

ADVOCACY in ACTION

Quarterly Highlights from the Southern Environmental Law Center • Summer 2015



Southern
Environmental
Law Center

The Washington Post

“From the point of view of what’s coming out of the smokestack, wood is worse than coal.”

Read more about SELC’s biomass work at SouthernEnvironment.org/biomass-report



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Transportation Strategies Pay Off in North Carolina

All across the South, transportation policy has long favored large, expensive highways. The ramifications of this approach are substantial: open space lost to asphalt, environmental destruction, air pollution—including greenhouse gasses—increased driving, and sprawl.

SELC is striving to implement a new vision: a real consideration of more efficient and less damaging alternative solutions to our transportation challenges; an honest assessment of the costs and benefits of proposals; decisions based on a project’s merit, not politics; and public engagement in an open, transparent process.

Our focus is yielding huge benefits across our region, and some of our most dramatic recent success has occurred in North Carolina, where SELC has helped to slow or stop more than \$1.7 billion in wasteful and harmful transportation spending around Charlotte.

Legal Leverage and Public Engagement

When the North Carolina Department of Transportation submitted a plan to construct the Monroe Bypass, an \$850 million, 20-mile toll road east of Charlotte, SELC noticed something was amiss: The development that the proposed road would generate was used as a justification to build the road in the first place. The state seemed to be saying that because houses would be built near the new road, NCDOT needed to build the road so people could get to the houses. But when NCDOT assessed the environmental impact, it did just the opposite, ignoring development altogether.

SELC’s legal challenge stopped the project in its tracks, giving us time to push for far less expensive, less damaging improvements to existing roads. We also engaged local communities, who worried the new road could hurt local businesses and change the character of the area.

Because of this local pressure, NCDOT began to implement many of the small-scale fixes we advocated, and a far different picture of the Monroe Bypass emerged: the 25-30 minutes the road was supposed to save drivers shrank to 8-12 minutes—savings that should become even smaller with continued improvements.

Reaching Decision Makers

The proposed \$930 million Garden Parkway west of Charlotte relied on the same flawed analysis that marked the Monroe Bypass plan. Once again, SELC was able to stop construction with a legal challenge and public engagement. We then took the case against the road to key decision makers, especially legislators concerned about wasteful government spending.

SELC helped the state implement a new scoring system to prioritize transportation projects based on merit and need, not political considerations. When legislators agreed to put the Garden Parkway through the new system, it came back with an abysmal score. SELC also won the legal battle when a federal judge ruled that the environmental review violated the law.

Thanks to SELC, the Garden Parkway is likely dead, and we are working to end the wasteful \$850 million Monroe Bypass plan once and for all. More importantly, SELC is deploying many of the strategies used in Charlotte throughout our region, using our unique combination of legal leverage, policy expertise, and the ability to stick with cases for years to build a new transportation future.

Listen to an interview on North Carolina transportation with Staff Attorney Kym Hunter at SouthernEnvironment.org/nc-transportation.

Court Reinstates Fracking Moratorium in North Carolina

SELC has secured a state court decision that effectively reinstates a moratorium on fracking in North Carolina. Wake County Superior Court has granted a preliminary injunction we sought to stop the state's Mining and Energy Commission from accepting or processing permit applica-

tions for fracking or from creating any drilling units pending the outcome of a constitutional challenge to the composition of the commission itself.

In 2012 the North Carolina General Assembly not only reconstituted the MEC but it also gave itself the right to make the majority of appoint-

ments. The commission subsequently instituted a set of inadequate regulations in its attempt to fast track high-volume hydraulic fracturing—fracking—despite widespread concerns among citizens.

By giving itself control of an executive branch body, however—eight members to the governor's five—the legislature violated the separation of powers doctrine firmly established in the state constitution. SELC argued that because an unconstitutional commission created the fracking rules, they are therefore null and void.

In fact, the General Assembly has used the same approach to control not only the MEC, but also the Oil and Gas Commission, the North Carolina Mining Commission, and the Coal Ash Commission. In November 2013, current Governor Pat McCrory joined former Governors Jim Hunt and Jim Martin in a lawsuit to challenge the practice.



Major Wins for Solar Power and the Coast in Georgia Legislature

SELC's advocacy in the Georgia legislature paid big dividends this session with two landmark bills.

With unanimous passage in both houses, new legislation will make solar financing and leasing programs available to homeowners for the first time. Georgians will now be able to install solar panels without the large upfront cost, making solar accessible for millions of households and businesses. The measure eliminates a major barrier to solar adoption, setting the stage for rapid growth of rooftop solar. SELC's strategy was nearly identical to our approach in South Carolina last year, bringing utilities, the solar industry, consumer advocates, and conservationists together to create overwhelming momentum for passage.

Legislators also approved a provision to restore a 25-foot protective buffer along Georgia's coastal marshes. The buffer, a strip of trees and plants along a stream or wetland, acts as a natural filter by preventing sediment and other pollutants from entering rivers, streams, wetlands, and marshes. Although it has been critical to the protection of the coast, the state's Environmental Protection Division announced on Earth Day last year that it would no longer enforce the buffer. SELC worked diligently with our partners at One Hundred Miles and the Georgia Water Coalition to restore the buffer with legislation, which passed the state Senate unanimously, with only two dissenting votes in the House.



Mechanized Gold Prospecting Threatens Tennessee's Waters

Mention gold prospecting, and what typically comes to mind is a grizzled treasure hunter panning for nuggets of ore. That was then. This is now: gasoline-powered dredges that suck up streambeds like a vacuum cleaner. If handled indiscriminately, mechanized gold prospecting equipment can destroy habitat for fish and mussels, stir up sediment, and send mercury and other toxic metals downstream to drinking water intakes.

In Tennessee, SELC is opposing efforts by a gold prospecting group to bypass state water quality protections so its members can use vacuum dredges as a “recreational” activity in natural areas, including national forests, wilderness management areas, and even in streams designated Exceptional Tennessee Waters. In addition to opposing

the group's proposed exemptions from clean water safeguards, SELC is working with partner groups to raise public awareness of the destructive impacts of mechanized gold prospecting on rivers,

streams, and aquatic wildlife and to ensure that “recreational” mining is subject to the same standards as other activities that affect public resources.



SELC Defends a Popular Fishing Spot—and Citizens' Legal Rights

SELC will be back in court to protect a pristine waterway in eastern North Carolina and to defend the right of citizens to stand up for such places.

We are appealing a judge's ruling that would allow a proposed limestone mine to discharge 12 million gallons of wastewater each day into the swampy headwaters of Blounts Creek, a tributary of the Pamlico River and a popular

fishing spot on North Carolina's central coast. The daily inundation from Martin Marietta's open-pit mine would transform the slow-moving creek into a fast-moving stream and would chew up habitat for commercial and recreational fish species such as red drum and speckled trout, as well as the imperiled river herring.

In addition to sanctioning a clear violation of the Clean Water Act, the

state administrative law judge held that the downstream residents and business owners who brought the complaint did not even have the right to challenge the mine's wastewater discharge permit. This flawed ruling, if left to stand, would set a dangerous precedent that would undercut the ability of all North Carolinians to take the state to court when necessary.

Court Says No to Fast-Track Approval of Alabama Strip Mines

A federal appeals court has agreed with SELC and ordered the U.S. Army Corps of Engineers to fix the way it reviews and approves massive strip mines in Alabama's Black Warrior River basin. For years, the Corps has given these mines free rein to fill streams and wetlands under a blanket permit intended for activities that cause only minimal harms. The result has been more unchecked pollution

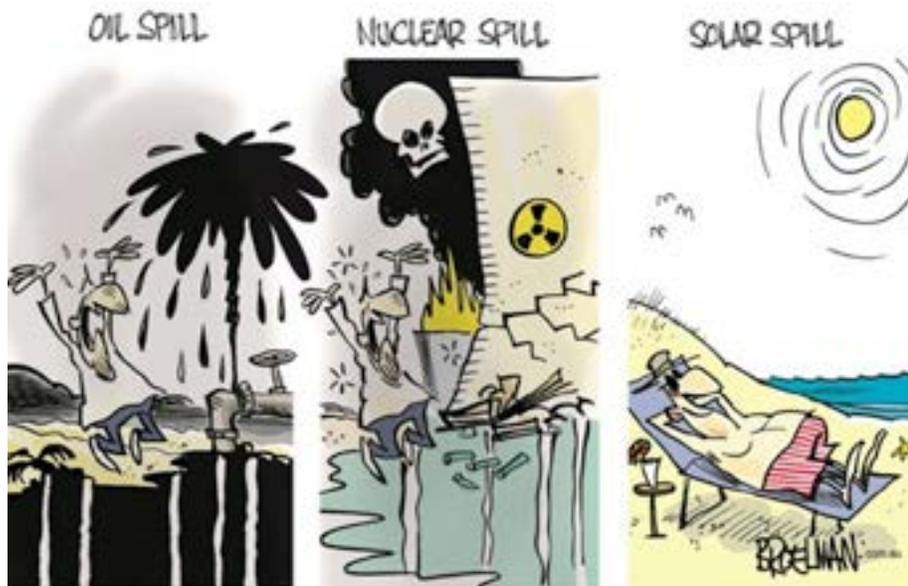
and sediment in a river basin that supplies water for Birmingham, Tuscaloosa, and other Alabama communities.

The ruling came after an admission by the Corps—on the eve of oral argument—that it had dramatically underestimated the effects of the 41 mining operations it approved under Nationwide Permit 21. The Corps now must conduct a thorough reassessment of the impacts at these sites. Unfortunately, the court

stopped short of putting the 41 projects on hold during that time.

Years ago, another federal court rejected the Corps of Engineers' use of Nationwide Permit 21 to fast track reviews of mountaintop-removal mines in the central Appalachian coalfields, but the Corps persisted in using this permit to approve coal mines in Alabama.

WHAT'S HAPPENING IN YOUR STATE?



ALABAMA

1 Promoting Solar Power.

Following up on recent successes in removing barriers to solar power in Georgia and South Carolina, SELC is taking its solar initiative to Alabama. Although it has abundant sunshine, the state is woefully behind in adopting solar technology. Compared to neighboring Georgia, which is on track to add roughly 1,000 megawatts of installed solar by 2016, Alabama currently has less than one megawatt. Recently, Alabama Power adopted a punitive solar standby tax, which will claw back up to 50 percent of the savings a solar customer might realize. SELC is helping the state reverse course and embrace its abundant solar potential—and the economic growth that comes with it.

2 Coosa River Hydropower Dams. The Federal Energy Regulatory Commission has agreed with SELC and required Alabama Power to track conditions for aquatic wildlife below its hydroelectric dams on the Coosa River. Specifically, the company must monitor and report dissolved oxygen levels and must study additional measures to improve these levels. The agency also has compelled Alabama Power to ensure that it

provides healthy conditions—including sufficient dissolved oxygen—for endangered species. FERC, at our request, is currently reviewing its decision to renew the license for Alabama Power's seven hydroelectric facilities on the Coosa River. Before the dams were built, the river was one of the world's most biologically diverse waterways.

GEORGIA

3 Metro Atlanta Transit. With support from SELC and other public transportation advocates, metro Atlanta's rapid transit service—MARTA—is expanding its system into Clayton County, part of metro Atlanta's inner ring of suburbs. SELC backed state legislation last year that enabled the expansion to go forward and then helped convince the county to put the issue on the local ballot in last fall's election. By a wide margin, Clayton County residents voted to join MARTA.



4 Regional General Permit 84. Under the Rivers and Harbors Act, the U.S. Army Corps of Engineers must review and approve structures such as

boat docks and logging roads that affect navigable waters. In Georgia, SELC is seeking to revise a regional general permit that limits the Corps' jurisdiction over rivers and streams within six miles of the coast instead of 50 to 75 miles farther inland as required by law. Unless this problem is corrected, it will be more difficult to protect certain wetlands, the banks of the rivers will become increasingly cluttered with unsightly and unsafe docks, and more logging roads will be built, harming cypress swamps that border Georgia rivers.

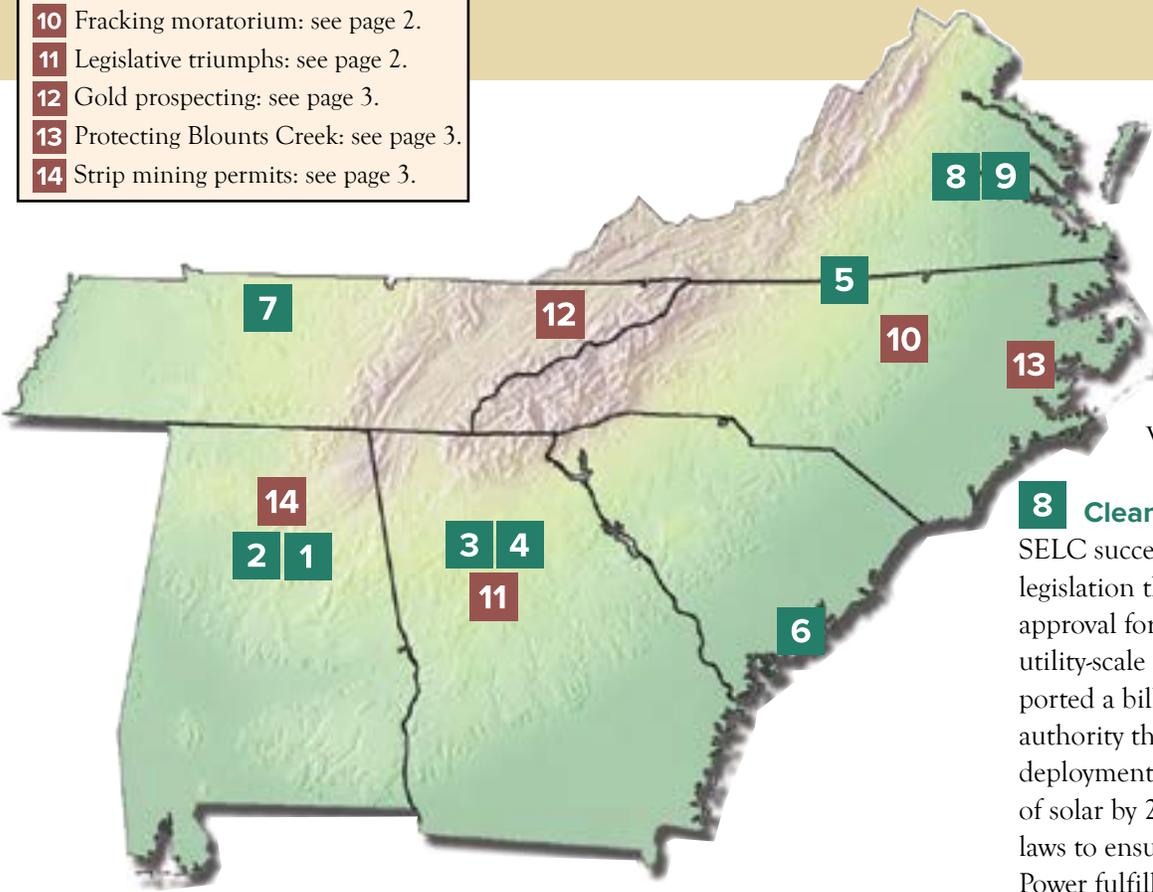
NORTH CAROLINA

5 Duke pleads guilty to coal ash crimes. Duke Energy will pay the largest federal criminal fine in the history of North Carolina—\$102 million—after pleading guilty to nine criminal misdemeanors at five coal ash sites in the state, including failures leading to the 2014 spill at its Dan River plant. As part of the deal, the company will also set aside \$3.4 billion to meet other obligations, and it has begun to publish full-page apologies in regional and national newspapers. The settlement established that, among other crimes, Duke had ignored explicit requests to perform more-rigorous inspections at Dan River in the years leading up to the spill. Although the deal with federal prosecutors confirms long-standing environmental negligence, what the agreement does not do is clean up the coal ash, which continues to pollute waters across the state. SELC continues to pursue a comprehensive cleanup for citizens of North Carolina.

SOUTH CAROLINA

6 Wood Pellet Export Facility. European Union energy policies have

- 10 Fracking moratorium: see page 2.
- 11 Legislative triumphs: see page 2.
- 12 Gold prospecting: see page 3.
- 13 Protecting Blounts Creek: see page 3.
- 14 Strip mining permits: see page 3.



VIRGINIA

ment action against the TVA facility, which was prompted by our formal notice of intent to file suit for Clean Water Act violations at the waste site.

8 Clean Energy Legislation.

SELC successfully championed state legislation this year that will speed the approval for up to 500 megawatts of utility-scale solar projects, and we supported a bill that gives a new state solar authority the power to assist in the deployment of at least 400 megawatts of solar by 2020. We will use the new laws to ensure that Dominion Virginia Power fulfills and builds on its recent commitment to put 400 megawatts of solar on line by that date—enough capacity to power up to 100,000 homes. SELC was also instrumental in the expansion of Virginia’s solar net metering program, which will further reduce barriers to solar expansion in the commonwealth.

9 Local Regulation of Fracking.

Virginia Attorney General Mark Herring has confirmed the right of localities to regulate and even prohibit shale gas development, known as fracking. The legal opinion reverses the position of the previous administration, which sought to limit the rights of local governments to control drilling operations in their area. SELC has been advocating the new position for more than a year, weighing in with specific legal arguments grounded in careful analysis of Virginia law. The decision is immediately applicable in rural eastern Virginia, where local concerns have been mounting about the leasing of 86,000 acres to extract oil and gas from an ancient lakebed that runs under the Potomac River and Chesapeake Bay.

encouraged utilities in the UK and other countries to use wood pellets as a substitute for coal, under the erroneous assumption that wood biomass is an inherently carbon-neutral fuel. This in turn has generated explosive growth in the wood pellet industry in our region. For a pellet export terminal proposed for the port of Charleston, SELC is insisting that the Army Corps of Engineers and the South Carolina Ports Authority conduct a thorough analysis of the facility’s environmental

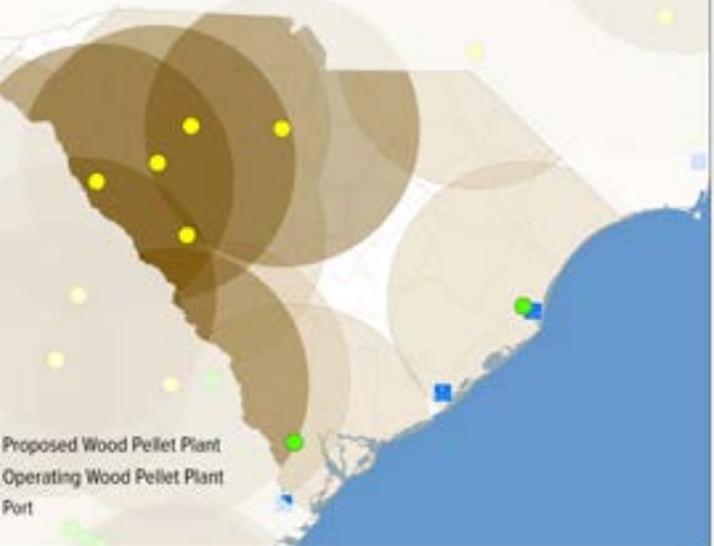
impacts—including impacts on forests and wildlife from induced tree harvesting across the state.

TENNESSEE

7 Gallatin Coal Ash Lagoons.

SELC has filed a federal lawsuit to force the Tennessee Valley Authority to end decades of coal ash pollution from its Gallatin plant upstream from Nashville on the Cumberland River. Toxins from the plant’s ash lagoons, including arsenic and mercury, have contaminated underlying groundwater that flows into the Cumberland. Toxin-laden seeps from the earthen dams holding back the coal ash also are polluting the river, which provides drinking water for Nashville and other downstream communities. Earlier, we joined the state’s civil enforce-

Operating Areas for Proposed & Existing Wood Pellet Plants in SC



This Is Not My State

On April 15, SELC's North Carolina Office Director, Derb Carter, addressed his state government's continuing assault on the environment. Delivered at Duke University and published in the *Charlotte Observer*, *This Is Not My State* sparked a tremendous response on social media. An excerpt of his speech is printed below, and the full version is available online at SouthernEnvironment.org/not-my-state.

You have given me a difficult challenge: discuss the damage the General Assembly and current state administration have inflicted on protection of our environment and natural resources—in only 10 minutes.

Many of us have worked for decades to protect what is special about North Carolina: our coast and mountains, streams and rivers, water quality and air quality, and natural areas, so it is hard to even imagine this has happened in North Carolina, in our state.

It is not the North Carolina I know, and I want it back.

In 1999, Governor Jim Hunt called for preserving an additional 1 million acres. Just a few years ago, we were a national leader in land and water conservation. Now, the legislature has raided trust funds and spending for land and water preservation has fallen by 90 percent, while we continue to lose 100,000 acres a year of forests, farmland, and open space to development.

This is not my state.

This year is the 100th anniversary of our state parks. In 2011, the state identified \$1.4 billion in unmet needs for facility development and parkland acquisition. But the legislature has cut funding for state parks by 25 percent, and Governor McCrory has now proposed an additional 25 percent cut over the next two years.

This is not my state.

The legislature repealed the longstanding prohibition on hardened structures to allow construction of terminal groins that destroy public beaches in a misguided attempt to protect private property. The legislature was embarrassed when it tried to enact a bill prohibiting state agencies and local governments from planning for sea level rise.

This is not my state.

The legislature cut funding to the Department of Environment and Natural Resources (DENR) by 40 percent and targeted all water quality and air quality regulations for review and either repeal or reissuance.

This is not my state.

DENR, under the new administration, changed its mission from protecting air and water quality to “customer service”—where the customers are the polluters and not the public.

Within days of taking office, the new DENR lived up to its promise, filing paper enforcement actions to enter a sweetheart deal with Duke Energy and shield Duke from our legal actions to clean up their polluting coal ash pits.

This is not my state.

In 1989, I served on a committee set up by former Governor Martin to evaluate oil drilling offshore, and the state op-

posed Mobil's plan to drill off the Outer Banks. Protection of our invaluable coastal resources from the impacts of oil drilling was a bipartisan effort. Governor McCrory was in Washington [in early April] to demand that the federal government allow drilling only 30 miles from our beaches, rather than the 50-mile buffer now under consideration.

This is not my state.

The Philistines have scaled the walls. You probably recall the most famous battle involving the Philistines: When they put up Goliath to fight a crafty young boy named David. And you know the outcome of that fight.

This is my state. This is our state. We want it back.

And we are going to take it back.

The Southern Environmental Law Center is stepping in to defend and protect the natural riches that we know and love in North Carolina. Wielding powerful law and policy tools, and drawing on deep expertise earned over 30 years, SELC attorneys are providing the crucial environmental oversight and enforcement that should be the duty of our public servants.



Angela Navarro Named Virginia Deputy Secretary of Natural Resources

Virginia Governor Terry McAuliffe has named SELC Staff Attorney Angela Navarro his Deputy Secretary for Natural Resources. During her five years with SELC, Navarro has led our work to advance investments in energy efficiency across the Southeast. As part of our Clean Energy and Air team, she was also one of our lead attorneys in utility proceedings before the Virginia State Corporation Commission. With her passion for the SELC’s mission, a razor-sharp analytical mind, and a tireless commitment to excellence, it is not surprising that she has become the go-to energy expert for many policy leaders in Virginia. SELC wishes Angela Navarro all the best in her important new role.



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For a complete staff list, see SouthernEnvironment.org.

SELC News Feed Offers New Way to Stay Up to Date

With nearly 200 cases and projects, SELC has plenty of work—and lots of progress—to talk about. Now supporters, reporters, and other interested people can get the latest via the SELC News Feed. Launched in March, the News Feed now features several new stories every week.

You can get all the updates:



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Reed Environmental Writing Award: Call for Nominations

Now in its 22nd year, SELC’s Phillip D. Reed Environmental Writing Award honors nonfiction and journalism that captures our region’s unique natural heritage. We are now accepting nominations for the 2016 award online at SouthernEnvironment.org/submit. Entries must have been published between October 1, 2014, and September 30, 2015. The deadline is September 30, 2015.



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CSI: Coal Ash—SELC Uncovers Violations

If SELC had not stepped in, scores of North Carolina residents might still be drinking dangerous well water. But after we insisted that North Carolina's Department of Energy and Natural Resources test specifically for heavy metals vanadium and hexavalent chromium near Duke Energy coal ash dumps, the state agency began sending out letters advising families not to drink or cook with their well water. The reason cited in most these "do-not-drink" letters: excessive levels of vanadium or hexavalent chromium, as high as 86 times the state standard in some cases.

The testing is ongoing, and while DENR continues to suggest more "assessments," and Duke Energy denies a connection between its coal ash and polluted groundwater, SELC continues to push for an immediate cleanup on

behalf of citizens across the state.

Further south, an investigation by SELC revealed serious problems with Duke Energy's coal ash dump on the banks of Lake Robinson in South Carolina.

Just last year, Duke reported that its H.B. Robinson plant housed 660,000 tons of toxic ash. Our review of public records, however, revealed that the facility actually holds 4.2 million tons, stored in an unlined pit on the banks of the popular lake. We also uncovered other serious problems: arsenic from the ash has contaminated local groundwater at 100 times in excess of the legal limits, and low-level radioactive waste was previously dumped into the pit.

In response, the company has now pledged to move all the ash to dry,

... the state agency began sending out letters advising families not to drink or cook with their well water.

lined storage away from the lake, as SELC has been advocating.



AMY BENJIT

CBS Evening News featured our work to uncover contamination of well water in North Carolina



**View online at
SouthernEnvironment.org/coal-ash-cbs**