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400 residents sue Dominion, developer over fly-ash site

## CHESAPEAKE

Attorneys representing nearly 400 people, part of a "community trust" made up of residents who live near Battlefield Golf Club at Centerville, filed a lawsuit today in Chesapeake Circuit Court seeking damages in excess of \$1 billion.

Among their claims is that Dominion Virginia Power sent fly ash to the site despite a consultant's conclusion that the ash eventually would leach harmful elements into the drinking water of nearby homes.

The utility, which supplied the 1.5 million tons of fly ash used to contour the course, is a defendant. In addition, the suit names CPM Virginia LLC, the developer of the course, and VFL Technology Corp., described as Dominion's coal-ash management consultant.

The 12-count suit's demands include the removal of all fly ash from the site; installation of public water and sewer service; the cleaning of the aquifer under the course; compensation for lost property values and personal injury; and the establishment of a fund for medical monitoring and treatment costs. It accuses the companies of committing conspiracy and fraud; battery; negligence; infliction of emotional distress; and the creation of a nuisance.

"This case represents a terrible tragedy in the community, and we ask Dominion to join us in finding a solution," said Roy L. Mason, the lead counsel for the plaintiffs.

Ted G. Yoakam, a Virginia Beach attorney and co-counsel, said, "I've come to realize through talking with these good people that this should never have happened in this day and age."

A paralegal who works for Yoakam lives near the course and is among the plaintiffs.

The suit describes the development as a "toxic waste site masquerading as a 'golf course.' "

It claims that the defendants knew that coal ash and the chemicals it contains were harmful if leached into the water and that the site "was inappropriate for coal-ash placement."

"Dominion has the fly ash - they knew what it was capable of doing," said Robyn Pierce, who lives on Murray Drive, just southeast of the golf course. "They paid people to take it from them, dig up the sand, the good land that we had over there. The developers sold the sand, took the fly ash that Dominion was paying them for and put it in our backyard."

Last fall, Dominion committed to paying up to \$6 million to extend city water to residences near the golf course.

Fly ash is a powdery residue left from the burning of coal for electricity. It contains heavy metals such as arsenic, lead and mercury that can pose environmental threats through groundwater and air.

A Dominion spokesman, contacted Thursday evening, declined to comment.

"We haven't seen the papers," Dan Genest said.

Neil Wallace, president of CPM Virginia, could not be reached for comment. Officials at VFL Technology could not be reached for comment.

The filing of the suit is expected to come nearly a year after a report in The Virginian-Pilot that cited the potential health risks from fly ash through contamination of groundwater.

City officials say there are roughly 200 potable wells within a 2,000-foot radius of the boundaries of the golf course.

The golf course project won approval from the city in 2001 and was cleared by the state Department of Environmental Quality in 2002. It opened for business in 2007.

The development involved moving the ash from a Dominion coal-fired power plant in Deep Creek, where the utility's ash landfill is subject to state solid-waste regulations, to a 217-acre parcel of farmland in the Fentress section of the city that was considered exempt from solid-waste rules.

Only a few months before state regulators allowed the project to move forward, they had warned Dominion that fly ash in its regulated landfill was stacked too high.

Citing state records obtained under the Freedom of Information Act, The Virginian-Pilot reported in December that the golf course was considered a linchpin in the utility's plan to comply with the state's warning.

The suit alleges that Dominion and the developers moved forward with the project despite warnings from environmental consultants in 2001 and 2003 - not shared with the city or the state until several months ago - about the potential long-term risks to nearby wells.

One consulting firm predicted that though it would take many years, elements such as arsenic "would ultimately leach into the groundwater and exceed safe limits" and "the first potential

receptors to encounter chemicals from the fly ash would be the residences along the southern property line of the site."

In September 2001, URS Corp. completed a "hydrogeologic investigation" of the golf-course site for Dominion, according to the suit. The findings made Dominion aware that some nearby wells were at risk of contamination from the proposed dumping of the ash, the suit alleges.

Dominion commissioned a second URS study, provided in December 2001, according to the suit.

URS' second report confirmed "that its initial study 'resulted in predicted concentrations in groundwater above applicable drinking water standard.' "

"These results included the drinking water standards for arsenic," the suit states.

Tests by city consultants announced last summer found arsenic in groundwater samples from the course at eight times the municipal drinking water standard.

"This was the definition of callous disregard," said Bob Cawood, another attorney who worked on the suit.

Dominion and the developers said the fly ash used on the golf course was treated to inhibit any leaching.

Eva Mae Griffin, one of the plaintiffs, has lived on Whittamore Road, just northeast of the golf course, since the early 1950s.

Griffin said that while she knew nothing about fly ash, she began to become concerned when a man hauling the material from Dominion to the golf course said he had been advised to wear a mask.

"He quit hauling it," Griffin said.

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