



SOUTHERN ENVIRONMENTAL LAW CENTER

POWER OF THE LAW QUARTERLY

Spring 2016

SELC Looking Past Natural Gas to Fuels of the Future

Over the past decade, SELC has achieved tremendous success in reducing the South's heavy dependence on coal. Of the 246 coal-fired units powering the South in 2005, 126 are closed or will close by 2020.

Natural gas is a lower-emitting alternative to coal, but it comes with its own environmental problems, particularly when you consider its extraction by fracking. SELC wants to ensure that, as southern utilities move away from coal, they do not simply invest in massive natural gas plants and pipelines rather than in cleaner, cost-competitive, and less risky choices such as energy efficiency, solar, and offshore wind. Across our region, SELC is working to scale back or eliminate several misguided gas projects—with significant recent successes.

Virginia Pipeline Paths

There are four separate pipeline projects proposed in Virginia that would crisscross the central Appalachians—forested mountains and rural farmlands that are the very heart of the state. If the Federal Energy Regulatory Commission follows its standard practice, it would consider and rubber-stamp each of these permits independently. SELC, on the other hand, is pressing the agency to take a comprehensive approach, assessing how many of the pipelines are indeed needed, and which route(s) should be chosen.

In January, the U.S. Forest Service rejected the route for the proposed Atlantic Coast Pipeline because it was too environmentally damaging. The 564-mile pipeline, proposed by a subsidiary of Dominion Power, was slated to

run through both the George Washington and Monongahela National Forests, but the Allegheny-Blue Ridge Alliance, of which SELC is a founding member, helped lead the charge for greater scrutiny. The pipeline developers recently released an alternate route, which still doesn't address the larger question of regional need.

SELC's legal team also is opposing a gigantic 1,600-megawatt gas plant Dominion Virginia Power has planned for southeastern Greenville County. This would be the commonwealth's fourth new gas plant in recent years.

Asheville Plant Downsized

In Asheville, North Carolina, Duke Energy was planning to construct a large new gas plant with 40 miles of accompanying transmission line through one of the most ecologically significant swaths of the Southern Appalachians. SELC joined forces with local citizens to mount a strong opposition. Duke agreed to downsize the project, substituting two smaller plants

and eliminating the new power lines entirely. We continue to push for further reductions in gas-fired capacity and increased use of solar at the site.

Solar in South Carolina

Near Anderson, South Carolina, we are working to offset the effects of Duke Energy's planned 750-megawatt gas plant with increased solar generation on the site. While the state's Public Service Commission rejected our proposal, SELC has taken the case to the South Carolina Court of Appeals.

“Dominion stubbornly persisted on a route that was identified as severely destructive from the start. It's time for them to step back and truly reconsider the need for this pipeline at all.”

—Greg Buppert, Senior Attorney

REGIONAL HIGHLIGHTS

Preserving Our Natural Coastline

North Carolina has had a longtime ban on hardened structures to control beach erosion along its coast, a key reason the state is known for its beautiful and diverse coastal ecosystems. Jetties, groins, and seawalls built to stabilize the beach in one area have unintended negative consequences: by preventing the natural migration of sand, these structures actually accelerate erosion elsewhere. Building one often leads to the construction of more structures, perpetuating a vicious cycle that ultimately destroys beaches and marshes rather than preserving them.

In 2011, the North Carolina General Assembly repealed this 30-year ban, and almost immediately several massive, expensive, and damaging proposals cropped up. SELC jumped into the fray,



and we are now challenging proposed terminal groins on Figure Eight Island, Holden Beach, and Ocean Isle Beach, with more proposals on their way.

The same thing is happening in Georgia, where we are opposing a 350-foot-long groin that would worsen

erosion for neighboring beaches in an attempt to create luxury waterfront properties on Sea Island.

As an alternative, SELC is promoting less expensive, more effective natural solutions to curbing erosion, such as living shorelines.

North Carolina Again Attempts to Thwart Cleanup

In December, SELC's examination of public records showed that the staff of North Carolina's Department of Environmental Quality (DEQ) agreed that 27 of Duke Energy's 32 coal ash lagoons posed a high risk to the state's citizens. But when the state released its official rankings in January, only eight ponds were listed as high risk. By arbitrarily moving 19 lagoons to lower risk categories, officials at DEQ have once again ignored science, common sense, and the health of North Carolinians to delay a cleanup of millions of tons of toxic ash from the banks of the state's waterways.

This is the continuation of a disturbing trend: SELC pushing for cleanup and the state stepping in to obstruct us. In October, a U.S. district court affirmed our right to enforce the law on behalf of citizens, saying it was "unable to find" that DEQ was trying "in good faith" to enforce the Clean Water Act. DEQ then unsuccessfully attempted to derail an agreement we

had reached with Duke Energy to add three coal ash sites to the cleanup list. Finally, the agency agreed to a settlement that would grant the utility complete immunity from any past or future groundwater violations,

violations that are the subject of an SELC legal challenge. After hearing our arguments, a state judge recently declared that the settlement between Duke and DEQ does not resolve SELC coal ash cases against Duke in his court.

Holleman Testifies Before Senate Committee

In early March, SELC Senior Attorney Frank Holleman testified about coal ash storage before the U.S. Senate.

Holleman, who leads SELC's coal ash cleanup, answered questions surrounding Senate Bill 2446, which is aimed at stripping effective citizen enforcement of, and federal standards for, coal ash storage nationwide. The Environmental Protection Agency's coal ash standards were established in 2015 after numerous spills, many of them in the Southeast, highlighted the risk coal ash storage poses to communities and their water.

Holleman urged the committee not to move the bill forward. As he

noted, "thousands of people have called upon ineffective state agencies, the EPA, and elected officials to do more to protect them from coal ash. I can tell you, I travel all over the Southeast, and there is not one person who is asking this Congress 'Give us less protection from coal ash pollution.'"

"Well, Mr. Holleman, I just want to say you are the best witness I have ever had on my side of an issue for many reasons: you're very articulate, you worked for the business side of it, you see the big picture, and you're motivated by doing what's right."

—Senator Barbara Boxer

Black Creek Mine Permit Overturned

SELC has won an important victory in its longstanding efforts to protect Alabama's biologically rich waterways from the devastating impacts of strip mining. In response to our challenge, on behalf of the Black Warrior Riverkeeper and Defenders of Wildlife, the U.S. Army Corps of Engineers has suspended a permit that would have allowed the 287-acre Black Creek Mine to fill up to two miles of streams that feed the Locust Fork of the Black Warrior River. There are already more than 100 permitted coal mines in the watershed, and this permit would have allowed the mine's Canadian owners to discharge heavy metals, sediment, and polluted wastewater directly into Locust Fork—already officially listed as an impaired waterway.

Now the Corps is reevaluating the impacts of the proposed permit, and

SELC will continue to push for appropriate protections for Alabama's waters.



Offshore Drilling Threatens Tourism, Seafood Economy of the Atlantic Coast

As the oil and gas industry promises thousands of new jobs and billions in revenue from opening the Southeast coast to offshore drilling, SELC has released a report showing these supposed benefits are wildly overestimated. In contrast, our report provides new data on the thriving tourism, seafood, and coastal economies that would be imperiled by drilling.

Among the findings:

- Industry's job and revenue calculations are based on oil prices three times higher than current levels, and \$19 billion in potential revenue sharing—even though federal law actually doesn't allow revenue sharing in the Atlantic region.
- The supposed benefits fail to take into account the catastrophic damage to coastal economies that a major oil spill would cause—or even the water and air pollution and other effects from industrialization of the coast. Currently there are nearly 250,000 ocean-related jobs in Virginia, North Carolina, South Carolina, and Georgia that

depend on clean beaches, and the ocean economy pumps \$14.6 billion a year into our region.

While the oil industry claims that drilling will not affect tourism, SELC has released another analysis showing that Gulf of Mexico counties with onshore drilling infrastructure pull in about 50 percent less in tourism dollars than counties without.

As coastal communities learn about the risks of offshore drilling, local opposition grows: more than 100 municipalities and hundreds of businesses now officially oppose the federal plan expected to be released this spring.

To read the entire report prepared for SELC by the Center for a Blue Economy, visit SouthernEnvironment.org/Offshore-drilling-report.



REGIONAL HIGHLIGHTS

Dumping Coal Ash into the James and Potomac Rivers

SELC is challenging Dominion Virginia Power's plans to dump hundreds of millions of gallons of coal ash wastewater into both the James River and Quantico Creek, a tributary of the Potomac River, as part of its process of closing coal ash ponds at the Bremo and Possum Point Power Stations. Representing the James River Association and the Potomac Riverkeeper Network, SELC was able to secure more stringent limits on several pollutants, but the approved permits are still far too lax. In North Carolina—not exactly the standard bearer for responsible coal ash clean-up—a similar permit is much more restrictive, limiting arsenic to levels at least thirty times lower than those proposed in Virginia.

Across the region SELC continues



to challenge proposals to simply cover up millions of tons of coal ash sitting in unlined ponds on the banks of vital waterways. Recently a court rejected Dominion's attempt to throw out an SELC lawsuit over coal ash pollution at its Chesapeake Energy Center in Virginia's Tidewater area.

The media was on hand as SELC, Potomac Riverkeeper Network, and the James River Association announced appeals of lax state discharge permits for Dominion's coal ash wastewater along Virginia waterways.



Watch a video clip at SouthernEnvironment.org/potomac.

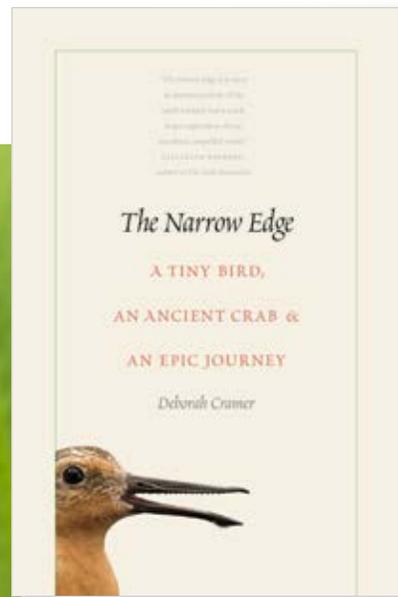
Announcing 2016 Writing Award Winners

The winners of SELC's 2016 Reed Environmental Writing Awards take their readers on remarkable journeys into the natural world and, with vivid storytelling, show what we stand to lose when we damage or destroy it.

Deborah Cramer received the Reed Award in the Book category for *The Narrow Edge: A Tiny Bird, an Ancient Crab, and an Epic Journey*. She accompanies a sandpiper—the red knot—along its 19,000-mile annual migration between the Strait of Magellan and the icy Arctic, with stops on the Southeast coast along the way. Cramer reveals how the fate of these now-threatened birds is intertwined with that of the horseshoe crab, whose blue blood is used to help safeguard human health.

Ben Raines won the Reed Award in the Journalism category for a five-part series looking back at the BP oil spill as he experienced it firsthand covering the story. The award also recognizes his six-part series “America's Amazon,” which explores the natural riches of the Mobile River Basin, considered the most biologically diverse river system in North America, but also a global hot spot for extinctions. Both series were published by AL.com.

Learn more about the award and past winners at SouthernEnvironment.org/philreed.



THE INSIDE STORY

SELC Challenges North Carolina's Attempts to Block Citizen Enforcement

The federal government gives states the authority to oversee and enforce national environmental laws such as the Clean Air and Clean Water Acts. It is exceedingly rare for the federal government to take that power back because of a state's misbehavior, but that's what the Environmental Protection Agency (EPA) has threatened to do to North Carolina. In October, EPA warned the state that it was in danger of losing its oversight authority because of its attempts to deny citizens the basic right to challenge permits in court. EPA singled out exclusionary decisions in two SELC cases taking aim at state permits: one for a Titan America cement plant near Wilmington, and another for a Martin Marietta open pit mine near Vanceboro.



Read EPA's letter at SouthernEnvironment.org/epa-nc-letter

In the Martin Marietta case, SELC challenged the company's permit to dump 12 million gallons of mine wastewater a day into slow moving Blounts Creek, a popular waterway near the Pamlico River. The plan is a clear violation of the Clean Water Act. But the state administrative court accepted the state's argument that citizens represented by SELC—some of whom have fished and boated on the creek for decades—didn't even have the right to challenge it.

The News & Observer

“Basically, the state's position . . . is simple: Industry gets to do what it wants and any citizens' group or public interest organization that wants to be heard in opposition is summarily dismissed or ignored.”

Our attorneys quickly appealed, and six months later the decision was reversed by a state superior court. Local residents will now at least have their day in court.

Before Titan's recent decision to abandon its plan for a new cement plant, neighbors had been trying for years to get a judicial hearing on the excessive air pollution allowed under the plant's permit. The proposed cement plant would annually release more than 5,000 pounds of particulates, mercury, and other pollutants, which are known to cause respiratory problems, early deaths, and millions of dollars in health care costs. Nonetheless, a state judge ruled that, because the citizens challenging the permit had not demonstrated specific physical

injuries from future pollution, they could not challenge the permit. SELC is appealing the decision. If allowed to stand, it would have sweeping repercussions for future permit challenges—and would jeopardize North Carolina's entire permitting program.

Locking the courtroom doors to citizens isn't a strategy seen only in North Carolina; SELC continues to fight this trend all across the South. As EPA noted in its letter to North Carolina, citizen enforcement is “a critical component” of federal environmental protections. Without it, government agencies have unilateral power to misinterpret or ignore the law.

Jeff Gleason Wins Environmental Leadership Award

Our recently retired Deputy Director, Jeff Gleason, received SELC's annual James S. Dockery Jr. Award for Environmental Leadership in recognition of his contributions in helping build and lead this organization. In his presentation remarks, Rick Middleton, SELC's Founder and Executive Director, also cited Jeff's accomplishments over 24 years in cleaning up our air pollution and moving the South toward cleaner energy alternatives. See Jeff Gleason's profile in *Albemarle Magazine* by visiting albemarlemagazine.com/issue_current.shtml.



WHAT'S HAPPENING IN YOUR STATE?

ALABAMA

1 Beltline boondoggle. At more than \$100 million per mile, Birmingham's proposed Northern Beltline is one of the most expensive road proposals in history. It will relieve only 3 percent of traffic congestion at most, won't be completed until roughly 2090, uses up most of the region's transportation funding for the next quarter century, threatens important waters, and mostly benefits wealthy property owners. And the state has no idea how to pay for the whole thing. Despite all the negatives, a U.S. district court has rejected SELC's request for an updated study of the project's environmental impacts, allowing the first phase of construction to move forward. SELC continues to support more effective and affordable ways to improve Birmingham's transportation and development.

2 State water plan. SELC attorneys Gil Rogers, Keith Johnson, and Sarah Stokes have been appointed by the Governor to serve on focus panels that will help shape Alabama's first-ever state water management plan. Alabama is the only state embroiled in the tri-state water wars without a water plan, and SELC and our partners at Alabama Rivers Alliance have long advocated this important step to meet the state's water needs while improving the health of its water resources.

GEORGIA

3 Wetlands agreement. More than 4,000 acres along Georgia's Altamaha River will be saved from development, thanks to the work of SELC and our coastal partners. After SELC filed extensive comments with the U.S. Army Corps of Engineers challenging a proposed wetlands permit that would have allowed a massive



housing development to be built on the site, the developer regrouped and returned to the negotiating table, agreeing to sell the property to Georgia's Department of Natural Resources. The tract will be added to the state's Altamaha Wildlife Management Area. Protecting the Altamaha tract shields the surrounding freshwater wetlands and tidal salt marsh from polluted runoff and will add five miles of protected habitat along the Altamaha River.

NORTH CAROLINA

4 Triangle transportation. SELC is opposing a wasteful and misguided plan to build the most expensive highway in the state's history, a more than \$2 billion toll road around Raleigh. The project would threaten water quality, destroy more than 70 acres of wetlands and miles of streams, and increase air pollution at nearby schools—all this to save those wealthy enough to pay the toll an estimated 10 minutes or less. SELC is working with local partners to develop a suite of affordable, less damaging alternative solutions focused on upgrades to the existing

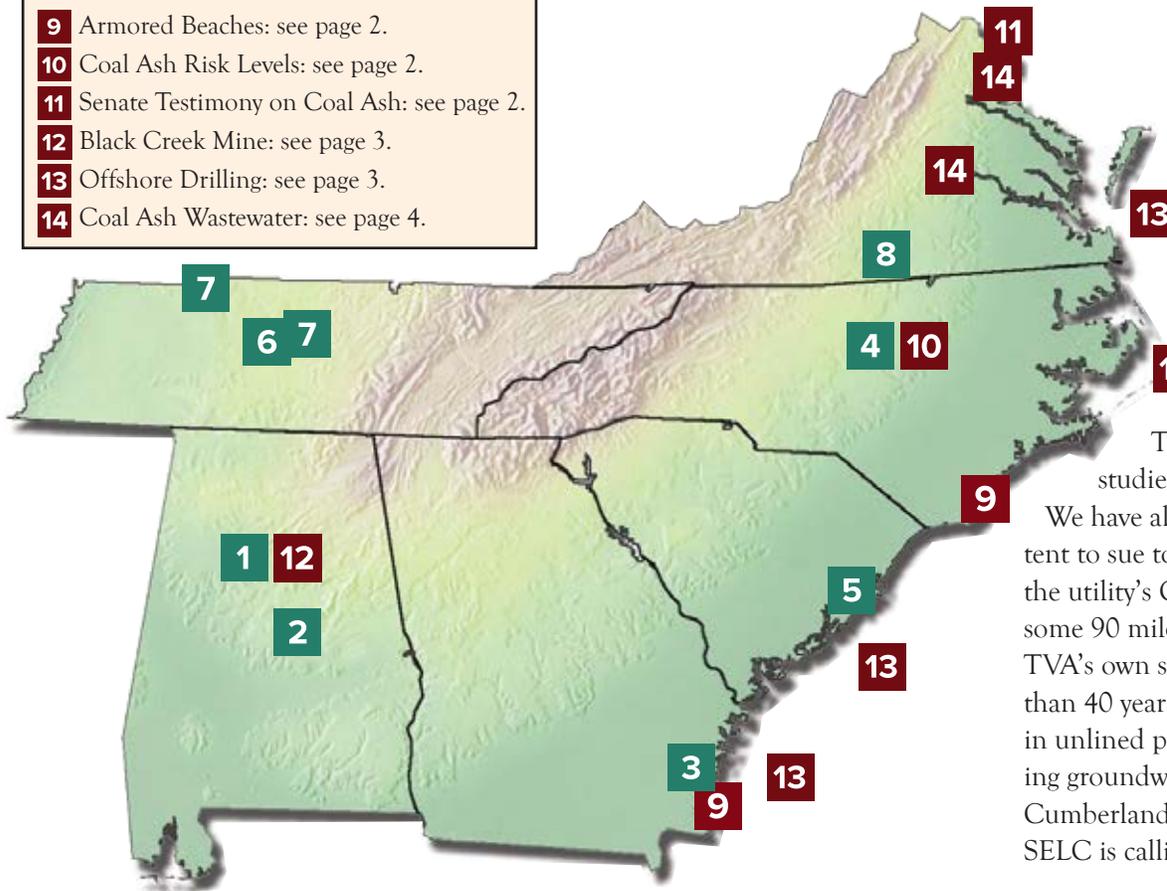
road network that would be available to all drivers. At the same time, SELC is working to secure passage of a sales tax referendum in Wake County to dramatically expand public transit. SELC is also engaged in support of a proposed 17.1-mile light rail system between Durham and Chapel Hill.

SOUTH CAROLINA

5 Solar tax. While South Carolina's two investor-owned utilities, Duke Energy and SCE&G, reached agreements with SELC and other



- 9** Armored Beaches: see page 2.
- 10** Coal Ash Risk Levels: see page 2.
- 11** Senate Testimony on Coal Ash: see page 2.
- 12** Black Creek Mine: see page 3.
- 13** Offshore Drilling: see page 3.
- 14** Coal Ash Wastewater: see page 4.



lution from coal ash dumps at the Tennessee Valley Authority's Gallatin power plant near Nashville. In the state case, we are opposing a recent attempt by the state and TVA to conduct redundant studies and delay the cleanup.

We have also filed notice of our intent to sue to clean up coal ash sites at the utility's Cumberland Fossil plant, some 90 miles to the west of Gallatin. TVA's own studies show that more than 40 years of storing coal ash waste in unlined pits is illegally contaminating groundwater, Wells Creek, and the Cumberland River. At the same time, SELC is calling on TVA to go beyond

its plans to just "put a lid" on its other unlined coal ash pits across the state.

VIRGINIA

8 Uranium mining ban upheld. A federal court has agreed with SELC and upheld Virginia's right to ban uranium mining in the face of an industry challenge. The

state's Attorney General defended the ban in court, with SELC offering a "friend of the court" brief in support. The mining company has appealed the decision and filed a second lawsuit in state court. SELC will continue to defend Virginia's long-standing moratorium, working with our partners at the Roanoke River Basin Association and Dan River Basin Association.

stakeholders to make affordable solar power more accessible, state-owned Santee-Cooper has adopted punitive fees for those who go solar. The utility has imposed a monthly \$30 fee for the average solar household, effectively pricing out those who could benefit most from rooftop systems. And while Duke and SCE&G pay solar users the retail rate for the power generated by solar customers, Santee-Cooper plans to pay far less. SELC is opposing both of these regressive policies.

TENNESSEE

6 Harpeth River cleanup. SELC's ongoing work to restore the Harpeth River near Nashville received a major boost when a court dismissed the city of Franklin's attempt to countersue to avoid cleaning up its sewage treatment system. The city has spent roughly \$500,000 on legal fees, prompting the judge in



the case to ask, "Should you be filing a counterclaim instead of everybody working for clean water?" On behalf of the Harpeth River Watershed Association, SELC already reached agreements with two other wastewater treatment facilities that have been polluting the fragile river.

7 Action on coal ash. Last year we filed a federal lawsuit and intervened in a state lawsuit to address pol-



SOUTHERN ENVIRONMENTAL LAW CENTER

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

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POWER OF THE LAW QUARTERLY SELC PREPARES TO KICK OFF 30TH ANNIVERSARY

Solar Success in the South

The year 2015 was a big one for solar power in the South, with significant commitments by nearly every utility in our region to expand solar investments. SELC seeks to build on this momentum in 2016.

North Carolina hit the one-gigawatt mark for installed solar energy last year, and Georgia is on track to do the same this year. In Virginia, the legislature authorized Dominion Virginia Power to grow its solar capacity by 400 MW over the next few years. South Carolina utilities rolled out new solar programs in accordance with the state's 2014 Solar Act, which SELC helped draft and pass. The city of Atlanta has a bold plan to put solar on its municipal buildings, financing the project thanks to legislation SELC helped pass. Even Alabama took a small step forward, with a plan

to install 20 megawatts of solar power at two military installations.

Still, SELC has many more challenges ahead. In Alabama and South Carolina, utilities are pushing for—or already impose—large and punitive taxes on customers going solar. The Tennessee Valley Authority

is planning a massive rollback of its solar investments. And North Carolina, which has already allowed a clean energy tax credit to expire, is poised to eliminate more key policies that helped the state become our region's leader in sun power.



Protecting the air you breathe, the water you drink, and the places you love throughout the South.