

TVA Should Clear the Air: Q&A

Jan. 30, 2006

Q: What action did North Carolina Attorney General Roy Cooper take?

North Carolina Attorney General Roy Cooper continued his efforts to make sure that North Carolinians receive the full benefit of cleaner and clearer air as promised in North Carolina's Clean Smokestacks laws. On behalf of the people of North Carolina, Cooper filed suit against the Tennessee Valley Authority (TVA). Cooper seeks to significantly reduce the amount of pollution emitted from TVA's coal-fired power plants.

Too much air pollution from coal-fired plants makes people sick with asthma and other lung diseases, damages plants and trees with acid rain and contaminates the fish we catch with toxic mercury. North Carolina claims that TVA's pollution is a public nuisance that threatens the health of North Carolina residents and harms North Carolina's natural resources, tourism and economy.

Q: Who are the parties to the case?

The plaintiff is the State of North Carolina. The defendant is the TVA. The TVA was established by the federal government as part of President Franklin Roosevelt's "New Deal." It was originally designed to improve the economic and social circumstances of people living in the Tennessee Valley, a region that includes portions of seven states including North Carolina. Today the TVA calls itself "the Nation's largest public power system."

The TVA operates 59 coal-fired electric generating units in three states, Tennessee, Alabama and Kentucky.

Q: Where and when will the case be heard?

The action was filed in the Asheville Division of the United States District Court for the Western District of North Carolina. North Carolina will seek a prompt resolution to the case because of the importance of obtaining pollution reductions quickly. A federal judge will set the schedule for the case.

Q: What is North Carolina saying in its complaint?

North Carolina is saying and will prove that air pollutants from TVA's coal-fired power plants in Tennessee, Kentucky, and Alabama are causing unreasonable harm to the public in North Carolina and the surrounding region.

TVA's coal-fired power plants emit large amounts of sulfur dioxide (SO₂), nitrogen oxides (NO_x), and mercury into the air. These pollutants are carried from TVA's smokestacks into North Carolina. Along the way, SO₂ and NO_x form fine particulate matter, and NO_x is converted to ozone. Fine particulate matter, ozone and mercury are pollutants that make people in North Carolina sick with lung disease, and contaminate the fish they catch with dangerous neurotoxins.

North Carolina estimates that out-of-state power plant emissions are responsible each year for more than 15,000 illnesses and hundreds of emergency room visits and deaths in North Carolina alone. This air pollution also degrades the environment, ruining visibility in the scenic mountains, and harms North Carolina's economy.

TVA's emissions create an unlawful common law public nuisance in North Carolina under the laws of the states in which TVA's plants are located.

Q: What is common law public nuisance?

Specific definitions of common law public nuisance vary from state to state. Generally, an activity can be found to be a public nuisance when the activity interferes with a right common to the general public and the interference of that right is unreasonable.

The United States Supreme Court has noted "[a]ir pollution is, of course, one of the most notorious types of public nuisance in modern experience." Washington v. General Motors Corp., 406 U.S. 109, 114 (1972).

Q: What is North Carolina asking the Court to do?

North Carolina is seeking a Court order requiring TVA to control its emissions to levels similar to those required for coal-fired power plants in North Carolina by the North Carolina Clean Smokestacks Act on a similar timetable.

Q: What are coal-fired power plants required to do in North Carolina?

In 2002, the legislature adopted the North Carolina Clean Smokestacks Act. This law requires coal-fired power plants to reduce their emissions by more than two-thirds. Clean Smokestacks establishes a cap on emissions from coal-fired power plants in North Carolina that is far below current emission levels. As a result, North Carolina plants cannot annually emit more than 56,000 tons of NOx by 2009 and 130,000 tons of SO2 by 2013. In 2004 it is estimated that TVA plants emitted 199,000 tons of NOx and 492,000 tons of SO2.

North Carolina utilities are meeting the timetables for reductions. These reductions are real emission reductions and cannot be met through alternative means. As North Carolina utilities make their plants cleaner, the harmful impact TVA's plants have on North Carolinians increases.

Q: Why is North Carolina concerned about out-of-State power plants?

North Carolina has passed a law which greatly reduces emissions from North Carolina plants. Because air pollution doesn't respect state lines, it's reasonable for out-of-state plants to make similar reductions. North Carolina estimates that out-of-state power plants have a combined effect on public health and the environment in North Carolina equal to or greater than that of power plants in the state.

Q: Why is North Carolina focusing on TVA?

Analysis shows that TVA is one of the largest contributors to air pollution in North Carolina. North Carolina estimates that out-of-state power plant emissions are responsible each year for more than 15,000 illnesses and hundreds of emergency room visits and deaths in North Carolina alone.

The North Carolina Senate established a Select Committee on Mountain Air Quality in 2000. According to a letter signed by all 50 members of our State Senate, the Committee found that “the substantial problems impacting our western areas of the state are caused in large part by TVA.”

In a May 9, 2001 letter to members of the North Carolina Senate, U.S Senator Jesse Helms wrote: “I generally appreciate your sharing the findings of your Senate Select Committee on Mountain Air Quality (which are very distressing). We have done our own research up here and have come up with much the same conclusion regarding the culprit - - the TVA.”

Also, North Carolina’s Clean Smokestacks Act directs the Attorney General to use all resources, including litigation, to seek emission reductions from polluters in other States that affect North Carolina’s air quality, specifically TVA. (2002 Sess. L. 4, § 10)

Q: Will there be any benefits in other States if TVA reduces its emissions?

Across the eastern United States, TVA emissions contribute to at least 900 deaths annually. The people of Tennessee, Alabama, and Kentucky, where TVA’s coal-fired electric plants are located, as well as residents in other downwind states, will benefit if TVA is required to make the emission reductions North Carolina is seeking.

Q: Why doesn’t North Carolina just sit down with TVA and work it out?

North Carolina officials have tried and will keep on trying. The State has asked the TVA for binding assurances that TVA will clean up its power plants. TVA’s Chairman has said that entering into agreements with individual states is counterproductive, even though he admits that “we [TVA] are part of the problem.” It has also recited a list of past pollution control actions, many required under federal court consent decrees from 1979 and 1980, and vague but unenforceable plans for future actions.

Q: Why is North Carolina taking the route of litigation?

Litigation is a last resort. North Carolina has attempted to engage TVA in discussions, but with no results so far. The State also has filed a petition under section 126 of the Clean Air Act asking the federal government to require TVA, as well as other power companies, to reduce their pollution to protect citizens of North Carolina. TVA is actively opposing North Carolina’s petition.

In addition, TVA has fought the U.S. Environmental Protection Agency’s (EPA) own efforts to force TVA to install pollution controls on its power plants. A federal appeals court has ruled that the EPA cannot administratively force TVA to comply with federal rules requiring the installation of pollution controls. The court’s ruling was on procedural grounds, despite the fact that an administrative law judge found that TVA violated pollution control requirements under the federal Clean Air Act.

Q: Why isn't the EPA's CAIR rule good enough to solve North Carolina's problem?

EPA's recent Clean Air Interstate Rule (CAIR) requires states in the eastern half of the country to meet certain emission "budgets." CAIR requirements are not expected to be met fully until after 2020. North Carolinians don't want to and shouldn't have to wait another generation for healthy air quality, or for the chance to see the Smokies clearly again. As North Carolina's Clean Smokestacks program shows, emissions can be reduced far more rapidly than federal rules require.

In addition, CAIR does not cap emissions from any power plant or power system. TVA can comply with CAIR by buying pollution "allowances" rather than actually cleaning up, leaving North Carolinians and those in Alabama, Tennessee, Kentucky and other states, suffering from TVA's continuing excessive pollution.

Unlike CAIR, Clean Smokestacks requires actual reductions from North Carolina power plants that cannot be avoided by buying paper credits on the market. North Carolina deserves an equivalent assurance that TVA's harmful emissions are also actually reduced.