

# BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE

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March 27, 2003

Keith Overcash, Director  
Division of Air Quality  
1641 Mail Service Center  
Raleigh, NC 27699-1641

**Re: Air Permit No. 01983T15, Belews Creek Steam Station, Duke Energy Corporation  
Facility ID: 8500004, Walnut Cove, Stokes County, NC**

Dear Mr. Overcash:

On behalf of the Blue Ridge Environmental Defense League, I write to comment on the proposed Title V permit for Duke Energy's Belews Creek electric power station.

## Overview

Duke Energy's Belews Creek Steam Station generates electrical power using four fossil-fueled boilers. The company operates two coal-fired electric utility boilers (ID Nos. ES-1 and ES-2) and two No. 2 fuel oil-fired auxiliary boilers (ID Nos. ES-3 and ES-4). Other air pollution sources include an ash landfill and six anhydrous ammonia storage tanks. Duke's coal-fired boilers are at the center of the U.S. Environmental Protection Agency's ongoing legal action against the company. The EPA has called for the shut down of Duke coal plants because they were modified without approval. Major modifications of pollution sources requires the owner-operator to submit to a review of the modernization under provisions of the Clean Air Act known as New Source Performance Standards. BREDL supports the EPA in this matter and calls upon the State of North Carolina to use all measures at its disposal to enforce the Clean Air Act and Amendments including New Source Review for Belews Creek.

## Energy Management Systems Increase Risk to Public Health

Both the draft permit and the permit review state that Duke must obtain an air permit before installing current trimming devices (energy management systems) on its electrostatic precipitators [sections 2.1-A.5.b and VI.2.e, respectively]:

- e. 2D.0536 "Particulate Emissions From Electric Utility Boilers"
  - i. Regulatory Analysis

Emissions of particulate matter from these boilers shall not exceed 0.15 pounds per million Btu heat input. Emissions of particulate matter are controlled by the electrostatic precipitators (ESPs). The Permittee shall obtain an air permit before installing Energy Management System

(EMS) capability. The permittee shall perform annual stack test, and submit the results and the report to assure compliance with this requirement.

The following requirements under 2D .0536 is state-enforceable only since the annual average opacities under this rule have not been approved by EPA.

While we approve of the Division's attempt to rein in the use of the problematic EMS's, the draft permit fails to clarify this issue. First, if energy management systems are not now installed, will the approval of permit 01983T15 allow them to be? Second, if they are presently installed but not operational, i.e., no "EMS capability," will approval of the draft permit allow their use? Finally, we remain unconvinced by the explanation that energy management systems are used only to optimize performance of pollution control devices and not to save energy as their name implies. In a February 25, 1999 letter to DAQ, Duke Energy's David Miller stated, "We believe that use of energy management systems will not adversely impact compliance with opacity regulations, but rather, represent an increase in energy efficiency (less coal per MW)." DAQ's Gary Saunders' email of February 3, 2000 stated, "...a *substantial* decrease in power utilization might be realized with the use of Power Management controllers while not *significantly* adding to the emissions from the ESP." [emphasis added] Plainly, the primary motivation for EMS systems is to save energy costs. You yourself have said that power saving is not an appropriate use of EMS and its use as such would violate the requirement for "maximum feasible control" under 15A NCAC 2D.0502. As we have stated in previous correspondence, EMS or current trimming relies on the supposition of parity between particulate emissions and opacity. There is no consistent correlation between opacity and particulate emissions; therefore, using opacity monitoring to ramp down the voltage on electrostatic precipitators which control particulates puts public health at risk, regardless of the rationale.

#### Duke's Violation of New Source Review

Duke Energy's 2001 Annual Report states:

In 2000, the U.S. Justice Department, acting on behalf of the EPA, filed a complaint against Duke Energy in the U.S. District Court in Greensboro, North Carolina, for alleged violations of the New Source Review (NSR) provisions of the CAA. The EPA claims that 29 projects performed at 25 of Duke Energy's coal-fired units were major modifications, as defined in the CAA, and that Duke Energy violated the CAA's NSR requirements when it undertook those projects without obtaining permits and installing emission controls for sulfur dioxide, nitrogen oxide and particulate matter. The complaint asks the court to order Duke Energy to stop operating the coal-fired units identified in the complaint, install additional emission controls and pay unspecified civil penalties. This complaint is part of the EPA's NSR enforcement initiative, in which the EPA claims that utilities and others have committed widespread violations of the CAA permitting requirements for the past 25 years. The EPA has sued or issued notices of violation of investigative information requests to at least 48 other electric utilities and cooperatives.

[http://media.corporate-ir.net/media\\_files/NYS/DUK/reports/duke2001ar/downloads/financial.PDF](http://media.corporate-ir.net/media_files/NYS/DUK/reports/duke2001ar/downloads/financial.PDF)

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Draft permit section 2.2, Permit Shield for Nonapplicable Requirements, holds that Duke Energy remains in violation of important provisions of the Clean Air Act. The language in the draft permit is intended as a “placeholder” to allow permit approval pending ongoing enforcement action by the U. S. Environmental Protection Agency. Section 2.2 stipulates that the permit “may be subject to reopening” to correct illegal actions by the company. The draft permit states:

This condition is to clarify that issuance of this permit provides no shield from the Act, or regulations promulgated thereunder, including state regulations, pertaining to requirements of the New Source Performance Standards or major or minor new source preconstruction review requirements, which EPA is currently alleging as having been violated by the Permittee. The permit may be subject to reopening to include a compliance plan and schedule addressing any judicial or administrative order establishing new applicable requirements arising out of past or ongoing noncompliance with those provisions for any affected emission units. [40 CFR 70.6(c)(3), 70.6(f) and 70.7(f)]

The Permittee is shielded from the following nonapplicable requirements as of the date of issuance of this permit based on information furnished with all previous applications. This shield does not apply to future modifications or changes in the method of operation: [15A NCAC 2Q .0512(a)(1)(B)]

The DAQ must change “may” to “shall” to remove uncertainty with regard to practical enforceability in this matter. Moreover, 40 CFR Part 70 requires compliance schedules to be included in Title V permits for sources which are out of compliance. Duke is out of compliance. Barring an end run around New Source Review by the Vice President's National Energy Policy Development Group, Duke faces fines of \$27,500 per day per facility. The DAQ cannot issue this permit without a compliance schedule.

Respectfully submitted,

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John Runkle, Esq.

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