

Environment & Energy

Alabama Power Sued for Plant Closure Leaving Coal Ash Near River

By Zach Bright

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- **Court:** S.D. Ala.
 - **Track Docket:** [No. 1:22-CV-00382](#)
 - **Judge:** [Kristi K. DuBose](#) (Bloomberg Law Subscription)
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The Alabama Power Co.'s plan to close a coal-fired power plant leaves behind millions of tons of ash that will leach into waterways and could get released by storms or flooding into the Mobile River and the Mobile-Tensaw River Delta, a complaint alleges.

The electric utility's James M. Barry Electric Generating Plant is violating an Environmental Protection Agency rule and the Resource Conservation and Recovery Act by leaving 21 million tons of coal ash in a capped, unlined impoundment in wetlands adjacent to the Mobile River, according to the lawsuit filed Monday by former U.S. Attorney for the Southern District of Alabama Richard Moore and the Southern Environmental Law Center.

Community members and the plaintiff, Mobile Baykeeper, "fear contamination of drinking water, wildlife, and river water, by ground and surface water contamination," according to the complaint. Storage of the coal ash "will be subject to the risks of flooding, storms, water level rise, and hurricanes, thus exposing Baykeeper and its members and these water resources to the risk of catastrophic failure and a spill of coal ash into the Mobile River and the Delta," it added.

"The Mobile-Tensaw River Delta and Mobile Bay are of incalculable value to Coastal Alabama," Mobile Baykeeper's Cade Kistler said. "These waters are the bedrock of the economy, quality of life, and environment in the region."

Under the EPA's Coal Combustion Residuals Rule, companies that keep coal ash in contact with water or groundwater are practicing open dumping. It requires that owners of coal ash impoundments who don't meet the standards for leaving coal ash in place must move the ash to a dry and lined landfill storage or recycle it.

The EPA hasn't prosecuted and doesn't plan to prosecute Alabama Power, according to the complaint.

“Plant Barry is the only coal ash lagoon of a major utility left in a low-lying coastal area of the Southeast that is not already cleaned up or on track to be recycled or removed to safe storage, away from waterways,” said Barry Brock, Alabama director for the Southern Environmental Law Center. “It is past time that Alabama Power faced up to the fact that leaving wet, polluting coal ash on the banks of the Mobile River is not a long-term solution — it’s a disaster.”

Alabama Power obtained a state permit to cap Plant Barry’s coal ash approved by the Alabama Department of Environmental Management. But the approval doesn’t shield it from complying with the EPA rule, according to the suit, because the state permitting program under which the plan was authorized wasn’t approved under the EPA’s coal rule.

Causes of Action: EPA’ coal combustion rule, Resource Conservation and Recovery Act.

Relief: A declaration that Alabama Power is violating the rule and RCRA; a permanent injunction to halt the closure plan and file a new plan. Mobile Baykeeper is also seeking costs to cover attorneys’ fees and additional relief.

Response: “As a matter of practice, we do not comment on pending legal matters,” Alyson Tucker, media relations manager for Alabama Power, said in a statement.

Attorneys: Moore and the Southern Environmental Law Center are representing Mobile Baykeeper.

The case is Mobile Baykeeper, Inc., v. Alabama Power Co., S.D. Ala., No. 1:22-cv-00382-KD-MU.

To contact the reporter on this story: Zach Bright at zbright@bloombergindustry.com

To contact the editor responsible for this story: Renee Schoof at rschoof@bloombergindustry.com

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