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Coal Combustion Residue/Citizen Suit Enforcement: Mobile Baykeeper, Inc.: U.S. District Court Complaint Filed Addressing Alabama Power Company Electric Generating Plant Impoundment

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The Southern Environmental Law Center (“SELC”) on behalf of Mobile Baykeeper, Inc., filed a Complaint in the United States District Court (Southern District of Alabama) against Alabama Power Company (“APC”) addressing a coal combustion residue (“CCR”) impoundment at the James M. Barry Electric Generating Plant (“Plant”) in Mobile County, Alabama.

The citizen suit alleges violations of the Resource Conservation and Recovery Act (“RCRA”) and the Coal Combustion Residuals Rule (“CCR Rule”) found at 40 CFR § 257.50, et. seq.

The Complaint alleges APC’s plan to permanently store CCR in the Plant’s impoundment constitutes an unlawful closure.

The concerns expressed in the Complaint state in part that APC:

. . . plans to leave over 21 million tons of coal ash capped in place within the footprint of its existing unlined impoundment, which is built on top of a tributary of the Mobile River, Sisters Creek, and is in wetlands adjacent to the Mobile River. This plan leaves large quantities of coal ash in contact with water, including groundwater, and in an impoundment, in violation of the CCR Rule and RCRA. In fact, the plan even leaves coal ash stored below sea level. The capped impoundment will be almost surrounded by the Mobile River and within the river’s floodplain. Because the surrounding waters affect the elevation of the groundwater within the ash, the water level in the impoundment will rise and further saturate the ash when there are floods, storms, and with the rise in water level in the Mobile River and the floodplain.

The previously referenced plan is alleged to violate the CCR Rule because it is stated to constitute open dumping in violation of the Rule’s provisions. Cited is 40 CFR § 257.1(a)(2) which states:

Practices failing to satisfy any of the criteria in . . . § 257.50 through 257.107 constitute open dumping, which is prohibited under section 4005 of the Act.

The Complaint states that a citizen suit can be filed because more than 60 days have passed since SELC served a notice regarding the alleged violations and EPA has not commenced and/or is diligently prosecuting a civil or criminal action to redress the alleged violations of the Act and Rule.

The Complaint requests that the Court:

- Issue a Declaratory Judgment that APC is violating the CCR and RCRA by failing to comply with the closure plan requirements and that APC is violating the open dumping prohibition
- Enter appropriate preliminary and permanent injunctive relief to prevent APC from implementing what is described as an illegal closure plan
- Enter appropriate preliminary and permanent injunctive relief to ensure that APC files a closure plan for the Plant's coal ash impoundment that satisfies the statutory and regulatory requirements by eliminating free liquids and precluding the possibility of future impoundment of water, sediment, or slurry; eliminating infiltration of groundwater and other liquids into APC's coal ash
- Award costs of the action including reasonable attorney and expert witness fees and any other relief that the Court deems justified

A copy of the Complaint can be downloaded here.

https://www.southernenvironment.org/wp-content/uploads/2022/09/Complaint_Filed_2022.09.26_Complaint.pdf