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VIA MAIL AND EMAIL

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Re: Probation Violation  
U.S. Department of Justice v. Duke Energy

Dear Mr. Wilson:

I am writing you in your position as Federal Court Appointed Monitor for Duke Energy's probation relating to the nine criminal convictions for its decades of mishandling of coal ash and violations of the Clean Water Act.

My clients, NC WARN, Blue Ridge Environmental Defense League, and Appalachian Voices, organizations working with citizens throughout North Carolina on environmental and justice issues, believe Duke Energy's interference in the findings and recommendations of the National Ash Management Advisory Board ("NAMAB") are violations of Duke Energy's probation and plea agreements with the Department of Justice.

As background, Duke Energy created the NAMAB in response to the adverse public response to its initial ash spill on the Dan River. The NAMAB's express purpose is to provide "**independent**" input and advice to Duke Energy Coal Combustion Products (CCP) and Environmental Health and Safety (EH&S) organizations, Duke Energy senior

management and Duke Energy's Board of Directors."<sup>1</sup> (emphasis added). Operation of the NAMAB was contracted to the UNC Charlotte Lee College of Engineering, and Chaired by Dr. John L. Daniels, P.E., Professor and Chair of the Department of Civil and Environmental Engineering.

Continuation and funding of the NAMAB are provisions in the plea agreement. Memorandum of Plea Agreement, pp. 21-22. The NAMAB recommendations are one of the bases for the Environmental Compliance Plans in subpart 3.u. of the plea agreement, and again, the clear purpose of the NAMAB is to provide independent expert guidance in this area.

However, an investigation conducted by WBTV in Charlotte revealed Duke Energy fully participated in the NAMAB investigation and recommendations, even to the point of "strongly urging" the NAMAB to accept Duke Energy's substantial edits and track changes.<sup>2</sup> The referenced WBTV article provides links to many of the internal NAMAB documents, correspondence between the NAMAB and Duke Energy, and the resulting watered-down recommendations in the report.<sup>3</sup>

Duke Energy's involvement and strongly urged changes to the fundamental recommendations of the NAMAB's final report make a mockery of any claim of independence of the NAMAB. We believe the only reason for establishing the NAMAB was to provide cover to Duke Energy rather than provide any independent, science-based recommendations. The end result was a series of statements to State regulators, legislators, and the Department of Justice downplaying the impacts of coal ash spills and leaks on families nearby and the impacts on the environment. For example in the letter to Mr. Reeder, Assistant Secretary, NC Department of Environmental Quality, providing the NAMAB recommendations, Dr. Daniels states:

The NAMAB has been integrally involved in the review of groundwater assessment plans, comprehensive site assessments, and corrective action plans, which have been submitted to DEQ. Likewise, it has participated in the review of stability and engineering related assessments and with the implementation of NAMAB-recommended health and environmental assessments of risk. While licensed professionals are responsible for these work products, the group is sufficiently aware of the

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<sup>1</sup> <https://engr.uncc.edu/research/national-ash-management-advisory-board>. See also, Chairman Daniels's letter to the NC Division of Environmental Quality laying out its "independent" recommendations.

<http://ftpcontent4.worldnow.com/wbtv/pdf/DOC%202%20DANIELS%20LETTER.pdf>

<sup>2</sup> <http://m.wbtv.com/story/36817611/emails-reveal-duke-edited-scientific-reports-on-coal-ash-coordinated-with-advisory-board-chair>. The article provides cites to the various emails and text messages between the NAMAB and Duke Energy; <http://ftpcontent4.worldnow.com/wbtv/pdf/DOC%206%20REPORT.pdf>; <https://www.documentcloud.org/public/search/projectid:%2036090-duke-energy-uncc-coal-ash-research-john-daniels-text-messages-emails-amp-attachments>; <https://www.documentcloud.org/public/search/projectid:%2036089-duke-energy-uncc-coal-ash-research-bill-langley-emails-amp-attachments>

<sup>3</sup> <http://ftpcontent4.worldnow.com/wbtv/pdf/DOC%206%20REPORT.pdf> with cover email and track changes making major edits to report.

site-specific conditions to which the CAMA risk classification criteria are being applied. For example, licensed engineers and geologists, with support from health and environmental risk assessors, have determined that there is no imminent hazard. Those same professionals have determined that existing conditions at these sites do not present a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment will occur.

These findings are colored by Duke Energy's insistence there was no need for more protective closure options than capping-in-place and minimal removal at a few of the sites. The edits to the report made the recommendations conform to what Duke Energy was looking for, the most economical way to address coal ash rather than strategies to minimize harm.

As the Court Appointed Monitor you have the responsibility to insure compliance by Duke Energy with its probation term, and the authority to obtain relevant documents and testimony from Duke Energy and the NAMAB. We urge you to fully investigate this interference as it brings into question all of the recommendations made by the NAMAB and Duke Energy to State regulators, the NC General Assembly, and the Department of Justice, as well as any "good faith" compliance with the plea agreements. The documents in the WBTV article cited herein should provide you a starting point to your investigation.

Please inform me of any action you take on this critical matter.

Sincerely,

*/s/ John D. Runkle*

John D. Runkle

cc. Jim Warren, NC WARN  
Lou Zeller, Blue Ridge Environmental Defense League  
Amy Adams, Appalachian Voices

Josh Stein, NC Attorney General  
Michael S. Regan, Secretary, NC Department of Environmental Quality