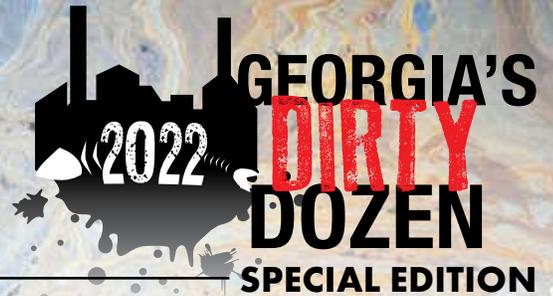


Celebrating the Clean Water Act's Impact on **GEORGIA'S WATER**



UPSTATE FOREVER AND SAVANNAH RIVERKEEPER V. KINDER MORGAN

Citizen Suit Establishes Link Between Groundwater Pollution and Surface Water, Creates \$1.5 Million Fund for Clean Water Projects

INTRODUCTION

In December 2014, a Kinder Morgan petroleum pipeline near Belton, South Carolina developed a leak that for several days went undetected and released 369,000 gallons of gasoline into the surrounding land, contaminating wetlands and nearby creeks that flowed to the Savannah River. While Kinder Morgan initiated a cleanup that removed some 200,000 gallons of gasoline from the spill site, an estimated 160,500 gallons remained, contaminating the soil to a depth of 14 feet. Two years after the spill, gasoline could still be seen on the creeks, and tests conducted by conservation groups showed more widespread contamination and higher concentrations of hazardous chemicals than were shown in Kinder Morgan's reports. That's when Upstate Forever and Savannah Riverkeeper filed suit under the Clean Water Act to force a more thorough cleanup. The suit, and the legal appeals that followed, stretched into 2020 and all the way to the U.S. Supreme Court. In the end, the case helped establish that those who pollute groundwater that then spreads to surface water are responsible for that pollution. Meanwhile, the settlement between Kinder Morgan and the plaintiffs established a \$1.5 million fund for clean water projects in the Upper Savannah River basin.

THE WATER BODY

Flowing more than 300 miles along the Georgia-South Carolina state line, the Savannah River is Georgia's second largest river basin. At the Georgia coast, it supports the fourth largest port in the United States. Up river, it is no less important, supplying drinking water for 1.4 million people, including its namesake city as well as Augusta, among other municipalities. The streams of South Carolina and Georgia's upstate—like Browns and Cupboard that were impacted by the Kinder Morgan spill—feed three federal reservoirs above Augusta which provide recreational opportunities and hydropower for the region. Together Clarks Hill, Russell and Hartwell reservoirs attract 17.5 million visitors annually. Meanwhile, beneath the river's surface is a treasure trove of biological diversity, including the federally protected Atlantic and shortnose sturgeons that spawn in the Savannah.



The upstate streams impacted by the Kinder Morgan pipeline spill in Anderson County, South Carolina feed the Savannah River and its three U.S. Army Corps of Engineers reservoirs (Hartwell, Russell and Clarks Hill) that attract 17.5 million visitors annually.

THE CASE

The United States is crisscrossed by crude oil, petroleum products and natural gas pipelines. In total, there are more than 200,000 miles of pipelines in the country, more than four times the total miles in the country's interstate highway system. Mostly buried underground and often traversing remote swaths of land, when these pipes leak, they can go undetected.



An oily sheen covers wetlands near the Kinder Morgan pipeline spill. The spill released 369,000 gallons of gasoline and left contaminated soil up to a depth of 14 feet. The pollution prompted Savannah Riverkeeper and Upstate Forever to sue Kinder Morgan under the Clean Water Act. Kinder Morgan agreed to a more complete cleanup of the site and agreed to pay \$1.5 million for a fund to support clean water projects in the impacted area.

Having already spent \$17 million on the cleanup, in October 2020, Kinder Morgan agreed to a settlement in which the company would continue groundwater remediation at the site and pay \$1.5 million to set up a fund for citizen science and water quality projects in the Upper Savannah River basin. Managed by a local volunteer water council, this fall, the council began providing grants for clean water projects. The Council expects to distribute more than \$150,000 in grants each year for at least the next 20 years.

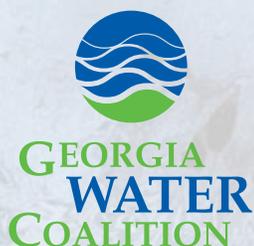
Such was the case in 2014 near Belton, South Carolina. Nearby residents notified authorities when they began smelling petroleum and noticed plants dying. The spill contaminated a layer of soil 14 feet thick. The cleanup that Kinder Morgan initiated proved inadequate to stem the pollution which leached into groundwater and then into nearby creeks. By 2016, tests showed that contamination in Browns Creek was increasing, despite there being no direct surface water connection between the spill site and the creek.

Initially, the courts determined that Kinder Morgan's leak was not a violation of the Clean Water Act because the pollution was not being discharged from a pipe into the creeks. Upstate Forever and Savannah Riverkeeper appealed that decision, and subsequent appeals by Kinder Morgan brought the case all the way to the Supreme Court which, at the time, was looking at several similar cases in which contaminated groundwater was polluting surface water.

In April 2020, the Supreme Court ruled in *Maui v. Hawaii Wildlife Fund* that a discharge that pollutes groundwater that in turn pollutes surface water should be regulated under the Clean Water Act. Wrote the Court: the Clean Water Act "requires a permit if the addition of pollutants through groundwater is the functional equivalent of a direct discharge from the point source into navigable waters." The high court then sent the Kinder Morgan case back to the lower courts.



An aerial view of one of the creeks impacted by the Kinder Morgan gasoline spill shows an oily sheen. Tests showed that contaminated groundwater continued to leach into the creeks well after the spill. In 2020, the Supreme Court ruled that in cases where a discharge pollutes groundwater that in turn pollutes surface water, that discharge should be regulated under the Clean Water Act.



FOR MORE INFORMATION

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