

Lawsuit filed over ash dumping

By [Leesha Faulkner](#) (Contact) | Selma Times-Journal

Published Friday, June 25, 2010

UNIONTOWN — John Wathen has lived with the coal ash dumped in Perry County for nearly two years.

His affair with the substance began shortly after an accident in December 2008 at the Tennessee Valley Authority power plant's holding pond sent nearly 5 million cubic yards of ash onto nearby land and in water surrounding Kingston, Tenn.

The Tuscaloosa-based environmentalist is not a Johnny-come-lately. He organized an effort to have the Tuscaloosa County Commission agree in 2008 to set aside 249 acres on Hurricane Creek for a public park. Wathen leads Friends of Hurricane Creek.

Wathen went to the TVA site to record the incident. His project led him eventually to Perry County, where his wife's family once held huge tracts of land granted them in the 1830s.

Nearly two years of videos, interviews and water and soil tests later Wathen's work as an investigator for a couple of environmental attorneys has resulted in a couple of lawsuits — one filed in federal court Friday by a group of 64 Perry County citizens and another filed in Perry County Circuit Court earlier this week by the same group.

The latest complaint filed by attorneys David Ludder of Tallahassee, Fla. and Keith Clark of Birmingham in U.S. District court in Mobile against the Arrowhead Landfill operators Phill-Con Services and Phillips and Jordan seeking enforcement of the Federal Clean Air and Waste Disposal Act.

"The suit seeks abatement of odors and penalties up to \$37,500 per day," Ludder said.

The complaint filed in federal court, which is one side of a legal issue, contends the operators of the landfill contends the operators of the landfill have violated the state implementation plan for landfills approved by the U.S. Environmental Protection Agency; that the operators continue to run an "open dump" in violation of federal law and the complainants want a permanent injunction to have the owners of the landfill, Perry County Associates, from operating Arrowhead in a way that would produce odors injurious to human health.

Arrowhead attorney Mike Smith said of the complaint, "We will be closely reviewing the attorneys' allegations. And, in the interim, will continue to operate the Arrowhead Landfill in full accordance with state, federal and local laws and regulations."

But for Whathen, Smith's promises are as empty as the boxcars that leave the Arrowhead Landfill each day.

"None of the improvements have been voluntary by Arrowhead," Whathen said. "Any and all improvements at the land fill have been like pulling teeth. We've had to literally sue to get changes."

Whathen said before the ash is loaded onto boxcars in Kingston, the substance is treated like a hazardous substance. For instance, he said, trucks loaded with the substance go through a double wash to ensure any residue is gone after the ash is delivered to boxcars. Workers wear respirators.

"As soon as the train crosses the state line, the rules and regulations change dramatically," Whathen said. "In Alabama we do not treat it as hazardous waste; we treat it as common dirt."

About 110 boxcars per day rumble through the state en route to the Perry County Landfill.

Some residents say they worry rainwater from the landfill will contaminate their drinking water supplies. Others who live near the landfill say the landfill's operators place pump liquid produced in the landfill from decomposition of waste into ditches along County Road 1, causing a rotten egg stench from the site.

Whathen said he has witnessed the action and taken samples of the water in the public ditches, and tests showed high concentrations of arsenic.

He said he hurts for the people of Perry County.

"Why should the people of Perry County be treated with any less consideration than the wealthy white people of Swan Pond, Tenn.?" he asked.

The Demopolis Times contributed to this story.