

Residents Fight For Remand Of Coal Ash Pollution Suit

Law360 (December 14, 2021, 1:40 PM EST) — Residents alleging a nearby Georgia Power Co. coal plant exposed them to carcinogens and neurotoxins urged a federal court to send their suits back to state court, arguing the utility's "disingenuous focus on the uranium" can't keep the suit in federal court.

A dozen Georgia residents fought the utility's attempt to force them to litigate their claims that operations at the country's largest coal power plant exposed them to toxins, including uranium, arsenic and lead, due in part to the utility's handling and storing of coal ash. The residents told the court that the federal law Georgia Power argues establishes federal jurisdiction over their claims "applies to nuclear incidents that involve uranium, but not to all incidents that involve uranium."

The Atlanta-based utility removed the three separate, but related, lawsuits from a dozen residents of Juliette, Georgia, in November. The residents allege they have been exposed to toxins stemming from the more than 15 million tons of stored coal ash leaching into the surrounding soil and infiltrating the groundwater on which the plaintiffs rely, according to the complaint.

In the notices for removal, Georgia Power said that the allegations, which it denies, fall under the scope of the Price-Anderson Amendments Act of 1988, a federal law intended to encourage private companies to develop nuclear energy capacity by creating a framework for any liability-related issues that arise.

But the residents told the federal court Monday that the PAA doesn't apply to their claims because the 12,000-acre Robert W. Scherer Power Plant, which has been operating since 1982, is not a nuclear power plant. And the uranium at issue in the dispute is a contaminant found in that coal ash and not a source material for nuclear energy.

The residents told the court that the "improper removal is no more than a delay tactic aimed at preventing litigants from obtaining redress in State Court from the harms Georgia Power inflicted on an entire community."

"This case is not about splitting atoms; it is about the toxic coal ash Defendant discarded in its unlined Coal Ash Pond without regard to the safety of its neighbors, including the decedent, Tony Bowdoin," one group of plaintiffs said in their motion for remand. "Yet, for its own purposes, Georgia Power seeks to transform this coal ash case into a 'nuclear' one with a disingenuous focus on the uranium that results from the coal-burning operations at Plant Scherer."

The 12 plaintiffs bringing the three separate suits own eight properties near the plant in Juliette, according to the complaints.

The plaintiffs claim that Georgia Power buys from Wyoming the "cheapest and dirtiest coal available" to heat water from its manmade Lake Juliette at the Scherer plant, then dumps the residual coal ash in a 776-acre unlined pond on the site.

Harmful toxins allegedly emitted into the air by the coal plant are also cited in the cases.

One complaint was brought by the sons of a lifelong Juliette resident who inherited their father's property a few miles from the plant after his death from colon cancer in February. Benjamin and William Bowdoin said their dad, Tony Bowdoin, spent his entire life in Juliette, using well water for drinking, bathing, cleaning and irrigation.

The plaintiffs also claim Georgia Power has insufficient monitoring of groundwater toxin levels around the plant, using too-shallow wells in the wrong places. And they say studies in the 1970s, before the plant was built, showed wells in Monroe County had low concentrations of uranium, the source of which was a naturally occurring mineral deposit.

The Scherer plant is the most powerful coal-fired power plant in the U.S. and the nation's fourth-largest electric generating plant, case filings show. It is the largest to be fueled exclusively by coal, according to the U.S. Energy Information Administration.

The plaintiffs further claim Georgia Power disrupted the environment around its Scherer plant by creating Lake Juliette, which increased the pH in the groundwater and the solubility of the naturally occurring uranium, according to the complaint.

Stacey Godfrey Evans of Stacey Evans Law, counsel for some residents, told Law360 in an email Tuesday that Georgia Power failed at its basic "legal and human obligation" to be a good neighbor

"The residents of Juliette have called Georgia Power to the mat and instead of allowing the case to proceed, Georgia Power seeks to deflect, delay, and dodge accountability by misstating the nature of the Plaintiffs' claims," Godfrey said. "These claims are about the horrors of coal ash exposure, not a nuclear event. We hope the federal court will see through these tactics and return the case to state court where it belongs."

Representatives for Georgia Power, a subsidiary of Southern Co., didn't immediately return requests for comment Tuesday.

The plaintiffs are represented by Stacey G. Evans, Tiffany N. Watkins and John A. Johnson of Stacey Evans Law, Cale H. Conley and James T. Cox of Conley Griggs Partin LLP, and Brian P. Adams and Mary B. Hand of Adams Law Firm.

Georgia Power is represented by Meaghan G. Boyd, Douglas S. Arnold, Jenny A. Hergenrother, Lee Ann Anand and Sara M. Warren of Alston & Bird LLP; Duke R. Groover and Lee M. Gillis Jr. of James Bates Brannan Groover LLP; and ***Richard Robbins and Josh Belinfante of Robbins Alloy Belinfante Littlefield LLC.***

The cases are Cansler et al. v. Georgia Power Company, case number 5:21-cv-00401, Bowdoin et al. v. Georgia Power Company, case number 5:21-cv-00402, and Quinn v. Georgia Power Company, case number 5:21-cv-00403, in the U.S. District Court for the Middle District of Georgia.