

VIRGINIA: IN THE CIRCUIT COURT FOR PRINCE WILLIAM COUNTY

Brian G. West  
18411 Possum Point Road  
Dumfries, VA

*Plaintiff*

v.

Virginia Electric and  
Power Company  
d/b/a Dominion Virginia Power  
120 Tredegar Street  
Richmond, Virginia 23261

SERVE ON:  
CT Corporation System  
4701 Cox Road, Suite 301  
Glen Allen, Virginia 23060

and

Dominion Resources, Inc.  
P.O. Box 26532  
Richmond, Virginia 23261-6532

SERVE ON:  
CT Corporation System  
4701 Cox Road, Suite 301  
Glen Allen, Virginia 23060

and

Dominion Virginia Power  
120 Tredegar Street  
Richmond, Virginia 23261

SERVE ON:  
CT Corporation System  
4701 Cox Road, Suite 301  
Glen Allen, Virginia 23060

and

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CIRCUIT COURT CLERKS OFFICE  
PRINCE WILLIAM COUNTY, VA  
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Virginia Power  
d/b/a Dominion Virginia Power  
120 Tredegar Street  
Richmond, Virginia 23261

SERVE ON:  
CT Corporation System  
4701 Cox Road, Suite 301  
Glen Allen, Virginia 23060

and

Dominion Generation Corporation  
120 Tredegar Street  
Richmond, Virginia 23261

SERVE ON:  
CT Corporation System  
4701 Cox Road, Suite 301  
Glen Allen, Virginia 23060

and

Dominion Energy  
P.O. Box 26666  
Richmond, Virginia 23261

SERVE ON:  
CT Corporation System  
4701 Cox Road, Suite 301  
Glen Allen, Virginia 23060

*Defendants.*

**COMPLAINT**

**(JURY TRIAL DEMANDED)**

COME NOW, the Plaintiff, by counsel, and files the within Complaint against  
Defendants Virginia Electric and Power Company, d/b/a Dominion Virginia Power, Dominion  
Resources, Inc., Dominion Virginia Power, Virginia Power d/b/a Dominion Virginia Power,

Dominion Generation Corporation and Dominion Energy (collectively "Dominion"); and in support thereof states the following:

### INTRODUCTION

1. The Defendant, Dominion, owns and operates the Possum Point Power Station, a 650-acre Site about 30 miles south of Washington D.C., located on a peninsula between Quantico Creek and the Potomac River.

2. The Possum Point Power Station, hereafter ("Power Station") burned coal from 1955 to 2003. Currently there are four generating units; two of which are natural gas fired, one is oil fired, and the other is a dual fired combined-cycle unit. The Defendant retired the oldest two units.

3. Despite the switch to natural gas, the Power Station still contains billions of gallons of coal ash, the waste produced from burning coal. The coal ash is disposed of at the Power Station in five "ponds" that hold over a billion gallons of toxic coal ash and contaminated water.

4. Coal ash contains a range of metals that are toxic at high levels, including lead, aluminum, arsenic, barium, boron, chromium, copper, selenium, mercury, nickel, antimony and hexavalent chromium.

5. Many of the constituents of coal ash, such as arsenic, cadmium and antimony, and hexavalent chromium are known carcinogens.

6. Per the National Institutes of Health, hexavalent chromium (VI), present in the coal ash and kiln dust used here, is also a known carcinogen when it is inhaled or ingested. Other adverse health effects associated with hexavalent chromium exposure include cancers, chromosomal disruption and damage, fetal brain damage and other birth defects, kidney damage, liver damage, pulmonary congestion and edema, epigastric pain, and erosion and discoloration of the teeth.

7. The coal ash at the Power Station is held in large unlined ponds that cause the coal ash to mix with water creating a slurry that seeps into the groundwater.

8. Upon information and belief, in May 2015, the Defendant dumped 27.5 million gallons of untreated coal ash waste water from its Power Station Coal ash Pond E into Quantico Creek.

9. The Plaintiff's property is adjacent to the Power Station and approximately 700 feet from coal ash Pond E. He owns a private well for his potable water. The toxic slurry has migrated into the groundwater and has contaminated the Plaintiff's property including his potable well.

10. Upon information and belief there has been a continuous discharge of coal ash contaminated water into the groundwater which has then contaminated nearby potable wells, property, and soil.

11. The Plaintiff was made aware of the possibility that his well was contaminated in February 2016 while he was watching a Dumfries Town Hall meeting on TV.

12. As of February 2016, the Plaintiff stopped using his well water for drinking, cooking and brushing his teeth, instead using bottled water.

13. On March 1, 2016, Environmental Consultants and Contractors, Incorporated (ECC), collected water samples from the Plaintiff's potable well. On April 6, 2016, the analytical results showed elevated levels of barium, boron, cobalt, copper, lead and nickel – constituents of coal ash. Specifically, the Aluminum concentration of 318  $\mu\text{g/L}$  in Plaintiff's well greatly exceeded the EPA Maximum Contaminant Level of 50  $\mu\text{g/L}$ . Additionally, the Lead concentration of 549  $\mu\text{g/L}$  greatly exceeded the EPA Maximum Contaminant Level of 15  $\mu\text{g/L}$ . ECC concluded, based on a review of the collected data, that untreated water from the Plaintiff's well should not be used for potable purposes.

14. The Plaintiff has no choice but to use as little of his well water as possible to shower, do dishes and wash his clothes.

15. The Plaintiff is consistently anxious about the impact using the well water is having on his personal health.

### **JURISDICTION, VENUE AND PARTIES**

16. This Court has exclusive general jurisdiction over this claim which exceeds \$25,000.

17. The Plaintiff is a resident of Prince William County Virginia. The Plaintiff purchased the property 18411 Possum Point Road, Dumfries, Virginia in 2001. At all relevant times the Plaintiff has resided at 18411 Possum Point Road, Dumfries, Virginia.

18. Defendants Virginia Electric and Power Company, d/b/a Dominion Virginia Power, Dominion Resources, Inc., Dominion Virginia Power, Virginia Power d/b/a Dominion Virginia Power, Dominion Generation and Dominion Energy (collectively "Dominion") are regulated public entities, providing among other things electric power, and are located in, or doing business in, the Commonwealth of Virginia and Prince William County.

19. Venue is preferred in this Court pursuant to Virginia Code § 8.01-261 because the Plaintiff resides in Prince William County, Virginia, and the Defendants regularly and systematically conduct affairs and substantial business activity in Prince William County, Virginia.

### **COUNT I**

(Trespass)

20. The Plaintiff incorporates the proceeding paragraphs as if they were fully restated herein.

21. Plaintiff was at all relevant times in possession of land that he owned and occupied located at 18411 Possum Point Road, Dumfries Virginia.

22. The Defendant knew or should have known that placing multiple unlined coal ash ponds near a residential community that relied on well water would cause groundwater contamination that would then contaminate the nearby properties and potable wells.

23. The discharge, which Defendants knew or should have known was migrating into Plaintiff's drinking water supply, property and soil constitutes an actual and/or constructive trespass, because the discharge interfered with, continues to interfere with, and will interfere in the future with the Plaintiff's interests in the exclusive possession of his land.

24. As a result of Defendant's misconduct, the Plaintiff needs a new primary water source and reimbursement and/or advance payment by Defendants of all costs associated with the creation, installation, and maintenance of alternative water sources.

25. Upon information and belief, Plaintiff's real property and the neighborhood surrounding Plaintiff's real property continues to be exposed to harm, and/or harmed as a consequence of migration of coal ash constituents through the groundwater.

26. The Defendant's conduct has resulted in an entry and intrusion onto Plaintiff's property without privilege, permission, invitation, or justification.

27. Defendant's conduct directly and proximately caused Plaintiffs' injuries, including actual harm to his property and economic interests and injuries to his person.

**WHEREFORE**, the Plaintiff prays for relief as follows:

- a. An Order requiring the Defendant to pay all future costs incurred by the Plaintiff for public water and/or private water, including the cost of installation and maintenance of water filtration systems and continued water testing;

- b. An order for injunctive relief requiring the Defendant to properly maintain and restore the Power Station to prevent and further discharge of coal ash laden water into the groundwater;
- c. Compensatory damages in the amount of ONE MILLION DOLLARS (\$1,000,000.00) for economic losses as well as for past, present, and future pain and suffering, inconvenience, reduction in quality of life, loss of use and enjoyment of his property, diminution of property value, reasonable medical expenses and medical monitoring;
- d. All costs, attorneys' fees and interest recoverable by law; and
- e. Such other and further relief as the Court deems appropriate.

## COUNT II

### (Nuisance)

28. The Plaintiff incorporates the proceeding paragraphs as if they were fully restated herein.

29. At all times material hereto, the Plaintiff was in lawful possession of his land. By their conduct, the Defendant has caused an unreasonable and continuous invasion of the area around and including Plaintiff's property, soil and well, which has materially diminished the value of Plaintiff's property and substantially interfered with his right to use and enjoy his property.

30. Defendant's storage of coal ash has caused contamination to the Plaintiff's drinking water supply and property in a manner that is substantially offensive, discomforting, and annoying to persons of ordinary sensibilities, tastes, and habits. The Plaintiff can no longer use his potable well for drinking, cooking or brushing his teeth. This damage will occur in the future until the source of the nuisance is removed in its entirety.

31. The Defendant's interference with Plaintiff's rights has been so unusual and excessive that it necessarily caused and continues to cause injury, damage, harm, and inconvenience to the Plaintiff. Plaintiff's specific damages include, but are not limited to, the need to obtain an alternate water supply for his personal use, the further diminution of his property value, and remediation costs attributable to the presence of coal ash contaminated water on his property. The Plaintiff, as a result of the Defendant's conduct needs a new primary water source and reimbursement and/or advance payment by the Defendant of all costs associated with the creation, installation, and maintenance of alternative water sources.

32. The Defendant's conduct has resulted in an entry and intrusion, and the continued entry and intrusion, onto the property of Plaintiffs without privilege, permission, invitation, or justification.

33. The Defendant's conduct directly and proximately caused and continues to cause Plaintiff's injuries, including actual harm to his property and economic interests and injuries to his person.

**WHEREFORE**, the Plaintiff prays for relief as follows:

- a. An Order requiring the Defendant to pay all future costs incurred by the Plaintiff for public water and/or private water, including the cost of installation and maintenance of water filtration systems and continued water testing;
- b. An order for injunctive relief requiring the Defendant to properly maintain and restore the Power Station to prevent and further discharge of coal ash laden water into the groundwater;



- c. Compensatory damages in the amount of ONE MILLION DOLLARS (\$1,000,000.00) for economic losses as well as for past, present, and future pain and suffering, inconvenience, reduction in quality of life, loss of use and enjoyment of his property, diminution of property value, reasonable medical expenses and medical monitoring;
- d. All costs, attorneys' fees and interest recoverable by law; and
- e. Such other and further relief as the Court deems appropriate.

### COUNT III

(Negligence)

34. The Plaintiff incorporates the preceding paragraphs as if they were fully restated herein.

35. Defendant was and continues to be negligence it is storage of millions of gallons of coal ash in unlined pits near residential wells.

36. The Defendant knew or should have known that their conduct could and would cause substantial injury to the Plaintiff and other area residents if coal ash migrated or was released into nearby groundwater contaminating the Plaintiff's property and well.

37. The Defendant owed the Plaintiff a duty of due care with regard to their storage, and management of its coal ash waste. The Defendant likewise owed the Plaintiff a reasonable duty of due care with regard to maintaining and repairing the Power Station's coal ash storage system to prevent the migration of toxic coal ash onto the Plaintiff's property.

38. The Defendant owed the Plaintiff a duty of due care and with regard to communication of appropriate and accurate information regarding test results and remediation efforts once the existence of the discharge had belatedly been disclosed.

39. The Defendant had a specific duty to prevent the discharge and release of coal ash that might harm the persons, property, or economic interests of the Plaintiff. The Defendant also had a specific duty to warn or notify the Plaintiff of the potential hazards of exposure to coal ash and coal ash laden water and to warn or notify the Plaintiff and government officials that discharges or releases of had occurred, or were likely to occur in the future and threaten the Plaintiff.

40. The Defendant breached these duties by their negligent and reckless management and storage of coal ash and negligent and reckless reporting of the contamination. The Defendant's conduct resulted in the actual dangerous releases of coal ash contaminated water into the Plaintiff's property and water supply. These actual and continued releases and discharges have subjected Plaintiff to unreasonable risks of harm, threats of future harm, and actual injuries to his property and person.

41. The Defendant failed to warn the Plaintiff of the actual and threatened releases of coal ash into the groundwater and of the reasonably foreseeable effects of such releases, an omission that was reckless, grossly negligent and/or negligent. The Defendant likewise failed to, and continue to fail to, act to prevent the release of coal ash from causing additional harm to the Plaintiff.

42. The Defendant's negligence was a direct and proximate cause of injuries to the Plaintiff causing both actual present harm to Plaintiff's property and economic interests and creating an increased risk of personal harm to the Plaintiff.

**WHEREFORE**, the Plaintiff prays for relief as follows:

- a. An Order requiring the Defendant to pay all future costs incurred by the Plaintiff for public water and/or private water, including the cost of installation and maintenance of water filtration systems and continued water testing;

- b. An order for injunctive relief requiring the Defendant to properly maintain and restore the Power Station to prevent and further discharge of coal ash laden water into the groundwater;
- c. Compensatory damages in the amount of ONE MILLION DOLLARS (\$1,000,000.00) for economic losses as well as for past, present, and future pain and suffering, inconvenience, reduction in quality of life, loss of use and enjoyment of his property, diminution of property value, reasonable medical expenses and medical monitoring;
- d. All costs, attorneys' fees and interest recoverable by law; and
- e. Such other and further relief as the Court deems appropriate.

A Jury trial is demanded.



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