



ADVOCACY in ACTION

Quarterly Highlights from the Southern Environmental Law Center • SUMMER 2014



SELC Leverages Coal Ash Cleanup

In the year leading up to February's devastating coal ash spill on the Dan River, SELC encountered serious resistance in its attempts to correct this longstanding environmental problem. First at Asheville's French Broad River, then at Mountain Island Lake (Charlotte's main drinking water supply), and finally at Sutton Lake near Wilmington, North Carolina attempted to block SELC lawsuits against Duke Energy by purporting to take up its own enforcement. In fact, the state was protecting the \$50 billion company. After filing a blanket suit covering all coal ash lagoons statewide, authorities reached a sweetheart deal with Duke—one that levied a paltry fine and required no actual cleanup.

The Dan River spill changed everything.

SELC intervenes to ensure action

The state's proposed settlement with Duke, which SELC had challenged as the charade that it was, was abandoned after the disastrous Dan River spill. Then, to our opponents' chagrin, the Southern Environmental Law Center was allowed to join the state's enforcement actions against all coal ash sites across the state, representing North Carolinians who want to see coal ash removed from the banks of their waterways and put into dry, lined storage.

Court: groundwater must be protected

Early March brought a game-changing ruling when a state superior court agreed with SELC that state law required the immediate cleanup of all 13 coal ash sites that were seeping toxins into groundwater. Despite being granted clear legal authority to force the immediate cleanup of coal ash lagoons—authority the state claimed it lacked when it attempted to justify its sweetheart settlement with Duke—the state

joined Duke in appealing this court decision. Fortunately for the citizens of North Carolina, courts have continued to side with SELC in denying the state's request to stay this ruling while the appeal goes forward.

Dan River cleanup deal

Meanwhile, in mid-May the U.S. Environmental Protection Agency and Duke reached an enforceable agreement to clean up the Dan River spill under the Superfund statute, passed in 1980 to deal with abandoned hazardous waste sites. Although Duke has continually downplayed the seriousness of the spill, Superfund status establishes beyond a doubt that coal ash poses substantial risks to clean water and human health. North Carolina and Virginia officials reached a similar agreement with the company in June.

What will the legislature do?

SELC now turns its attention to coal ash legislation making its way through the North Carolina General Assembly—which has acted intentionally in previous years to undermine protections for North Carolina citizens (*see page 6*). Governor Pat McCrory's initial proposal included no timetable for coal ash cleanup, called simply for "study" at most sites, and failed to address ongoing groundwater contamination. We are working with our partners to ensure that any final legislation will have teeth and not undermine existing law.

Enforcing the Clean Water Act

Our most recent major victory came in June, when a federal court ruled that we may proceed with enforcement action under the federal Clean Water Act to stop coal ash contamination of Sutton Lake near Wilmington, citing allegations of improper influence between Duke and the state environmental agency as one justification.



Facebook.com/SouthernEnvironment



Twitter.com/SELC_org

REGIONAL HIGHLIGHTS

Solar Breakthrough in South Carolina

South Carolina is embracing a cleaner energy future thanks to new legislation that will put solar power within reach of more households

and businesses. SELC played a central role in crafting and negotiating the bill, which sets the stage for utilities to quickly ramp up large solar genera-

tion programs and make that power more accessible for schools, churches, and other nonprofits.

Historically, consumers in South Carolina couldn't take advantage of cost-effective solar leasing programs, and nonprofits had highly restrictive caps on the amount of solar power they could use. The bill not only addresses those restrictions, it also provides targets for utility-scale solar programs and initiates a process to determine how much credit consumers will receive for the power their solar panels put back into the grid.

SELC's engagement and expertise were critical in building support for the bill, which was signed into law in early June. We will be representing our partners in the upcoming solar pricing proceedings before the state Public Service Commission.



TVA to Retire Eight Coal-Fired Units

Facing tougher environmental standards that SELC and our partners helped secure, the Tennessee Valley Authority has decided to retire eight of its old, highly polluting coal-fired units. The facilities slated to be shut down include all five coal units at the Colbert plant in northwest Alabama, one of two remaining units at the Widows Creek plant in northeast Alabama, and two units at the Paradise plant in Kentucky, which TVA plans to replace with cleaner gas-fired generation. As we applaud the utility for reducing its dependence on coal,

we are pushing it to rethink its plan to spend \$1.2 billion to keep running the half-century-old Gallatin coal plant near Nashville. We are also challenging the inadequate analysis of environmental impacts of the project and urging full consideration of cleaner and more cost-effective alternatives.



WATCH THE VIDEO: 

The Call of the Red Wolf

SELC Earns Protection for Endangered Red Wolves
Court prevents coyote hunting in recovery area

SouthernEnvironment.org/redwolves

Defending One of the South's Great Rivers

For decades Georgia state regulators have turned a blind eye to pollution from Rayonier's pulp mill in Wayne County, which has degraded miles of the Altamaha River with foul-smelling and discolored wastewater. SELC is now part of a legal team that

has filed suit against Rayonier to force the company to control its pollution, which clearly violates both federal and state water-quality standards.

The Altamaha is Georgia's largest river, and the pulp mill dumps 50 million gallons of wastewater a day

a mere 50 miles from the Altamaha delta. Despite a 2008 agreement with the state's Environmental Protection Division, and readily available technology, Rayonier's discharges continue to violate the state's standards for odor and color.



CRAIG TANNER/THELIVE

Court Upholds Mercury Protections

A federal court has upheld EPA's rules regulating mercury and other toxic emissions from power plants. SELC's intervention in the case on behalf of five national health care organizations was only the latest step in a process stretching back more than six years.

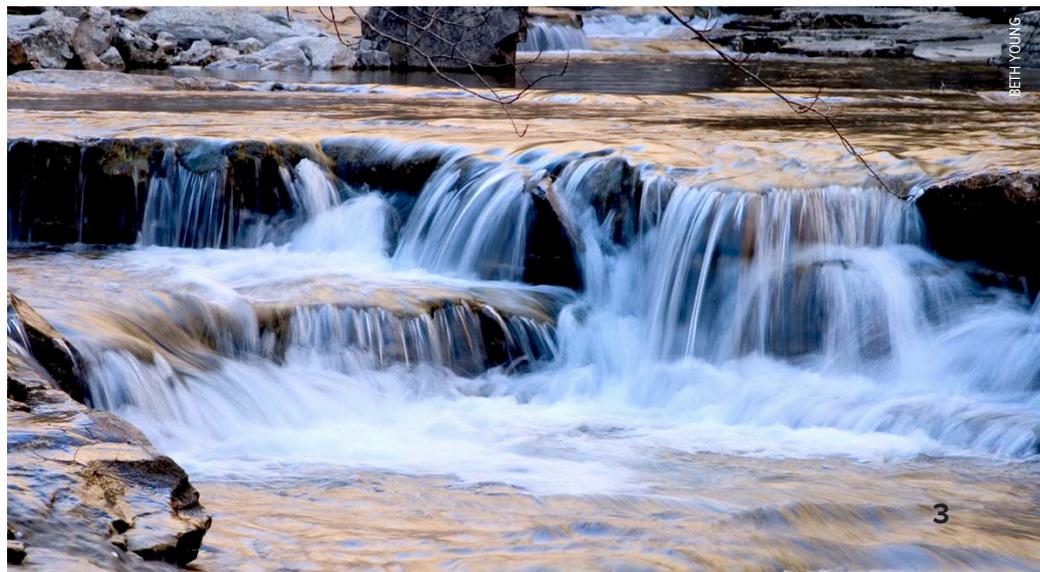
In 2008 we were part of the legal team that won a court ruling compelling EPA to step in and limit highly toxic air pollutants such as mercury, arsenic, and lead from existing coal- and oil-fired power plants. When the agency released final standards in 2012, the power industry—in conjunction with several states—challenged them in court.

Having survived, the new rules will serve as a catalyst for retirement of the oldest and dirtiest facilities, many of which are found in the South. EPA estimates that, among other benefits, the standards will prevent over 100,000 heart and asthma attacks each year and provide \$37-\$90 billion in health-related benefits.

Alabama Focusing on Water Plan

Ensuring clean and abundant water has always been a top priority for SELC in Alabama, and our sustained advocacy has paid off with Governor Robert Bentley's 2014 release of a report detailing strategies for developing a state water management plan. Alabama is the only state in our six-state region without some sort of water plan, and the report's release is an important step forward, outlining a process for meeting the needs of local communities, businesses, and ecosystems.

To weigh in on the report, SELC submitted recommendations, engaged with public officials, and appeared at public stakeholder meetings convened by the Alabama Rivers Alliance in every corner of the state. Our attorneys shared lessons learned from involvement in the water planning process in neighboring Georgia—especially the need for planning based on sound science, the primacy of watersheds over political boundaries, and the importance of legally enforceable standards and policy objectives.



BETH YOUNG

WHAT'S HAPPENING IN YOUR STATE?

ALABAMA

1 White Rock Quarry. SELC is making sure state regulators fully examine the potential impacts of a proposed limestone quarry in central Alabama that threatens water quality in the nearby Coosa River and its tributaries. The proposed permit would allow the 974-acre project to release more than 600 pounds of sediment per day, in addition to other pollutants, into Lay Lake and waters that feed it. The lake is a public drinking water intake, and the proposed permit would allow the site to operate for 100 years with long-lasting repercussions for the river system and surrounding communities.

GEORGIA

2 Plant Vogtle. With a detailed critique, SELC has highlighted flaws in the state's draft water-withdrawal permit for two units under construction at a nuclear power station on the Savannah River south of Augusta. The permit would allow the plant to withdraw an additional 74 million gallons a day from the already-overtaxed river with only limited and vague provisions for mitigating impacts. This burden would be compounded if Georgia Power were granted its pending request to withdraw an additional 127 million gallons per day for Plant McIntosh, a coal-fired facility downriver near Savannah.

3 Marsh Protections Eliminated.

Georgia is home to one-third of the remaining salt marsh on the entire East Coast, and for years the state's coastal protection laws have helped preserve this

precious resource. That's about to change, now that Georgia's Environmental Protection Division has announced it will stop enforcing a 25-foot buffer between coastal marshlands and development. Using a much narrower interpretation of existing law, the EPD's new position jeopardizes not only a defining feature of the Georgia coast, but the unique ecosystems that support multi-million-dollar commercial and recreational fishing industries. SELC is seeking to restore this crucial safeguard, which may require new legislation. The state chose April 22—Earth Day—to make its announcement.

4 Freedom of Information Act Victory. A federal court has agreed with SELC that the Federal Highway Administration should provide free access to documents related to the Northwest Corridor Managed Lane Project in Atlanta. The agency has continually used excessive fees and long delays to obstruct SELC's attempts to obtain public records under the Freedom of Information Act. With this ruling firmly in place, we hope FHWA will correct its approach to SELC fee waiver requests.



NORTH CAROLINA

5 Biomass Export Project in Wilmington. The use of biomass fuel as a renewable energy source has gone awry in North Carolina, where acres of old-growth wetland forests are destroyed to make wood pellets, which in turn are shipped off to Europe to burn as a power source. To protect these rare and important ecosystems, SELC is working to force comprehensive reviews of proposed wood pellet export projects at the Ports of Wilmington and Morehead City. The export facilities at the ports would depend on three new pellet plants harvesting wood from forests in eastern North and South Carolina. Joined by several other environmental groups, SELC is

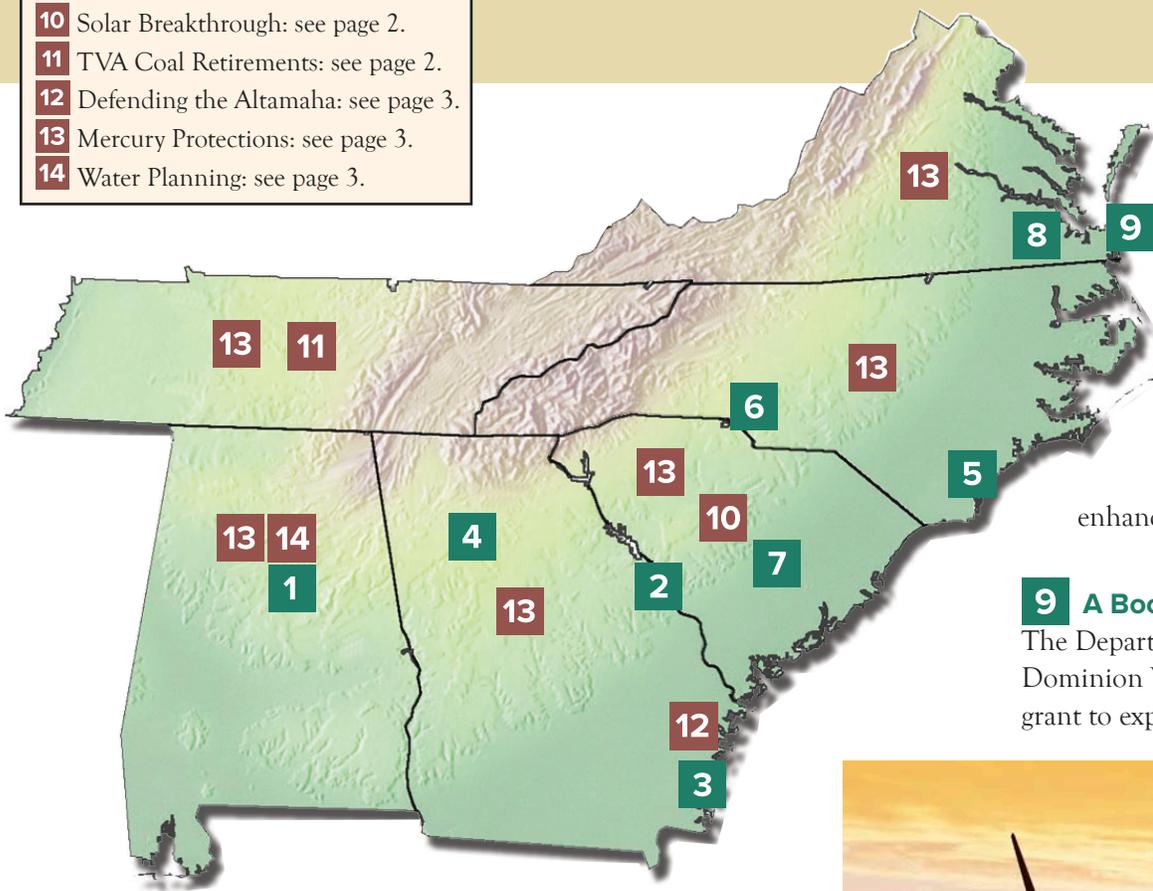
insisting on a comprehensive review and public hearings.

6 Monroe Bypass. Although the Federal Highway Administration has made the unfortunate decision to approve the \$900 million Monroe Bypass toll road near Charlotte, SELC continues to work to prevent this



ROBERT LLEWELLYN

- 10** Solar Breakthrough: see page 2.
- 11** TVA Coal Retirements: see page 2.
- 12** Defending the Altamaha: see page 3.
- 13** Mercury Protections: see page 3.
- 14** Water Planning: see page 3.



the wasteful and damaging plan, which would destroy more wetlands than any other project in Virginia since the Clean Water Act was enacted in 1972. Instead, we have argued for common-sense solutions to improve the existing Route 460 and enhance rail in the corridor.

9 A Boost for Offshore Wind.

The Department of Energy has awarded Dominion Virginia Power a \$47 million grant to explore the potential of offshore



destructive and unnecessary project in favor of continuing improvements to existing U.S. Route 74. Local drivers have already seen substantial benefits thanks to low-cost fixes on the current road, and five municipalities in Union County recently passed resolutions in opposition to the project. Because no permits have yet been requested, construction has not begun. SELC has delivered an expert report to FHWA asking it to revisit its decision in light of new information, and we have filed suit to prevent this harmful project from moving forward.

SOUTH CAROLINA

7 Oakridge Landfill. SELC is challenging plans for an unnecessary expansion of a Waste Management landfill next to the Francis Beidler Forest, an internationally renowned Audubon preserve. The proposed project would destroy 14 acres of unique headwater wetland streams flowing directly into the forest, one of the most important old-growth freshwater wetland swamps in the world. Although

the project is located in Dorchester County, most of the waste would come from Charleston and Berkeley counties, which already have adequate landfill space to accommodate their own needs.

TENNESSEE

Coal Plant Retirements, please see page 2.

VIRGINIA

8 Route 460 from Petersburg to Suffolk. Governor Terry McAuliffe’s administration has suspended work on the proposed new U.S. Route 460 pending a comprehensive environmental study and permit review—a move SELC has been advocating. The new 55-mile highway would parallel existing Route 460, one of the most lightly traveled corridors in the state, at a cost of at least \$1.4 billion. SELC has long opposed

wind power. The project consists of two 6-megawatt test turbines located 24 miles off the Virginia Beach coast. Ultimately Dominion could install as many as 200 turbines, generating power for up to 700,000 homes. SELC will continue to work with DOE and Dominion to ensure the company moves forward with this effort.

“Smoke in the Water”—SELC in the *New York Times*

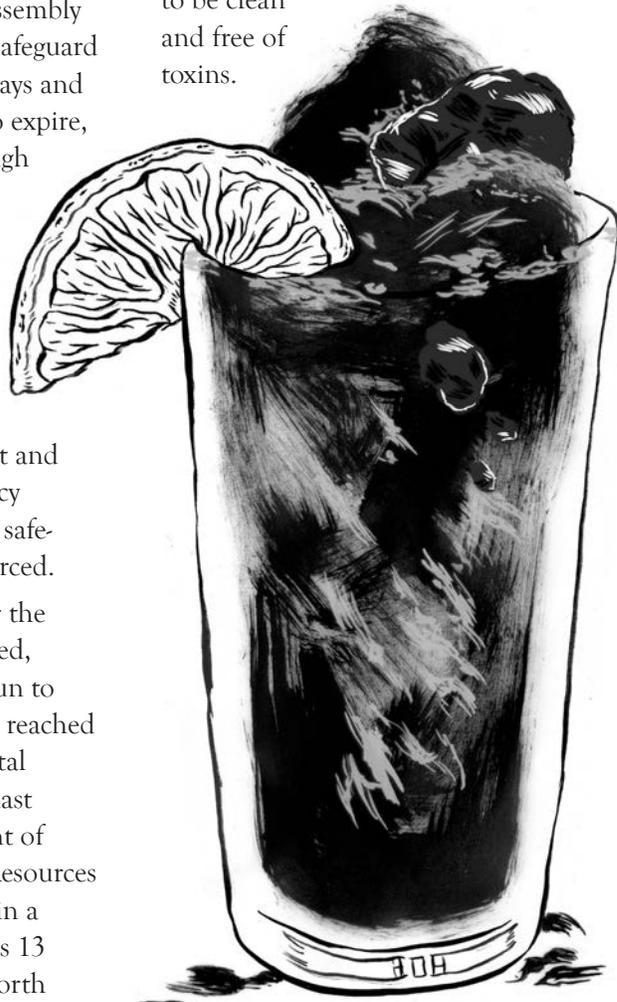
The following is an excerpt from the lead op-ed in the June 2 *New York Times* by *Derb Carter*, Director of SELC’s Chapel Hill Office. The piece was the sixth most e-mailed *Times* feature of the day.

Even as North Carolina faces the worst threat to its waterways in a generation, state politicians have started a process to eliminate dozens of environmental protections that have kept our water safe and clean for decades.

Last year, the General Assembly mandated that every single safeguard on North Carolina’s waterways and drinking water be allowed to expire, unless regulators went through a burdensome process to readopt each one. To further stack the deck, legislators have simultaneously slashed 40 percent from the budget of the state Department of Environment and Natural Resources, the agency charged with ensuring these safeguards are in place and enforced.

Nearly four months after the Dan River spill was discovered, Duke Energy has barely begun to clean up the river (though it reached a deal with the Environmental Protection Agency to do so last month), and the Department of Environment and Natural Resources has yet to force Duke to begin a comprehensive cleanup in its 13 other coal ash sites across North Carolina—all of which are slowly leaking pollutants into our rivers, groundwater and drinking water. The site on the Dan River is the smallest one in the state; if the coal ash ponds near Asheville or Charlotte or another community were to fail, it would make the Dan River spill look like a mere prelude to a truly national disaster.

It’s hard to overstate the seriousness of the crisis that would ensue if our politicians allowed the safeguards that protect our water to expire. These are the laws that allow us to feel confident that when we turn on our taps and pour a glass of water, that water is going to be clean and free of toxins.



Paula Searing, *New York Times*

These are the safeguards that stand between us and corporations that have demonstrated, with every single leaking coal ash pit, that what they care most about is profit, not the health and safety of North Carolina’s families.

Worst of all is the fact that threats to longstanding environmental protections

won’t stop here. North Carolina has become a bellwether—a “purple” state where, most especially in an election year, all eyes turn to see which way the political winds are blowing. All too often, one state’s radical experiment can become a national wave, and if politicians succeed in gutting the traditional safeguards on our air and water, you can be sure that North Carolina will not be the last state to do so.

We have a chance right now to get this right: The North Carolina Legislature just went back into session, and it is debating a series of bills related to Duke’s coal ash pits. We all know Duke needs to clean up its mess—but that’s not enough anymore. North Carolina families, and people around the country, must speak up, because we can’t allow Governor McCrory and the State Legislature to rob our state of the protections we rely on to keep our drinking water safe and clean.



To hear a brief conversation with Derb Carter on threats to water quality, please visit SouthernEnvironment.org/listen.

David Carr Receives Prestigious Award for Public Service, Integrity

SELC's General Counsel David Carr has joined a list of high-profile public servants as the latest recipient of Episcopal High School's *Integrity in Action* award. A 1973 graduate of the 175-year-old Alexandria, Virginia, school, David joined past winners such as U.S. Senator John McCain and journalist Judy Woodruff in accepting the award, which is Episcopal's highest.

In presenting the award, created to honor longtime faculty member Allen C. Phillips, Episcopal headmaster F. Robertson Hershey cited David's 27-year career at SELC, in particular his work on renewable energy, biomass, and forest protection. In his remarks David discussed three themes: a strong foundation for integrity, taking positive action to seek out what is right, and serving others.



Protecting the South's environment through the power of the law

Frederick S. Middleton III
Executive Director

Jeffrey M. Gleason
Deputy Director & Director of Regional Programs

Derb S. Carter, Jr.
Director, Chapel Hill Office

David H. Pope
Director, Atlanta Office

Holly L. Hueston
Director of Finance & Administration

E. Marie Hawthorne
Director of Development & Marketing

For a complete staff list, see SouthernEnvironment.org.

Deborah Murray Is Conservationist of the Year



The Back Bay Restoration Foundation has presented its Conservationist of the Year award to Senior Attorney Deborah Murray for her work protecting Virginia's coastal treasures, including a victory that halted a commercial marina until the U.S. Corps of Engineers completes an environmental review.

BOARD OF TRUSTEES

Stephen E. O'Day, *Chair*

- | | |
|------------------------|----------------------------|
| Joel B. Adams, Jr. | Nimrod W.E. Long III |
| Marcia A. Angle | Allen L. McCallie |
| Paul K. Brock, Jr. | Frederick S. Middleton III |
| Dell S. Brooke | Edward M. Miller |
| Cathy S. Brown | Deaderick C. Montague |
| Wendy B. Brown | Susan S. Mullin |
| Marion A. Cowell, Jr. | Jean C. Nelson |
| Melvin T. Davis | Charles W. Patrick |
| J. Stephen Dockery III | William H. Schlesinger |
| James G. Hanes III | Kathryn S. Smith |
| Matthew E. Hapgood | Thomas F. Taft, Sr. |
| Anna Kate Hipp | William L. Want |
| Mark B. Logan | Nancy Hanes White |

PRESIDENT'S COUNCIL

- | | |
|--------------------|-------------------------|
| Victor H. Ashe | Michael Morency |
| Martin S. Brown | Ginna McGee Richards |
| James P. Craig | J. Rutherford Seydel II |
| Dennis M. Crumpler | James Gustave Speth |
| Robert L.V. French | Alice M. Stanback |
| Terry E. Grant | Bradford G. Stanback |
| Ciannat M. Howett | Fred Stanback, Jr. |
| Hugh C. Lane, Jr. | Jennifer T. Stanley |
| Hunter Lewis | John B. Wilson, Jr. |
| William Martin | |

Seven Years of Highest Charity Navigator Rating

For the seventh year in a row, SELC has earned a four-star rating from Charity Navigator, the leading evaluator of U.S. nonprofits. Only two percent of the organizations tracked by Charity Navigator have received its top rating for this long, a testament to SELC's commitment to good governance, sound fiscal management, accountability, and transparency.





Charlottesville Office (Headquarters)

201 West Main St., Suite 14
Charlottesville, VA 22902
(434) 977-4090

SELC's other offices

Chapel Hill
Atlanta
Asheville
Birmingham
Charleston
Nashville
Richmond
Washington, D.C.

Nonprofit
Organization
U.S. Postage
PAID
Charlottesville, VA
Permit No. 449

ADDRESS SERVICE REQUESTED

SouthernEnvironment.org

Printed on recycled paper using soy-based inks

Meeting EPA's Proposed Carbon Pollution Standards

Unveiled in June, EPA's proposed carbon pollution standards would result in a nationwide reduction of carbon emissions from power plants by 30% from 2005 levels by 2030. Each state is responsible for achieving its fair share of this overall target by developing its own customized plan to meet the individual reductions goal assigned to it by the agency.

SELC is proud to have helped achieve significant progress in carbon reductions over the past decade, in large measure through retirement of old coal-fired power plants. Since 2010 we have secured plans or legally binding commitments to retire more than 25 percent of the southeastern coal plant fleet.

The work to achieve the new carbon goals, however, is really just beginning, and SELC's continued

engagement is critical. With only a few exceptions, utilities across the region continue to ignore the vast potential to improve energy efficiency. Outdated policies have also limited the growth of solar power, but our efforts have yielded recent breakthroughs. We will continue to build the case that increasing clean-energy investment in the South is not only the key to reducing carbon pollution, it can also spur job growth, lower energy bills, and promote healthier communities.

