



# **NCDEQ Coal Ash Impoundment Closure Plan Decision**

## **Attachment 1: Hearing Officer's Report**

**April 29, 2020**



## **Hearing Officer's Report – Proposed Closure Plan for the Coal Ash Impoundment at Cliffside Steam Station**

Date: April 28, 2020

Facility: Cliffside Steam Station  
County: Rutherford  
Owner & Operator: Duke Energy Carolinas, LLC

### Purpose

The purpose of this document is to provide an administrative record of the public input process on the proposed Closure Plan for the subject facility as required by G.S. 130A-309.214(b) of Session Law 2016-95 House Bill 630 (referred to as the Coal Ash Management Act or CAMA).

### Regulatory Background Summary

CAMA required that the North Carolina Department of Environmental Quality (NCDEQ) develop proposed classifications for all coal combustion residuals surface impoundments, including active and retired sites, for the purpose of closure and remediation based on these sites' risks to public health and the environment.

On November 13, 2018, NCDEQ issued a final low-risk classification for the Cliffside Steam Station based on the determination that Duke Energy met the requirements of G.S. 130A-309.213(d)(1). On April 1, 2019, NCDEQ further determined that the coal combustion residuals (CCR) impoundments at the Cliffside Steam Station required closure via excavation per G.S. 130A-309.214(a)(3)(a). On April 26, 2019, Duke Energy appealed the determination that the impoundment should be excavated.

On December 31, 2019, NCDEQ received the Closure Plan for the Cliffside Steam Station per the CAMA deadline. Staff from the NCDEQ's Division of Waste Management; Division of Energy, Mineral, and Land Resources; and Division of Water Resources have reviewed the Closure Plan for completeness and the requirements of G.S. 130A-309.214(a)(4). NCDEQ also received the Corrective Action Plan for groundwater remediation for the Cliffside Steam Station. The Division of Water Resources staff also reviewed the Corrective Action Plan as it is an integral part of the Closure Plan.

On December 31, 2019, NCDEQ entered into a Settlement Agreement with Duke Energy and the community groups represented by the Southern Environmental Law Center regarding the closure of the Cliffside Steam Station. The Settlement Agreement added further requirements to the closure efforts and corrective action activities at the site as well as established some milestone dates for reporting, corrective action, and closure goals.

On January 31, 2020, the parties from the Settlement Agreement filed a Consent Order with the Wake County Superior Court. The Consent Order was subsequently signed by Wake County Superior Court Judge Paul Ridgeway on February 5, 2020.

### Site History/Background Summary

The Cliffside Steam Station (CSS) is owned and operated by Duke Energy Carolinas in Rutherford County astride the Cleveland/Rutherford County lines, near the town of Mooresboro, North Carolina. The CSS is a two-unit, 1,387 MW, coal- and natural gas-fired station. Both units began operation in 1940. The site has two ash basins. Unit 5 Ash Basin (inactive) was constructed in 1970, has a surface area of 46 acres, and contains 2.36 million tons of ash. Active Ash Basin (active) was constructed in 1980, has a surface area of 86 acres, and contains 5.04 million tons of ash.

### Closure Plan Summary

The closure plan indicates that both coal ash basins will be excavated. The proposed new landfill construction will begin the 4<sup>th</sup> quarter of 2021. It will consist of a lateral expansion of the existing onsite permitted lined landfill (8106-INDUS-2009). Excavation of the two coal ash impoundments will also begin the 4<sup>th</sup> quarter of 2021 and is expected to be completed the 4<sup>th</sup> quarter of 2028. A total of 7.39 million tons of ash will be excavated from the Unit 5 and Current Ash Basins. The final closure of the new landfill is expected to be completed the 4<sup>th</sup> quarter of 2029. This represents eight years to complete excavation and close the new landfill. Complete final site vegetative cover is expected to be completed the 4<sup>th</sup> quarter of 2030. The new landfill will have a surface area of 47.5 acres and a final elevation of 1000 feet, or 170 feet above McCraw Road.

### Public Input Summary

In accordance with the requirements of G.S. 130A-309.214(b)(1), the Closure Plan was made available to the public for review and input on January 23, 2020. A copy of the proposed closure plan was available to be reviewed at the Rutherford and Cleveland County Health Departments, Rutherford and Cleveland County Public Libraries, and at the NCDEQ Asheville Regional Office. The Closure Plan was also made available online at:

<https://NCDEQ.nc.gov/news/key-issues/coal-ash-excavation/cliffside-steam-station-coal-ash-closure-plan>

Per G.S. 130A-309.214(b)(2)(a), a notice and summary of the proposed Closure Plan was published in the Asheville Citizen-Times newspaper for three consecutive weeks beginning on January 29, 2020. Copies of the Notice were provided as required by G.S. 130A-309.214(b)(2)(b) and (c). Per G.S. 130A-309.214(b)(4), the 60-day comment period began on January 26, 2020 and ended on March 17, 2020. However, due to publication error, the public notice was published again for three consecutive weeks beginning March 4 in The Daily Courier and the Shelby Star. This extended the comment period, so that it ended on April 17, 2020. Comments could be sent to the NCDEQ via email, mail, and oral and/or written comments submitted during the public hearing.

### Public Hearing and Oral Comments Summary

In accordance with the requirements of G.S. 130A-309.214(b)(3), a public hearing was held on February 25, 2020 at 6:00 pm in the Chase High School cafeteria, located at 1603 Chase High Road in Forest City, North Carolina. The purpose of the public hearing was to allow the public to comment on the Cliffside/Rogers proposed Closure Plan. Interested parties were able to submit

oral or written statements regarding the proposed Closure Plan. Persons wishing to speak registered at the hearing. Speaking times were allotted per speaker as time allowed.

Approximately 27 people attended the public hearing including eight staff members from the Division of Waste Management; Division of Energy, Mineral, and Land Resources; Division of Water Resources, and Division of Air Quality, as well as Public Information Officers and the Hearing Officer. A total of 19 individuals signed the attendance sign-in sheets at the hearing. The Hearing Officer provided opening comments and Larry Frost, an engineer in the Division of Waste Management, gave a brief overview of the Closure Plan. Six individuals registered in advance of the hearing to make comments. Speakers had three minutes for initial presentations and additional time was provided after everyone that registered to speak was finished.

### Response to Comments

As discussed above, during the hearing, seven individuals made comments on the Closure Plan. Additionally, NCDEQ received one written comment regarding the Closure Plan. All of the commenters expressed support for excavating and relocating coal ash into lined landfills. A discussion of the substantive concerns raised in these comments follows. The written comments are contained in Attachment 2.

**Comment:** Two commenters expressed concern that 30 years of post-closure monitoring would not be sufficient at the site.

**Response:** The Coal Ash Management Act requires submission of a plan which includes 30 years minimum of post-closure monitoring. That section provides for that period to be extended at the end of the 30-year monitoring period if sampling reveals that groundwater contamination levels are increasing, or if otherwise necessary in order to fully protect public health and the environment.

**Comment:** One commenter expressed concern that semi-annual monitoring at the site was insufficient.

**Response:** The Closure Plan must meet the Coal Ash Management Act requirement that a plan contain a schedule for post-closure groundwater monitoring for a period of at least 30 years in order to ensure that groundwater contamination is not increasing, and that groundwater contamination at the site does not pose a risk to public health and the environment. The post-closure monitoring plan must be developed following appropriate site investigation and monitoring, and include a description of actions proposed to mitigate statistically significant increasing groundwater quality trends.

**Comment:** Two commenters expressed concern for worker safety during the cleanup process.

**Response:** Duke Energy is required to comply with all applicable state and federal regulations during the cleanup process, including those regulations pertaining to worker safety. It should be noted, however, that the authority to regulate worker safety is vested in state and federal agencies other than NCDEQ.

**Comment:** Three commenters expressed concern about the potential for Duke to increase rates in order to recover from consumers the costs associated with cleanup at the site. Two of these commenters felt it should not be allowed, one expressed ambivalence on this issue.

**Response:** The North Carolina Utilities Commission has statutory authority to determine who will pay the costs associated with cleanup of coal ash at the site, including those costs associated with storage of excavated coal ash in a lined landfill. These cleanup costs will be the subject of

future rate cases before the North Carolina Utilities Commission. The public will have an opportunity to provide comments during those rate case hearings.

**Comment:** One commenter expressed concern regarding the closure process, specifically, that stockpiles might be exposed during landfill construction.

**Response:** The Closure Plan must comply with the Coal Ash Management Act, which requires that a site closure plan include a “description of the construction quality assurance and quality control program to be implemented in conjunction with the Closure Plan.” N.C. Gen. Stat. 130A-214(4)(g). This requirement will ensure that the coal ash is properly managed as the material is excavated, dried and transported to the landfill.

**Comment:** One commenter expressed concern that all saturated coal ash must be removed and that Duke Energy should submit the plan for how the saturated ash should be addressed.

**Response:** The Closure Plan requires that all coal ash be removed from the impoundment. It is not known at this time to what extent, if any, fully saturated ash will be present at the site during excavation. Should this condition occur, Duke will need to submit an additional plan to NCDEQ for its removal.

**Comment:** One commenter expressed concern regarding the discharge into the river of treated decanted water from the impoundment.

**Response:** Duke Energy is required to comply with all applicable state and federal regulations at the facility, including obtaining and complying with all required permits associated with carrying out the Closure Plan. Any discharge of wastewater into the river must comply with all parameters set forth in the required NPDES permit, as well as all other applicable regulations.

**Comment:** Three commenters expressed concern for the impact coal ash contaminants may have on fish in the river.

**Response:** Duke Energy is required to conduct annual fish tissue monitoring and to comply with all applicable state and federal water quality regulations during site closure, and to obtain and comply with all required water quality permits.

#### Hearing Officer Recommendations

Based on my review of the record and in consultation with subject matter experts in NCDEQ, I recommend approval of the submitted Closure Plan for the coal ash impoundment located at Duke Energy’s Cliffside Steam Station located in Rutherford County. I conclude the Closure Plan is protective of public health, safety and welfare, the environment and natural resources and otherwise complies with the requirements of CAMA.



William T. Wike, Jr., Hearing Officer



Date