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BLOG ENTRY

## AG's office, other states settle with power giant

December 22, 2009 at 12:34 pm by Casey Seiler

Attorney General Andrew Cuomo's office has announced a settlement with the power producer Duke Energy to reduce its sulphur dioxide emissions from a plant in New Albany, Ind., that has been linked to soot and acid rain in every state between here and the Ohio River (not to mention lovely Louisville, Ky., directly across the river from New Albany).

In addition to forcing the company to greatly reduce its pollution output, the settlement means New York will receive \$400,000 to fund environmental projects in the state as part of \$1 million paid to the state coalition that includes Connecticut and New Jersey. Other provisions of the deal:

- \* Duke will have to spend \$85 million — the feds' estimate — to refit its facilities to run cleaner.

- \* The settlement requires Duke to pay a civil penalty of \$1.75 million.

- \* Finally, Duke is required to spend \$5.25 million on other environmental projects, including \$250,000 to address acid rain in national forests and \$5 million to fund projects that benefit regional air quality, such as investing in hydropower generation or hybrid-powered vehicles.

Read the full release after the jump.

Attorney General Andrew M. Cuomo today announced that New York and a coalition of states, joining the U.S. Department of Justice and environmental groups, have reached a settlement with Duke Energy, one of the country's largest power producers, requiring the company to make dramatic reductions in its air pollution emissions and pay for environmental projects in New York.

Under today's settlement, Duke Energy will cut almost 35,000 tons of sulfur dioxide (SO<sub>2</sub>) emissions each year from its 550-megawatt Gallagher Generating Station located in New Albany, Indiana. This is equivalent to an 86% reduction in the plant's total SO<sub>2</sub> emissions. The company will also pay \$400,000 to New York to fund projects that reduce air pollution and conserve energy.

"This settlement shows that New York will hold dirty coal-burning power companies accountable for breaking clean air laws," said Attorney General Cuomo. "Duke Energy must eliminate tens of thousands of tons of air pollution each year that would have otherwise harmed the health of New Yorkers and our environment. We will continue to fight to clear the air for New Yorkers by pursuing the companies that pollute our skies and our lungs."

Air pollution emissions from Duke Energy's Gallagher plant contribute to smog and soot pollution in New York. These pollutants threaten human health and are directly linked to increases in asthma attacks and lung diseases. They also are primary contributors to acid rain, which has severely damaged lakes, forests, and wildlife throughout New York's Adirondack and Catskill regions. The power plant, which burns coal as fuel, also emits substantial amounts of global warming pollution.

In August 2001, the Attorney General's office, leading a coalition of states that included Connecticut and New Jersey, joined two environmental groups and the federal government in suing Duke Energy for violations of New Source Review ("NSR") provisions of the federal Clean Air Act ("CAA"). The coalition charged Duke Energy with modifying its facilities and increasing air pollution at four of its power plants in Indiana and Ohio without installing required pollution controls. This past May, a jury found that Duke Energy had illegally modified two of the Gallagher plant's power-producing units, Units 1 and 3. A trial on remedy was scheduled for February 2010.

Today's settlement includes several requirements to ensure deep and permanent cuts in air pollution emissions from the plant. For example:

- Duke Energy is required to either permanently shut down power-producing Units 1 and 3, or convert them so that they burn natural gas rather than coal as fuel. Even under the latter re-fueling scenario, the two units' contribution to smog and soot pollution and acid rain will drop to almost zero, and their emission of global warming pollution will be halved at the least.
- The company is required to install state-of-the-art pollution control technologies on its Units 2 and 4, even though the 2001 lawsuit did not charge NSR violations at these units. These control technologies will cut the units' emissions of SO<sub>2</sub>, which contribute to soot pollution and acid rain, by over 50%.

The federal government estimates that Duke Energy will have to spend \$85 million to meet these requirements.

The settlement requires Duke Energy to pay a civil penalty of \$1.75 million. It further requires the company to pay the state coalition a total of \$1 million for environmental projects, with New York State receiving \$400,000. Finally, Duke Energy is required to spend \$5.25 million on other environmental projects, including \$250,000 to address acid rain in national forests and \$5 million to fund projects that benefit regional air quality, such as investing in hydropower generation or hybrid-powered vehicles.

Brian L Houseal, Executive Director of the Adirondack Council, said, "We congratulate Attorney General Cuomo for forcing the clean up of one of the dirtiest power plants in the United States. His actions today will help to curb acid rain across the Adirondack Park and will make the air cleaner and healthier for all New Yorkers. The Attorney General has helped to rid us of a public nuisance."

Scott T. Santarella, President and CEO of the American Lung Association in New York, said, “Emissions from coal-fired power plants are a major contributor to lung health problems. Attorney General Cuomo’s settlement will directly lead to cleaner air and better health for all New Yorkers.”

The case being settled today is U.S. v. Cinergy, and was submitted to Judge Larry McKinney of the federal district court for the Southern District of Indiana. There will be a 30-day public comment period on the settlement. The environmental groups Hoosier Environmental Council and Ohio Environmental Council were party to the lawsuit and today’s settlement.

In 2005, Cinergy Corporation merged with Duke Energy to form Duke Energy Company. The combined company is now the nation’s third largest electric power company, with about 35,000 megawatts of electricity generation capacity in the U.S. and four million customers in Indiana, Ohio, Kentucky, North Carolina, and South Carolina.

While today’s settlement resolves the suit over CAA violations at Duke Energy’s Gallagher power plant, the Attorney General’s legal action continues as to violations at another one of the company’s other power plants. In May 2008, after a trial prosecuted by the Attorney General and other plaintiffs, a jury found that Duke Energy had illegally modified three power-producing units at its Wabash River plant in West Terre Haute, Indiana. In a subsequent trial, the judge ordered the company to shut down these three units no later than September 2009 and permanently surrender 20,000 to 30,000 tons of pollution emission allowances. Duke Energy has appealed this order.

This matter was handled by Assistant Attorneys General Joe Kowalczyk, Robert Rosenthal, and Michael Myers, under that supervision of Special Deputy Attorney General for Environmental Protection Katherine Kennedy.