

Constellation to pay \$45M in damages, restoration

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Constellation Energy and lawyers in a class-action lawsuit announced yesterday that a settlement package worth \$45 million was made in a case filed by Gambrills residents.

The residents said their wellwater was contaminated by the fly ash Constellation used to fill in craters in a nearby sand and gravel mine owned by BBSS Inc.

Hassan Murphy, managing partner of the Murphy Firm who represents the Gambrills residents, said residents are pleased with the lawsuit's outcome.

"I think everyone's ecstatic about it," he said. "We're really proud of what we accomplished. This was the first settlement of a fly ash case by a major utility in the country, at least that we know of."

The lawsuit, filed in November 2007, states that Constellation knew that millions of tons of fly ash it had dumped was contaminating groundwater with cancer-causing chemicals, but that the utility company failed to warn them of the risks.

Fly ash is the powdery gray byproduct from burning coal. In this case, the substance came from the electric company's Brandon Shores power plant.

The plaintiffs - several residents who live off of Queen Mitchell, Evergreen and Summerfield roads in Gambrills - sued Constellation in Baltimore City Circuit Court, seeking court-ordered medical monitoring, air and soil testing and well-water screening, as well as undetermined compensatory and punitive damages.

The settlement is estimated to cost Constellation \$45 million, plus up to \$10 million for lawyer fees paid to The Murphy Firm and the Law Offices of Peter Angelos, who represented the class, officials said.

It provides for 84 households which were previously supplied by private wells to be connected to public water, which costs about \$7.5 million. However, an agreement between Constellation and MDE announced a year ago, required Constellation to provide 40 well owners with a safe supply of drinking water.

When privately owned wells first showed signs of contamination in October 2006, Constellation began providing affected residents with cases of Deer Park bottled water. Eventually their homes were connected to a temporary, makeshift water system via a network of hoses attached to a fire hydrant in the Village of Waugh Chapel shopping center.

The settlement also includes establishing a \$9.5 million trust fund to compensate affected property owners. It will be run by a claims manager, who will decide which health, property and other claims - made by the 210 residents of the affected properties - will be honored.

There is also a \$500,000 trust fund set up to provide site enhancement to the neighborhood. That will be used mainly to create buffering landscape between the site and nearby condos.

Additionally, Constellation will restore the former mine and the company commits to not deliver new fly ash into the quarry. However, Robert Scrivener, president of BBSS Inc., the company which owns the land where fly ash was dumped, voluntarily promised in July to never allow the substance to be put onto his property again.

"From our perspective, we're pleased that we've been able to reach this settlement, and we believe it's a settlement that will have benefits for residents in the community," said Robert L. Gould, spokesman for Constellation Energy in Baltimore. "We were able to arrive at a constructive solution that addresses all the outstanding issues is a positive for all concerned."

The settlement was a compromise, but a happy one for residents, Mr. Murphy said. "I give Constellation a lot of credit. Early on in the process, they told us they wanted to do right by the community, and they did."

The settlement, particularly connecting homeowners to the public water system is a good thing, said County Councilman Jamie Benoit, D-Crownsville, who represents the affected residents.

"It's a good result. It's a good result for the communities and a good result for the parties," he said. "I think that the message it sends is that companies who do business in the state need to do it in a manner that respects the health of the people who live here and the environment."

Madonna Brennan, chairman of Crofton First, a community group that has been following the fly ash issue, said that the settlement sends a stronger message to polluters than the \$1 million fine Maryland Department of the Environment levied against Constellation in October 2007.

"Obviously, this proves that the \$1 million fine was never going to put a dent on anything and perhaps this will have more impact than MDE's attempt," she said.

Including this settlement, the fly ash problem has cost Constellation tens of millions of dollars. When the company voluntarily decided a little over a year ago to stop putting fly ash in the mine, and to send it to Virginia instead, they said it would cost at least \$1 million a month.

That expense, combined with the \$45 million settlement, and the \$1 million fine, brings the total to at least \$58 million, not including lawyer fees, studies and other expenses Constellation endured.

But the fly ash price tag is a little less than three-tenths of one percent of the \$21 billion of assets held by Constellation and its subsidiaries.

Beginning in 1995, Baltimore Electric Co. and later Constellation Energy, contracted with BBSS to dump about 200,000 tons of fly ash per year into the mine pits.

Surface mining of sand and gravel used in construction had left large holes in the ground, and the fly ash was intended to fill them, making it possible to eventually develop the property.

However, like water through coffee grounds, rainwater seeped through the fly ash landfill into the groundwater below, contaminating it with heavy metals, some of which cause cancer, and others, such as lead, can cause nerve damage. A county investigation tested water samples collected from 83 wells, with 23 showing dangerous levels of contamination.

Constellation continued to dump fly ash until September 2007, two days after *The Capital* published a story that showed Constellation and MDE knew about contamination for years but had not stopped dumping fly ash.