

Slander suit against citizens battling Alabama coal ash dump shows downsides of landfill disposal

By Sue Sturgis
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After TVA's coal ash began arriving at a landfill in Uniontown, Alabama, resident Esther Calhoun witnessed the paint peeling off her car and friends becoming ill. She's now the target of a slander and libel suit by the landfill's corporate owner. (Photo by Chris Jordan-Bloch/Earthjustice. For more photos, see Earthjustice's **"Ashes: A Community's Toxic Inheritance."**)

Officers of a grassroots citizens group whose members have been embroiled in a civil rights complaint involving the Alabama landfill that took in coal ash waste from a 2008 spill at a TVA plant in Tennessee are now facing a \$30 million libel and slander suit from the landfill's corporate owner.

The latest struggle facing **Black Belt Citizens Fighting for Health and Justice** shows the myriad difficulties facing communities near sites targeted for what's being promoted as a safer way of disposing of toxic power plant waste than dumping it in unlined, leaky wet impoundments.

Back in December 2008, a dam at one of these wet impoundments burst at TVA's Kingston power plant near Harriman, Tennessee. The disaster sent a billion gallons of waste laden with contaminants including arsenic and lead into a residential community and the Clinch and Emory rivers and sparked a national move to better regulate coal ash and end risky wet storage.

Much of the waste scraped up from the Kingston disaster site – about 4 million tons – ended up being shipped by TVA some 300 miles by train to the Arrowhead Landfill in Uniontown, Alabama, **over the protests of many residents**. The landfill is permitted for household garbage, which coal ash is regulated as under law despite its potential toxicity. Local residents fought the landfill even before its opening in 2007, and the decision to dump TVA's coal ash there only intensified their concerns.

One of those concerns was about environmental injustice. Roane County, Tennessee, where the spill occurred, is over 94 percent white and less than 3 percent African-American, with about 14 percent of residents living in poverty. Perry County, Alabama, where the landfill is located, is over 68 percent African-American and is the state's poorest county, with over 35 percent of residents living in poverty. In Uniontown, 88 percent of residents are African-American and almost half live in poverty.

In 2013, 35 Perry County residents including Black Belt Citizens activists filed a **civil rights complaint** with the Environmental Protection Agency's (EPA) Office of Civil Rights against the Alabama Department of Environmental Management (ADEM), which permits the landfill to take coal ash and other waste from 33 states. The complaint alleges the landfill has disproportionately harmed African-American property owners, some of whom live just 100 feet away from the facility. It cites health concerns including respiratory problems, headaches, dizziness, nausea and vomiting, as well as unpleasant odors, fugitive dust, pest problems, and depressed property values.

A 2015 **report** by the Center for Public Integrity found that ADEM has been the target of 11 civil-rights complaints over 17 years – among the most of any state environmental agency. ADEM maintains that it complies with Title VI of the federal Civil Rights Act of 1964, which prohibits racial discrimination by those receiving federal financial assistance.

The complaint remains under investigation.

'This lawsuit is outrageous'

In the latest twist in the fight over the landfill, the facility's current owner – **Green Group Holdings LLC** of Canton, Georgia – is suing Black Belt Citizens' officers for slander and libel. The lawsuit announced last week accuses them of using the group's website and Facebook page "in a false and malicious manner" and says they have made "knowingly false" statements to the media.

The lawsuit focuses on comments made by visitors to the group's Facebook page relating to controversies over the landfill's **activities near an old cemetery** and accusations that the facility is polluting the community and oppressing local residents. Among the comments the lawsuit calls false and defamatory are these remarks by the group's president, Esther Calhoun. The bold text is the plaintiff's own, showing what the company objects to:

"Its a landfill, its a tall mountain of coal ash and it has affected us. **It affected our everyday life.** It really has done a lot to our freedom. **Its another impact of slavery.** ...Cause we are in a black residence, things change? And you can't walk outside. And **you can not breathe. I mean, you are in like prison.** I mean, its like **all your freedom is gone.** As a black woman, our voices are not heard. EPA hasn't listened and ADEM has not listened. Whether you are white or black, rich or poor, it should still matter and **we all should have the right to clean air and clean water.** I want to see EPA do their job."

Last November, and again last month, the company's attorney demanded that Black Belt Citizens delete and also retract and repudiate the posts. The group removed them but refused to retract and repudiate them. Arguing that the defendants have thus "permanently injured and damaged the business and reputation of Plaintiffs," the lawsuit seeks \$5 million in compensatory damages and \$10 million in punitive damages for each count.

"This lawsuit is outrageous," said Marianne Engelman Lado of Earthjustice, a nonprofit law firm representing community members in the civil rights complaint. "I believe this is nothing more than an attempt to quiet those who have lifted their voices in protest. Green Group Holdings should be ashamed of itself for trying to intimidate community members to prevent them from exercising their rights to be heard. This is the latest in a long line of impacts to the community."

Green Group Holdings bought the Arrowhead facility in 2012 after the previous owner, Perry County Associates, **went bankrupt.** Green Group is **backed by two privately held investors:** Hertzog Contracting of Missouri and Knoxville, Tennessee-based Phillips & Jordan, which helped managed the Arrowhead Landfill under the previous owner.

Ernest Kaufman, Green Group's president and CEO, **said** that Arrowhead "is one of the safest facilities of its kind in the entire country, and despite being the most heavily inspected landfill in Alabama, it has never once been cited for a violation."

But that doesn't mean problems haven't been documented there. Back in 2010, before Green Group Holdings bought the landfill, Hurricane Creekkeeper John Wathen of Alabama **sent a complaint to the EPA** warning of environmental health threats there. He investigated nearby residents' complaints of unusual runoff and sickening smells after TVA's ash began arriving there and found arsenic levels 80 times the safe drinking water standard in liquid waste that was being pumped from the landfill at night.

In his complaint, Wathen noted that he had taken his findings to ADEM but the agency declined to investigate after the landfill manager denied the pumping claims. "No tests, no samples, no interviews of employees or nearby residents," Wathen's complaint stated, "just a simple denial by the manager was good enough to refute hundreds of photos, certified lab results, stories from the community, or first hand eye witness account[s] by me."

He also documented arsenic-contaminated waste running in the landfill's roadside ditches, coal ash falling out of uncovered dump trucks, and runoff from washing of train cars hauling the coal ash allowed to flow into a nearby creek's drainage basin.

"Why is Perry County being treated like this?" Wathen **asked** at the time. "Are the people in Perry County any less valuable than the people of Kingston, Tennessee?"

Upsides, downsides to landfilling coal ash

The problems experienced by the Arrowhead Landfill's neighbors have the potential to become more widespread as pressure builds to move coal ash away from wet, unlined impoundments – often located along rivers and other waterways – and into dry, lined landfills away from water sources.

On the one hand, it's important that wet impoundments be shuttered due to the risk of sudden failures like those **at the Kingston plant** in Tennessee or **at Duke Energy's Dan River plant** in North Carolina, where a 2014 spill sent tens of thousands of tons of coal ash and 27 million gallons of contaminated water into the river. In addition, unlined impoundments are leaching dangerous contaminants **cancer-causing hexavalent chromium** into groundwater at sites nationwide.

The considerable upsides of moving to dry storage can be seen in South Carolina, where a lawsuit filed by the Southern Environmental Law Center on behalf of an alliance of environmental groups against Santee Cooper **resulted in a settlement** in which the utility agreed to move coal ash from unlined impoundments along the Waccamaw River. The lawsuit placed pressure on all of the state's coal-fired utilities to clean up their ash disposal operations.

As a result, groundwater monitoring reports issued by South Carolina utilities show **pollution levels are dropping.** For example, a report released by S.C. Electric & Gas earlier this year showed that in one monitoring well at the utility's Wateree plant where arsenic had contaminated the groundwater at 43 times the legal limit, levels of the cancer-causing chemical dropped from 432 to 2.9 parts per billion – a 99 percent decrease. Another monitoring well showed a 95 percent drop in arsenic, while levels of other pollutants are also falling.

But the experience of Uniontown, Alabama, residents shows there are potential downsides of moving coal ash from wet impoundments to dry landfills that need to be addressed. Environmental injustice in siting decisions. Health concerns over living so close to toxic waste. Loss of property value. And even lawsuits against residents who speak out about their experiences.

Nevertheless, the people of Uniontown don't plan to quit their battle to close the landfill any time soon.

"We will fight the landfill at every step on its preposterous claims," said Matt Swerdlin, an attorney defending the residents in the slander lawsuit. "Threatening and intimidating participants in a Civil Rights Act complaint is illegal, plain and simple."

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