

More Suits Could Be Filed in TVA Ash Spill Case

the Associated Press

KNOXVILLE, Tenn. (AP) — An attorney for property owners who are suing the Tennessee Valley Authority for damages from its 2008 coal ash spill has told a federal judge that hundreds of other property owners are looking to file lawsuits before a Dec. 22 deadline.

Damage suits must be filed within three years of the Dec. 22, 2008, disaster at TVA's coal-fired Kingston plant on the Emory River west of Knoxville.

Any damage payouts for potential claimants, like more than 300 plaintiffs in current lawsuits, depend on U.S. District Judge Thomas Varlan's ruling on a lengthy bench trial that ended in October. Varlan presided at a Knoxville trial on the suits that contend TVA's negligence made the utility liable for damages. He is expected to make a liability ruling sometime next year.

Plaintiffs' attorney Gary Davis was among attorneys at the Tuesday hearing on an agreement to call off a second bench trial on TVA's liability, which had been set to start Tuesday.

Varlan, who has set a Jan. 12 deadline for attorneys to file briefs on the liability trial, told TVA attorneys, Davis and others at the hearing to try and agree on how to fit any prospective claimants into the case.

Davis said that he and other plaintiff attorneys have hundreds of prospective litigants who are awaiting Varlan's ruling on any TVA liability and would be "looking forward to their day in court as well ... after three years of TVA not wanting to deal with them in any meaningful way."

Plaintiffs' attorney Beth Alexander said "there are still hundreds of people out there with claims that they intend to bring against the TVA," but the process of filing suits in a case where the trial has already been held is not yet decided.

Davis said he mentioned mediation as a way of possibly reaching a settlement with the nation's largest public utility.

Plaintiffs' attorney John Agee said after the hour-long hearing that he recently added a property owner to his list of about two dozen who are suing. He said the hearing included "some discussion about potential mediation" but nothing was decided.

Another plaintiffs' attorney, Jim Scott, said Tuesday that he represents about two dozen property owners and expected to be "filing several more lawsuits" before Dec. 22.

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Plaintiffs' attorney Wayne Ritchie suggested a class settlement as a way to resolve all claims while limiting TVA exposure to further lawsuits.

TVA attorneys previously said they agreed to call off the second trial to avoid further expenditure of time and expense. TVA spokeswoman Barbara Martocci said the utility's attorney, Edwin Small, said at the hearing that mediation is not appropriate "at this time" because the number of plaintiffs won't be known until after the Dec. 22 filing deadline for lawsuits.

At trial, TVA argued that the spill wasn't caused by negligence but a deep foundation failure unrelated to TVA's employee training, maintenance and construction practices.

Plaintiffs' attorney Jeff Friedman told the judge at the bench trial that testimony and evidence show TVA neglected warnings about possible problems with the dike for years.

A report for TVA on what caused the spill of 5.4 million cubic yards of ash containing mercury, selenium, arsenic and other chemicals into the Emory River and across 300 acres in the Swan Pond community — destroying or damaging about two dozen homes — included dikes built over a "slime" layer of loose ash and silt.

The lawsuits contend TVA concocted the slime explanation to avoid lawsuits.

No one was hurt in the spill, which the Environmental Protection Agency has described as "one of the worst environmental disasters of its kind." EPA is trying to decide if the byproduct of generating electricity with coal should be regulated as hazardous.

TVA supplies power to about 9 million people in Tennessee, Kentucky, Alabama, Mississippi, Georgia, North Carolina and Virginia.

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