

WHO WILL TELL THE PEOPLE

IF THE DAN RIVER COAL-ASH SPILL PROVED ANYTHING, IT IS THAT AS GOVERNMENT REGULATORS DO THE BIDDING OF POWERFUL CORPORATIONS, IT IS LEFT TO CITIZENS' GROUPS TO STAND UP FOR DEMOCRACY AND SOUND THE ALARM.

BY HALEY TWIST

When Ben Adkins describes the Dan River, his words reveal profound reverence for the 214-mile-long river that runs through his hometown of Eden, North Carolina. To Adkins, a 36-year-old father of two, the Dan is more than just a source of drinking water for communities downstream and a destination for paddlers and tourists; it is a defining element of his life. This river, according to Adkins, is the first place he ever felt God's presence. Yet he knows well that on February 2nd, 2014, this river he cherishes suddenly, drastically changed, potentially for years to come.

On the afternoon of February 2nd, as many people prepared to watch Super Bowl XLVIII that evening, a maintenance worker patrolling the grounds of Duke Energy's Dan River coal-fired Steam Station in Eden, North Carolina, noticed that the water level in the plant's nearly 60-year-old coal-ash waste pit seemed lower than usual. Upon further inspection, utility workers discovered that a 48-inch metal stormwater pipe running beneath a coal ash disposal pond had collapsed, delivering a torrent of toxic sludge straight into the Dan River. By the time the utility managed to stop the spill more than three days later, an estimated 150 million tons of coal-ash slurry – and about 1,200 pounds of arsenic, 435 pounds of chromium, and 325 pounds of lead, among a long list of other toxic heavy metals found in coal ash – had spilled directly into the river.

Even after the river water returned to its natural greenish-brown color, a layer of thick, gray ash settled on the bed of the river for at least 70 miles downstream, threatening drinking water supplies from Danville, Virginia all the way to Virginia Beach. Deposits of floating ash lingered in eddies behind rocks and fallen tree limbs for over a week. Shortly after the spill, the water level in the river receded in the interim between two



DONNA LISENBY, CENTER, WATERKEEPER ALLIANCE'S GLOBAL COAL CAMPAIGN COORDINATOR, LED COMMUNITY MEMBERS IN NORTH CAROLINA FOR COAL ASH WEDNESDAY, WHERE CITIZENS GATHERED AT THE GOVERNOR'S MANSION IN RALEIGH TO DEMAND THAT DUKE ENERGY CLEAN UP THEIR COAL-ASH PONDS.

snowstorms, leaving a chalky-gray “bathtub ring” of ash on the bank at the high-water line for miles downstream.

Now, as the scorching North Carolina summer rolls in and memories of the mid-winter spill have begun to fade, people have resumed fishing and swimming in the Dan, unaware of the layer of solid ash that still rests on the river bottom, now concealed by two or three inches of soft sediment deposited by snowmelt and runoff from heavy spring rains. At Draper Landing, the only public access point on the river between Eden and Danville, a laminated sheet of paper dangles inconspicuously from a nail on a maple tree. On the sheet, in bureaucratic fine print, a notice from the North Carolina Department of Public Health warns visitors to avoid contact with the contaminated water.

If there has been a silver lining to the Dan River spill, it has been the very public exposure of a broken government that is either unwilling or incapable of protecting its citizens and natural resources from irresponsible – and in many cases, blatantly illegal – coal-ash disposal practices. Wastewater discharges from coal-ash impoundments are by far the largest source of toxic water pollution in the United States, yet there is currently little in the way of uniform federal standards to require utilities to reduce or eliminate this waste stream, as required by the Clean Water Act.

The absence of federal standards has left the regulation of coal ash almost exclusively to the individual states. And in coal-dependent states, where electric utilities exert tremendous political influence, a combination of lax regulation and nonexistent enforcement allow corporate polluters to dump millions of pounds

of toxic pollution into rivers and lakes with almost complete impunity. In North Carolina, for example, landfills that receive ordinary household garbage are subject to far more regulatory requirements (impermeable liners, leachate collection systems, etc.) than landfills and impoundments filled with toxic coal ash. State-issued Clean Water Act permits allow Duke Energy to discharge many toxic pollutants in unlimited quantities. Worse yet, the North Carolina Department of the Environment and Natural Resources (DENR), the primary agency responsible for overseeing Duke's compliance with environmental laws, never brought a meaningful enforcement action to address Duke's noncompliance, even though illegal groundwater contamination and discharges from leaking dams and pipes had been documented at Duke facilities for decades.

In the three years prior to the spill, Waterkeeper Alliance and six North Carolina Riverkeepers meticulously documented illegal water pollution leaking from unlined ash dumps at three Duke Energy coal-fired power plants in the state. Lawyers from the Southern Environmental Law Center representing the Waterkeepers sent notices of intent to sue Duke Energy for Clean Water Act violations at three plants. The first two notices concerned pollution at Duke's Asheville Plant and the Riverbend Steam Station near Charlotte. Each time the Waterkeepers threatened to sue, state regulators suddenly leapt into action, suing Duke first, thereby preempting the citizen enforcement actions to a great extent. After filing the lawsuits, the state secretly negotiated an exceedingly lenient settlement with Duke, which would have imposed inordinately small fines for extensive pollution, and would have allowed the pollution

to continue unabated while insulating Duke from liability. The proposed settlement met massive resistance from the public, and the parties subsequently withdrew it before the judge could ever rule on its adequacy.

At the third plant, the L.V. Sutton Plant in Wilmington, selenium in illegal coal ash discharges into Lake Sutton – a popular fishery – is causing rapid population declines and physical mutations in several fish species. Groundwater contamination emanating from the coal-ash dumps is also creeping off Duke's property, threatening the drinking water supply for nearby residents. When Waterkeeper Alliance, the Cape Fear Riverkeeper, and the Sierra Club sent a third notice letter for pollution at the Sutton Plant, North Carolina responded as it had the first two times, blocking the citizen action by suing Duke itself. This time, however, the state accused Duke of illegal coal-ash pollution not only at the Sutton Plant, but at all 11 of Duke's remaining coal-ash dumps across the state. According to Waterkeeper Alliance attorney Pete Harrison, this move was clearly designed to thwart any plans the Waterkeepers may have had to take action at additional sites in the future.

“To be perfectly honest,” Harrison says, “we had no plans to pursue enforcement at any of the other plants. The state overshot the mark. What was significant about this unprecedented maneuver was that you had the state of North Carolina going on the record, under oath, accusing Duke Energy of threatening the health and welfare of the people of North Carolina with its illegal toxic pollution – at every single one of its coal facilities across the state.”

After state regulators filed the suite of coal ash enforcement lawsuits against Duke Energy in August of 2013, the litigation

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AERIAL PHOTO BY RICK DOVE/WATERKEEPER ALLIANCE

WATERKEEPER ALLIANCE SENT PLANES AND PHOTOGRAPHERS INTO THE AIR IN THE DAYS FOLLOWING THE COAL ASH SPILL ON THE DAN RIVER.

stagnated while the pollution continued unchanged. Six months later, the collapsed pipe at the Dan River plant flooded the river with coal ash, shining a national spotlight on Duke's lawless ash-management practices, and the regulators who allowed the utility to get away with it. Within days, the U.S. Department of Justice launched a massive criminal investigation, specifically examining whether Duke had provided any favors or "items of value" to state employees in exchange for leniency and other concessions.

Harrison remains hopeful that "a serious criminal prosecution would help solve a lot of problems with 'captured' agencies, where powerful industries come in and dominate government to the point where the government agencies that are supposed to protect our health and our environment are no longer doing that." The ongoing criminal probe appears to focus on the state's collusion with Duke Energy to obstruct threatened citizen-enforcement lawsuits, and to a greater extent, the regulatory breakdown that allowed the Dan River spill to occur. Immediately after the public received notice of the spill on Monday evening, more than 24 hours after Duke became aware of the problem, questions arose as to why there had been such a delay in notice in the face of such a serious endangerment to public health. Hours after discovering the spill on Sunday

afternoon, Duke Energy called the state's spill-reporting hotline. However, nobody answered the phone and nobody heard Duke's voicemail until it had become irrelevant.

Officials at DENR only became aware of the spill on Monday morning when Duke called an agency field office in Winston-Salem. Finally, on Monday evening, Duke, DENR, and Danville Utilities each issued a press release within an hour of one another, informing the public that tens of millions of gallons of toxic waste had spilled into the Dan River. By then, the ash had long since reached the public drinking water intake at Danville, a city of 43,000. Danville Utilities' press release proudly declared its "success" in removing all of the contaminants ingested by its water treatment system, though it was later revealed that the utility had relied completely on water quality data supplied to it by Duke Energy.

"Whenever you have an environmental disaster like the Dan River spill, those responsible for the disaster and the authorities responsible for responding to it often try to suppress public information," says Harrison. "Responsible parties suddenly find themselves facing huge liabilities, and if they can influence regulators to cut corners and conceal information, they will – even if it exposes the public to harm. That is why it's vital for citizens to keep a close eye on the response to this kind of crisis, making sure the public gets the whole story."

Harrison, who specializes in coal-related

water pollution issues, and Donna Lisenby, Waterkeeper Alliance's global coal campaign coordinator, led a Waterkeeper team that would prove instrumental in "guarding the guards," in the wake of the Dan River spill. Not long before the spill, Lisenby developed a set rapid response protocol for Waterkeeper Alliance, which she based on three fundamental elements: rapid deployment to the scene, thorough documentation of impacts and government response, and rapid distribution of the information collected to the public.

Before she joined Waterkeeper Alliance in 2013, Lisenby had been a Riverkeeper in North Carolina for 15 years, and a firefighter before that. Lisenby's experience responding to emergency situations included a previous coal-ash spill. On the night of December 22, 2008, when a dike collapsed at a huge coal-ash impoundment near Kingston, Tennessee, Lisenby and Hurricane Creekkeeper John Wathen were among the first on the scene, paddling kayaks through a thick gray soup of spilled coal ash in the Emory and Clinch Rivers. Their photography and water sample results helped inform the world of how severe the Kingston spill had been, at a time

when few people had even heard of coal ash. When Lisenby got news of the Dan River spill Monday evening, she immediately initiated the rapid response protocol she had developed. Early Tuesday morning, Lisenby and her truck, loaded with boats, cameras and water-sampling tools arrived at the site of the spill. Catawba Riverkeeper Sam Perkins and Yadkin Riverkeeper staff member Justin Quinlivan joined Lisenby. With limited public access to the river upstream of the spill, the team's first task was to gain access to the water.

After surveying maps, they determined that the cow pastures across the river from the power plant would be ideal. Lisenby contacted the landowner and he allowed the team to use his fields as a base camp. From there, the team set out in their kayaks, and after a frantic paddle across the rushing river, they arrived at the toe of the ash pond. High above them, Chapel Hill attorney and pilot Bob Epting and Larry Baldwin, who coordinates field investigations of North Carolina factory farms for Waterkeeper Alliance, captured striking aerial images of the gray plume of coal ash extending for miles downstream of the spill.

The crew in kayaks soon arrived at the spilling pipe, and despite warnings from Duke Energy personnel instructing them to leave, they collected samples of the sludge that continued

The EPA's arsenic standard for safe drinking water – the level below which consumers are protected from the effects of long-term exposure – is 0.01 parts per million. The arsenic concentration logged by Waterkeeper Alliance at the Dan River spill site registered .349 parts per million – nearly 35 times greater than the standard.

Waterkeeper Alliance's samples, which were tested within 48 hours, indicated that the Dan River was polluted with arsenic, lead, boron, manganese, and other contaminants. Current medical knowledge links such pollutants to learning disabilities, birth defects, Alzheimer's disease, Parkinson's disease, asthma and various types of cancer. Yet Erin Culbert, a Duke Energy representative, says these health concerns "are based in the inaccurate perception that coal-ash is toxic." Coal ash, she concedes, contains low levels of arsenic, but its toxicity, she claims, is questionable.

"Assessing toxicity," she contends, "is more than whether a specific element is present; it's also about what form that element is in, whether there is actual exposure to people or animals, and whether the magnitude of that exposure is sufficient to cause a concern."

Filmmaker Rhiannon Fionn has travelled across America to gather personal stories of exposure to coal ash for her forthcoming film, *Coal Ash Chronicles*. "I do feel like the

Although there are currently no federal regulations that specifically govern coal-ash storage, and state regulation is minimal, Duke Energy's Culbert places North Carolina ahead of other states for its dam-safety standards and groundwater-monitoring requirements for ash basins. In May, North Carolina State Senate Republican leaders filed a coal-ash-regulation bill at the General Assembly in Raleigh, proposing the gradual closure of several coal-ash storage-basins in the state, including ones at the Dan River, Riverbend, Asheville, and Sutton plants. According to Raleigh's News & Observer, environmental groups believe the bill should require Duke Energy to close all of their storage-ponds. But North Carolina Governor Pat McCrory, a former Duke Energy executive for 28 years before taking office, has proposed a much more lenient bill of his own.

As coal-ash pollution has received more attention, the state has issued several citations to Duke Energy for similar leaking pipes beneath many of its North Carolina facilities, although little has been done to correct problems. Inspection reports dating back to 1986 demonstrate that Duke Energy had been warned about the corroding pipe that failed at the Dan River plant more than 20 years ago, but the utility never took action to fix it.

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to pour out of the pipe. Lisenby claims that, although independent inspectors found and flagged the busted pipe as a problem years ago, neither Duke Energy nor the State investigated the situation. "They just let that old, corrugated metal pipe sit underneath that coal-ash basin, corroding away over the decades," she says.

The water samples that Lisenby and Quinlivan collected turned up very different lab results from those that were taken by Duke Energy and analyzed in a private lab in Huntersville, N.C. According to Lisenby, the State, Duke Energy and the EPA collected samples two miles downstream from where the spill occurred, while the Waterkeepers took theirs directly from the source of the spill. Quinlivan, who spent over 77 hours on the river in the weeks after the spill, says that it was almost as if DENR selected its sampling points in places where pollution concentrations would appear to be lower.

Waterkeepers have a right to say "I told you so," says Fionn. "The lack of regulations is bad, but it's been bad for a long time. The Dan River spill – and other cases of coal-ash contamination in the state – could have been prevented if DENR was doing its job, instead of pandering to political and corporate interests."

After Lisenby's international duties took her away from the Dan River, Pete Harrison deployed to the scene to continue the investigation. Along with five North Carolina Riverkeepers, he examined other Duke Energy facilities in North Carolina with coal-ash dumps, and documented illegal pollution at 11 of them. They also discovered that the company had pumped an estimated 61 million gallons of wastewater into the Cape Fear River from another coal-ash pond. Neuse Riverkeeper Matt Starr, French Broad Riverkeeper Hartwell Carson, and Cape Fear Riverkeeper Kemp Burdette investigated other facilities.

Duke Energy claims it has taken responsibility for the spill and in a March 12th letter to Governor McCrory, CEO Good explained that the company permanently sealed the broken pipe at Dan River, removed some coal ash from the water, and continues to test water quality. The company plans to close or remove ash ponds at its Dan River, Sutton, Riverbend and Asheville plants, however the fate of the other 11 sites remains in question. Ben Adkins still goes down to Draper Landing several times a week. The landing had always been a place where Adkins could go to clear his mind, but now it stirs thoughts of regret for what has been lost. "My kids deserve to swim here and fish here," he says. "I deserve to be able to teach them those things – here." **W**

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