

METRO PULSE

TVA'S Clean Air Efforts — and Lawsuits

By Charles Maldonado

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According to EPA data, TVA's Bull Run Steam Plant in Anderson County was responsible for nearly 60 percent of Knoxville-area pollutant emissions coming from large facilities in 2002, with 42,190 tons of airborne pollutants produced that year. But last year, the utility installed SO₂-reducing scrubbers and NO_x-reducing selective catalytic reduction systems in the plant.

So it may seem strange that the National Parks Conservation Association (NPCA) is still suing them for violations of the Clean Air Act for failing to put those measures into Bull Run.

"I know what you're thinking," says NPCA's Southeast Regional Director Don Barger. "Haven't they done what you've asked? And the answer is no."

The 1977 Clean Air Act requires that any facility that could cause significant air damage to a class-one area—such as the Great Smoky Mountains National Park—install the best available controls available to curb emissions. However, they weren't required to do it right away.

"The industry said, 'We rely on coal. We still rely on coal. If we have to retrofit these plants all at once, we'll just have to turn off all the lights. We'll have to shut them down,'" Barger says. "So what happened was the existing plants were grandfathered in... until they make a modification."

And that—the word "modification"—is where things get a bit confusing. In 1988, TVA replaced two major components at the Bull Run plant: the economizer and the superheater,

plus 58,000 feet of tubing. It cost about \$8.3 million. According to the NPCA and co-plaintiffs the Sierra Club and Our Children's Earth Foundation, that improvement constituted a major modification. To prove it, they say that it increased the plant's pollutant output by a "significant" degree which in Tennessee equals 40 tons a year for both NOx and SO2. The plaintiffs say that Bull Run's NOx emissions increased by 1,933 tons per year after the project, 310 of which were directly related to the improvements in question. SO2, they say, went up 6,578 tons per year, 763.8 of which resulted from the improvements.

"I believe that it's a clear case meeting the definition of modification," says Barger.

TVA, however, contends that the replacements were routine. In court documents, the utility's witness, former head mechanical engineer Jerry Golden, says that the project cost less than 542 other projects performed throughout the TVA system between the passage of the Clean Air Act in 1977 and 1988. TVA also takes issue with the NPCA's charges that the improvements caused significant increases in pollutant emissions, saying that the group hasn't properly determined what the plant's baseline emissions were.

The suit was filed in 2001. On June 1, following eight years of legal wrangling, it finally went to trial before Judge Thomas Varlan in the U.S. District Court of East Tennessee in Knoxville.

"So it looks like it's still on," says David Reister, head of the Sierra Club's local chapter, as he sits in Courtroom 3-C waiting for the proceedings to begin. He's presumably talking about this lawsuit, but he could also be referring to the utility's recent appeal of its loss to the state of North Carolina. A federal court there declared emissions from four TVA plants (including Bull Run) a "public nuisance" and ordered that it speed up the process of installing controls, projected to cost an additional \$1 billion to TVA. Despite the appeal, TVA CEO Tom Kilgore was quoted in an Associated Press article last week as saying that TVA also plans on building an \$820 million natural gas plant in Rogersville as "insurance" in compliance with the North Carolina decision.

NPCA is not seeking any cash settlement from their lawsuit.

"We are trying to establish a legal bar," by which other such Clean Air Act actions would be

judged, says Barger. And, judging by its recent SEC quarterly financial filings, that may be precisely what TVA is worried about. “An adverse decision, however, could lead to additional litigation and could cause TVA to install additional emission control systems such as scrubbers and SCRs on units where they are not currently installed, under construction, or planned to be installed. It is uncertain whether there would be significant increased costs to TVA,” says the section of the document pertaining to the suit.

TVA employees cannot comment on pending litigation, but in 2008 court documents TVA Fossil Group Environmental Affairs Manager Gordon Park pointed to the utility’s efforts in improving its environmental footprint.

“TVA has historically taken its environmental compliance responsibilities very seriously and has worked diligently to control and reduce air emissions,” Park said, highlighting some \$6 billion in emissions improvements TVA has made since 1977. According to recent figures from TVA, SO₂ emissions from its plants have decreased 85 percent since 1977, and NO_x emissions by 82 percent since 1995. Barger doesn’t dispute those figures, but he thinks there is much more work to do.

“It’s like we’re at the very top of the first hill on a roller coaster, right when it slowly starts to click its way downward,” he says. “We’re getting there, but that’s not where you want to stop.”



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