BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE

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The LEAGUE LINE

SPRING 2021

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The Stop the Pipeline Pamplico Defense League Committee
"The struggle continues and so do we."

Pamplico Community Raises the Stakes
Calls mount for a landowner bill of rights

2021
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Yet another polluting facility permitted for Richmond County, NC

ITD plans to burn wood and creosote railroad ties

By Debra David, Concerned Citizens of Richmond County
contributions by staff

The fight is not over regarding International Tie Disposal (ITD) coming to Richmond County. ITD, yet another polluting plant, has been granted a permit in Hamlet, NC. The synthetic minor air permit application was received by North Carolina Division of Air Quality (DAQ) in August 2020 and approved on April 13. ITD proposes to develop a "biochar production site" at 174 Marks Creek Church Road, located on leased CSX property near the CSX railyard along Highway 177.

Richmond County is already suffering from negative health effects from the cumulative impacts of air pollution from other Title V industries, according to the Richmond County Health Department. Richmond County has one of the highest incidents of asthma related emergency room visits compared to surrounding counties in the region. ITD would significantly add to respiratory disease problems in Richmond County. This is a matter of life and death. The 2019 Richmond County Community Health Assessment stated that chronic lower respiratory disease, which includes asthma, chronic bronchitis, and emphysema, is the third leading cause of death in Richmond County.

The report that the North Carolina Department of Environmental Quality (DEQ) produced for the International Tie Disposal facility clearly indicates that the impacted community is an environmental justice community. The report details that Richmond County has a high proportion of people of color and poorer health outcomes, and according to the North Carolina Department of Commerce, Richmond County ranks among the most economically distressed counties in the state. In addition, there are 9 permitted facilities within one mile of the ITD site.

Richmond County is not alone in being targeted by dirty industry; over the decades since the environmental justice movement began, low wealth communities and communities of color in North Carolina have been repeatedly targeted by companies wanting to site toxic facilities which are then issued permits by our state agencies. Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in their programs or activities. DEQ receives financial assistance from the U.S.

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BREDL grants permission to other publications, including websites, to reprint materials from The League Line. All reprinted material should contain a statement acknowledging that the material was originally published in The League Line, BREDL's quarterly newsletter.

BREDL: Who and what we are

In March 1984, fifty citizens of Ashe and Watauga Counties met in the Mission House of Holy Trinity Church in Glendale Springs, North Carolina. Teachers and farmers, home- makers and merchants listened to the report of the Episcopal Church Women on the US Department of Energy's siting search for a high-level nuclear waste dump in the rain-rich east.

Recognizing that the North Carolina mountains were a region at risk, the assembled group organized the Blue Ridge Environmental Defense League (BREDL) to protect their own backyard and those of other threatened communities.

Grassroots organizing was a cornerstone of our early all-volunteer organization. One of our first multi-county boards of directors adopted our credo, which embodies our mission statement:

BREDL Credo

We believe in the practice of earth stewardship, not only by our league members, but by our government and the public as well. To foster stewardship, BREDL encourages government and citizen responsibility in conserving and protecting our natural resources. BREDL advocates grassroots involvement in order to empower whole communities in environmental issues. BREDL functions as a "watchdog" of the environment, monitoring issues and holding government officials accountable for their actions. BREDL networks with citizen groups and agencies, collecting and disseminating accurate, timely information.

BREDL sets standards for environmental quality, and awards individuals and agencies who uphold these standards in practice.

Moving into the future

Since then, the Blue Ridge Environmental Defense League has grown to be a regional community-based, nonprofit environmental organization. Our founding principles - earth stewardship, environmental democracy, social justice and community empowerment - still guide our work for social change. Our staff and volunteers put into practice the ideals of love of community and love of neighbor, which help us to serve the movement for environmental protection and progressive social change in Virginia, North Carolina, South Carolina, Georgia, Alabama and Tennessee.

Grassroots Campaigns

Nothing creates hopefulness out of helplessness like a successful grassroots campaign -and our chapters have a history of winning. For over three decades Blue Ridge Environmental Defense League chapters have protected their communities by stopping dangerous facilities and promoting safe alternatives.

In the 1980's and 1990's, BREDL prevented a multi-state ThermalKEM hazardous waste incinerator, a southeastern nuclear waste dump and a national nuclear waste dump. In the 2000's, our coordinated grassroots citizens' campaigns have had further victories. We won a legislative victory with the passage of the NC Solid Waste Act, effectively blocking at least four multi-state mega-dumps. Our Person County chapter convinced their Board of Commissioners to reject expansion of the Republic Services landfill. Our Cascade, Virginia, chapter shut down a huge hazardous waste incinerator. We eliminated mercury waste from the Stericycle incinerator, shut down a tire incinerator in Martinsville, won the landmark environmental justice court decision in Greene County, NC. Further, with our chapters we have protected air quality by blocking scores of asphalt plants, four medical waste incinerators, a PVC plant and a lead smelter, and passage by local governments of eight polluting industries ordinances. Our work on nuclear power and coal plants laid the groundwork for our new Safe Energy Campaign. Victories over twenty-four mega-dumps have resulted in our affirmative Zero Waste Campaign. Guided by the principles of earth stewardship and environmental justice, we have learned that empowering whole communities with effective grassroots campaigns is the most effective strategy for lasting change.

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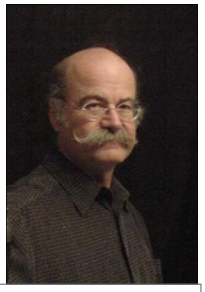
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LEAGUE LINE DIRECTOR'S REPORT

Louis A. Zeller, Executive Director

April 11, 2021



Power matters

Power—the ability to direct or influence the course of events—is central to any successful community organizing campaign. Without power, having the right arguments, knowledge, analysis and facts alone, we are simply unable to effect meaningful change. This can be a bitter lesson for those who, though prepared in many areas, nevertheless fail to achieve their goals.

"We don't like how power operates and so we shun power, but we need power in order to transform it."

Cultivating the relationships necessary to build a foundation for community power is central to the organizer's mission. Whether done in person, social-distanced, door-to-door, canvassing, Facebook, Instagram, Zoom or telephone, taking the time to find out the concerns of those directly affected is vital to the campaign and essential for building community power. Community organizing is about people, not issues. The pick-and-shovel work of organizing includes reaching out to potential allies and locating those who are affected but unengaged. Mass media and social media are also invaluable tools for getting the word out. It's not apathy if people have not heard your message yet.

"The mission and purpose of organizing is to build power. Without power, we are unable to change conditions in our communities that hurt us. A movement is successful if it transforms the dynamics and relationships of power—from power being concentrated in the hands of a few to power being held by many."

Key to building power is the element of surprise. Make a list of all the things you are planning, Then, make another list of the things your opponent expects you to do. Compare the two lists: letters-to-the-editor—check, testify at public hearings—check, lawsuit—check, and so forth. If the lists are the same, your campaign is unlikely to succeed because your opponent is prepared for everything you are doing and can therefore check your move. "Be unpredictable" I often tell groups at planning meetings. This at times evokes criticism. "Shouldn't we get Mayor Smith's approval," as if it were unfair to let an official learn about your initiative in the newspaper.

"Power is about who makes the rules."

The power of elected and appointed officials to govern is enforced by procedures, laws and regulations. This is perfectly acceptable if the governance is fair and unbiased. But the siting of waste dumps and toxic industries is wholly biased and unfair. And the regulations and courts favor the establishment. Attorney Ron Simon states, "The courts won't save you when you don't win elsewhere." Winning depends on a resourceful battle for public opinion, a unified group employing all its tools to tilt the balance of power in its favor, and a campaign directed towards the individual who can meet your demands. A successful organizer knows that playing fair does not include playing by rules designed to make you lose.

"Power prefers to operate in obscurity."

Community leaders should avoid meetings in private with public officials, company representatives or their attorneys. This is a common maneuver. There is little to gain and much at risk with such meetings. Ask yourself, why a meeting in private? The meeting is on their turf. Your opponents are holding all the cards. You have no control in this situation. Consider instead countering such a powerplay by refusing to meet with opponents; this is unexpected, unsettling and unmanageable. Corporations have influence and money power; grassroots groups can best counter them with purpose and people power.



The quotations in italics are from *The Purpose of Power–How to Build Movements for the 21st Century*, authored by Alicia Garza, community organizer and co-founder of the Black Lives Matter Global Network.

(ITD—Continued from page 1)

Environmental Protection Agency (EPA) and is subject to Title VI requirements. The Department, including its Divisions, must make environmental justice a priority, not simply a box to check or a public relations exercise.

ITD will shred and cook cross ties to feed 426 kilns and 62 natural gas-fired afterburners onsite with 160 kilns in operation per day with each kiln filled with 1 ton of material. ITD indicates it will operate the kilns and afterburners 7 days a week, 365 days a year. Using natural gas, ITD will fire 62 kilns in the first of three daily 8-hour shifts. After the 7 to 8-hour cooking process, the afterburner is removed and placed on the next kiln to start the burning process. This process continues until 160 kilns have been completed. The yearly operation would be a maximum of 58,400 kilns. Approximately 500 pounds of biochar will be produced per kiln.



The ITD kilns will be identical to the Biochar Now Colorado operation shown in the photo.

Photo: NC DAQ Presentation



The kiln looks more like a moonshine still operation. However, instead of making "holiday elixir" like the Morrison sisters on The Andy Griffith Show or Granny's "medicine" on The Beverly Hillbillies, this kiln still recipe produces air toxins such as nitrogen dioxide, carbon monoxide, VOCs and cancer-causing dioxins and furans along with dozens of other hazardous air pollutants. Not to mention that the railroad ties will contain creosote, a probable carcinogen.

Using emission controls, the facility avoids being classified as a Title V or major pollution source. ITD is using a PSD Avoidance Condition to avoid PSD permitting. Prevention of Significant Deterioration (PSD) applies to new major sources or major modifications at existing sources for pollutants where the area the source is located is in attainment or unclassifiable with the National Ambient Air Quality Standards (NAAQS). PSD would have required additional measures such as the installation of Best Available Control Technology and an impact analysis.

BREDL and citizens requested DAQ complete air dispersion modeling for NO_2. We were concerned that the ITD facility has a high probability of exceeding the NAAQS ambient air quality 1-hr standard for NO_2 – especially when adding the background concentration and nearby sources. Our concerns were spot on. ITD had to use Tier 3 OLM to allegedly meet compliance. While there are three tiers for modeling NO_2 using EPA AERMOD, it's unusual in North Carolina for a synthetic minor facility to rely on Tier 3 to prove compliance. In general, the higher tier will result in a lower modeled result.

Tier 1 screening assumes that NOx is 100% converted to NO_2. Tier 2 uses the Ambient Ratio Method 2 (ARM2) Technique, which uses default conversion ratios. Tier 3 has two

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(ITD—Continued from page 4)

options: the Ozone Limiting Method and the Plume Volume Molar Ratio Method. EPA guidance describes the two options: "OLM uses the assumption that either Ozone (O_3) or available NO_X is the limiting factor in the reaction of NO with O_3 to form NO_2. PVMRM estimates the amount of ozone entrained in the dispersion plume of a source to determine the amount of ozone that is available for oxidation of NO to form NO_2, then applies a limiting factor approach."

While the Enviva Pellet facility (236 tpy NO_X emissions) was included in the air modeling, the CSX Railroad was not. Based on North Carolina NO_2 design values, the background concentrations of NO_2 was deemed to be 15.03 ug/m3. This was based on a NO_2 monitor that is no longer in operation in Lee County. Other NO_2 monitors show much higher concentrations – up to 73.32 ug/m3 in Mecklenburg County.

BREDL and our chapter Concerned Citizens of Richmond County requested that the draft air permit be denied because this facility will significantly impact the ambient air quality of the surrounding community affecting public health. That is still the case.

Nearly 60 people attended the February 22 DEQ informational meeting and nearly 90 attended the March 1 public hearing—both held online. The overwhelming majority of speakers were against this project. DEQ has once again sacrificed the Hamlet community.

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[1] DEQ ITD Documents and Information: https://deq.nc.gov/news/events/public-hearing-international-tie-disposal-llc-project-tie

International Tie Disposal Toxic Emissions		
Acetaldehyde	Chromium	Nickel
Acrolein	Cresol	PCBs
Ammonia	DEHP	Pentachlorophenol
Arsenic	1,4-Dichlorobenzene(p)	Phenol
Benzo(a)pyrene	Ethylene dichloride	Styrene
Beryllium	Formaldehyde	TCE
Cadmium	n-Hexane	Tetrachlorodibenzo-p-dioxin
Carbon tetrachloride	Hydrogen chloride	Toluene
Chlorine	Manganese	Vinyl chloride
Chlorobenzene	Mercury	Xylene
Chloroform	Methylene chloride	

Pollutant	Expected Emissions (tons/yr)	Potential Emissions Before Controls (tons/yr)
PM	7.30	53.95
PM_{10}	4.80	35.40
$PM_{2.5}$	3.52	25.63
SO_2	0.03	0.15
NO_X	97.84	699.71
CO	19.57	139.94
VOC	13.12	321.86
Methanol	2,050 (lbs/yr)	5,470 (lbs/yr)
Total HAP	2,180 (lbs/yr)	6,360 (lbs/yr)

BREDL Grassroots Mini Grant Program

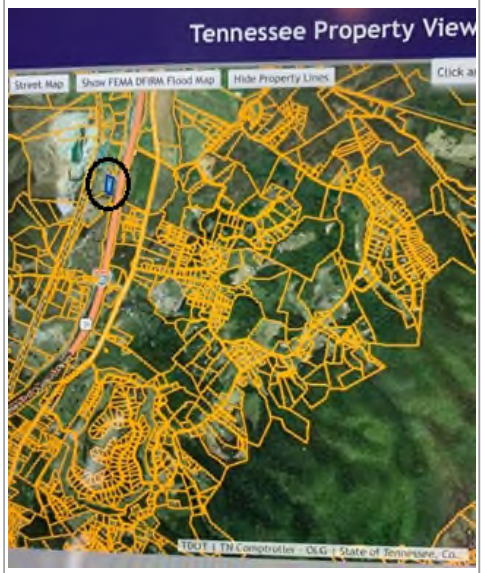
The BREDL Grassroots Mini Grant Program (GMGP) is a grant being offered by BREDL to its chapter organizations and other grassroots groups who need cash for the purpose of developing, expanding, enhancing, promoting, or otherwise improving their campaigns to protect the environment in the communities where they live. The GMGP will be offered in amounts ranging from $500 to $2,500 to applicant organizations who are successful in raising matching funds equal to the amount of grant funding requested. Proposals will be accepted through December 31, 2021. **Contact Lou Zeller (336-982-2691, bredl@skybest.com) or Ann Rogers (540-312-3104, amelvin3@verizon.net) for more details.**

Welcome Unicoi Clear

By Court Lewis, President, Unicoi Clear Executive Committee

Mission: *Unicoi Clear is a grassroots community association in Unicoi, Tennessee, whose mission is to preserve the rural and suburban character of the Town of Unicoi, located in The Valley Beautiful on the edge of the Blue Ridge Mountains, in the Cherokee National Forest. In particular, we will work to champion and protect the natural beauty of the landscape—its forests, air, and water—and to encourage economic growth, tourism, and other businesses and activities that respect the land and preserve our quality of life. To that end, we will resist the encroachment of polluting industries and other commercial enterprises that threaten the environment and conflict with those aims through collaborative community action and communication with the citizens and leaders of our community.*

The Town of Unicoi was incorporated in Unicoi County, Tennessee (just south of Johnson City) in mid-1994. From the beginning it was unusual for a small mountain town in that its founding leaders were progressive, aiming to develop an economy based on agriculture, tourism, and small retail businesses capitalizing on the natural beauty of the area, on the edge of Appalachia and the Blue Ridge. Within a year they had established a comprehensive zoning plan in which the great majority of the Town's area was zoned Agricultural.



The small rectangle inside the circle shows the existing 2-acre asphalt plant site and its location in a heavily residential area of 550 homes within one mile. The larger area abutting it to the north is the proposed expansion.

At the time of incorporation there was a batch-mix asphalt plant that had recently begun operating on a two-acre parcel to serve the paving of I-26. It was located on the side of Buffalo Mountain on land zoned Agricultural, but was grandfathered in because it predated the Town's formation. In response to citizen complaints, the Town created an ordinance expressly prohibiting future asphalt plants.

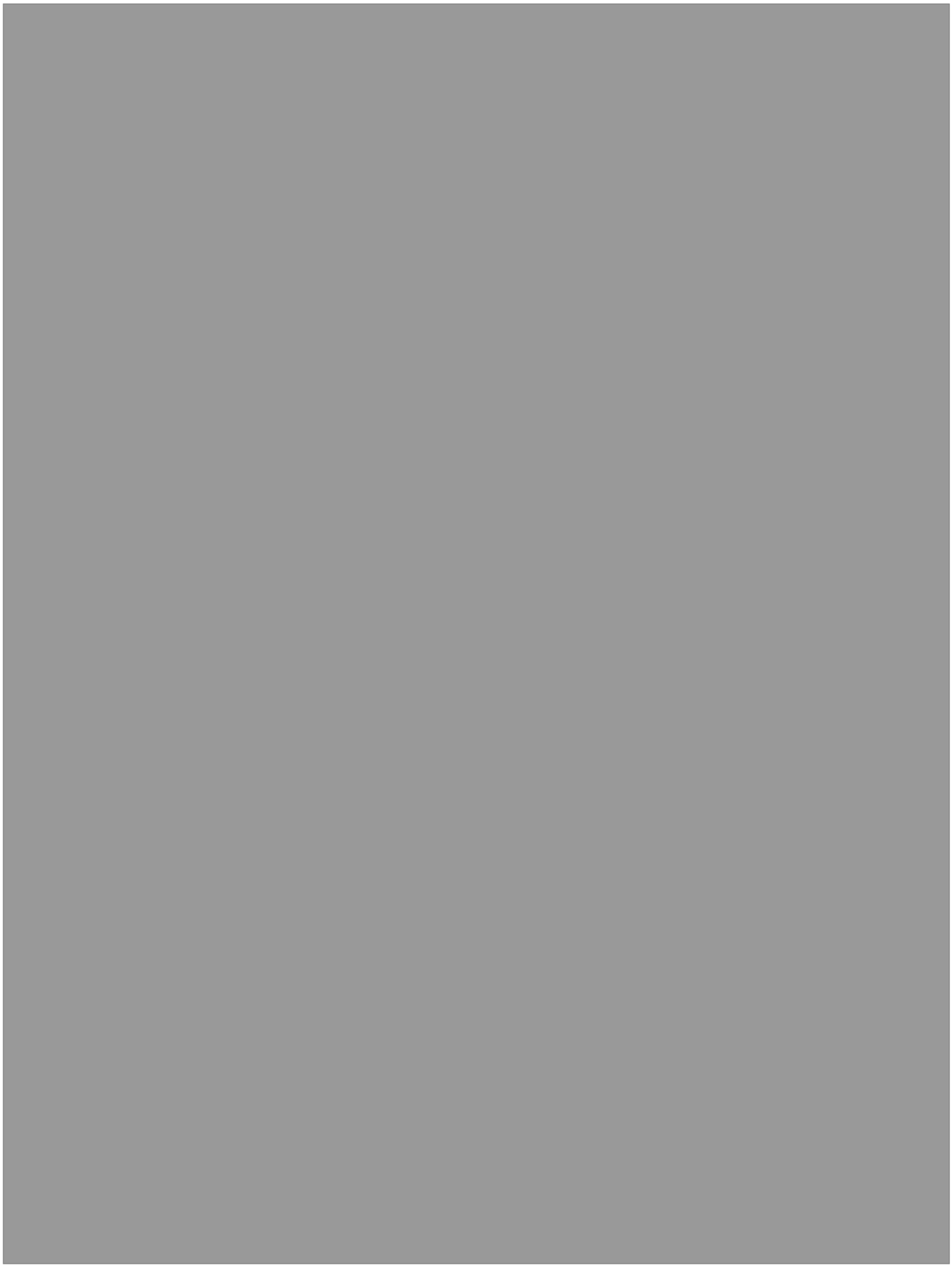
Unicoi Clear

In January 2020 a large asphalt company bought the batch-mix plant and land, adding it to adjacent land they already owned, and applied for permits to operate two drum-mix plants there, in preparation for the repaving of I-26. The first permit was issued by the Tennessee Division of Air Pollution Control (TDAPC) in April, and the second permit was in the works when, in May, a resident saw the small notice published in the back pages of the local newspaper. That began the series of events that soon led to the formation of Unicoi Clear.

Residents contacted the Town officials to alert them to this development. The company's president was invited to appear at a virtual meeting of the Town's Board of Mayor and Aldermen—the first of several public meetings on the subject, culminating in TDAPC holding a public hearing in November 2020. A growing number of residents attended these meetings and expressed their views. Citizens had also begun canvassing the nearby neighborhoods to alert other residents to the situation and gain their support. The company soon surrendered one of its permits. The pending application for the second plant made it clear that the company planned to expand its operations well beyond the two-acre site to the total of 15 acres they now owned.

By then a large number of residents had joined together to form Unicoi Clear, consisting of a six-member Executive Committee, an Advisory Committee of 18 members who provide advice and more active forms of support to the organization, and an additional much larger group named Friends of Unicoi Clear, who are kept informed and who provide support as needed. In the course of the hearing we surfaced publicly the

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Chapter Update: Madison County Clean Power Coalition

By Ruth Ann Tesanovich, Secretary & Treasurer, Historian
Madison County Clean Power Coalition

MCCPC formed and became a chapter of BREDL in January 2020. We began our fight when the Georgia Renewable Power (GRP) Biomass Plant became our neighbor and, rather than burning "clean green wood" as promised, they added carcinogenic creosote treated railway ties to the fuel mix. In August 2020 a bill was signed into law to ban burning creosote for power generation statewide.

We continue to press GRP to mitigate the noise, light, land, air, and water pollution that continues. The COVID-19 pandemic has added many challenges to our endeavors. Although we've become Zoomers along with the rest of the world, we look forward to the time we can have in-person public events and rally our members once again.

In late 2020, we started our campaign against GRP noise pollution. It has been affecting the health and quality of life of people living near the plant causing sleep disturbance and limiting daily activities. We erected a 48-foot wide highway billboard, lobbied our Board of Commissioners repeatedly to contract with an acoustical company to take sound measurements. MCCPC surveyed residents within a 3-mile radius of the plant. We asked residents questions about the distance they live from the plant, the ways and the extent to which the noise affects them, amongst other questions. The acoustical sound study and our noise survey both have provided conclusive evidence that GRP noise pollution is real and must be mitigated.

In February, MCCPC focused on GRP water pollution, trying to convince the Georgia Environmental Protection Division to deny the GRP NPDES wastewater permit application. GRP generates on average 240,000 gallons of polluted wastewater daily. GRP applied to dump the water onto a farmer's field and into the Savannah River Basin rather than haul it by tanker truck to an industrial wastewater disposal facility as they currently do. Their reason: because it is too expensive! Public outcry has been tremendous and we await the decision of the EPD.



MCCPC billboard along the highway near Georgia Renewable Power plant

Seven members of MCCPC recently became certified Adopt-A-Stream volunteers. Georgia Adopt-A-Stream (AAS) is the state's volunteer water quality monitoring program. AAS is one of the outreach and education programs of the Non-Point Source Program in the Watershed Protection Branch of the Georgia Environmental Protection Division. The program is funded by a Section 319(h) Grant under the Clean Water Act. Our "Stream Team" will be performing bacterial, chemical, and macroinvertebrate monitoring to assess water quality of streams in our community.

MCCPC has been collaborating with our neighbors to the north in Hamlet, NC to stop the International Tie Disposal Biochar Plant from moving in next door. We have been sharing our experience regarding health risks and environmental damage resulting from fugitive emissions created by the chipping

(Continued on page 10)

(Unicoi—Continued from page 6)

issues that would be crucial in the important effort ahead, to convince the Town to uphold its zoning and ordinance forbidding future asphalt plants.

Initially the company requested that the entire 15 acres be rezoned from Agricultural to Heavy Industrial. This request came before the Town's Planning Commission on February 1 and was unanimously denied in a meeting attended by about 60 Unicoi Clear members, many of whom spoke in opposition.

But the Town's administration is industry-friendly and has since been trying to find creative ways to allow the company to expand its operations. To assist in our efforts to push back, we became a BREDL chapter on January 30, 2021. Unicoi Clear's position is that the asphalt operation should be confined to the two-acre parcel where it is grandfathered in, as the Town's zoning and ordinance requires. We see no significant benefits to the Town or its residents in allowing the operation to expand—only future harm to the health, quality of life, and property values of the residents.

We have a four-pronged strategy: (1) public participation, consisting of phone calls to Town leaders and public meeting attendance; (2) more focused individual and small-group engagement with Town leaders; (3) media, including articles and letters to the editor in local newspapers, a website and Facebook presence (in development); and (4) the engagement of a well-known land-use attorney for strategic advice, meeting participation, and letters to Town officials. Unicoi Clear's Executive Committee and members of the Advisory Committee meet regularly to plan strategy. We keep the Friends of Unicoi Clear informed through our gmail account (Unicoi.Clear@gmail.com) and engage them through that means. Please help with our efforts by donating to Paypal.me/UnicoiClear. We are at a crucial phase of this campaign and do not know how the situation will be resolved. Stay tuned!



(Clean Power —Continued from page 8)

and processing of creosote railway ties. We have been warning our neighbors in South Georgia too, via a letter and newspaper ad campaign, to beware of the promises of Twin Pines Minerals, LLC. This company proposes to build a titanium strip mine next to the Okefenokee Swamp National Wildlife Refuge. It so happens that Twin Pines Minerals and GRP have the same owners. We warn them that no amount of promised tax relief or jobs is worth the damage to their health, quality of life, and the Okefenokee Swamp Wildlife Refuge. These large corporations only care about money, not people, not our environment.

A small group of diverse people in our community were drawn together to fight for the quality of our lives. We discovered good neighbors we didn't know we had. We formed a coalition. We know the GRP biomass plant is here to stay and so are we. We will continue our work until the noise, light, air, land, and water pollution problems are mitigated.

We thank Lou Zeller and BREDL for continuing to guide our way.



The MCCPC "Stream Team" training to become certified AAS Volunteers. Our trainer is Frank Carl, Science Advisor, Savannah River Keeper (second from right)

"Never doubt that a small group of thoughtful, committed, citizens can change the world. Indeed, it is the only thing that ever has."

— Margaret Mead

IN OUR BACKYARD

PODCAST

BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE

If you haven't listened to our podcast, you are missing some great interviews and guests! Search for "In Our Backyard Podcast" on your podcast app or click the link at www.bredl.org.

In Our Backyard Podcast recent interviews have included:

Hope Taylor is Executive Director Emerita at Clean Water for North Carolina. Their vision is to have clean, safe, accessible water for all North Carolinians, protected by empowered, educated communities and a publicly accountable government and economy.

Nick Trombetta is an organizer with the Sunrise Movement in Chapel Hill, NC. The Sunrise Movement is a youth movement to stop climate change and create millions of good jobs in the process. They're building an army of young people to make climate change an urgent priority.

John Runkle is a retired attorney at law. Over the many years, John shared his legal skills to many BREDL campaigns – with communities all over North Carolina—including landfills, coal ash, nuclear plants and more. Some fights were won, others lost, but John was there to make sure folks had legal protection.

Sam Tesh is BREDL's co-President of the Board of Directors. Sam has been a part of BREDL for several decades. He has been a critical part of past BREDL campaigns such as fighting ThermalKEM's hazardous waste incinerator. Sam has also worked with organizations such as GreenPeace and Sierra Club.



Let UNC know we don't want their coal plant anymore!

By Jenn Galler

Every major polluting facility in the country must have an air permit to operate. Permits are required by Title V of the Clean Air Act. The Clean Air Act empowers state agencies to issue the Title V permits for each major polluting facility in the state. In North Carolina, the Division of Air Quality issues air permits. Title V permits must be renewed every five years.

North Carolina's Division of Air Quality has just issued a draft of its air permit for the UNC coal plant. After a public comment period and public hearing, it will issue a final permit that will last for five years.

Talking Points/Comment Letter

- The draft permit will significantly increase pollution from the UNC coal plant and worsen the health impacts on the community.
- DAQ has removed the heat input limit from the draft permit, which allows UNC to burn even more coal and emit more toxic air pollution.
- Without a heat input limit, there is no way to enforce the limit on the amount of pollutants that can be released from the coal plant's smokestack.
- Without a heat input limit, this permit allows the UNC coal plant to pollute as much as it wants.
- This permit will lead to increased asthma attacks, respiratory illness, heart attacks, and premature death for the surrounding communities.
- The coal-burning power plant is located less than a quarter-mile from UNC Hospitals, harming the health of patients and worsening outcomes during a respiratory pandemic.
- The aging UNC coal plant is the dirtiest coal plant in the state. It has no scrubbers or other pollution control technologies, and UNC has not invested in any upgrades.
- This weakened permit will harm the adjacent Pine Knolls community, a historically and predominantly African American community that has already been disproportionately harmed by the UNC coal plant's pollution.



What is the duration of the public comment period and how do I submit a comment?

The public comment period began March 31 and will end May 6.

Comments can be submitted by email to DAQ.publiccomments@ncdenr.gov with the subject line ["UNC.15B"] You may also leave a voicemail comment at (919) 707-8726. Comments will be accepted until May 6, 2021 at 5 p.m.

When is the public hearing?

A public hearing will be held (by telephone) May 4 at 6 p.m. Eastern Standard Time. Here are the details about how to register and participate by phone:

Event title: University of North Carolina at Chapel Hill

Date and Time: May 4, 2021 at 6 p.m.

Phone: US TOLL +1-415-655-0003,

Access Code 185 344 4346

How can I sign up to speak?

If you wish to speak at the public hearing, you must register **by May 4 at 4 p.m.**

WebEx Link and Register to speak please visit: https://deq.nc.gov/news/press-releases/2021/03/31/release-public-hearing-draft-unc-title-v-permit-be-held-may-4 or call (919) 618-0968.

BREDL requests state action to correct MVP's erosion & sediment control and stormwater management plans



By Ann Rogers

On April 2, BREDL submitted a letter to the Virginia Attorney General, Virginia Department of Environmental Quality (DEQ), and the State Water Control Board (SWCB) requesting that they require Mountain Valley Pipeline, LLC (MVP, LLC) to revise the *Project Specific Standards and Specifications for Virginia*, the Stormwater Management (SWM) Plans, and the Erosion and Sediment Control (ESC) Plans for the Mountain Valley Pipeline (MVP) prior to any further pipeline construction in Virginia.

Throughout the period May 21 through November 15, 2018, construction proceeded on the MVP, resulting in shockingly detrimental impacts to soils, streams, and wetlands, as documented in the DEQ and State Water Control Board Complaint against MVP issued December 7, 2018. This Complaint enumerates violations of Virginia's clean water law and regulation committed during construction of the MVP. As a result of the violations of the Commonwealth of Virginia's environmental laws and regulations documented in this Complaint, MVP, LLC agreed to pay $2,150,000 to Virginia in a Consent Decree signed on October 23, 2019. The construction that has occurred in 2019 and 2020 is operating under the same flawed planning that resulted in extensive harm to the environment in 2018.

As described below, the *Standards* and SWM and ESC Plans prepared for the MVP by MVP, LLC are based on the flawed reasoning that the installation of certain erosion control devices, including silt fences and compost-filled socks (CFS) at the perimeter of the pipeline right-of-way (ROW) during construction will restrict stormwater runoff to "sheet flow" downslope of those erosion control devices.[1] This assumption that stormwater flowing downslope from the silt fences and CFS will be restricted to sheet flow allows MVP,

(Continued on page 13)

Corrective actions requested in the letter included:

- BREDL requested that DEQ, the SWCB, and the Virginia Attorney General acknowledge that MVP, LLC's failure to conduct adequate stormwater calculations for the MVP is associated with the repeated failure of MVP's erosion and sediment control protocols, as evidenced by the release of vast quantities of muddy stormwater and damage to rural lands and freshwater streams and rivers downslope of the MVP construction zones, during the period 2018-2020.
- In order to bring the MVP project into compliance with Std. & Spec. 3.05 and with the highest standards of stormwater management practice, BREDL requested that DEQ, the SWCB and the Virginia Attorney General require MVP, LLC to delineate complete and correct drainage areas both upslope and downslope of the pipeline ROW, and to incorporate these drainages into the projects ESC and SWM Plans.
- In order for the MVP project to be brought into compliance with Std. & Spec. 3.09, Std. & Spec. 3.17, and 9VAC25-870-40 Minimum Standard 6.b., BREDL requested that DEQ, the SWCB, and the Virginia Attorney General require MVP, LLC to revise the ESC Plans so that they include runoff calculations corresponding to the "bare earth condition" inside the pipeline ROW during construction.
- BREDL requested that DEQ, the SWCB, and the Virginia Attorney General require that the ESC and SWM Plans for the MVP be amended to reflect a more realistic runoff scenario for post-construction soils that have been significantly damaged by heavy equipment impacts.
- BREDL requested that DEQ, the SWCB, and Virginia Attorney General require MVP, LLC to acknowledge the special needs of the Appalachian headwater areas through which the pipeline has been routed, and end its dependence on Virginia Runoff Reduction Method, which was developed for use in urban and suburbanized areas, not the forested mountain slopes across which the MVP has been routed.
- BREDL asked DEQ, the SWCB, and the Virginia Attorney General to require the MVP ESC and SWM Plans to acknowledge and accommodate the effects of sediment-laden water released from silt fences.
- BREDL requested that the SWCB and Virginia Attorney General require DEQ to conduct a survey of the MVP corridor where silt fencing has been installed to determine whether the installed silt fencing meets the required minimum height of 16 inches. In areas where silt fencing is of insufficient height, BREDL requested that DEQ, the SWCB, and the Virginia Attorney General require MVP, LLC to reinstall silt fencing which meets the required minimum height as required in Std. & Spec. 3.05. Please see photo on page 13 showing the measured height typical of silt fences that were photographed in April.

(MVP—Continued from page 12)

LLC to claim the MVP project to be in compliance with the Virginia Stormwater Management Program Regulations at 9VAC25-870-66 and subsequently, with the Virginia Erosion and Sediment Control Regulations at 9VAC25-840-40. MVP, LLC has not provided any stormwater calculations to determine stormwater quantities in the pipeline ROW during construction, and thus the presumption of sheet flow downslope of MVP construction areas is factually unsubstantiated.



MVP silt fencing is not meeting the required minimum height of 16 inches

The *Standards,* ESC Plans, and SWM Plans are all based on MVP, LLC's unsupported assumption regarding the capacity of silt fences and CFS to render sheet flow downslope of their placement at the perimeter of the MVP construction areas. In the interest of developing ESC and SWM Plans that adequately manage stormwater runoff from MVP construction areas, BREDL requested that DEQ, the State Water Control Board, and the Virginia Attorney General require MVP, LLC to conduct a stormwater analysis based on the actual condition of the soils inside the pipeline ROW as it occurs both (a) during construction and (b) throughout the period of time required to achieve re-vegetation in the pipeline ROW.

BREDL's request was prepared under the guidance of Hydrogeological Consultant, Pamela C. Dodds, Ph.D., L.P.G. As BREDL's advisor, Dr. Dodds conducted a thorough and systematic review of MVP, LLC's documentation on ESC and SWM for the MVP, as published online at www.mountainvalleypipeline.info/news-info/ under "Approved VA DEQ Documents". BREDL was extraordinarily appreciative of this opportunity to employ Dr. Dodds as our advisor in the preparation of this request.

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[1] A definition of "sheet flow" is provided in Chapter 5 of the Virginia Erosion and Sediment Control Handbook (source: https://www.deq.virginia.gov/water/stormwater/esc-handbook), page V – 4, which states, "The three types of flow (or flow regimes) are presented below: **Overland flow** (or sheet flow) is shallow flow (usually less than one inch) over plane surfaces. . . . **Shallow concentrated flow** usually begins where overland flow converges to form small rills or gullies and swales. Shallow concentrated flow can exist in small, manmade drainage ditches (paved and unpaved) and in curb and gutters . . . **Channel flow** occurs where flow converges in gullies, ditches, and natural or man-made water conveyances (including pipes not running full). Channel flow is assumed to exist in perennial streams or wherever there is a well-defined channel cross-section".

UNC Student Volunteers

This spring BREDL has 3 student volunteers from an Environmental Justice (ANTH 539) course at UNC-Chapel Hill. The students have been helping with a variety of tasks that have benefited BREDL greatly.

Hateya Fox is a senior majoring in Psychology. She volunteered for the Podcast Specialist helping with outreach, statistics, content curation, fact checking, script writing, guest research and scheduling, audience engagement, audio editing, and more.

Jamila McKoy is a senior majoring in Sociology. She volunteered as our social media outreach coordinator analyzing our website and social media stats, reviewing new outreach avenues and creating a social media campaign.

Lauren Copperwaite is a junior majoring in Chemistry. She volunteered with the Chapel Hill Organization for Clean Energy (CHOCE) chapter. She is working on getting our air monitoring program off the ground. But now we are switching to outreach to get the word out about the UNC coal plant comments and public hearing.

The Stop the Pipeline Pamplico Defense League Committee

"The struggle continues and so do we."

By Charles Utley



We have witnessed many plagues that confront our Nation that threaten Equal Justice and Equality. And there is the struggle that confronts our rural landowners, the constant threat of their property being seized.

The Stop the Pipeline Pamplico Defense League Committee in South Carolina is still standing firm against the threat being launched against them from Dominion Energy.

The group has been actively engaged in their defense efforts with our assistance to assure that their property remains in their possession. On February 27, BREDL hosted the Stop the Pipeline Stop the Injustice Public Forum on Natural Gas Pipelines in South Carolina, which offered the opportunity for public engagement with featured speakers including Rebekah Sale, Executive Director of the Property Rights and Pipeline Center (PRPC); Shelley Robbins, Director of Energy & State Policy, Upstate Forever; and Christopher Covington, member of Pamplico Stop the Pipeline Defense Committee.

The group was able to get support to have their voices heard over the local radio stations in the area, to bring awareness to those who may not have heard of the struggle that is taking place in their neighborhood, and to invite them to become participants to help stop the invasion and the devastating pollution and its long-time effects on the health of the residents far and near.

To communicate their concerns to the residents of the area, the group arranged for BREDL Executive Director, Lou Zeller to present their concerns to local county government officials.

Lou also presented the group's

(Continued on page 15)

Pamplico Community Raises the Stakes

Calls mount for a landowner bill of rights

By Lou Zeller

In a complaint sent on April 6, 2021 to the South Carolina Public Service Commission, BREDL members rejected the unjust use of eminent domain for a proposed 14-mile natural gas pipeline on the banks of the Great Pee Dee River in South Carolina. One of these members is Rev. Reatha Hyman Jefferson. Last year, she received a Notice of Condemnation and Tender of Payment on the 33-acre property handed down to her family. Her land is in the pipeline's proposed path. To build the pipeline across her property, Dominion Energy South Carolina offered compensation of $105.

However, Rev. Jefferson wants nothing to do with a pipeline on her land and has said so in no uncertain terms. She is one of the heirs of Andrew H. Hyman, who is listed as landowner in Florence County records dating back to 1912. But Rev. Jefferson was badly treated by a pipeline company representative, who came to her door and was "rude" and told her he was "giving you one last attempt to sign these papers or I'll turn it over to a lawyer." Such high-handed tactics are commonly used by pipeline agents, who assume that invoking eminent domain gives them rights they do not have.



The Fifth Amendment to the Constitution states that "No person shall be…deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." This is the basis for eminent domain law which allows for the taking of private property for

(Continued on page 15)

(Struggle —Continued from page 14)

concerns to Jocelyn G. Boyd, Chief Clerk & Administrator of the Public Service Commission of South Carolina in regard to Docket No. 2020-247-A, Public Service Commission Review of Regulations Chapter 103.

The group has continued to work to stop this invasion and to preserve their Heritage from their fore-parents.

As it was well put by Rev Reatha Jefferson in her letter to the community, the questions that we all need to answer are: 1. How safe are these pipelines? 2. What damage will be done to my property? 3. How thick are the pipelines and will they hold up after heavy traffic? 4. How will these pipelines affect my health and that of my family?

And she sums it all up with "Please Sign The Petition To Stop The Pipeline." As we continue to work with the residents of Pamplico and Rev. Jefferson, it is our desire to do our best to assure that their voices are being heard.

Therefore, she wants to encourage the residents not only in Pamplico but all those who are in this battle with the "Pipelines who are seeking to invade our country through their Unfair Power to keep on fighting and standing for that which has been given to you from generations past."

(Raises the Stakes—Continued from page 14)

public use. Originally, public use was defined as being public ownership or having public access. Clearly, schools, canals and highways are public uses, provided there is due process and just compensation. However, existing rules governing the taking of private property—such as the South Carolina Eminent Domain Procedure Act[1]—give every advantage to the private company seeking to build a profit-making pipeline.

For example, the Act defines "Public works project" as "any work or undertaking which is financed in whole or in part by a federal agency or a public body, or is administered or supervised or regulated by a federal agency or a public body." To allow eminent domain to apply to any work regulated by a public body includes virtually any private industry with an air, water or building permit. As written, this has a chilling effect on constitutionally protected conduct; that is, the right of a private individual to own property.[2]

The Eminent Domain Procedure Act also states that the "condemnor shall cause the property to be appraised." This hands to the private company the right to determine the value of private land it seeks to take for its own use. Shopping for appraisals favoring the company is not prohibited.[3]

And the ultimate decision-making power to take possession of property is placed in the hands of the private company based on compensation determined by the condemnor, the party who stands to benefit from the seizure of private property.[4]

In a Petition to Stop the Pipeline currently circulating in Pamplico, Rev. Jefferson writes:

> As descendants of slaves, the heirs of Mr. Andrew Hyman are calling upon all of you, to stand and protect the community we all love. Some of you are descendants, some heirs of property, and some of you are property owners. But all of us will be affected by the proposal of the Riverneck to Kingsburg 16-inch Gas Main Line. You probably have received some type of notification by now that Dominion Energy is planning new pipelines to pump their gas throughout our families' land. They are using the terminology "eminent domain" to secure the rights to invade your property, and say it is for the good of the community. This is not true; it is not for the good of the community.

The system no longer works for the good of the community. The experience of Rev. Jefferson is the tip of the iceberg; there are many like her who support a landowner bill of rights.

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[1]S.C. Code Ann. § 28-2-70
[2]Section 28-2-30 (19)
[3]Section 28-2-70 (A)
[4]Section 28-2-90 (3)

BREDL
PO BOX 88
Glendale Springs, NC 28629

Contact BREDL to help organize your community and plan events to educate others about your issue and expand your membership so you can win!

BREDL is a regional, community-based non-profit environmental organization founded in 1984. BREDL encourages government agencies and citizens to take responsibility for conserving and protecting our natural resources. BREDL advocates grassroots involvement in environmental issues. Protecting children's health from environmental poisons, empowering whole communities to engage in crucial decision making, and changing the balance of power to prevent injustice are key components of our work.

Annual Membership is only $20

Thank you for supporting Blue Ridge Environmental Defense League
It's easier than ever to **join**, **renew** and **donate** online.
Check out our secure online donation form and use your credit card at **www.BREDL.org**.
Or send your check to: BREDL PO Box 88 Glendale Springs, NC 28629
For more information contact BREDL at 336-982-2691.
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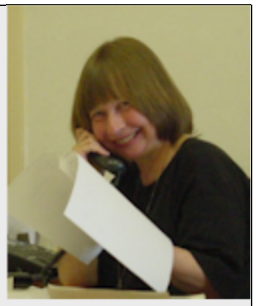
Phone_____

Chapter_____

Membership Amount: $ _____

JMZ Fund Donation: $_____

Janet Marsh Zeller Honorary Fund



The BREDL Board of Directors established this fund to honor the work of Janet Marsh Zeller, who founded the Blue Ridge Environmental Defense League and served as its executive director for over two decades.

The honorary fund supports BREDL's endowment and our long-term ability to serve communities. Individual gifts are accepted throughout the year. All donations to BREDL are tax deductible. Contributions to the fund will benefit the organization and honor the woman who gave so much to make our world better, one community at a time.