

COUNT TWO

(Criminally negligent discharge of pollutants in violation of Clean Water Act)

Beginning no later than May 31, 2011, the exact date being unknown, and continuing up to and including December 30, 2014, in Buncombe County, within the Western District of North Carolina, and elsewhere, the Defendants,

- (1) DUKE ENERGY BUSINESS SERVICES, LLC**
(3) DUKE ENERGY PROGRESS, INC.

by and through their employees acting within the scope of their employment and agency and with the intent to benefit the Defendants, did negligently discharge pollutants from a point source into a water of the United States in violation of a permit issued pursuant to Title 33, United States Code, Section 1342; that is, the Defendants, by and through their employees, did fail to exercise the degree of care that someone of ordinary prudence would have exercised in the same circumstance with respect to the discharge of coal ash and coal ash wastewater from an unpermitted and engineered outfall from a coal ash basin at the Asheville Steam Electric Generating Plant, through an unpermitted and engineered toe drain, into the French Broad River, in violation of the facility's National Pollutant Discharge Elimination Systems Permit Number NC0000396, and did aid and abet each other in so doing.

All in violation of Title 33, United States Code, Sections 1311(a), 1319(c)(1)(A), and 1342, and Title 18, United States Code, Section 2.

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Attorney for the United States, Acting under Authority Conferred By 28 U.S.C. § 515

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