

# Sierra Club accuses LG&E of 'almost daily' dumping pollution into Ohio River

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(Photo: Photo courtesy of The Sierra Club )

Citing a year's worth of remote-camera photos, the Sierra Club alleged Monday that LG&E has dumped polluted water into the Ohio River "almost daily" from a coal-burning waste pond at its Mill Creek power plant, violating a permit that allows only "occasional" discharges.

While state officials disputed the allegations, the San Francisco-based environmental group, along with its legal partner, Earthjustice, took the first step in bringing litigation to force LG&E to reduce the pollution by sending the utility a letter alleging permit violations in and threatening a lawsuit after a required 60-day period.

"LG&E's permit for Mill Creek says they will occasionally discharge" from the pond, said Tom Pearce, a Sierra Club organizer in Louisville who helped set up and maintain the camera. "They are discharging 24/7."

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In its complaint letter, the group wrote that it believes LG&E has been regularly discharging waste from the holding pond since at least 2009 and called on the company to stop.

The letter describes the 40-year-old pond as 43 acres with an average depth of 27 feet, containing ash-sludge water, boiler chemical cleaning waste waters, cooling water and stormwater runoff from a coal pile, a limestone pile and ash treatment basins. It says the water may contain arsenic, mercury and selenium, and other toxic substances found in coal-combustion waste.

Referring to recent dramatic spills related to mining or burning of coal, Pearce said, "it's like the North Carolina or West Virginia spills, but in slow motion, with no one to stop it."

LG&E and KU Energy spokeswoman Chris Whelan said Monday afternoon that the company had not received the Sierra Club's notice of intent to sue.

"We will not comment on potential litigation," she said.

But Kentucky environmental regulators on Monday defended LG&E, saying the river discharges are legal, meeting the requirements of the company's Kentucky Pollutant Discharge Elimination System permit.

"The permit description and narrative ... describe the direct discharge" from the pond as "occasional," but it "does not restrict the frequency of the discharge," said R. Bruce Scott, commissioner of the Kentucky Department for Environmental Protection.

"Consequently, there is no violation of the permit for frequency of discharge ... as alleged," he said.

Thomas Cmar, a Chicago-based attorney with Earthjustice, disputes that.

"The state can't rewrite this permit in the press," Cmar said. "The law clearly prevents regular toxic mercury discharges into our water, (and) the evidence shows that LG&E is in blatant violation of existing standards, threatening the health of Kentucky families."

In recent years, the Sierra Club and neighbors of the company's Cane Run power plant in Louisville used cameras and video equipment to document blowing ash and strengthen complaints to Louisville air-pollution regulators, who in November reached an agreement that required the company to a penalty of \$113,250.

Now, the environmental group is using similar technology and the citizen-enforcement provisions of the Clean Water Act to go after water pollution.

Pearce described the camera the Sierra Club used as similar to those used to capture images of wildlife along nature trails. He said he strapped it onto a tree and directed the lens on the pond's outfall into the river. It took three to five images every few seconds for about a year, he said.

Scott said all discharges from the pond are monitored by the company and meet the pollution limits contained in the plant's permit, which dates to 2002 and technically expired in 2007.

Scott acknowledged the permit does not specify any limits on toxic heavy metals. But he said the state requires the company to conduct laboratory tests to determine whether the effluent is toxic to fish — "a surrogate" for heavy metals limits.

"We haven't seen a problem" with the Mill Creek effluent, he said.

The company applied for a new permit in 2007, but seven years later, the state still has not acted on the application because of a backlog, so the 2002 permit remains in effect.

Scott said his agency's Division of Water "has been working on eliminating the permit backlog for the past few years."

Monday's dispute over coal ash is just the latest since a catastrophic coal-ash slide at a Tennessee Valley Authority plant near Kingston, Tenn., in 2008 sparked a national debate over the management of one of the country's largest sources of industrial waste.

Coal-burning wastes have been found to contaminate groundwater, lakes and rivers, and can cause cancer and other health and environmental problems.

The U.S. Environmental Protection Agency in January agreed to issue national rules on the management and handling of toxic coal-combustion wastes, including ash, by Dec. 19.

The agency has also proposed new rules for power-plant effluent discharges, finding that electric power plants contribute more than half of all industrial toxic pollutants discharged into surface waters.

Last April, EPA officials said they wanted to "align" the long-delayed rule on managing coal-combustion wastes at power plants with a new rule for power-plant water pollution.

Congress has also been working on coal-ash management legislation.

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#### Power plant pollution

The EPA has proposed tightening rules on water pollution from power plants, citing concerns about cancer, birth defects and lower intelligence.

Among the annual discharges nationally:

- 64,400 pounds of lead
- 2,820 pounds of mercury
- 79,200 pounds of arsenic
- 14.5 million pounds of manganese
- 225,000 pounds of selenium

These discharges contribute to:

- More than 160 water bodies not meeting state quality standards.
- 185 waters with fish-consumption advisories.
- Degradation of 399 water bodies that provide drinking water.

Source: U.S. EPA