



MARK VANDYKE

ADVOCACY in ACTION

Quarterly Highlights from the Southern Environmental Law Center • Fall 2015



Southern Environmental Law Center

Perpetuating SELC's Success as Our Leadership Evolves

The Southern Environmental Law Center has a solid reputation as one of the most effective nonprofits in the U.S. The secret to SELC's success lies in our unique approach, which blends law and policy expertise; big-picture regional strategy; and practical, place-based action.

This isn't easy to pull off.

Coordinating the work of almost 70 attorneys working out of nine offices, focusing on five program areas, and handling more than 200 active cases and projects is quite a challenge. But for the past 15 years, that's been the job of SELC Deputy Director Jeff Gleason. His ability, judgment, and diplomacy are evident in the organization's consistently stellar results.

Jeff joined SELC in 1991 to improve air quality, promote energy efficiency, and help move the South away from its overdependence on coal. He led the Energy Team that secured a 9:0 ruling from the U.S. Supreme Court and launched the largest power plant cleanup in history. Promoted into the new role of deputy director around the time of SELC's 10th anniversary, Jeff worked hand-in-glove with SELC's visionary founder and executive director, Rick Middleton, to chart and

implement transformative strategic action plans and significant organizational expansion. SELC is now the largest environmental advocacy organization in the South, able to take a central role in every important environmental issue playing out in our six states—and to exert influence on international issues such as biomass policy and climate change trends.

Jeff Gleason is retiring at the end of this year. As we prepare to bid him a fond adieu, we are pleased to announce that one of our own is stepping up to fill the essential leadership role of regional oversight and coordination. John Suttles, a senior attorney in SELC's Chapel Hill office responsible for significant victories in our mercury, coal ash, and power plant work, will be SELC's new Director of Litigation and Regional Programs. John is a graduate of the University of Virginia, with a law degree and master of laws with distinction from Tulane University.

"SELC has assembled a remarkable team to defend the South's environment and natural resources," says John. "When such a smart, dedicated group of people put their collective hearts and minds into accomplishing something, watch out," he continues. "I'm honored to be given this opportunity—and excited by the potential of what lies ahead."

Breaking News

As we were going to press, a North Carolina court agreed with SELC that Duke Energy must clean up 7 of its 14 coal ash sites in North Carolina.

Learn more at SouthernEnvironment.org/nc-coal-ash-update

2016 is SELC's 30th anniversary year

Stay tuned as we prepare to celebrate three decades of results, including

Protecting millions of acres of mountain forests, wetlands, and wildlife habitat through strategic litigation and advocacy

Preventing fracking from gaining a foothold in our region

Improving or stopping dozens of harmful, wasteful highway projects

Opening the door to exciting opportunities for energy efficiency and solar in the South

Cleaning up 50 million tons of toxic coal ash—with more to come.



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REGIONAL HIGHLIGHTS

Settlement Will Protect Outer Banks, Replace Bonner Bridge

Former North Carolina Secretary of Transportation Tony Tata, who once raged against SELC as latte-drinking ivory tower elitists, found himself standing shoulder to shoulder with us in June as we announced a settlement with the state to finally deal with serious transportation challenges on the Outer Banks.

Storms and tides frequently chew up N.C. Highway 12, the only access route to Hatteras Island via an outdated Bonner Bridge. Efforts to keep the increasingly questionable route open in the face of rising seas and shifting sands were also degrading the once pristine Pea Island Wildlife Refuge. Now, after months of intense negotiations on behalf of Defenders of Wildlife and the National Wildlife Refuge Association, SELC has negotiated an agreement to replace the aging bridge, deal with the

most vulnerable portions of N.C. 12, and preserve the refuge.

After working through the compromise with us, Secretary Tata

ended up praising SELC for our “stewardship and leadership.”

For more details, visit SouthernEnvironment.org/nc12-settlement.



SELC's Julie Youngman (far left) and Derb Carter (far right) flank, from left to right, Desiree Sorenson (National Wildlife Refuge Association), Tony Tata (NC Secretary of Transportation), and Shelley Blake (General Counsel, NCDOT).

Court Upholds Chesapeake Bay Protections

For decades science has shown that nitrogen, phosphorus, and sediment pollution are responsible for the dead zones, fish kills, and harmful algal blooms that annually plague the Chesapeake Bay. In response, EPA issued pollution limits—known as the Bay Total Maximum Daily Load (TMDL)—to restore clean water in the Bay and its tidal waters.

After agricultural and house construction trade associations challenged the Bay TMDL in federal court, SELC, as

part of a coalition of environmental groups, intervened to help defend it. These efforts succeeded, and in July the U.S. Court of Appeals for the Third Circuit upheld the TMDL, explaining, “Although Farm Bureau claims that the Bay will be cleaned up without EPA intervention, the contention defies common sense and experience.”

SELC will continue to be active in Bay TMDL implementation.

SELC Defends New Rule to Protect Our Drinking Water

U.S. Supreme Court rulings in 2001 and 2006 contributed to major confusion about which waters the Clean Water Act actually protects. Since that time, SELC has been pushing back against industry attempts to exploit the confusion, and we have been working to reinstate clear protections for our region's wetlands, waterways, and drinking water supplies.

Now, after years of our concerted advocacy on behalf of more than 40 groups, EPA and the U.S. Army Corps of Engineers have made it official: The Clean Water Act does protect wetlands, intermittent streams, and smaller bodies of water. Moreover, the new rule will help safeguard the drinking water of 117 million Americans, including 20 million in the Southeast.

There is more to do to secure these vital protections. SELC now must help defend and strengthen the new rule in court, as several states were quick to file legal challenges.



Charleston, Wilmington, Myrtle Beach Lead Growing Local Opposition to Offshore Drilling

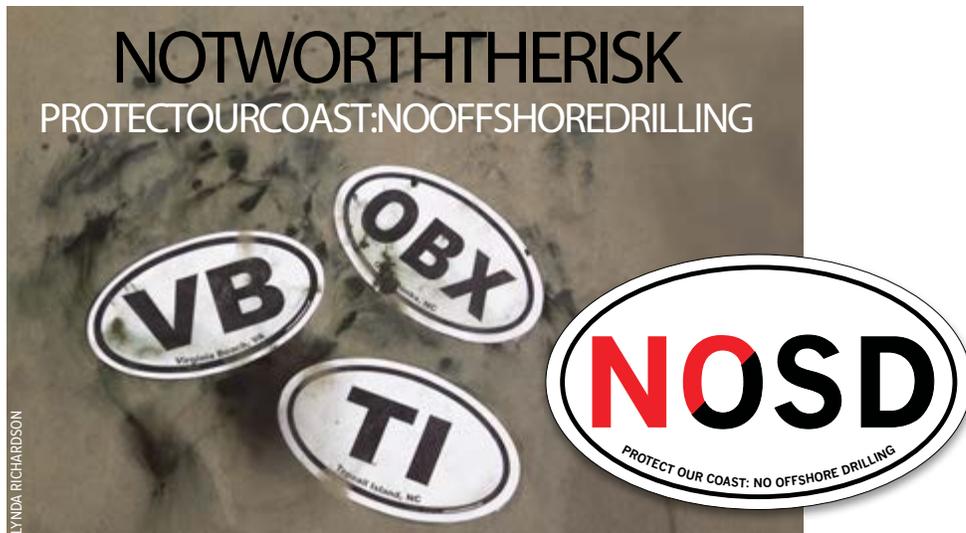
As we use our legal and policy expertise to push back against a federal proposal to open the Atlantic coast to offshore drilling, SELC is urging coastal communities, elected leaders, and local industries to join us in voicing their opposition to the

plan. More than 70 municipalities—and counting—have now passed resolutions against offshore drilling. Large cities such as Wilmington, N.C.; Charleston, S.C.; and Myrtle Beach, S.C.; have officially come out against the proposal, along with several counties and many

smaller towns. Various local chambers of commerce, including the South Carolina Small Business Chamber of Commerce and the Outer Banks Chamber of Commerce, have also spoken out, as have trade groups such as the Virginia Beach hotel and restaurant associations.

These resolutions come against the background of SELC’s multimedia campaign to build momentum against offshore drilling in local communities, an effort that has now reached more than 2 million people. We will continue to push for removal of the Atlantic coast from the revised plan, which is due to appear in early 2016.

See SELC’s online campaign against offshore drilling at SouthernEnvironment.org/offshore-drilling-campaign.



Order a free “No Offshore Drilling” sticker at protectourcoastnow.com.

SELC Challenges North Carolina Public Records Delays

As the state of North Carolina continues to obstruct SELC’s efforts to enforce environmental protections, one major tactic has been to block our access to public records with illegal delays, charges, and outright failure to provide documents. In 2014 alone, the state failed to respond properly to nine separate requests from our Chapel Hill and Asheville offices. We are still awaiting a response from the Governor’s office to a request made more than two years ago.

We have had enough. SELC has joined a coalition, including the state’s major media outlets, in mounting a legal challenge to this clear pattern of obstruction. The North Carolina Public Records Act defines public records as the “property of the people,” mandates that government must respond “as promptly as possible” to requests, and makes clear that the state may not charge for mere inspection of public records. With this lawsuit, we hope to ensure access to public records

for all North Carolinians, bring increased transparency to the state’s government, and improve our ability to protect the environment.

South Carolina’s Coal Ash: The Story of a Cleanup

SELC has now forged groundbreaking agreements with all three major South Carolina utilities to remove more than 20 million tons of toxic ash from the banks of the state’s waterways. The commitments cover all the major coal ash impoundments in South Carolina, and the cleanup is under way and ahead of schedule at several sites.

 Hear a first-person account of this success at SouthernEnvironment.org/sc-coal-ash.



WHAT'S HAPPENING IN YOUR STATE?

ALABAMA

1 Shepherd Bend Coal Mine.

Drummond Company has announced it is shelving its plan to develop the Shepherd Bend Coal Mine, a project that SELC has battled for years. Slated for a site owned by the University of Alabama, the strip mine would have released pollution-laden wastewater into a branch of the Black Warrior River less than 1,000 feet upstream from an intake for the Birmingham Water Works. We will remain vigilant for any attempt by Drummond or the university to revive this project.

2 Alabama Power Settlement.

EPA and SELC have reached a legal agreement with Alabama Power that makes binding the company's plans to retire three coal units and convert four others to natural gas at its Barry, Greene, and Gorgas plants. The agreement also requires that the plants' remaining coal-fired units meet current emissions standards. The settlement, which must be approved by the court, ends a Clean Air Act enforcement action that has been in litigation since 1999. It was a companion to our enforcement case against Duke Energy, which resulted in a unanimous 2007 U.S. Supreme Court ruling that utilities cannot increase the yearly emissions of old, coal-burning power plants without installing modern pollution controls.

GEORGIA

3 Upper Warwoman Creek Project.

Working closely with our local partner Georgia ForestWatch, as well as with the Sierra Club and others, SELC has secured major improvements to a large-scale logging and forest management project in the Chattahoochee National Forest. As a result of our sustained pressure on the

U.S. Forest Service over the past decade, the new plan reduces the amount of commercial logging by a third, protects rare old-growth forest, and lessens harmful road impacts. These measures will safeguard a rugged and remote area known as Windy Gap and will significantly improve water quality in the Warwoman Creek watershed, which empties into the legendary Chattooga River.



NORTH CAROLINA

4 Soot Pollution Lawsuit. In agreement with our legal arguments, a U.S. Court of Appeals has rejected a lawsuit filed by North Carolina that challenged federal standards for soot pollution—the fine particles emitted from smokestacks and tailpipes that have been linked a host of health problems. Ignoring its duty to protect public health and to avoid wasting taxpayer dollars, the state filed the suit three years after the deadline for challenging the pollution standards. The court agreed with SELC and our allies and held that the timing of the suit made it invalid.

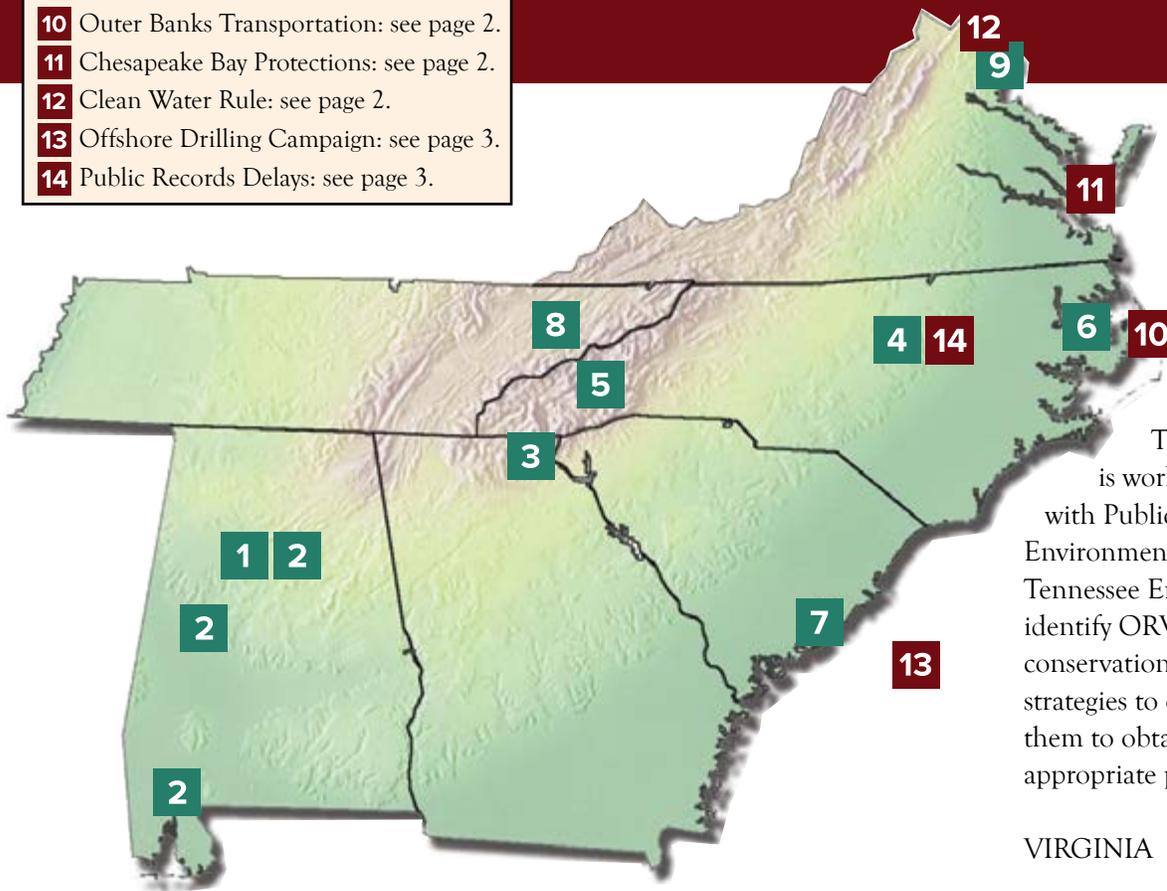
5 Asheville Coal Plant

Conversion. After legal pressure from SELC highlighting several environmental problems, Duke Energy will replace the coal units at its Asheville power plant with a combination of natural gas and solar generation. The plant's waste lagoons were one of the first targets of our litigation to clean up coal ash and are among the seven North Carolina coal ash sites that Duke has committed to clean up in the face of our lawsuits. SELC also uncovered other violations, convincing Duke to convert the 51-year-old facility, one of the first coal plants with modern pollution controls to be retired as alternative energy sources become more cost-competitive. We are now working to ensure that the gas plant is not oversized, and that the proposed solar farm—which will be built where its coal ash ponds are now being excavated—will be as large as possible.

6 Saving the Red Wolf. For years SELC has defended the world's sole population of wild red wolves, which occupy a five-county recovery area on the Albemarle-Pamlico Peninsula. Now we are poised to take legal



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problem is particularly acute: Most ORV parks have neither a sediment discharge permit nor a stormwater permit, and many operate in natural areas near Extraordinary

Tennessee Waters. SELC is working in partnership with Public Employees for Environmental Responsibility and the Tennessee Environmental Council to identify ORV parks in areas of high conservation value and to develop legal strategies to encourage—or compel—they to obtain and comply with appropriate permits.

VIRGINIA

9 Pushing Duke, Dominion on Coal Ash. Over SELC’s objections, the commonwealth of Virginia has accepted a meager \$2.5 million settlement with Duke Energy for its 2014 Dan River coal ash spill in Eden, N.C., upstream from Virginia farms and communities. But SELC continues to work to address Virginia’s own coal ash problem. SELC is pushing for a permanent solution to decades of coal ash pollution at the Possum Point Power Station, where Dominion Virginia Power stores 3.7 million cubic yards of ash in leaking pits near the Potomac River. The company is moving forward with

a plan to bury Possum Point’s coal ash on site to avoid federal regulations that take effect in October. In meetings with state officials, SELC has called for public involvement and a long-term closure plan that will end the legacy of pollution at this site.

action to preserve the only successful reintroduction of a top predator species formerly extinct in the wild. Under pressure from the state, the U.S. Fish and Wildlife Service is suspending the reintroduction of red wolves and will allow the killing of wolves on private lands if landowners request it. SELC has officially notified FWS of its intent to sue should these and other problems continue.

SOUTH CAROLINA

7 Cainhoy Plantation. Less than 10 miles from downtown Charleston and adjacent to the Francis Marion National Forest, the 9,000-acre Cainhoy plantation contains unique cultural, ecological, and historical resources. For decades, stands of longleaf pine, one of the Lowcountry’s most at-risk habitats, have thrived at Cainhoy. The plantation is still undeveloped. All that is now at risk with massive mixed-use development proposed for the entire property. With our partners at the Coastal

Conservation League, SELC is evaluating options for limiting the harm of the proposal, which will push large-scale sprawl into one of the region’s most important ecological and cultural areas.

TENNESSEE

8 Off-road vehicle parks. Off-road recreational vehicle use generates a tremendous amount of sediment, which can cause major harm to nearby streams. In fact, sediment is the most common pollutant in our rivers, streams, and lakes. In Tennessee, the



GEORGIA FORESTWATCH

Shuttered Alcoa Plant Threatens North Carolina Community

Almost exactly 100 years ago, Alcoa purchased an aluminum smelting operation in Badin, N.C., a small town 47 miles east of Charlotte. The plant produced 115,000 metric tons of aluminum a year during its heyday, but today Alcoa's Badin Works is closed. And although most of the jobs associated with the plant are long gone, its hazardous waste has been left behind.

Monitoring indicates that cyanide, fluoride, and PCBs from the smelting process have leached from an unlined landfill into the local groundwater and contaminated Badin Lake and Little Mountain Creek. Working with the predominantly African-American community of West Badin, where the plant is located, and the Yadkin

Badin, residents are still waiting for action.

Alcoa describes its plan as “natural attenuation,” a euphemism for simply allowing the hazardous pollutants to remain in place until they dissipate—a process that could take decades.

“Every year those cyanides, those fluorides, and that arsenic is still in our ground out there, polluting well water, and our rivers, and everything else.”

—Stanly County resident
Chris Bramlett

spoke out against a proposed new stormwater permit the company was seeking from the state. Not only would the proposed new permit actually relax the standards for pollutants, it would also give the company three years to comply.

“To allow pollution to continue that should have been corrected years ago, also to allow a company that is no longer active, that is no longer generating jobs for this community, to continue to pollute the waters of this community—I think that’s rather ridiculous,” local resident Ron Bryant told the North Carolina Department of Environment and Natural Resources at a public hearing.

Macy Hinson, who grew up in West Badin, remembered Alcoa trucks using PCB-laden oil to keep dust down on the dirt roads in his neighborhood. “PCB does not dissolve,” he said. “It’s there forever.”

SELC is seeking to revise the permit, advocating for specific limitations and rigorous monitoring of the hazardous pollutants contaminating the water. And we are pushing for appropriate removal of the wastes that continue to threaten the community.

We have already made progress. DENR has acknowledged concern about a three-year compliance schedule and said that the permit will not be issued in its current form. But there is a significant amount of work remaining.

“It’s up to people like y’all to correct the problems of the past,” said former Stanley County Commissioner Gary Lowder, “so that this county can have a water aquifer that’s clean enough that a cow can drink out of it and a human can drink out of it. And that’s not the case today.”



Riverkeeper, SELC is pushing for a cleanup that is long overdue.

The plant was one of three Alcoa facilities a 1992 court ruling cited as warranting an extensive cleanup. The other two sites, Massena, N.Y., and Point Comfort, Texas, were both designated Superfund sites by EPA and have already been cleaned up. In

In early July at a meeting with officials from the North Carolina Department of Environment and Natural Resources, SELC and the town’s residents



To hear more from Badin’s residents and SELC attorney Chandra Taylor, visit SouthernEnvironment.org/badin-works.

Planned Gifts Provide Staying Power

SELC lost a close friend last November with the death of Carolyn King of Birmingham, Ala. Carolyn’s deep generosity and longstanding love for the environment led her to support SELC for many years, but her impact will be felt far into the future because of a significant gift she left us through her retirement fund.

SELC board member Bill Schlesinger and his wife, Lisa Dellwo Schlesinger (at right), are adding to their already substantial environmental legacy by including SELC in their estate planning. Bill, the former dean of Duke University’s Nicholas School of the Environment and Earth Sciences and author of the blog *Citizen Scientist*, explains, “Over the years, Lisa and I have been impressed with the success of SELC. The power of the law works, and we want it to continue long after we are gone.”



A bequest in your will, a trust, or a gift of stock or retirement funds is a simple and powerful way to secure SELC’s future as a vigilant, effective, long-term steward of our environment, while offering some practical tax advantages for you or your heirs. To find out how you can become a friend for the future as part of SELC’s *Amicus Society*, please contact Annie Stafford, SELC’s Senior Development Officer, at 434-817-1330 or AnnieStafford@selcva.org.

2015 Southern Exposure Films Highlight Alabama’s Environmental Riches

Now in its fourth year, the *Southern Exposure* film fellowship brings young filmmakers from across the country to Alabama to examine environmental issues in one of the most biologically diverse states in the U.S. This year’s films explore subjects such as the lingering impacts of the BP oil spill, the barriers preventing Alabama from realizing its vast solar potential, and ongoing work to preserve more than 4,000 breathtaking caves.

You can find the films—as well as an exclusive interview with native Alabamian and two-time Pulitzer Prize-winning biologist Dr. E. O. Wilson—at the new *Southern Exposure* website, SouthernExposureFilms.org.



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Headquarters

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Charlottesville, VA 22902
(434) 977-4090

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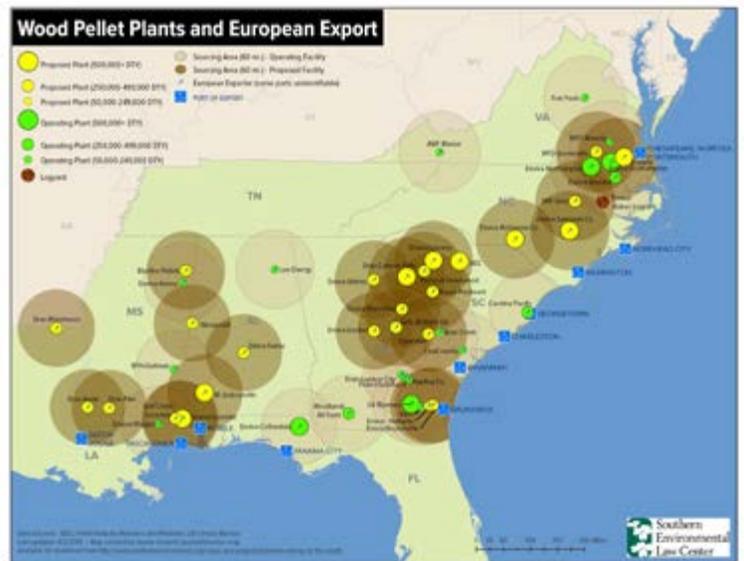
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UK Withdraws Major Biomass Subsidy

SELC's impact on environmental policy in the Southeast is well known. Now our work is affecting energy policy in the United Kingdom and protecting thousands of acres of southern forests as a result. In mid-July the British government announced it would end a major subsidy for the use of biomass—wood and other plant material—as a fuel source.

Drax, Britain's largest consumer of biomass, received an estimated \$500 million dollars during 2014 alone, but its stock dropped by 28 percent following the announcement that subsidies will cease. Although the company has already converted two power plants to biomass, its plan to convert a total of six is now in question. Enviva, the U.S.-based company that provides most of the biomass from our region, saw its stock decline by a similar amount.

SELC has been working for years to publicize the pernicious effect of the supposedly renewable fuel: When it comes from hardwood forests, biomass is actually worse for CO₂ emissions than burning coal. And increasing demand from Europe has been devastating southern forests. In June, a new SELC report detailing the problem received prominent coverage in the *Washington Post* and Britain's *Daily Mail*. The *Mail* reported that the British government was taking the report seriously.



The policy change did have one significant downside, however, as the British government also withdrew the tax exemption—specifically designed to address climate change—from legitimately renewable sources of energy.