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City Of Raleigh
NORTH CAROLINA

ATTACHMENT E

November 21, 2012

Delivery via Duke Energy Counsel

Mr. Stephen T. Smith, Chairman
North Carolina Environmental Management Commission
1617 Mail Service Center
Raleigh, NC 27699-1617

Re: Request for Declaratory Ruling on the Interpretation of 15A NCAC §2L.0106(c) with Respect to Coal Ash Lagoons, Cape Fear River Watch et al., Petitioners

Dear Chairman Smith:

The City of Raleigh is submitting the following statement in opposition to the suggested interpretation set forth in the Request for Declaratory Ruling of 15A NCAC §2L.0106(c) with Respect to Coal Ash Lagoons (the "Request") filed by Cape Fear River Watch, Sierra Club, Waterkeeper Alliance, and Western North Carolina Alliance ("Petitioners") on or about October 10, 2012. The City opposes the Petitioners' interpretation of the rule, and supports the interpretation currently implemented by the Division of Water Quality, for the reasons explained below.

The City of Raleigh is a municipal corporation in Wake County. It is the second most populous municipality in the State of North Carolina. It provides water and sewer service to six other municipalities with a total population of customers of approximately 490,000. Raleigh relies on land application for disposal of its biosolid byproducts from it sewer operations. Raleigh has applied biosolids on the fields surrounding its primary waste water treatment plant. In addition, Raleigh operated numerous sites as solid waste landfills that are now designated inactive hazardous waste sites by the State of North Carolina. Raleigh owns various other properties where there is known groundwater contamination. Raleigh is cooperating with the appropriate regulatory agencies in addressing these sources of contamination, irrespective of the City's role in the source of the contamination.

If the regulation is interpreted as requested by the Petitioners, the Environmental Management Commission will issue a declaratory ruling requiring that facilities holding permits issued before December 30, 1983 do the following:

> (1) Initiate corrective measures pursuant to 15A NCAC 2L.0106(c) when the activity at issue results in an increase in the concentration of substance in excess of the groundwater standards, whether or not groundwater quality standards have been exceeded at or beyond a compliance boundary around the facility;

(2) Take immediate action to eliminate source of the contamination that causes a concentration of a substance in excess of groundwater quality standards, even before the initiation of corrective measures; and

(3) For closed or inactive facilities, implement corrective action as described above when they cause an increase in the concentration of substance in excess of the groundwater standards, again whether or not groundwater quality standards have been exceeded at or beyond a compliance boundary around the lagoon.

Although the Request specifically asks for a determination of the application of 15A NCAC 2L.0106(c) to coal ash lagoons, the interpretation of the rules as requested by the Petitioners would not be limited to such facilities. The City owns and operates facilities that could be adversely affected if the rule is interpreted as requested, and this approach is not consistent with the way in which our facilities have historically been regulated. As requested, the interpretation would require changes in the actions that we must take to address exceedances of groundwater standards within a compliance boundary if a site was permitted by the agency prior to December 30, 1983. Substantial uncertainty will be created about what regulatory program has primacy for groundwater contamination associated with properties where there was no DWQ permit issued, such as inactive hazardous waste sites, dry cleaning solvent sites, and underground storage tank sites. The City has properties which meet each description and wants to continue its remedial efforts under the programs as administered by the Division of Waste Management.

The City supports the long standing interpretation of the rule as applied by the staff in the Division of Water Quality and urges the Environmental Management Commission to uphold the historical interpretation of the rules on which we and other regulated entities around the state have relied. If the Environmental Management Commission believes the current approach is inadequate, any changes to the rule should be accomplished by undertaking rulemaking procedures.

Respectfully submitted,

J. Russell Allen
City Manager

CC: Charles D. Case, Esquire
Daniel F. McLawhorn, Associate City Attorney