



SOUTHERN
ENVIRONMENTAL
LAW CENTER

POWER OF THE LAW QUARTERLY

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The Atlantic Coast Pipeline: Fighting a \$7 Billion Boondoggle

SELC is applying a full-court press to stop the Atlantic Coast Pipeline. This 600-mile, \$7 billion project would cut a massive swath across Virginia and North Carolina, bisecting two national forests, crossing thousands of waterways, and tunneling under the Appalachian Trail and the Blue Ridge Parkway. The pipeline is completely unnecessary to meet current or projected energy demands, and the huge investment would lock Virginia and North Carolina into decades of reliance on fossil fuels when it is imperative to pivot to solar energy.

Who would profit from this misguided endeavor? The politically powerful utilities Dominion Energy and Duke Energy, which are guaranteed a 15% return on the project. How was it approved? By the Federal Energy Regulatory Commission, which has authority over interstate pipelines and, according to our research, has never rejected an application for one. And who will pay for the pipeline? Utility customers, who don't need it and won't benefit from it.

Stopping an interstate pipeline in court is difficult because the commission often delays challenges to its central permit until a pipeline is already in the ground. With the Atlantic Coast Pipeline, the commission attempted to do just that.

To get this project into court in a timely fashion, SELC assembled one of the most robust collaborative enterprises in our 33-year history. To date, we have filed seven coordinated federal lawsuits challenging required environmental permits. This past summer, we won our first two cases, temporarily stopping construction along the entire pipeline route.

Under strong political pressure to keep the project moving, the agencies hastily reissued permits without fixing the underlying problems. While renewing those challenges, we initiated another case that won a temporary stay of all pipeline work on national forest land.

Along the way, our attorneys have also presented evidence to Virginia regulators exposing Dominion's false claims that the pipeline is necessary to meet growing energy demands and will save customers money. This fall, we discredited the inflated demand forecasts Dominion has used to justify this project. As a result, the developers will have a harder time defending the pipeline in court.

This project has also received a remarkable level of public opposition for many reasons, including risks to clean air and water and the taking of farmland by eminent domain. SELC and our partners are using public hearings and published op-eds to amplify the outcry over this unnecessary damage.

Thanks to this multi-pronged attack, SELC's strategy is working. The Federal Energy Regulatory Commission has finally released the hold on our challenge to its central permit for the pipeline, and we are pursuing this case, which should unfold through the first half of 2019.

The science, economics, public opinion, and the law are on our side. Pipeline developers have never faced concerted opposition like this before. But we know these forests, these streams, these public lands—and the laws governing them—intimately. We have helped protect them for decades. And now, we have a chance to actually stop this boondoggle project from blasting a destructive path through them.

REGIONAL HIGHLIGHTS

SELC Applauds Forest Service Decision Protecting Public Lands

The mountain forests and streams of east Tennessee offer pristine beauty and unmatched recreation for the state's residents and visitors alike. SELC recently won a significant victory for the protection of these natural treasures when the U.S. Forest Service cancelled a risky commercial logging project in the Cherokee National Forest.

The agency had proposed the cut in an area with steep slopes and fragile soils at Tumbling Creek, a trout stream that winds along the eastern edge of the Big Frog Wilderness. For three years, SELC had urged the Forest Service to reconsider the worst portions of the timber sale, but the agency ignored public objections and

pressed ahead. Meanwhile, a similar project resulted in massive problems, validating SELC's concerns. Still, the agency refused to explain how they might prevent the same thing from happening again.

In March, SELC filed suit to stop the Tumbling Creek project and to defend the right of citizens to participate in decisions relating to public lands. To its credit, the Forest Service then took another look and cancelled the proposal. In its place, a new plan protects all of the most vulnerable resources in the area and recognizes the importance of protecting our shared public lands.

Recently, SELC has also successfully challenged misguided timber sales in Virginia and Georgia, and we are opposing a number of Trump administration proposals to challenge public involvement and review in decisions involving our national forests.



Endangered Species, Endangered Protections

The red wolf is the only wolf endemic to the United States. In November, SELC won a federal court decision that protects the world's only wild population of America's Wolf. The judge found that the U.S. Fish and Wildlife Service violated the Endangered Species Act by arbitrarily dismantling its successful program to reintroduce the wolves to eastern North Carolina.

The battle to save the red wolf heated up years ago when the state authorized nighttime hunting by property owners. In 2013, SELC won a court injunction against shooting wolves, but the practice continued due to lax oversight. Now the agency wants to restrict the wolves' range to an area too small to maintain a viable wild population. Our most recent court vic-

tory will give the red wolves a fighting chance of survival.

Meanwhile, the Trump administration is attacking the Endangered Species Act itself, seeking to rollback long-standing regulations that have protected species from extinction and critical habitat from destruction. These changes would dramatically hamper government agencies' ability to list, protect, and promote the recovery of endangered species, and would make it harder to consider the impacts of climate change in this work.

SELC is leading the charge among southeastern organizations objecting to these proposals, and we will play an important role in challenging the administration in court if they insist on moving forward.



Georgia Power's Nuclear Debacle

Georgia Power's Plant Vogtle units 3 and 4 are the only new nuclear units being built in the U.S. today. Over budget and behind schedule, the \$25 billion expansion is already the most expensive energy project in Georgia's history. After the original contractor went bankrupt and Georgia Power took over the project last year, the utility requested an additional cost increase of \$2.3 billion.

Who's on the hook for this enormous bill? Customers, who are already paying for construction costs on monthly energy bills even though the units are not finished or operating. As a state-sanctioned monopoly, Georgia Power must obtain Public Service Commission approval to

continue passing these costs along. Last year, SELC presented the commission with evidence that the new Vogtle units are not needed, are too expensive, and that future energy demands could be met far more cheaply through energy efficiency and solar.

The commission's staff agreed with us, but the commissioners approved the additional cost increase and delays anyway. SELC has appealed the decision to Georgia Superior Court to address what we believe are legal errors in the outcome and to shine a light on a process that does not protect the interests of Georgia Power's customers.

Alabama's Maxine Mine

Alabama is riddled with nearly 900 abandoned coal mines, where companies shut down operations, walked away, and left mountains of heavy metal waste polluting waterways. Because state regulators have ignored these major industrial pollution sources for decades, SELC has stepped up to address this pervasive problem.

We filed a federal lawsuit against Drummond Coal, whose abandoned Maxine Mine is polluting the Locust Fork of the Black Warrior River.

After a federal judge granted us access to the site, our team identified a natural flowing stream buried under coal-mining waste and showed high concentrations of toxic pollution flowing in the groundwater from the mine site into Locust Fork.

If successful, this groundbreaking work could force Drummond to clean up Maxine and establish a precedent for cleaning up hundreds of similar sites across the state.



2018 STATE OF SOLAR IN THE SOUTH



Number of Homes & Businesses with Solar

🏠 = 200 rooftop solar systems

Alabama



Tennessee



Virginia



Georgia



North Carolina



South Carolina



Advocating for Fair Solar Energy Policies

Alabamians pay more than \$1,700 a year in utility bills, the second-highest rate in the nation. Solar power could bring real cost savings in this sunny state, but Alabama Power's stiff monthly solar fee eats away 50% of the typical savings homeowners could see over the lifetime of their rooftop system.

Similar charges have been rejected as unfair to customers by many states, including neighboring Georgia. To level the playing field for solar energy in Alabama, SELC has filed a complaint, asking the state commission to declare the solar charge unlawful and contrary to the public interest.

Many other utilities across the Southeast have adopted more covert, but equally draconian, solar policies. To shed light on these practices, SELC recently launched an interactive website, RatesOfSolar.com, that lays out the solar policies of 400 Southeast utilities and highlights the best and worst solar actors in our region.

WHAT'S HAPPENING IN YOUR STATE?

ALABAMA

A Victory for Alabama's Water Quality

The construction of eight hydroelectric dams on the Coosa River triggered one of the largest extinction events of the 20th century with a staggering 36 aquatic species lost. The operation of these dams has continued to degrade water quality and harm species. When Alabama Power's license to operate the facilities came up for renewal, SELC stepped in to improve the management of the river. After five years of effort challenging the inadequate license, we won a significant victory in July when the U.S. Court of Appeals for the D.C. Circuit rejected the unlawful license. This decision sets a nationwide precedent and will require dam operations that are more protective of water quality in the Coosa.



In June, a judge ruled that Georgia Power can no longer harm the Upper Coosa River by operating antiquated technology at its 60-year-old, coal-fired Plant Hammond. The plant's intake system kills 60,000 fish per year in one of the most ecologically diverse river basins in North America. When the utility recently applied for a renewal permit, the state agency ignored EPA requirements and rubber-stamped the application. SELC filed suit to enforce the law, and the new ruling requires Georgia Power to adopt the best available technology to reduce harm to aquatic life in the river.

Mapping a Solution to Atlanta's Energy Crisis

In Atlanta, residents spend a higher portion of their income on energy than almost any other area in the nation. To call attention to this problem, SELC partnered with Greenlink to produce comprehensive maps of the metro area showing communities where low-income residents live in outdated, extremely inefficient housing and shoulder energy cost burdens more than 300% above the national average. SELC is using these maps to press state decision-makers to adopt more robust energy efficiency incentives and solar programs that would lower energy bills in Atlanta and around the state for customers who need it most.

NORTH CAROLINA

SELC Opposes Power Grab from Anti-Environment Legislature

In the lead-up to the midterm elections, SELC represented a broad range of citizen groups in opposing the North Carolina state legislature's attempts to place misleading constitutional amendments on the November ballot. Two ballot measures would have radically restructured the state's separation of powers by allowing the unconstitutionally gerrymandered General Assembly to usurp important functions of the executive and judicial branches. This was a thinly-veiled power grab from the same legislature that has sought to gut the state's environmental protections over the past decade. SELC won an injunction keeping the two misleading amendments off the ballot, and this forced legislators to revise the language to explain the real purpose of the amendments. On Nov. 6, North Carolina voters rejected both by wide margins.

New Contaminants Threatening North Carolina's Drinking Water

SELC is fighting to protect North Carolinians' air and water from a class of little-studied, carcinogenic contaminants. For more than a decade, DuPont spin-off Chemours has been polluting the Cape Fear River with several of these compounds. One is GenX, an exotic, proprietary chemical compound used for waterproofing and nonstick coatings. When SELC learned of widespread GenX contamination around Chemours' Fayetteville plant, and that the company had ignored a legal commitment to stop its discharge, we filed a petition urging the state environmental agency to order an immediate plant shutdown to avert a public health emergency. The agency refused, so SELC has filed lawsuits in state and federal courts to clean up Chemours' releases of this dangerous class of chemicals.



SOUTH CAROLINA

Solar Customers Get a Lift



In September, South Carolina's Public Service Commission agreed to extend a net metering program that makes rooftop solar more affordable. Net metering helps customers with solar save money by crediting their energy bills for the extra power they generate at home and move to the grid. The initial SELC-supported program helped rooftop solar spread so quickly that Duke customers hit the program's cap three years earlier than expected. To keep solar expanding and avoid moving jobs out of the state, SELC has worked with Duke Energy, the solar industry, and environmental partners to negotiate a temporary extension through March 2019, when the legislature will consider a long-term renewal of the program.

TENNESSEE

Shaping a State Water Plan

Governor Haslam is developing Tennessee's first comprehensive plan, TN H2O, to ensure adequate water supply across the state during a projected period of rapid population and economic growth—and SELC is contributing its clean water policy expertise to the effort. The final plan will assess the status of the state's surface waters, groundwater, water infrastructure, and aquatic ecosystems, as well as their vulnerability to stresses such as drought, overuse, and disputes with neighboring states. Our water experts have already identified gaps in existing policy and suggested improvements in planning to promote a more holistic approach.

SELC Responds to an Adverse Ruling

In September, a three-judge panel of the Sixth Circuit Court of Appeals voted 2-1 to overturn SELC's landmark victory enforcing the Clean Water Act at the Tennessee Valley Authority's Gallatin plant and requiring TVA to excavate 12 million tons of toxic coal ash from wastewater ponds that leak into the Cumberland River. The panel's dissenting judge called the ruling "contrary to the plain text and history" of the law, saying the decision would allow a polluter to "escape liability...by moving its drainage pipes a few feet from the riverbank." SELC has asked the full court to reconsider the panel's ruling.



VIRGINIA

Curbing State Greenhouse Gas Emissions

While the Trump administration is working to roll back the federal Clean Power Plan, Virginia has proposed an emission trading program that will make carbon pollution caps for power plants 30% tighter than under the national plan by 2030. Governor Northam has also committed \$14 million in Volkswagen settlement funds to develop an all-electric fleet of transit buses, and Virginia has joined

11 other states and D.C. in the Transportation and Climate Initiative, which includes efforts to expand electric vehicle networks. With tailpipe exhaust now the biggest contributor to greenhouse gas emissions in Virginia, SELC is supporting these measures and working to strengthen them as the state seeks to lead the South in addressing climate change.

INSIDE STORIES

Completely Predictable, Totally Avoidable: The Catastrophic Toll of Hurricanes

Less than two years after Hurricane Matthew hammered the North Carolina coast, Hurricane Florence slammed ashore near Wilmington and inundated the same area with record-breaking rainfall, destruction, and death. As Governor Roy Cooper observed in the aftermath of Florence, “When you have two 500-year floods within two years of each other, it’s pretty clear it’s not a 500-year flood.”

This pattern has become all too familiar, and scientists have warned for years that it will only get worse unless we take strong steps to address the risks of more frequent and intense storms, particularly on our Southeast coasts.

Unfortunately, industrial polluters are not heeding the warnings.

In eastern North Carolina, 100 or more vast industrial ponds filled with hog waste overflowed as Florence raged, polluting rivers and other sources of drinking water. It didn’t have to be that way, but the pork industry has long resisted adopting proven technologies that would greatly reduce health and environmental risks from industrial hog operations.

Hog waste is not the only industrial pollution problem along our coastal plain. During Hurricane Florence, coal ash lagoons at Duke Energy’s Sutton and Lee sites overflowed and released toxic heavy metals into the Cape Fear and Neuse Rivers. “If Duke Energy hadn’t fought us every step of the way and dragged its feet about cleaning up the ash at these sites, there wouldn’t have been anything to overflow,” said Frank Holleman, SELC senior attorney. Our coal ash initiative has already helped to secure the cleanup of 110 million tons of this toxic waste, and Florence showed once again the urgency of finishing this work and safely removing or recycling all coal ash in our region.

SELC is also working to prevent new threats that would make our communities even more vulnerable to stronger storms and flooding.

In Virginia, we continue to oppose attempts to lift the state’s longtime ban on uranium mining to allow an open-pit operation in Pittsylvania County. Uranium mining near the rainy, populated East Coast is unprecedented, and for good reason.

The proposed site is prone to large amounts of rainfall—it was in the path of Hurricanes Florence and Michael—and uranium mining would leave a toxic, radioactive legacy for centuries in an area whose economy depends on its water resources and tourism.

The threat of disasters like *Deepwater Horizon* has already convinced most coastal communities in our region, and many state elected officials as well, that gas and oil drilling off the southern Atlantic coast is a bad idea. But hurricanes have caused even bigger spills than *Deepwater Horizon*. The new reality of stronger and more frequent storms in this part of the country would dramatically increase the devastating risks these “routine accidents” would wreak on our coastal communities, ecosystems, and economies.

Despite the clear facts, the Interior Department wants to open the mid- and south-Atlantic to offshore drilling for the first time ever. But SELC is up to the challenge. After defying the odds and fending off a similar proposal two years ago, we are once again fighting to save our coasts from oil and gas exploration and drilling.



“When you have two 500-year floods within two years of each other, **it’s pretty clear it’s not a 500-year flood.**”

—Governor Roy Cooper

BE PART OF SOMETHING POWERFUL



Dear SELC Friends,

We're living in crazy times. Practically every day, there is a big headline with something new to worry about. It's easy to start feeling defeated and depressed—as if there is nothing you can do to make a difference.

But there is. You can partner with the Southern Environmental Law Center at this critical time and be part of something powerful. Your year-end gift can make a big difference in the quality of the environment we live in today, and what we will pass along to our children.

Thanks to the generous and loyal partnership of people like you, SELC has matured into a formidable powerhouse. We now have 80 attorneys on staff, making this the third-largest environmental nonprofit legal team in the U.S. Considering that SELC is focused exclusively on the wellbeing of our six states, the size and expertise of our team is particularly impressive.

The Trump administration's first years have confirmed all of our worst fears and predictions for the environment: the willful ignoring of climate change and its disastrous impacts; the rush to mine, drill, and log indiscriminately; the determined efforts to gut essential clean air and clean water protections.

As a result, while we can employ a full array of law and policy approaches, SELC is increasingly turning to litigation in order to prevent environmental harm, to right abuses, and to force more responsible decision-making.

As one of SELC's friends once said to me so eloquently, "Some SOB's just won't listen until you hand them a subpoena."

With your help, our attorneys will continue to use the power of the law to stand up for what's right. And we will continue to win—maybe not in every hearing or on every issue, but I guarantee you it will be an upward trend. We've got the facts, science, and the law on our side, and that's a powerful combination.

Thanks for sticking with SELC when it matters most,

A handwritten signature in blue ink that reads "Rick Middleton". The signature is fluid and cursive.

Rick Middleton
SELC Founder and Executive Director

"Your year-end gift can make a big difference in the quality of the environment we live in today, and what we will pass along to our children."



SOUTHERN ENVIRONMENTAL LAW CENTER

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What does it take to protect our health and environment?

AN INSIDER'S LOOK AT SELC'S 2018 LITIGATION PRIORITIES

SouthernEnvironment.org/2018LitigationPriorities

In Charleston, a Clean Water Victory for the Nation

In August, a federal court in Charleston ruled in SELC's favor and ordered a nationwide injunction blocking the administration's suspension of the 2015 Clean Water Rule. This decision marks a major victory for clean water in the South and the nation, but it is only the beginning of the story. Any day, we expect an unprecedented new rule that would strip away protections we have taken for granted for decades.

The new rule would place at risk up to 60% of stream miles across the nation and more than 75% of our country's wetlands. The administration is taking this action hastily and without legal, factual, or scientific basis. But we know that pollution in upstream headwaters will flow downstream and contaminate drinking water supplies and rivers where people fish, boat, and swim. We know that filling wetlands destroys important ecosystems that also help protect communities by storing flood waters and providing buffers from storms and rising sea levels.

SELC has mobilized a network of partner groups throughout our six states to get out the message: the administration's proposal will seriously and irreparably

harm waters that southerners use every day, and strong public opposition can make a difference in protecting our streams and wetlands.

We went to court to uphold a science-based approach to clean water protections—and we are ready to step up again to defend our bedrock clean water laws from being gutted by politicians in Washington, D.C.

