

# POWER OF THE LAW QUARTERLY

Winter 2019/20

## The Clean Water Act on the Ground

On October 23, SELC filed a lawsuit in Charleston to stop the federal administration's advance toward eviscerating the Clean Water Act, which for nearly 50 years has provided vital protections for our nation's rivers, streams, and wetlands. With this lawsuit, SELC is leading the charge into a multiyear battle to defend our nation's key clean water safeguards against the most sustained assault they have ever seen.

The administration's reckless proposals would dismantle our nation's bedrock clean water law. As we work with national and regional partners to defend this essential statute at the federal level, SELC attorneys also continue to enforce the Clean Water Act on the ground in order to protect the South's drinking water, sustain natural biodiversity, and defend the rivers, lakes, and coasts essential to our way of life.

### Plastic Spill Fouls Charleston Harbor

In Charleston, SELC is using Clean Water Act protections to address an alarming case of plastic pollution in the city's harbor. In July, outraged locals began speaking out when thousands of plastic pellets, or nurdles, began washing ashore on beloved area beaches.

These grain-sized spheres, used to manufacture innumerable plastic products, originated at Frontier Logistics, a company that packages nurdles for export at the Port of Charleston. Months after the initial spill, our team is still finding piles of nurdles from Sullivan's Island Beach to Waterfront Park downtown, and state officials have failed to take action to stop this pollution.

Fortunately, the Clean Water Act allows citizens to file suit to enforce the law when agencies fail to do so. On October 28, SELC and our partners sent a notice of our intent to sue Frontier under the Clean Water Act for illegally discharging plastic into the harbor. This case

presents an immediate, ongoing pollution problem, but as officials recruit more plastics exporters to South Carolina, the threat of plastic contamination will only grow. SELC is drawing the line now, before more damage is done.

### Tackling Industrial Toxins in North Carolina

Last year, SELC settled a citizen suit brought under the Clean Water Act in North Carolina to stop GenX pollution that plagued the Cape Fear River for decades. GenX is one of a class of emerging contaminants, called PFAS, that are widely used to manufacture waterproof and nonstick products. PFAS have been linked with serious health problems, including cancer.

Drawing on our experience from the GenX case, SELC has identified another PFAS pollution hotspot in the Haw River, one of the Cape Fear's largest tributaries. Water sampling by SELC and Duke University researchers confirmed PFAS contamination in the Haw from two wastewater treatment plants owned by the city of Burlington, North Carolina. These plants receive waste from several nearby industrial facilities and discharge toxins into the drinking water sources for downstream communities, including Pittsboro, Cary, and Apex. Burlington also sprays sludge containing industrial waste onto nearby fields. The contaminated water then flows from the fields into adjacent waterways.

In early November, SELC filed a notice of intent to sue Burlington under the Clean Water Act for the city's undisclosed and illegal PFAS pollution. We hope the city will decide to take responsibility for this unlawful, dangerous stream of industrial pollution—and that similar wastewater treatment plants across North Carolina and our region are put on notice that they must also take action to clean up PFAS pollution and protect the health of local residents.

# REGIONAL HIGHLIGHTS

## Coal Company Wants to Mine Protected Lands on Cumberland Plateau



The U.S. Department of the Interior is considering whether to open federally protected land on the Cumberland Plateau to coal mining for the Triple H Coal Company, breaking its promise to safeguard this land. The agency's approval would threaten remote mountain areas rich with wildlife, unspoiled streams, and natural wonders treasured by hunters, anglers, hikers, and birders.

In 2010, the state recognized the irreplaceable significance of the world's largest hardwood-forested plateau by asking the federal government to designate 75,000 acres of east Tennessee ridgelines along the Cumberland Plateau unsuitable and off-limits for surface mining. When the Department of the Interior granted the state's request in 2016, then-Secretary Sally Jewell said the agency was motivated

to "protect the Cumberland Plateau's majestic forests, mountains, and streams for future generations."

Even though federal law prohibits new surface coal mining in areas designated unsuitable, Triple H's proposed 422-acre mine falls mostly within that protected area along the North Cumberland Plateau. Ignoring the law, the Interior Department's Office of Surface Mining continues to advance the company's application.

SELC's letter responding to the proposal reminded the agency that it is legally obligated to protect this special land on the Cumberland Plateau from the devastation of surface coal mining. We will maintain our vigilance to preserve the integrity of this exceptional resource.

## Union Hill's Day in Court

On October 29, SELC and our co-counsel were in federal appeals court in Richmond challenging the Atlantic Coast Pipeline's plan to site a polluting compressor station in the historic African-American community of Union Hill. Pipeline developers did not consider other locations, and they did not consider available options to reduce pollution for this major industrial facility, which would pollute the air 24 hours a day, seven days a week.

Union Hill is a central Virginia community with a remarkable history. In 1885, Taylor Harper, who was formerly enslaved on a nearby plantation, purchased a 25-acre plot of land in Buckingham County with savings he earned from 20 years of labor in tobacco fields. Harper's descendants still own this land today, eight generations later. Other Union Hill residents similarly trace their roots to the freedmen and freedwomen who settled in the area after the Civil War. Today, 63 percent of residents are descendants of formerly enslaved people

from nearby plantations.

This is a heritage that deserves recognition. But during the five years since the compressor station was proposed, Union Hill residents have had to fight for acknowledgment of their community and its historical significance every step of the way. As recently as January 2019, on the eve of the final vote of the Virginia Air Pollution Control Board, Atlantic Coast Pipeline argued that the predominantly African-American community did not exist.

This looming threat to Union Hill

illustrates a simple truth about the Atlantic Coast Pipeline: project backers Dominion Energy and Duke Energy plunged forward with their risky and destructive pipeline with no concern for the communities that lie in its path. SELC is standing with residents of Union Hill in federal court to demand that state officials follow the law and give this community the respect it deserves by forcing developers to fully consider other options.

We expect the court to rule on this case in early 2020.



## North Carolina Advancing Toward Quick Action on Strong Climate Change Plan

As the Trump administration walks back national efforts to address climate change, states are taking matters into their own hands. North Carolina officials released a strong clean energy plan in September, and SELC is urging Gov. Cooper to take clear and swift action on the ambitious carbon reduction targets outlined by the proposal.

Starting with 2005 levels, the state's plan calls for a 70 percent reduction of greenhouse gas emissions from power plants by 2030 and promises to work toward zero emissions by 2050. These goals are bold and achievable, and SELC is asking the agency to confirm its commitment to success by adopting a simple cap on carbon emissions that would decline over time.

The plan also prioritizes equitable access to community solar and energy efficiency measures. Programs like an efficiency apprenticeship and support for sustainable, long-term clean energy jobs will help ensure that no communities are left behind in the state's clean energy transition.

State officials wisely left no place in North Carolina's clean energy future for forest-derived biomass, a false solution that ultimately works against long-term carbon-reduction goals.

This proposal can put North Carolina on a solid path to climate change action that could reverberate throughout the region. SELC will support state officials and advocate for quick implementation of their clean energy plan recommendations.

## Virginia Moves to Address Climate Change

With a new program to limit carbon emissions from power plants and plans to build the largest offshore wind project in U.S. history, Virginia is taking serious steps to reduce its contribution to climate change. Recently, Gov. Northam boosted this momentum by committing Virginia to producing electricity from 100 percent carbon-free sources by 2050.

An important step toward that goal is the state's power plant carbon cap-and-trade program. Throughout a multiyear process, SELC played a key role in supporting and strengthening this policy, which is designed to control costs by linking with an existing consortium of nine northeastern states using market-based solutions to meet their greenhouse gas reduction targets. Virginia's regulations are officially on the books, but the state legislature yanked funding for the program before it could get off the ground.

We are committed to clearing the roadblocks for this program in 2020.

Virginia's clean energy progress was given another significant boost by Dominion Energy's announcement of a 2,600-megawatt offshore wind project. Onshore construction has already begun for a 12-megawatt pilot project in partnership with Danish offshore wind experts Ørsted. Dominion expects the first (880-megawatt) phase of its larger installation to be operational by 2024 and the entire project to be online by 2026.

Virginia is putting good ideas into action to address the climate challenge, and SELC is committed to ensuring their commonsense implementation and defending them from challenges that would derail the state's forward movement.

## Utility Debacle Creates New Solar Opportunity in South Carolina

South Carolina's energy landscape continues to be rocked by the 2017 collapse of the V.C. Summer nuclear expansion effort, and the crisis is creating opportunities to reshape the state's energy economy toward clean, renewable alternatives. The construction of two new units at the nuclear power plant ran years behind schedule and billions over budget before the incomplete project was abandoned—providing a textbook example of massive utility waste with zero public benefit.

The utilities that backed this fiasco ran into deep financial trouble, and state-owned Santee Cooper is now saddled with nearly \$9 billion of debt. In early 2020, state lawmakers plan to resolve the utility's crisis in one of three ways—by selling the company, handing its management over to another utility, or adopting deep internal reforms. Looming behind these options is the possibility that Duke Energy or Dominion could step in to consolidate its role in the state and extend the \$7.5-billion Atlantic Coast Pipeline into South Carolina.

Such an outcome could put South Carolinians back on the hook for another multibillion-dollar piece of unnecessary infrastructure. SELC recently commissioned a nationally respected firm to investigate Santee Cooper's power-generation options, and the results showed that replacing coal with renewable power would be the cheapest path forward. We are now working with partners in a coordinated campaign to ensure that Santee Cooper's fate allows clean energy to compete and avoids future billion-dollar utility boondoggles.

# WHAT'S HAPPENING IN YOUR STATE?

## ALABAMA

### Shelby County Developer Mends Its Water-Polluting Ways

Shelby County is one of the fastest-growing counties in Alabama. For years, the reckless clearing practices of one of Shelby's largest residential developers dumped sediment into area creeks and lakes at levels that can destroy the state's remarkable aquatic biodiversity. After repeatedly pressing for reforms with no success, neighboring homeowners and the Coosa Riverkeeper asked SELC to step in to help keep sediment from a massive development out of a local lake and creek. We filed a notice of intent to sue for violations of the Clean Water Act. Facing the imminent

litigation, the developer quickly agreed to an approach that avoids clearing massive areas all at once. It also completely redesigned the site in order to leave more trees standing and promised to employ some of these best

practices across its sites throughout the county. These changes will drastically reduce sediment erosion in Shelby County, and we hope this example will have a ripple effect in addressing a statewide problem.



## GEORGIA

### Vogtle Challenge Gets a Second Chance

SELC's challenge to the continuation of the costly, delayed Vogtle nuclear expansion will have another day in court, the Georgia Court of Appeals ruled in October. When SELC appealed the Public Service Commission's rushed and improper decision to continue the project despite a doubling of costs and

more than five years of delay, the Fulton County Superior Court refused to weigh in, ruling that the matter could not be heard until the expansion project is complete. Such a delay could leave customers on the hook for Vogtle's massive costs, and the Court of Appeals ruling says the lower court must reeval-

uate whether this harm to customers makes it appropriate to consider the merits of the appeal now. Given the exorbitant (and uncapped) cost of this project, Georgia customers would be better served by investments in more cost-effective clean energy resources like solar power and energy efficiency.

## NORTH CAROLINA

### Tire-Burning Power Plant Threatens Locals' Health

In the midst of a rural North Carolina community, the Roxboro CPI plant generates energy by burning a harmful cocktail of coal, treated wood, and used tires. This relatively small facility pollutes nearby air with as much sulfur dioxide as coal-fired plants that generate 45 times more electricity. Worse, this polluting facility is subsidized with clean energy credits for "reusing" old tires. On behalf of concerned partners, SELC demonstrated the clear risk to public health and de-

manded that state officials properly apply the Clean Air Act to a draft permit instead of allowing these dangerous emissions to continue. In response, the state has abandoned its weak draft permit, a step that should require the utility to install pollutant-removing scrubbers at the plant. SELC is keeping pressure on the company and the state while advocating for Roxboro CPI to clean up or move on from this outdated, dirty energy source.



# SOUTH CAROLINA

## Unwanted Transmission Line Threatens Natural and Cultural Treasures

The Francis Marion National Forest and the Santee Delta are in the crosshairs of a South Carolina company's plan to build a transmission line to the small town of McClellanville. One proposed route would cut a 75-foot-wide path across the Francis Marion National

Forest, one of the last great longleaf pine forests in the country. The other route would intrude for miles into the river delta, home to historic rice plantations that are central to the cultural legacy of local Gullah communities. As an alternative, SELC is urging

the utility to implement economic battery storage, renewable energy, and energy efficiency options that would meet customers' power needs, enhance long-term resilience, and avoid impacts to the forest and delta.

# TENNESSEE

## Protecting Nashville's Tree Canopy

As Nashville grows at an unprecedented rate, SELC is committed to keeping the city livable. Cities need lots of big trees, but Nashville is experiencing the rapid loss of mature trees as developers clear ground for new projects. The city's plans to cut 21 iconic cherry trees in full bloom—without consulting the public—for a temporary NFL draft stage was the most high-profile example of this alarming

trend. Conservative estimates show the city's urban canopy declined by 13 percent since 2008. We are working with partners to push the Metro Council to enact strong reforms to preserve and expand the urban canopy and minimize the removal of trees. Sacrificing the long-term livability of this great city so developers can cut a few corners is not acceptable.



# VIRGINIA

## SELC Promotes Key Virginia Rail Expansion



Transportation is now the nation's top source of greenhouse gas pollution. SELC is advocating for enhanced passenger and freight rail to help reduce these emissions, expand travel choices,

and ease the strain on our roads. This fall, two key Virginia projects took important steps forward. The Federal Railroad Administration signed off on plans to greatly increase passen-

ger rail service between Richmond and Washington, D.C., and a study is nearing completion on a proposal to expand Long Bridge—a critical bottleneck for passenger and freight rail crossing the Potomac River. These projects will provide much-needed alternatives to some of Virginia's most congested highways, including the busy I-95 corridor. In addition, SELC and our partners recently released a report calling for a new east-west passenger rail line, linking with existing services as part of our vision for a cleaner, connected Commonwealth.

# SELC GOES *Above* & BEYOND TO PROTECT OUR



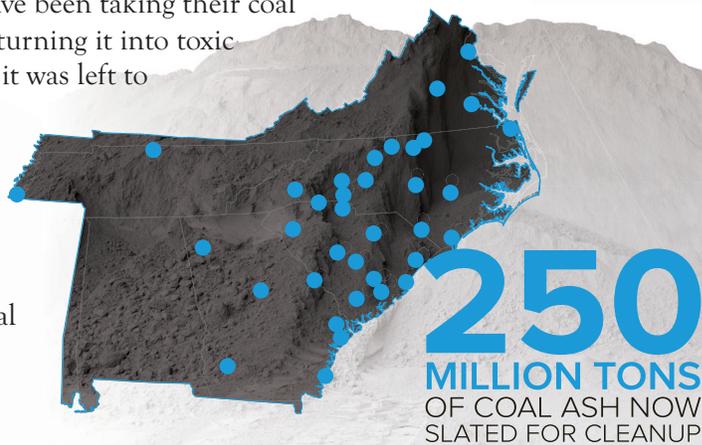
Dear SELC Friend,

I first joined the Southern Environmental Law Center 28 years ago to start a new clean energy and healthy air project. I was the eighth lawyer to join SELC, and not in my wildest dreams would I have imagined back then that we would become an organization with 83 lawyers and 160 employees. Or that SELC would be capable of launching sustained, multi-year efforts against three of the largest utilities in the country—forcing these powerful opponents to do what they swore they would never do—while simultaneously addressing myriad other site-specific issues across the region. But that is exactly who we are today.

I am honored to be leading this outstanding organization at this time in SELC's history and in the history of this country. We are the right organization at this critical moment. By partnering with SELC, you make a big difference at a time when it really matters.

There is no law firm in the country that can match the talent, dedication, and extraordinary achievements of our attorneys. Consider what SELC, in strong collaboration with our partners, has accomplished:

- For a good part of the past 100 years, utilities have been taking their coal ash—laced with arsenic and other heavy metals—turning it into toxic sludge, and dumping it into unlined pits, where it was left to seep into our rivers, groundwater, and drinking water supplies. No one had been able to do a thing about it until SELC took this on. Today, through strategic litigation and groundbreaking state legislation, we have secured binding commitments requiring utilities to dig up, dry out, and safely dispose of 250 million tons of coal ash, including all the ash in South Carolina and North Carolina, and all of Dominion Energy's coal ash in Virginia. All told, this covers over 70 percent of the coal ash pits across the region.
- A little over a decade ago, we launched a major initiative to reduce coal generation in the Southeast. At the time, if our six states were a country, we would have been the sixth-largest carbon emitter in the world. Today, we and our many partner groups have succeeded in securing commitments to retire almost half of the coal-generation capacity that was in service across our region in 2010.
- To fill the gap created by coal retirements, we are working to remove obstacles to solar development, promote energy efficiency, and ensure that all households, regardless of income level, share in the benefits of a clean energy economy. When we launched SELC's Solar Initiative five years ago, our region was lagging behind with only 1,000 megawatts of installed solar across our six states. After working with state agencies and legislators to remove barriers, we now have over 11,000 megawatts of solar installed or committed. To put this in context, in just five years solar has replaced roughly half of the coal capacity that we had previously retired. Talk about a win-win-win.



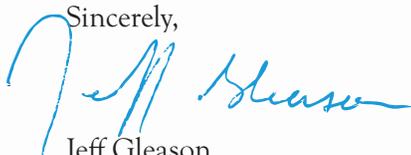
I'm proud of what we've been able to accomplish, but there is so much more to do.

# HEALTH & ENVIRONMENT

Climate change is *the* issue of our time. SELC is making significant headway in reducing our region's outsized contributions to this global problem. However, the Trump administration is bound and determined to take us backward. The latest example was this past September, when Hurricane Dorian was wreaking its devastation in the Bahamas and along our coasts due to conditions clearly exacerbated by climate change. The administration chose that exact moment to announce plans to roll back limits on emissions of methane—the most potent of greenhouse gases—and eliminate energy-efficient lightbulb standards, a rule that, by conservative estimates, saves the equivalent of the annual output of at least 25 large power plants.

This is the crazy upside-down world we are living in. SELC is determined to not let this happen, but we cannot stop it without you. Thanks to your generosity and the support of others like you, we can go above and beyond to meet what lies ahead, at a time when there has never been a greater need for the Southern Environmental Law Center. Thank you, and we look forward to partnering with you in the years to come.

Sincerely,



Jeff Gleason  
SELC Executive Director

## WHAT INSPIRES OUR ATTORNEYS?

As SELC tackles the most important environmental issues in our region, we're highlighting what motivates our attorneys to go above and beyond, day after day, to protect the South's natural resources.



SIERRA WEAVER  
Coast & Wetlands Program Leader  
Southern Environmental Law Center

“I went to law school because I wanted to do the kind of work that would let people live their best lives. ...The type of work we are doing at SELC is the type of work I set out to do. **We are protecting the air people breathe, the water they drink, and the places that inspire them.**”

“I feel empowered working for **an organization that acts on the belief that even the biggest polluters should be held accountable, and one that isn't afraid to fight back** against decisions by government leaders who fall short of protecting communities and the environment.”



CHANDRA TAYLOR  
Senior Attorney  
Southern Environmental Law Center

Watch the first of our video series at [SouthernEnvironment.org/above-and-beyond](https://SouthernEnvironment.org/above-and-beyond).

# SOUTHERN ENVIRONMENTAL LAW CENTER

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## Georgia Backcountry Areas Threatened by Logging Project

**S**ELC filed a federal lawsuit in April to stop a U.S. Forest Service logging project that threatens backcountry areas in north Georgia's Chattahoochee National Forest. As originally proposed, the Cooper Creek timber sale was more than double the size of the average logging proposal in the Southern Appalachian Mountains. For years, SELC highlighted the destructive, unlawful aspects of the project, and we convinced the Forest Service to drop 1,000 acres from the initial project's scope. However, the revised proposal would still allow road building and nearly 300 acres of commercial logging in areas designated as unsuitable for timber production, including parts of the Duncan Ridge and Board Camp roadless areas.

Fifteen years ago, thanks to the work of SELC and our partners, these areas were set aside from timber production because of their remarkable backcountry values. The popular Duncan Ridge Trail traverses these areas, winds through oak and white pine forests that are over 100 years old, and connects with both the Appalachian and Benton MacKaye Trails.

Now, under increased pressure to meet timber quotas, the Forest Service is walking away from its commitment

to protect what makes these places unique. Our lawsuit aims to hold the Forest Service accountable and to preserve the possibility that these areas could receive even stronger protections in the future.

