



September 20, 2017

Via Registered Mail – Return Receipt Requested

Ms. Lynn J. Good, Chairman, President and Chief Executive Officer
Duke Energy Corporation
550 South Tryon Street
Charlotte, North Carolina 28202

Ms. Melody Birmingham-Byrd, President
Duke Energy Indiana, LLC
1000 Main Street
Plainfield, Indiana 46168

Mr. Mike Wertz, Demolition Manager
Wabash River Steam Station
Duke Energy Indiana, LLC
450 Bolton Road West
Terre Haute, Indiana 47801

Notice of Intent to Sue: Resource Conservation and Recovery Act - 42 U.S.C. § 6972

RE: Duke Energy's Coal Ash Open Dump at its Wabash River Steam Station in Vigo County, Indiana: Violation of the Resource Conservation and Recovery Act and the Coal Combustion Residuals Rule by Duke Energy Corporation.

To Whom It May Concern:

Pursuant to 42 U.S.C. § 6972(a)(1)(a), the Hoosier Environmental Council (“HEC”), Waterkeeper and Wabash Riverkeeper, through their counsel, Earthjustice, gives Duke Energy Indiana, LLC (“Duke Energy” or “the company”) notice of its intent to file suit for violations of the Resource Conservation and Recovery Act (“the Act”) and the Coal Combustion Residuals Rule (“the Coal Ash Rule” or “the Rule”), 40 C.F.R. § 257.50 *et seq.*, adopted pursuant to the Act. After the expiration of sixty (60) days as provided in the Act, HEC, Waterkeeper and Wabash Riverkeeper plan to file suit in United States District Court against Duke Energy to enforce the provisions of the Rule and the Act.

Duke Energy Is Hiding Critical Safety Information from Indiana Residents

Duke Energy is hiding critical information from Indiana residents in blatant violation of the Coal Ash Rule. Duke Energy owns large lagoons full of toxic coal ash along the banks of the Wabash River just a few miles upstream of Terra Haute, Indiana, at its inactive coal-burning power plant, Wabash River Steam Station (“the Wabash Plant”). It admits that several ash

lagoons at the Wabash Plant have “significant hazard potential” under the Coal Ash Rule, meaning that, if the earthen and ash dams separating those lagoons from the Wabash River were to fail, that failure could disrupt essential transportation or utility infrastructure, damage the economy, and/or harm the environment. Due to the potentially severe impacts of a dam failure at the Wabash Plant, Duke Energy was required to create an Emergency Action Plan (“Plan” or “EAP”) containing, among other things, an inundation map showing downstream areas that would be affected by failure of the ash lagoon dams, and contact information for emergency responders the public can call if the dams fail. In spite of well-founded public concern about its ash lagoons – and in open violation of the Coal Ash Rule – Duke Energy refused to provide either the inundation map or the emergency contact information in the Plans it made publicly available. Duke Energy’s Wabash Plant ash lagoons are, therefore, open dumps in violation of the Rule and the Act.

Duke Energy’s Perilous Open Dumps at the Wabash Plant

The Wabash Plant was an old, dirty coal plant that operated for 63 years, from 1953 until 2016. Throughout those many decades, Duke Energy dumped the coal ash generated at the plant into large, unlined, water-filled pits. Sixty-three years of burning coal creates vast quantities of ash: according to Duke Energy, three coal ash lagoons at the site contain nearly two and a half million tons (2,053 acre-feet) of toxic ash and contaminated wastewater,¹ while the mostly dry “Ash Pond A” contains over 2 million tons of toxic ash alone.² And that’s an underestimate: the company’s consultants acknowledge that, in tallying the ash contained in the lagoons, they simply did not count the “excess” coal ash piled up above the surface of the water.³

Duke Energy’s ash lagoons at the Wabash Plant were carved into the earth right next to the Wabash River, an iconic waterway whose importance to Indiana is difficult to overstate. The Wabash is Indiana’s official state river, as well as the subject of Indiana’s official state song, “On the Banks of the Wabash River, Far Away.”⁴ It flows 475 miles through the state before joining the Ohio River, and includes the longest stretch of free-flowing river east of the Mississippi.⁵ Much of Indiana – 75 of its 92 counties – lies in its watershed.⁶ Near the Wabash Plant, the Wabash River is a vital waterway: it provides recreation for boaters and fisherman as well as habitat for at least 61 rare, threatened or endangered species.⁷

¹ 1 acre-foot = 1,211.29 tons (water); 2,053 acre-feet = 2,486,770.18 tons.

² See Duke Energy’s Annual Inspection Report – 2016 for the Wabash Plant, available at <https://www.duke-energy.com//media/pdfs/our-company/wr-annl-imp-2016.pdf>, at 7.

³ *Id.* (“[t]he facility has [coal ash] surface elevations that extend above the water level in portions of all the Ash Basin System Ponds. The excess [coal ash] volume above the water line is unknown and not included in the [coal ash] volumes given [here].”)

⁴ See <http://www.in.gov/history/2799.htm> and <http://www.in.gov/history/2800.htm>.

⁵ See <http://www.in.gov/dnr/files/WabashRiverFacts.pdf>.

⁶ *Id.*

⁷ See <http://www.in.gov/dnr/files/WabashRiverFacts.pdf> and <http://www.in.gov/dnr/outdoor/4476.htm>.

The great Wabash, and the people, plants and animals who use the iconic river stand to be harmed if the Wabash Plant’s ash lagoon dams fail, and the threat of such failure is very real. Major floods are a frequent occurrence in Indiana: they happened in 2017, 2008, 2005, and 2003, as well as multiple times in the 1900s,⁸ and the Wabash River is no exception – it flooded as recently as May 2017.⁹ All of the Wabash Plant’s coal ash lagoons lie in the floodplain of the Wabash River.¹⁰ Yet the lagoons are ill-prepared for flooding. Duke Energy’s consultants report that a 1000-foot-long segment of the earthen dam separating the “Ash Pond A” ash lagoon from the Wabash River lacks “riprap protection,” leading them to conclude that that length of the dam is vulnerable to “scour” during a flood.¹¹ The coal ash lagoons at Wabash River may not drain quickly enough after a flood: if significant precipitation or high river water levels continue, the lagoons “are not able” to drain the required amount, within the required timeframe, to keep them from getting too full of contaminated water – posing the risk that the polluted water will flow over the dams.¹² Compounding that concern is the fact that “Ash Pond A’s” earthen dams are too short for major floods: if floods larger than a 100-year flood were to occur, such a flood “may contribute to overtopping of the east embankment”¹³ – spilling ash-contaminated water directly into the Wabash River. The company’s consultants recommended that Duke Energy raise the ash pond’s eastern dike one to two feet,¹⁴ but none of the documents on Duke Energy’s Coal Ash Rule website for the Wabash Plant indicate that the elevations of that dike have been raised.

The structural problems plaguing the Wabash Plant’s coal ash lagoons, and “Ash Pond A” in particular, do not end there. Duke Energy’s consultants report that the dikes of that ash lagoon fall short of the Coal Ash Rule’s requirement to ensure structural stability during seismic events, noting that “the failure of the earthen dike as a result of an earthquake could result in significant uncontrolled release of ash materials into the Wabash River.”¹⁵ This is not a hypothetical concern. Southwest Indiana lies in part of the Wabash Valley Seismic Zone, which has produced two damaging earthquakes topping 5.0 on the Richter scale since 1968, including a 5.4 magnitude earthquake in 2008.¹⁶ Combined, the areas of southwestern Indiana, southeastern Illinois, and northwestern Kentucky have experienced 143 earthquakes since 1900 – one of which, in 1996, took place in Terre Haute just a mile or so from the Wabash Plant.¹⁷

⁸ See, e.g., <https://igs.indiana.edu/Hazards/Flooding.cfm>, <https://pubs.usgs.gov/fs/old.2003/fs-094-03/fs-094-03.pdf>, <http://www.floodsafety.noaa.gov/states/in-flood.shtml> and <http://abcnews.go.com/US/state-emergency-declared-indiana-county-due-flash-flooding/story?id=47526049>.

⁹ See <http://www.indianacentralnews.com/terre-haute-news/rain-flooding-problems-to-continue-for-the-vigo-county-area> (May 4, 2017).

¹⁰ See Duke Energy’s Annual Inspection Report – 2016 for the Wabash Plant, *supra* note 2, at 9.

¹¹ *Id.*

¹² *Id.* at 11.

¹³ *Id.* at 9.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See https://pubs.usgs.gov/gip/119/pdf/GIP119_ScreenVersion.pdf at pp. 8-9.

¹⁷ See *id.*, <https://earthquake.usgs.gov/earthquakes/byregion/indiana.php>, and <https://earthquake.usgs.gov/earthquakes/eventpage/usp0007uhc#executive>.

Finally, Duke Energy’s consultants “confirmed” that portions of the Wabash Plant’s ash lagoons lie over a mine void.¹⁸ Although the consultants concluded that the likelihood that the void would cause a pit or sinkhole is remote,¹⁹ the void does not bode well for the stability of toxic coal ash lagoons sitting just feet away from the Wabash River in an active seismic zone.

We need not guess what kind of contamination would enter the Wabash River if the coal ash lagoon dams were to fail. Groundwater monitoring at the site reveals elevated levels of arsenic, boron, manganese, and sulfate – pollutants long recognized as toxic to people, aquatic life, birds and wildlife.

In short, the only thing separating Duke Energy’s toxic coal ash lagoons from the iconic Wabash River are leaking, unsound earthen and ash dams that even the company’s own consultants admit are in poor shape. The threat that these dams will fail, sending a rush of toxic ash and contaminated water toward the boaters, fisherman, and endangered species that use the river, is very real; indeed, it is exactly what happened at Duke Energy’s Dan River Plant in North Carolina in February 2014, when up to 39,000 tons of coal ash and 27 million gallons of wastewater spilled from a failed ash lagoon, fouling 70 miles of river in North Carolina and Virginia and causing nearly \$300 million in damages over just six months.²⁰ This threat makes Duke Energy’s failure to provide the required inundation maps and emergency responder contact information all the more serious: residents and river users near the Wabash Plant deserve, and are legally entitled, to know if they are likely to be impacted by a dam failure and who they should contact if those ash dams fail.

Duke Energy’s Criminal Convictions

The threat posed by Duke Energy’s Wabash Plant coal ash lagoons cannot be fully appreciated without taking into consideration the company’s actions at its ash lagoons in other states. In May 2015, Duke Energy operating companies pleaded guilty 18 times to 9 federal Clean Water Act coal ash crimes across North Carolina. Duke Energy operating companies paid a \$102 million fine, and they are under nationwide criminal probation. Under court orders, the criminal plea agreement, statutes, regulatory requirements, and settlement agreements with conservation groups, Duke Energy is now required to excavate all the coal ash from behind coal ash dams and in unlined coal ash pits at 8 of its 14 coal ash storage sites in North Carolina and all its sites in South Carolina.

¹⁸ Duke Energy’s Closure Plan Application to Indiana Department of Environmental Management, dated December 16, 2016, available at https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_FILE&dID=80398976&dDocName=80398553&Rendition=web&allowInterrupt=1&noSaveAs=1&fileName=80398553.pdf, at 12.

¹⁹ *Id.*

²⁰ See <https://www.epa.gov/sites/production/files/2014-06/documents/signed-eden-ash-spill-aoc-04-2014-3762.pdf> and Dennis Lemly, *Environmental Pollution*, “Damage Cost of the Dan River Coal Ash Spill,” 2015, available at <https://www.srs.fs.usda.gov/pubs/49260>.

Transparency Is an Essential Component of the Coal Ash Rule

The Coal Ash Rule is a self-implementing federal rule that is built on transparency. Enforcement of the rule is dependent on the public's access to information via the documents that coal ash lagoon owners are required to post on their public websites. As EPA explains, the requirements to post information about, among other things, the structural stability of ash lagoons and the contaminants they are causing to leach into groundwater "serve as a key component by ensuring that the entities primarily responsible for enforcing the requirements have access to the information necessary to determine whether enforcement is warranted." 80 Fed. Reg. at 21,339. EPA has explained that these transparency requirements are consistent with, even encouraged by, the Act itself, which: "...contains neither provisions that grant facilities the right to withhold regulatory compliance information from the public, nor provisions that establish any reasonable expectation that such information will be kept confidential. To the contrary, section 7004 [of the Act] explicitly provides that '[p]ublic participation in the . . . implementation, and enforcement of any regulation under this chapter shall be provided for, encouraged, and assisted by the Administrator.'" 80 Fed. Reg. at 21,338-39.

The reasons underlying Congress' and EPA's demand that information be made available to the public are, in this case, crystal clear. It is the people living in communities across our nation near coal-fired power plants who face the most harm when coal ash spills from blown-out dams and fouls rivers, streams, and homes with toxic sludge, poisoning fish and rendering water undrinkable, as happened in North Carolina in 2014 and Tennessee²¹ in 2008. People living near coal ash lagoons such as those at the Wabash Plant have the right to know – and, under the Rule, are entitled to know – if their homes and schools lie in the likely path of a torrent of ash and contaminated water that will flow towards them if dams break. For their health and well-being, they are also entitled to know who to contact, and how to contact them, if those dams fail or show signs of leaking.

Duke Energy Is Violating the Rule by Hiding Required Safety Information from the Public

Under the Coal Ash Rule, owners of coal ash surface impoundments²² must periodically evaluate the "hazard potential" of those ash lagoons and classify them as low, significant, or high hazard potential lagoons. 40 C.F.R. § 257.73(a)(2). Several of Duke Energy's coal ash lagoons at

²¹ On December 22, 2008, a coal ash lagoon at the Tennessee Valley Authority's Kingston Fossil Plant in Harriman, Tennessee, failed, spilling more than 5 million tons of coal ash into and around the Emory River. US EPA reports that the spill "disrupt[ed] power, rupture[ed] a gas line, and destroy[ed] or damage[ed] scores of homes," while contaminating local soils with toxic pollutants including arsenic and rendering the lower portion of the Emory River unsafe for fishing. See U.S. EPA, "Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities; Proposed Rule," 75 Fed. Reg. 35,128 at 35,239 (June 21, 2010), available at <https://www.gpo.gov/fdsys/pkg/FR-2010-06-21/pdf/2010-12286.pdf>.

²² Duke Energy's coal ash lagoons at the Wabash Plant are "CCR surface impoundments" under the Coal Ash Rule and therefore are subject to the requirements discussed herein. The Rule defines "coal combustion residuals (CCR)" as "fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers." 40 C.F.R. § 257.53. A "CCR surface impoundment," in turn, is defined as "a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR." *Id.* Duke Energy does not dispute that the coal ash lagoons at issue in this Notice are CCR surface impoundments subject to the Rule.

the Wabash Plant – including Ash Pond A, Ash Pond B, the Secondary Settling Pond and the South Ash Pond – are sufficiently hazardous to qualify as “significant hazard potential” impoundments.²³ That means a failure of those ash lagoon dams “can cause economic loss, environmental damage, disruption of lifeline facilities, or impact other concerns.” 40 C.F.R. § 257.53.

The Rule further requires that, by April 17, 2017, owners of coal ash lagoons with significant hazard potential “must prepare and maintain a written [Emergency Action Plan].” 40 C.F.R. § 257.73(a)(3)(i). Those Plans must, at a minimum and along with other information, “provide contact information of emergency responders” and “include a map which delineates the downstream area which would be affected in the event of a CCR unit failure...,” 40 C.F.R. § 257.73(a)(3)(i)(C) and (D).

Thirty days after creating that Plan and placing it in the facility’s “operating record,” the owner of the ash lagoons must post the Plan on its publicly accessible website. 40 C.F.R. §§ 257.105(f)(6), 257.107(d), 257.107(f)(5). The Coal Ash Rule contains no exceptions authorizing owners of ash lagoons to decline to post information required by the Rule on the publicly accessible website.

Under the Act, any violation of the requirements of the Rule constitutes illegal open dumping. 40 C.F.R. § 257.1(a)(2) (“Practices failing to satisfy *any of the criteria* in . . . §§ 257.50 through 257.107 constitute open dumping, which is prohibited under section 4005 of the Act.”) (emphasis added); 40 C.F.R. § 257.1(a)(1) (“Facilities failing to satisfy any of the criteria in §§ 257.1 through 257.4 or §§ 257.5 through 257.30 or §§ 257.50 through 257.107 are considered open dumps, which are prohibited under section 4005 of the Act.”); 40 C.F.R. § 257.2 (“Open dump means a facility for the disposal of solid waste which does not comply with this part.”).

As discussed above, Duke Energy classified coal ash lagoons at the Wabash Plant – specifically, Ash Pond A, Ash Pond B, the Secondary Settling Pond and the South Ash Pond – as “significant hazard potential” lagoons under the Rule. Duke Energy created an Emergency Action Plan for those ash lagoons, included here as Exhibit A, and posted that Plan on its publicly accessible website in May 2017. But the company included no “map which delineates the downstream area which would be affected in the event of a CCR unit failure,” and redacted all contact information for emergency responders.

²³ See “Initial Hazard Potential Classification Assessment Certification, CCR Surface Impoundment: Wabash River Station, CCR Unit: Ash Pond A” (Oct. 3, 2016), available at <https://www.duke-energy.com//media/pdfs/our-company/ash-management/ccr-wr-haz-class-papa.pdf>, at 1; “Initial Hazard Potential Classification Assessment Certification, CCR Surface Impoundment: Wabash River Station, CCR Unit: Ash Pond B” (Oct. 3, 2016), available at <https://www.duke-energy.com//media/pdfs/our-company/ash-management/ccr-wr-haz-class-papb.pdf>, at 1; “Initial Hazard Potential Classification Assessment Certification, CCR Surface Impoundment: Wabash River Station, CCR Unit: Secondary Settling Pond” (Oct. 3, 2016), available at <https://www.duke-energy.com//media/pdfs/our-company/ash-management/ccr-wr-haz-class-ssp.pdf>, at 1; and “Initial Hazard Potential Classification Assessment Certification, CCR Surface Impoundment: Wabash River Station, CCR Unit: South Ash Pond” (Oct. 3, 2016), available at <https://www.duke-energy.com//media/pdfs/our-company/ash-management/ccr-wr-haz-class-sap.pdf>, at 1.

Duke Energy appears to claim that it is withholding this critical information on the basis of Indiana Code 5-14-3-4(b)(19): a header at the top of each page of its Emergency Action Plan says “Confidential” and cites that provision. But the company’s implicit assertion that the provision authorizes it to redact or withhold the emergency contact information and the inundation map from the Plan is simply implausible and without legal basis: the cited provision is part of Indiana’s law requiring public agencies to disclose information to the public, and Duke Energy is not a “public agency.”

Even if that Indiana provision did apply to Duke Energy, it would be preempted – and therefore invalid as applied to the company – by the Coal Ash Rule. Under the Supremacy Clause of the U.S. Constitution and numerous Supreme Court and Seventh Circuit Court of Appeals’ decisions, federal law overrides state law when there is a direct conflict between the two. *See, e.g., Mutual Pharm Co., Inc. v. Bartlett*, 133 S.Ct. 2466 (2013). If the Indiana provision applied to Duke Energy, it would be in direct conflict with the Rule: the Coal Ash Rule requires the emergency contact information and inundation map be developed and provided to the public on the publicly-accessible website; the Indiana law, as Duke Energy appears to interpret it, prohibits it from making that information public. Therefore, even if the Indiana law did apply to Duke Energy (it does not), it would be preempted by the Coal Ash Rule.

In sum, Duke Energy was required to provide and post on its website contact information for emergency responders and a map of downstream areas that would be affected if the Wabash Plant ash lagoons were to fail. 40 C.F.R. §§ 257.73(a)(3)(i)(C) and (D), 257.107(d), and 257.107(d). Duke Energy failed to do so, and therefore violated, and continues to violate, those requirements. Accordingly, under 40 C.F.R. § 257.1(a)(1) and Section 4005(a) of the Act, the Wabash Plant ash lagoons constitute illegal open dumps.

Duke Is Withholding the Same Critical Dam Safety Information from the Public at Every One of its High and Significant Hazard Coal Ash Lagoons

The communities near the Wabash Plant are not the only ones that Duke Energy is depriving of inundation maps and emergency responder contact information. Our review of Duke Energy’s Emergency Action Plans for all of its coal ash lagoons reveals that Duke Energy is withholding this critical dam safety information at every ash lagoon the company has classified as high or significant hazard potential – including coal ash lagoons in Indiana, Kentucky, Florida, North Carolina and South Carolina. In contrast, to our knowledge, no other ash lagoon owner or operator has refused to provide that essential, and required, information.

Citizens May Sue to Enforce the CCR Rule

Section 7002(a)(1) of the Act provides for citizen suits to redress violations of any standard, regulation, and requirement that have become effective pursuant to the Act. 42 U.S.C. § 6972(a)(1). 40 C.F.R. §§ 257.73(a)(3)(i)(C) and (D); 257.107(d), and 257.107(f)(5) are standards, regulations, and requirements that became effective pursuant to the Act on October 19, 2015. Section 7002(a)(1)(A) of the Act provides that citizens may commence civil actions against any person who is alleged to be in violation of any regulation or requirement that has

become effective pursuant to the Act and to compel compliance with such requirement or regulation. 42 U.S.C. § 6972(a)(1).

Additionally, under Section 4005(a) of the Act, any solid waste management practice or disposal of solid waste that constitutes the open dumping of solid waste is prohibited, except where the practice occurs under a timetable or schedule for compliance. According to Section 4005(a), this prohibition shall be enforceable under Section 7002 against persons engaged in the act of open dumping. *Id.*

Section 7002(b)(1)(A) of the Act, and its implementing regulations, require prior notice of citizen suits. 42 U.S.C. § 6972(b)(1)(A) and 40 C.F.R. Part 254. This notice of intent to sue is provided pursuant to these requirements.

PERSONS RESPONSIBLE FOR VIOLATIONS

The Wabash Plant is owned and operated by Duke Energy Indiana, LLC. Duke Energy Indiana, LLC, is a corporation with its principal place of business in Plainfield, Indiana. Duke Energy is responsible for all violations at the Wabash Plant.

PERSONS GIVING NOTICE

Hoosier Environmental Council (HEC) is Indiana's largest environmental policy non-profit organization, with more than 1,400 members statewide, including members in Vigo County. HEC's mission is to be the voice of the people for the environment in Indiana - the organization with the passion and the plan to tackle our environmental challenges and help make our state a healthier, better place to live and do business. Since its founding in 1983, the Hoosier Environmental Council has become Indiana's leading educator and advocate on environmental issues and policies, and has been a leading advocate on cleaning up toxic coal ash in the state.

Banks of the Wabash, Inc., d/b/a Wabash Riverkeeper, is a non-profit organization based in Lafayette, Indiana. Wabash Riverkeeper's mission is to represent the many recreational users that enjoy the rivers and streams that make up the Wabash River system. Through education, advocacy, and monitoring, Wabash Riverkeeper works for clean water and promotes implementation and enforcement of the Clean Water Act. Members of Wabash Riverkeeper live and recreate in Vigo County, Indiana.

Waterkeeper Alliance, Inc., is a non-profit headquartered in New York, New York uniting more than 300 Waterkeeper Organizations and Affiliates around the world and focusing citizen advocacy on issues that affect our waterways and water quality. Within the United States, Waterkeeper Alliance, Inc., works with more than 160 Waterkeeper Organizations and Affiliates to create and preserve drinkable, fishable, swimmable, and clean waterways. Waterkeeper Alliance, Inc. and its Organizations and Affiliates promote the health of waterways through education, advocacy, and vigilant monitoring, and have been leaders in protecting those waterways from toxic coal ash pollution.

HEC, Wabash Riverkeeper and Waterkeeper believe that a negotiated settlement of these violations, codified through a court-approved consent decree, would be preferable to protracted litigation. However, if we are unable to reach an enforceable settlement agreement, HEC, Wabash Riverkeeper and Waterkeeper are prepared to file suit in the United States District Court for the Southern District of Indiana pursuant to 42 U.S.C. § 6972(a)(1)(A), after sixty days from receipt of this letter. This lawsuit will seek injunctive relief, fees and costs of litigation, and such other relief as the Court deems appropriate.

If you have any questions concerning this letter or the described violations, or if you believe this notice is incorrect in any respect, please contact the undersigned counsel, Earthjustice, at (215) 717-4525. During the notice period, we are available to discuss this matter with you, but suggest if you desire to institute negotiations in lieu of a civil action that you do so immediately as we do not intend to delay prosecution of this suit once the notice period has expired. Please be advised that the failure to remedy any of the violations set forth in this letter can result in a court order enjoining further violations, and upon the successful prosecution of this suit, HEC, Wabash Riverkeeper and Waterkeeper intend to seek compensation for attorneys' fees and the costs of litigation under the citizen suit provisions of 42 U.S.C. § 6972(e).

Thank you for your prompt attention to this matter.

Sincerely,



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