



SOUTHERN ENVIRONMENTAL LAW CENTER

ADVOCACY in ACTION

Winter 2015

ENERGY ISSUE

As we approach our 30th anniversary, SELC is taking stock. We are reflecting on the challenges we've faced and the lessons we've learned over the past three decades—and celebrating the powerful organization that we have built through the support and partnership of friends who share SELC's love of the South and concern for its environmental health and beauty. Nowhere is SELC's impact more evident than in our clean air and energy work. In this special issue of our winter newsletter, we invite you to look back with us on the progress we've made over the past dozen or so years on a wide range of issues related to coal, climate change, and cleaner energy alternatives for the South's future.

The South's New Energy Trajectory

Ten years ago, there were 246 coal-fired units generating electric power in our region, and nine more huge units were planned. Coal-fired power accounted for the South's outsized contribution to climate change and emitted enormous amounts of soot-forming sulfur dioxide, smog-forming nitrogen dioxide, and nearly 100 percent of the mercury, arsenic, and selenium contaminating our waterways.

Today, 126 of the existing units—a third of the total coal capacity in our six states—are slated for retirement around 2020; most of them are already closed. And seven of the proposed units never got off the ground.

SELC has been deeply involved in this revolution, playing an instrumental role in securing plans or legally binding retirement commitments and in turning aside

most of the proposed new plants, while ensuring that the two that were built burn as cleanly as possible. As a result, CO₂ emissions from electric power generation in our region declined 29 percent between 2005 and 2013—even as our population increased by an estimated 10 percent.

These changes have come without increasing the average home electricity bill. And despite all the rhetoric, most of our states are already well on their way to meeting their goals under the EPA's historic Clean Power Plan, the first-ever limits on electricity-sector CO₂ pollution.

The power of the law creates economic leverage

SELC's contribution to this tremendous progress came from a fundamental insight: if we could force utilities to pay the true costs of a coal-based energy system—something economists call internalizing cost—we could create powerful incentives to close coal plants. We also had the legal expertise to make sure that coal-fired power plants included all the pollution control technology required by law and met the strictest environmental standards.



New standards for air toxics

The Bush era brought another obstacle with the issuance of a federal rule governing mercury and other air toxics from power plants. Although its stated purpose was to reduce pollution, the mercury rule effectively did the opposite, excusing polluters from mandatory—and more stringent—Clean Air Act requirements. On behalf of several medical groups such as the American Lung Association, American Academy of Pediatrics, and the American Nurses Association, we joined a suit to require EPA to create and enforce a proper rule.

In 2011, the new “Mercury and Air Toxics Standards” finally took effect—and was challenged by 40 coal-allied industry groups on the day it was issued, despite studies showing it would avoid more than 11,000 premature deaths every year and save \$37 billion to \$90 billion in annual health care costs. We continue to help defend the rule from these challenges, and even though the



ROBERT LEWELYN

SELC's unanimous Supreme Court victory hit hardest at the oldest and dirtiest coal-fired power plants.

U.S. Supreme Court required a revision for technical reasons earlier this year, it is still in effect. Finally faced with the actual costs of complying with this law, utilities in our six southeast-

ern states have shuttered 58 old, inefficient coal-fired units for which investment could not be economically justified. Nationally, 70 percent of coal units have taken steps to comply, either with new pollution controls or retirement.

Studies show the new Mercury and Air Toxics Standards could avoid more than

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every year and **save \$37 billion to \$90 billion** in annual health care costs.



AMY BENOIT

Moving on to the Clean Power Plan

SELC's work over the past decade has helped lay the foundation for EPA's historic Clean Power Plan, finalized in August of this year. The plan will produce a 32 percent reduction in carbon emissions nationwide by setting state-specific targets and is a powerful tool for maintaining the momentum of our energy progress. In the Southeast, retirement commitments already in place leave most of our states well positioned to meet their goals.

Of course we must do more than retire aging coal plants. SELC is actively promoting renewable energy and energy efficiency programs that reduce carbon emissions and move us into the future. We aren't there yet, but the results so far make it clear that cleaner energy for the South isn't some far-off dream. It's happening right here, right now. SELC is a big part of the reason why.

SELC LEADS COAL ASH CLEANUP

On February 2, 2014, when a ruptured pipe at a retired Duke Energy power plant in Eden, North Carolina, released 39,000 tons of toxic coal ash into the Dan River, many in the region, and the nation, were caught by surprise. At SELC, however, we were already on the case, engaged in legal actions that have now led to cleanup commitments for 53 million tons of ash—and counting. The response of state authorities to Dan River has been tepid at best. SELC, not government, is the driving force behind the coal ash cleanup under way in our region.

A massive threat

Coal ash is yet another consequence of our reliance on the dirtiest of fossil fuels, the end of a chain of destruction that starts with devastating mountaintop removal mining. Burning coal has its own pernicious effects, of course, and the pollutants not released into the air don't just go away. Arsenic, mercury, selenium, thallium, and other toxics end up highly concentrated in the leftover ash.

The extent of the threat is staggering: millions upon millions of tons

of ash, stored in water-filled, unlined lagoons, behind leaking, earthen dams, next to nearly every major waterway in the Southeast—57 locations in all throughout our six states. Many of the dams are at risk for a catastrophic failure such as the 2008 spill of more than one billion gallons of coal ash slurry in Kingston, Tennessee, and pollutants leak into our region's rivers, lakes, streams, and groundwater every day.

“Duke Energy has gotten a heck of a lecture about its environmental misbehavior. For that, North Carolina should thank the diligent efforts of various environmental groups, especially the Southern Environmental Law Center.”

— Raleigh News & Observer

Although the problem is massive, utilities have been loath to do anything about it, frequently characterizing the contaminants as “naturally occurring” substances to make them sound benign. SELC became convinced our legal leverage could overcome their intransigence—and political power—and we developed a strategy to get the job done.

Success in South Carolina

We understood early on that new regulations, on either a state or national level, would be difficult to get. (Since the Dan River spill, North Carolina and EPA have instituted new regulations, which stop far short of mandating safe cleanup.) Because of our local presence in each of our six states, however, SELC had the tools and expertise to attack the coal ash problem head-on using existing law. We started our quest in South Carolina, where the law made a favorable outcome most likely.

After we won an initial legal skirmish with South Carolina Electric & Gas, the utility agreed to a legally binding cleanup—the first successful coal ash enforcement action taken anywhere in the South. We then turned our attention to Santee-Cooper, and the combination of our legal action and the public pressure stemming from

it led to yet another cleanup agreement. Both utilities are now removing their ash to dry, lined storage away from waterways, and both are well ahead of schedule.

Earlier this year, we reached a settlement with Duke Energy, South Carolina's third major utility, to clean up its two coal ash sites in the state. With all the public pressure surrounding Duke following the Dan River spill, as well as our previous legal successes and cooperation from state authorities, we didn't even have to file a lawsuit. Today, South Carolina utilities are cleaning up, or have committed to clean up, all of their waterfront unlined coal ash storage.

In North Carolina, we found a far more difficult situation.

Taking on Duke—and the state of North Carolina

North Carolina state environmental regulators, now called the Department of Environmental Quality, didn't simply ignore the problem of coal ash at the state's 14 sites. They actively attempted to thwart us when we stepped in to force a cleanup.

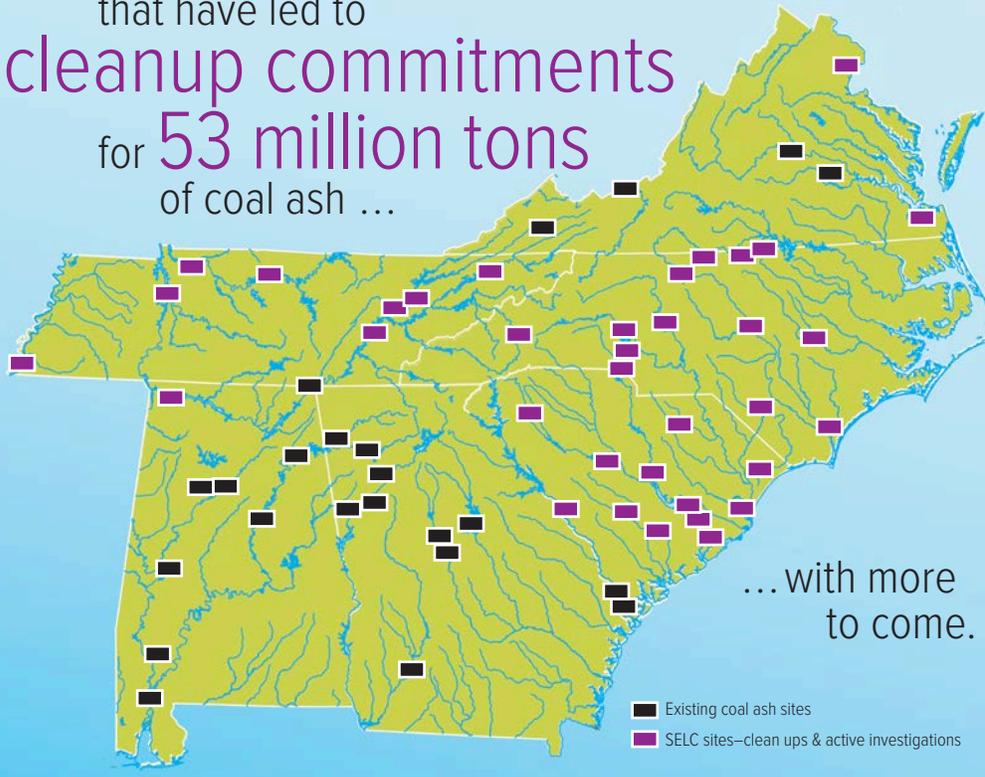
\$50 billion company with no requirement to clean up a single ounce of ash.

Two things changed this dynamic. First, the state court allowed us to join DEQ's action on behalf of citizen groups representing communities near all of Duke's North Carolina sites. Then came the Dan River spill. The state withdrew its paltry penalty, and

total regional commitment to more than 53 million tons. But by then DEQ had returned to its obstructing ways. It objected to this latest deal, even though SELC and Duke had agreed to it, and asked the court for permission to stop enforcement actions entirely.

Although SELC prevailed in that skirmish, DEQ tried another tactic a mere two weeks later, turning a hearing over the amount of a fine at one site into a comprehensive settlement that purports to immunize Duke for all past and future groundwater violations for a meager sum. It was as if DEQ had learned nothing from Dan River. SELC has challenged this action in court, as well.

SELC is engaged in legal actions that have led to cleanup commitments for 53 million tons of coal ash ...



In January 2013, over a year before Dan River, SELC notified Duke of our intent to sue to enforce clean water protections at three sites. The state took over the cases to shield Duke from citizen enforcers at these sites—and then preemptively included all North Carolina sites in an attempt to preclude further citizen enforcement. The state ignored us and the conservation groups we represent and negotiated a “penalty” with Duke behind closed doors: a \$99,000 fine of the

Duke agreed to clean up Dan River, as well as the three sites we had originally targeted. The state legislature enacted its own Coal Ash Management Act, but the measure added no new sites to the cleanup list. SELC appeared in investigations on *60 Minutes* and the *CBS Evening News*, authored an op-ed in the *New York Times*, and testified on Capitol Hill.

We continued negotiations with Duke and added three more sites to the cleanup list in 2015, bringing the

Tennessee, Virginia, and beyond

SELC's coal ash cleanup campaign isn't restricted to the Carolinas. In Tennessee, our legal actions have fundamentally changed the state's response to coal ash. After our notice of intent to sue TVA over pollution at the Gallatin Fossil Plant on the Cumberland River near Nashville, the state began its own enforcement action. Tennessee later ordered TVA to investigate and propose solutions for all coal ash problems in Tennessee.

In Virginia, we are focused on problems at the Chesapeake Energy Center in the Tidewater region and the Possum Point Steam Station some 30 miles south of Washington, D.C. A judge has recently denied Dominion Virginia Power's attempt to dismiss our Chesapeake lawsuit. Meanwhile, both Georgia Power and Alabama Power have now announced plans—though short on specifics—to begin cleaning up coal ash. SELC will remain involved, settling for nothing short of enforceable cleanups at every site.

We've already proven it can be done.

THE SUN'S ABUNDANT POWER

The sun offers the South a tremendous opportunity to embrace a clean energy future. Solar power combines the greatest raw potential with the smallest environmental footprint, provides increased power in the heat of the day, when it's needed most, and helps defer or even eliminate the need to build expensive new power plants. The cost of solar panels is coming down rapidly, and people from all parts of the political spectrum support solar. But due to powerful utilities and entrenched interests, it still takes an active effort by SELC to keep our region from falling behind.

As with our coal work, SELC recognizes that solar power isn't just an environmental issue—it's also about economics. For utilities and the fossil fuel industry, solar represents a threat to existing business models. But for the rest of us, solar has the potential to save money and create local jobs as well as to protect the environment.

That insight has led us to push for free markets, working to eliminate unfair taxes, fees, and regulations that put a major damper on solar in our region. In Georgia we succeeded in removing a punitive solar tax, and we helped open the way to third-party financing for consumers who want to install solar panels without having to pay the upfront costs. Today, Georgia has become one of the fastest growing solar markets in the country and a leader in clean energy job creation. We are now pushing for fair compensation

for solar power that consumers send to the grid.

We took a similar approach in South Carolina. Just last year we helped draft and pass a landmark law that opens the state to solar. We also negotiated favorable deals with two of the state's major utilities to give consumers full credit for the solar power they put back into the grid—and we are challenging Santee-Cooper's plans to discourage rooftop solar with unfair fees and below-market credits. In North Carolina, a solar leader in danger of regressing, we are advocating for churches that want to take advantage of tax credits and solar financing.

Solar jobs have **increased 85%** in the past 5 years.

Making utilities part of the solution

Rooftop solar is important, but SELC also knows we have to get utilities to invest in our future too. So we have taken a leading role in advocating utility-scale solar projects before public service commissions, showing that solar projects can be cost-competitive, and often even more cost-effective than building a traditional power plant.

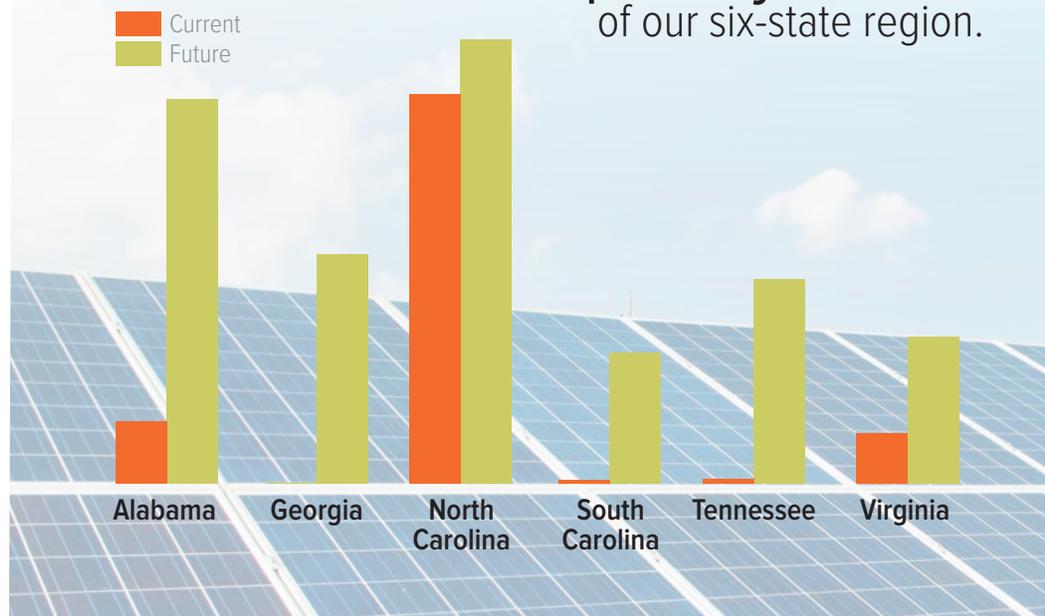
We have succeeded on that front, too. In Georgia, our advocacy before the state Public Service Commission has put the state on track to add one gigawatt of solar power by 2016. In North Carolina we helped protect fair rates for independent solar companies who sell to utilities, and earlier this year the state crossed the one gigawatt threshold—roughly enough energy to power 1 million homes. In fact, we have spurred utility-scale commitments in every one of our six states as we work toward our ambitious goal of harnessing the full power of this bountiful resource.

Future investments will

more than triple

the **total solar capacity**

of our six-state region.



FRACKING THREAT MOVES SOUTH

When the U.S. Forest Service raised the possibility of allowing high-volume hydraulic fracturing, commonly known as fracking, in the George Washington National Forest, SELC was prepared. Fracking injects large amounts of water and chemicals into the earth to release natural gas trapped underground. The environmental impacts—water and air pollution, industrial development of natural areas, and even increased seismic activity—are evident to anyone who lives nearby.

The natural gas boom, however, wasn't stopping for anyone—or so it seemed. Residents of Pennsylvania and West Virginia were intimately familiar

with the technique, but the Marcellus Shale formation also runs under the GW, the East's largest national forest, and the drilling industry wanted access to it. Moreover, once begun, fracking operations face few regulations on either the state or national level.

SELC had other ideas. In response to the threat we mobilized local partner groups, landowners, and governments, ensuring they understood what fracking would bring to the Shenandoah Valley. And we made sure the federal government listened to their concerns, so that in the end the Forest Service declined to open any new lands in the GW to drilling.

This strong defense of local voices extends throughout the southeast. Near the Chesapeake Bay, SELC is providing advice and legal guidance to communities in eastern Virginia concerned about fracking on nearly 86,000 acres leased for gas development. Our advocacy led to the Virginia Attorney General's landmark declaration that localities have the right to regulate fracking in their communities—a reversal of the state's earlier position.

In Tennessee, we headed off a University of Tennessee proposal to frack on public lands in the Cumberland Forest by revealing it was simply a moneymaking scheme disguised as a research study. When the North Carolina state legislature attempted to fast-track fracking by taking over the Mining and Energy Commission, we stepped in with a legal challenge to maintain the state's fracking moratorium.

SELC's continued vigilance is required if local communities are to protect themselves from fracking.

SELC has kept fracking out of sensitive natural areas—
and pressed for safeguards that
protect our communities and drinking water.



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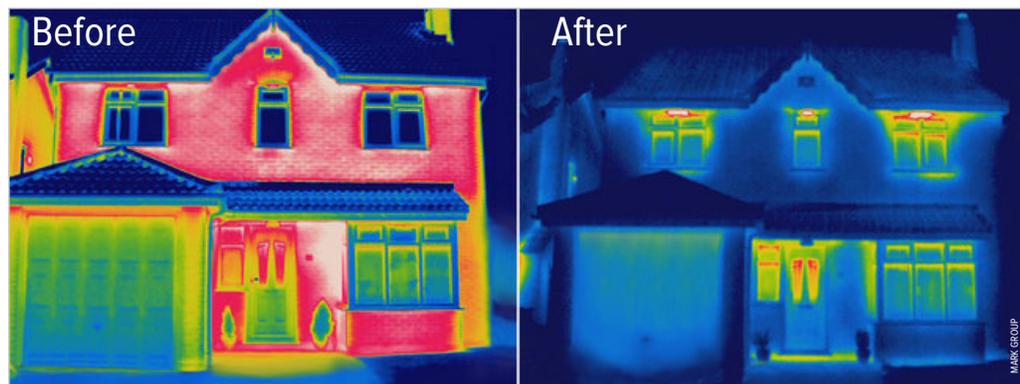
ADVOCACY in ACTION

SPECIAL ENERGY ISSUE

Energy Efficiency: The Cleanest, Cheapest Option

Ben Franklin didn't say it quite like this, but a kilowatt-hour saved really is a kilowatt-hour earned. In fact, using less power is the cleanest and cheapest energy option of all, and utilities can actually defer or avoid the need for expensive, polluting new power plants with efficiency programs. A 2014 study found that it costs an average of 2.8 cents nationwide to save one kilowatt-hour of energy, one-half to one-third the cost to generate that same amount of electricity. Another report showed that energy efficiency programs in the Southeast have delivered a 387% return on investment. And efficiency, of course, comes with no pollution.

But because it runs counter to the traditional monopoly utility business model—generating and selling power—energy efficiency needs a strong advocate before the state public service commissions that regulate the power



sector. SELC is just that, and since 2005, we have appeared in nearly 100 proceedings to help deliver efficiency to our region.

The breakthroughs are starting to come. After our intervention, Duke Energy rolled out the first large-scale energy efficiency program in the Southeast in 2009. Further agreements have expanded and improved the program. Our work in Georgia resulted in a 10 percent increase in energy efficiency goals. In Tennessee, we helped

Home insulation
and other energy efficiency improvements
can save an average
homeowner **25%–30%**

convince TVA to treat efficiency as a resource, and in Virginia our advocacy led to the approval of 15 efficiency programs. SELC is expanding these successful strategies throughout the region.