Air Pollution Ignores State Borders

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A decade ago, residents of Western North Carolina did not need any special equipment to tell them that their air was polluted. They could see the pollution and smell it; on some days, they could even taste it. On those days, their mountains were shrouded in gray—not a morning mist, but a haze of ozone, sulfur dioxide, nitrogen dioxide, and toxic particulates that caused asthma and even death. This chemical fog was killing trees and forming mercury compounds that seeped into the ground and into the water, thus contaminating fish. Worst of all, people were being poisoned in their own backyards with every breath they took. If the situation remained unchanged, local doctors would have to continue to tell their patients with asthma or other respiratory illnesses to stay indoors on days when pollution levels were high. Employers would continue to lose money because of employee illnesses, students would continue to miss school due to asthma attacks, and hospitalizations for respiratory illnesses would continue to rise. The problem was clear but difficult questions remained: What should be done? Who should be held accountable?

Coal-fired plants run by the Tennessee Valley Authority (TVA) were pumping pollution over the state border and into North Carolina’s mountains. The utility had promised to clean up the pollution but had moved slowly, and the damage it caused was spreading. As North Carolina Attorney General, in 2006 I filed suit against the TVA on behalf of the state, saying that the pollution was a public nuisance and demanding that it stop. The lawsuit was a last resort. Our office had tried negotiating with the utility, but without the power of a court order, we had no way to ensure results.

Within its borders, North Carolina was already doing its part to slow pollution. With urging from the governor and from our office, North Carolina legislators and utilities had agreed on the provisions of the 2002 Clean Smokestacks Act [1]. This act required North Carolina utilities to reduce coal-fired plant emissions and to speed cleanup. However, we could make no such requirements of our upwind neighbors. Thus, the TVA—the nation’s largest public utility, with plants not just in Tennessee but also in nearby states—was continuing to pump toxic fumes into Great Smoky Mountains National Park, the counties of Western North Carolina, and beyond.

The Clean Smokestacks Act directs the state to “use all available resources and means . . . to induce other states and entities, including the Tennessee Valley Authority, to achieve reductions in emissions” [1]. The legal theory we used was not new, but the scale of the case was. Our claim was that the TVA’s pollution had reached such a stage that it was literally a nuisance to the public. In general terms, this kind of lawsuit is used when public health and safety are endangered and cost-effective solutions are readily available.

Our research showed that the health of North Carolinians was threatened. Experts estimated that if the TVA reduced particulate matter and other airborne toxins, it could prevent 19,000 exacerbated asthma attacks, 99 early deaths, and dozens or even hundreds of emergency department visits and hospital admissions every year in North Carolina [2]. When neighboring states were included in the affected area, the health benefits were expected to reach tens of thousands of people. In addition,
the pollution was causing our state and its businesses to lose billions in health care dollars and lost workdays [3]. The state was also losing tourism dollars when Grandfather Mountain and the views from the Biltmore Estate were obscured by smog [4]. It was clear to me that action was needed.

After a hard-fought trial, Judge Lacy Thornburg saw it our way, setting limits on emissions and deadlines for improvement at several plants. The TVA fought our attorneys on appeal, but in the end we agreed on a landmark settlement [5], which required the TVA to either close its coal-fired plants or speed installation of pollution control equipment. The TVA also agreed to send $11.2 million to North Carolina to fund energy efficiency programs. What is most important is that the settlement is reducing harmful emissions and significantly improving views of the mountains. The dollar value of the health benefits alone is estimated to be $672 million per year [3].

Meanwhile, the fight for clean air continues, with a case about the Cross-State Air Pollution Rule of the Environmental Protection Agency (EPA) going to the Supreme Court of the United States this year. Having obtained a federal court order in 2008 to force the EPA to adopt stricter clean air guidelines [6], North Carolina is now fighting alongside the EPA to ensure that upwind states promptly control their pollution. Specifically, our attorneys are arguing that the federal Clean Air Act states proactively mitigate their impacts on other states, rather than putting off their responsibilities to downwind states and waiting for the EPA to solve their problems for them.

In the end, the case we brought under the Clean Smokestacks Act was a success for the public health and the economy of North Carolina. The TVA is making changes for the better. Although collaboration and negotiation should always be the first choice, litigation can be an effective tool when widespread damage to public health and the economy goes unabated.

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References