

**SOUTHERN
ENVIRONMENTAL
LAW CENTER**

POWER OF THE LAW QUARTERLY

Summer 2019

With Three New Victories, 250 Million Tons of Coal Ash Slated for Cleanup

This spring, SELC notched three historic victories in our campaign to clean up toxic coal ash that for decades has been polluting our region's streams, rivers, and lakes.

In late March, **Virginia** lawmakers enacted legislation requiring Dominion Power to excavate all 29 million tons of its coal ash stored in the Chesapeake Bay watershed. According to the new law—the first of its kind in the nation—Dominion must recycle at least 25 percent of the ash into concrete and move the rest to safe, lined storage.

On April 1, the **North Carolina** Department of Environmental Quality ordered Duke Energy to remove over 90 million tons of coal ash from unlined lagoons at six sites along the Dan, Roanoke, Broad, and Catawba Rivers—completing a clean sweep of Duke's 14 sites in the state when added to the eight other Duke sites already designated for cleanup by legislation, court orders, and settlements.

And then, in mid-June, SELC and the **Tennessee** Department of Environmental Quality reached a legally binding agreement with TVA to excavate 12 million tons of coal ash from leaking pits at the utility's Gallatin Fossil Plant along the Cumberland River just upstream from Nashville.

None of these victories came easily. Each was years in the making and required innovation and determination as well as every tool in SELC's arsenal: legal expertise, the ability to work effectively in all three branches of government, sophisticated communications strategies, and strong partners.

Persistence Pays Off

SELC filed the first federal coal ash enforcement lawsuits in the nation, including challenges of unlawful discharges of arsenic and other heavy metals from Domin-

ion Power's Chesapeake plant in southeastern Virginia and TVA's Gallatin plant outside Nashville. Both cases went to trial, and in 2017 SELC won singular federal court rulings in each—the Chesapeake ruling was the first time a federal court found a utility in violation of the Clean Water Act for coal ash pollution, and the Gallatin ruling was the first decision by a court ordering a utility to excavate coal ash over the utility's objection. Dominion and TVA appealed these landmark decisions, and each was overturned by sharply divided rulings from appeals courts.

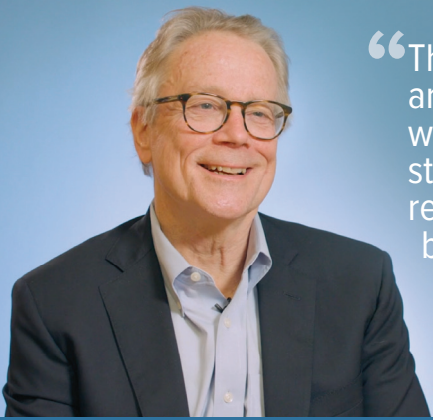
But the appellate court decisions, which turned on narrow and unprecedented interpretations of the Clean Water Act, could not erase the clear record of pollution discharges and environmental contamination our litigation established. In Virginia, we worked closely with the governor's office and key legislators, leveraging the facts established in the Chesapeake case to enact the first "clean closure" coal ash law in the country. In Tennessee, our federal case prompted the state to file its own enforcement action in state court, which we joined. The record we developed in our federal trial court victory was instrumental in securing the Gallatin settlement with the state and TVA.

Environmental Enforcers

Nowhere has our coal ash work produced bigger results than in North Carolina. We filed our first enforcement actions there more than five years ago. From the outset, the Department of Environmental Quality under then-Governor McCrory proved to be as problematic an adversary as Duke Energy. Despite opposition from the state agency, we helped secure legislation, negotiated binding settlements, and won court orders requiring Duke to excavate and safely dispose of ash from eight of its 14 sites in the state. Our work also led to federal investigations that resulted in

(Continued on page 7)

REGIONAL HIGHLIGHTS



“The challenges ahead are significant, but we’ve never been stronger. SELC is ready to go above and beyond to protect our environment and all the people who depend on it.”

Watch a video of Jeff sharing his vision for SELC at SouthernEnvironment.org/JeffGleason

New Leadership. Same Vision. Same Determination.

Jeff Gleason became our new executive director and president on April 1—exactly 28 years to the day since he first joined SELC to lead our then-new Clean Air and Energy Program. Jeff subsequently became deputy director and director of regional programs, and for 20 years he orchestrated our program work and helped to build the Southern Environmental Law Center into the powerhouse that it is today. With his deep knowledge and commitment to the region and the organization, Jeff is exactly the leader we need at this critical time.

Trump Administration Feels the Backlash on Offshore Drilling

Since day one, President Trump has been determined to open the Atlantic to offshore drilling despite widespread local opposition—but it’s getting harder for the administration to maintain that position.

In April, Georgia’s House of Representatives passed a resolution opposing offshore drilling, and U.S. Congressman Buddy Carter, who represents all of coastal Georgia, reversed position and asked for his state to be removed from a proposed five-year offshore leasing plan. In South Carolina, the state’s Senate voted 40-4 to ban infrastructure needed for offshore drilling and exploratory seismic blasting.

In the wake of this mounting bipartisan opposition, Interior Secretary David Bernhardt said the administration had “indefinitely delayed” the next version of the five-year leasing plan. Media reports suggest it may not appear until after the 2020 election, due in large part to significant opposition from Republicans in the Southeast. The delay was immediately hailed as “great news” by South Carolina Governor Henry McMaster, who vowed to “continue our efforts to protect our pristine coastline and invaluable tourism industry from the destructive threats of seismic testing and offshore drilling.”

The Trump administration nevertheless continues to push forward its pro-drilling policies. The government has announced it will proceed with seismic blasting permits in the Atlantic as well as rollbacks to drilling safety rules put in place following the 2010 Deepwater Horizon spill. SELC, joined by 10 East Coast states, is challenging the seismic permits in federal court, and in February we asked for a preliminary injunction to block the authorizations to begin seismic air gun blasting. As we await that decision, we also filed a federal lawsuit in June to stop the administration from weakening the drilling safety reforms established to prevent another offshore drilling tragedy.

Southerners Want More Wilderness, Research Shows

People who live in the South love wilderness areas and support the idea of protecting more forest through wilderness designations, according to a study recently completed through the University of Georgia. Researchers in-

terviewed 1,250 residents of five southern states and found that 89 percent support the preservation of existing wilderness areas and 88 percent want to see more wilderness areas added. Favorite backcountry activities among

respondents were hiking, photography, swimming, and camping. Unlike other parts of federally managed lands, designated wilderness areas are closed to timber production and oil and gas drilling.

SOUTHERNERS' FAVORITE WILDERNESS AREAS



Bridge to the Bottom of the Sea

Climate change and rising sea levels are central concerns in SELC's opposition to the proposed Mid-Currituck bridge, a \$600 million project designed to connect the North Carolina coast to the northernmost island of the Outer Banks. This bridge is a bad idea for many reasons—from its harm to vital freshwater estuary habitat to its wasteful use of scarce funds needed for more pressing road improvements and transportation needs.

Proposed as a toll bridge, the project makes even less sense when you consider its pay-off date in 2073. By then, according to even modest sea level rise forecasts, the approach roads leading to the proposed

bridge will be under water. In the meantime, the bridge would facilitate further beachfront development in an area that is already vulnerable to erosion, hurricanes, and rising waters that are expected to become more severe as a result of climate change.

Much of this critical information was not included in the now-outdated project planning documents, so SELC filed a lawsuit to force public disclosure and to provide North Carolinians a chance to decide for themselves whether to build a bridge that will be swallowed by the sea before it is paid for. A favorable outcome also would

put agencies on alert that they must take sea level rise into consideration when they propose new infrastructure projects.

Place-Based Expertise Drives SELC's Forest Work

One of the most important tools in SELC's work to protect national forests is our deep and extensive knowledge of our region's natural treasures—earned first-hand from walking the trails, engaging with local communities and forest partner groups, and participating in U.S. Forest Service decision-making over three decades. So when the agency proposed to log more than 1,000 acres on the Jefferson National Forest in 2017, we immediately saw the danger signs. Southwest Virginia's High Knob boasts a rich expanse of

mature hardwood forest that is an oasis amid the area's coalfields and an important source of eco-tourism dollars.

SELC showed how important High Knob is to Virginians—and how critical the site is for the nearby Clinch River, a global biodiversity hotspot with an extraordinary diversity of fish and mussels. Working closely with The Clinch Coalition, we eventually convinced the Forest Service that this was the wrong place for such a project, and the agency cancelled most of the proposed logging.

On the Chattahoochee National

Forest in north Georgia, the Forest Service has proposed another destructive commercial logging project at Cooper Creek. With our partners at Georgia ForestWatch, SELC marshalled our knowledge of the area and of the Forest Service's own guidance documents to demonstrate that much of the logging is planned for areas designated as offlimits to industrial timbering. The Forest Service repeatedly dismissed our concerns, so SELC filed a court challenge in April.

The South Speaks Up for Clean Water

SELC is leading efforts to counter attacks on the nation's bedrock clean water safeguards. In August 2018, we won a court order that blocked EPA from suspending the prior administration's Clean Water Rule, which clarified the scope of waters protected by the Clean Water Act in response to questions raised by earlier Supreme Court decisions. Now, the agency has proposed a new rule that would eliminate those clean water protections for half the nation's waters, including many of the streams,

rivers, lakes, and wetlands that southerners rely on for fishing, swimming, paddling, and clean drinking water.

During the public comment period for the new rule, we launched the ProtectSouthernWaters.org campaign and worked with dozens of riverkeepers and partner groups to raise awareness about what the proposed changes would mean for our region and to generate comments opposing it. The administration is still counting the submitted comments, but it looks like the final tally will be well over one

million nationwide—with our efforts accounting for more than 20,000 comments. Drawing on 30 years of Clean Water Act enforcement expertise, SELC also submitted an exhaustive comment letter on behalf of 80 partners, exposing the proposal's legal and scientific flaws.

The agencies cannot act until they consider all comments submitted, which should take months. If they finalize the flawed rule as proposed, we stand ready to challenge it in federal court.

WHAT'S HAPPENING IN YOUR STATE?

ALABAMA

Ending Decades of Wastewater Pollution

Regulators in Alabama have a long history of using lax enforcement to shield water polluters from taking responsibility for clear violations—making it difficult to use state proceedings to enforce the law. For 25 years, the Oxford wastewater treatment facility has been polluting the Choccolocco Creek with *E. coli* bacteria at levels more than 100 times above its permitted allowance. To address this dangerous situation, and to challenge the cozy relationship between regulators and polluters in the state, SELC filed a federal lawsuit. This step finally brought Oxford to the table, and we were able to compel a robust settlement that forces the operator to address its longstanding violations.

GEORGIA

SELC Takes Fair Energy Demands to Georgia Regulators

As a percentage of monthly income, total energy costs for Georgians are third-highest in the nation. Expensive, poorly managed projects like the \$12 billion Vogtle nuclear expansion are making this problem worse, raising customer bills while Georgia Power profits. Programs that promote saving energy through greater efficiency, however, have been proven to make a big difference, especially for lower-income customers. But to date, the Public Service Commission regulators who decide on Georgia's energy mix have mostly heard from Georgia Power. As the commission considers Georgia

Power's 2019 long-range energy plan before making a final decision in July, SELC, Partnership for Southern Equity, and Georgia Interfaith Power and Light have launched a new campaign, FairEnergyNow.org. Its aim is to inform Georgians about the unfair burden of high energy costs and to provide an outreach channel to the commissioners to force Georgia Power to invest in better, more affordable solutions. These include efficiency programs that could address the sky-high energy burden of those Georgians who can least afford it.

NORTH CAROLINA

Keeping Poison Gas out of Columbus County

SELC stopped a log export company from locating one of the nation's largest sources of methyl bromide air pollution in Delco, North Carolina. This colorless, odorless gas depletes the ozone layer and can cause central nervous system damage. Still, the Malec Brothers company planned to spew 140 tons of the poison gas per year from a facility less than a mile from a middle school, and the state was ready to go along. SELC identified legal problems in the air pollution permit and informed the local community about the health risks. As a result, more than 600 residents voiced public opposition, and over 1,000 submitted written comments. Soon after, North Carolina declared methyl bromide should be strictly regulated, and Malec Brothers dropped plans to use the gas in Columbus County.

Bad Factory Farm Bill Thwarted in Legislature

Industrial livestock farms do not make great neighbors when animal waste pollutes nearby water and exposes nearby communities to noxious odors. Today, Georgians can file lawsuits when new facilities move in and make living conditions oppressive. But an eleventh-hour bill was proposed in the state legislature to drastically limit the rights of rural property owners, businesses, and schools by declaring that any agricultural facility in operation for at least one year cannot be considered a nuisance. For an industrial hog farm, the nuisance may not be apparent for a year or more, leaving nearby communities with no legal recourse. SELC partnered with the Georgia Water Coalition and numerous rural voices to oppose the bill, and we stopped it with the help of a bipartisan group of senators.



Protecting Beaches from Terminal Groins

As sea levels rise, property owners are seeking ever more desperate measures to protect vulnerable coastal investments. To stop shoreline erosion, some have proposed building rock-pile structures (called terminal groins) hundreds of feet into the ocean from barrier islands. Terminal groins, however, actually cause further beach erosion, disrupt wildlife habitat, and are obscenely expensive. After two years of alerting the community to these pitfalls, SELC saw a big

step forward in our efforts to oppose these structures when Holden Beach became the first town to withdraw its federal application to construct a terminal groin. A similar project was voted down by homeowners on Figure Eight Island. Now SELC has filed suit to stop a terminal groin at Ocean Isle Beach. If successful, this challenge could raise serious legal barriers to these destructive projects going forward.

TENNESSEE

Under Pressure, TVA to Clean Up Memphis Coal Ash

Beneath the city of Memphis lies an ancient aquifer providing residents with some of the purest drinking water in the world. Saying there was low potential for contamination from its nearby coal ash pit, the Tennessee Valley Authority unilaterally decided to drill through the aquifer to create industrial wells for a natural gas plant. But independent testing showed the aquifer has vulnerabilities. SELC worked to communicate the risk, pressure TVA to commit to not using its wells, and strengthen both local groundwater rules and TVA's permits. In March, the utility reversed position and committed to cleaning up all the coal ash—a huge win for clean drinking water in Memphis.

SOUTH CAROLINA

Loan Fund Offers Sensible Approach to Flooding

Each of the last four years, South Carolina has experienced devastating flooding events. Development in low-lying areas makes flooding worse because concrete doesn't absorb flood waters like wetlands and other natural features do. And in massive storms, the same properties are often hit over and over again. After a flood, residents often want to sell and move to higher ground but cannot afford to do so. SELC drafted legislation to create a low-interest loan fund to help communities purchase repeatedly flooded properties, move homeowners out of flood-prone areas, and restore floodplains to open space. The bill passed the state Senate in 2019, and we are building support in the House ahead of the 2020 session.



VIRGINIA

Regulators Clear a Path for Efficiency

For many years, Virginia regulators have approached new energy efficiency programs with skepticism. Doubting the basic calculus that using less energy to perform the same household or commercial tasks could save ratepayers money, they repeatedly shaved time and

funding off of Dominion Energy's efficiency proposals—and the utility has been all too happy to go along. As a result, Virginia has lagged behind other states in the cleanest energy resource of all. But in May, regulators approved \$226 million in efficiency spending by Dominion over

five years, for the first time blessing an efficiency proposal at the full dollar amount and for the full duration. This shift places the ball squarely in Dominion's court to demonstrate commitment to implementing meaningful programs over the next five years.

INSIDE STORIES

Defending the Right to Go Solar

The growth of solar power in the South over the past five years has been remarkable, and SELC has been at the center of many of the biggest success stories. At the beginning of 2015, with barely one gigawatt of solar capacity in our region, our energy team set an

ambitious goal of expanding that number to seven gigawatts by 2018. As it turned out, the South was so ripe for a solar revolution that we surpassed that goal more than a year ahead of schedule and, by 2018, had secured 11 gigawatts of solar installed or committed to in our six states.

Continued expansion of solar power is essential to realizing a clean energy transformation and weaning the Southeast from fossil fuels. Our solar advocacy going forward will focus on continued growth of renewable resources and securing the rights for everyone in our region to go solar.

Today, SELC is targeting barriers to solar access across the South. The solution starts with better information; many utilities have policies that make adding solar difficult or even impossible for customers, and those policies are often hidden or extremely complex. Last year, SELC launched a website, RatesOfSolar.com, that provides clear, powerful

information about solar policies for more than 400 southern utilities, comparing how each company's solar programs stack up when compared to its peers.

In Georgia, we used the website to identify a municipal utility in the town of Oxford that was charging customers an exorbitant fee to go solar. We coordinated with local partners in an outreach

campaign to drive local customers to our website, where they could learn about the punitive policies and take action to demand change. The utility recently relented and rolled back its solar fee.

In neighboring Alabama, the state's largest utility charges one of the highest fees in the nation to customers who want to add rooftop solar. This solar tax is a major reason why solar power still provides only 0.27 percent of Alabama's energy. Last year, SELC challenged this fee in the state Public Service Commission, where we informed commissioners that this tax eats away an average of \$9,000 in clean energy savings from solar customers. We are currently waiting for their decision.

The solar transformation in South Carolina began with 2014 legislation that SELC helped craft and pass, and over the past five years we have worked hard to implement this law. South Carolina hit its program targets for solar installations two years ahead of schedule, and there are now more than 10,000 rooftop solar customers and 3,000 solar jobs across the state.

This spring, South Carolina passed one of the most forward-looking solar bills in the country. The 2019 Energy Freedom Act renews and expands on many of the successful 2014 programs, including a popular rooftop solar net metering program and increased access to solar for low-income residents. SELC worked closely with more than 20 conservation and solar partners to get this new law across the finish line. We will stay engaged at the Public Service Commission to make sure these programs succeed in broadening access to solar power, especially for those who need it most.



SAVING THE EARTH THROUGH POWERFUL STORYTELLING

From the Chesapeake Bay to Alabama: the 2019 Reed Writing Award Winners

Additional details about the award and 2020 submission process at SouthernEnvironment.org/ReedAward

SELC honored the winners of the 2019 Phillip D. Reed Environmental Writing Awards in March during the Virginia Festival of the Book in Charlottesville.

Author Earl Swift received the Reed Award in the nonfiction book category for *Chesapeake Requiem: A Year with the Warten of Vanishing Tangier Island*—an intimate and empathetic portrait

of a community in the middle of the Chesapeake Bay that is rapidly losing ground to the waters around it.

John Archibald and Kyle Whitmire of the Alabama Media Group received the Reed Award in the journalism category for their coverage of a public corruption scandal aimed at shielding companies from the expense of cleaning up pollution in disadvantaged neighborhoods in the North Birmingham area.

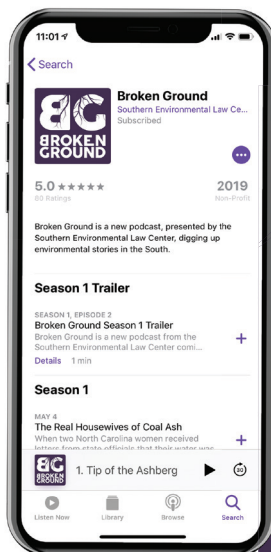
We are now accepting nominations for our 2020 book and journalism awards.

Submissions:

- Are due by October 1, 2019.
- Must have been published between October 1, 2018, and September 30, 2019.
- Must relate to the natural environment in at least one of the following states: Alabama, Georgia, North Carolina, South Carolina, Tennessee, or Virginia.

Listen to SELC's Podcast, *Broken Ground*

To ring in Earth Day, SELC launched a new podcast, *Broken Ground*, devoted to digging up environmental stories in the South that often get overlooked and giving voice to the people bringing those stories to light. Hosted by Claudine Ebeid McElwain, program communications manager for SELC's Virginia office, the first season explores the region's past, present and future energy landscape. Listen to the whole season, available now, wherever you listen to podcasts—and don't forget to leave a review!



BINGE THE SEASON!

TIP OF THE ASHBERG

The 2008 Kingston, Tennessee, coal ash spill was disastrous at the time, but what came a decade later would reveal the full devastation of the tragedy.

REAL HOUSEWIVES OF COAL ASH

When two North Carolina mothers received letters from state officials that their water wasn't safe to drink due to coal ash pollution, they fought it all the way to the state house.

DEMAND FOR POWER

An elderly couple steps up to defend their farm and neighbors from pipeline developers.

RIDING THE SOLAR COASTER

Many schools in the Southeast are saving a bundle by going solar. But what's holding some schools back?

Continued from page 1

criminal prosecutions, Duke pleading guilty 18 times to environmental coal ash crimes and suffering a fine of more than \$100 million. Our persistent advocacy—and a change in administrations—finally turned the tide on the remaining sites. Based on a record that SELC played a major role in developing, the state agency in April issued a cleanup

order for Duke's last six sites. Duke is now challenging the order, and we have joined the lawsuit to support the state in defending its cleanup order.

Not Done Yet

Even with these momentous victories, there is a lot of work to do. We must defend the North Carolina cleanup orders in state court against Duke Energy's challenges. We will remain vigilant to

ensure that the Virginia cleanup law is faithfully implemented. And we will monitor TVA's cleanup at Gallatin. But we are in a strong position. These transformational victories will remove and safely dispose of 250 million tons of coal ash, leaving our rivers cleaner and our communities safer.

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POWER OF THE LAW QUARTERLY

**Jeff Gleason Takes Over as
SELC's Executive Director**

*"The challenges ahead are significant,
but SELC has never been stronger."*

Watch a video of Jeff sharing his vision for SELC at SouthernEnvironment.org/JeffGleason.

Helping Union Hill Fight the Buckingham Compressor Station

SELC has banded together with a coalition of community activists and civil rights leaders to fight Dominion Energy's plans to build the Buckingham County natural gas compressor station in the town of Union Hill, an area in central Virginia that was settled by former slaves in the years following the Civil War. Dominion Energy wants to build the compressor station in the middle of this

historic community to keep natural gas flowing through its proposed Atlantic Coast Pipeline. Compressor stations are the dirtiest parts of pipeline infrastructure; they are loud, industrial facilities that run 24/7, emitting pollutants linked to skin rashes and respiratory, neurological, and gastrointestinal problems. Union Hill residents would bear the brunt of the noise, air pollution, and illness from the facility.

Dominion sited the Buckingham compressor station—as it has the rest of the Atlantic Coast Pipeline—without regard for what lies in or near its path. In February, SELC filed a federal lawsuit on behalf of Friends of Buckingham to challenge Dominion's air pollution permit on the grounds that the compressor station would disproportionately harm an African-American community, and because state regulators failed to consider less-polluting alternatives or to study the best available pollution controls to protect human health and wellbeing in the area. As SELC continues to work to ensure that the pipeline complies with all health and environmental safeguards, we also will fight to protect the communities that lie in the path of this unnecessary, expensive, and destructive boondoggle.

