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UNC Dodges Enviro Groups' Coal Emissions Suit

By [Morgan Conley](#)

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Law360 (September 1, 2021, 4:37 PM EDT) -- The University of North Carolina at Chapel Hill defeated environmental groups' claims that the school's operation of coal-fired power plants violated the Clean Air Act, with a Tarheel State federal judge finding the groups failed to show a concrete injury.

In her final judgment Tuesday, U.S. District Judge Catherine C. Eagles granted UNC's motion for summary judgment against all nine claims lodged by the [Center for Biological Diversity](#) and the [Sierra Club](#) and dismissed the suit with prejudice.

Judge Eagles explained in her memorandum opinion filed the previous day that the bulk of the environmental groups' claims were rooted in allegations that the university kept improper or inaccurate records about equipment tests and inspections. But the court said the environmental groups failed to show how they or their members "suffered a concrete injury as a result of any recordkeeping, reporting, monitoring or inspecting violations."

The environmental groups lodged two additional claims accusing the school of violating conditions of its North Carolina Division of Air Quality emission permit through the unauthorized operation of two combustion boilers and an emergency diesel-fired generator.

But the court said the DAQ permit didn't include an "enforceable limit" on how much coal can be burned at a time, known as a "heat input capacity." The judge said state regulators didn't intend for the heat input capacity figure included in a now-expired permit to be interpreted as an enforceable maximum, noting that a replacement permit that went into effect early last month removing all reference to heat input capacity without categorizing the removal as a significant change backs up that conclusion.

"The uncontroverted evidence shows that DAQ, the writer and issuer of the permit, intended the ambiguous 323.17 heat input capacity number to be a descriptor and not an enforceable limit," Judge Eagles wrote.

Finally, the environmental groups had alleged the university wrongfully fired up the emergency generator for testing while another generator was still running. But the court said the alleged violation only occurred once and the school is entitled to summary judgment on the claim since there is no evidence of repeated violations.

Perrin de Jong of the Center for Biological Diversity, an attorney representing the two groups, told Law360 on Wednesday that the Center is "disappointed with the decision, especially because UNC continues to needlessly dump asthma-causing pollution on students, athletes, and the Chapel Hill/Carrboro community."

"We are evaluating our next steps in our ongoing efforts to protect local residents from UNC's coal plant pollution," he said.

The Center for Biological Diversity and the Sierra Club [launched the suit](#) accusing UNC Chapel Hill of polluting the air and causing potential health risks in December 2019. The advocacy groups accused the university of exceeding coal-burning limits on two specific campus boilers and violating several testing and inspection requirements included in four permits granted under the Clean Air Act from 2014 to 2018. The groups also claimed the university kept improper or inaccurate records about the tests and inspections.

In October, Judge Eagles [rejected the university's effort](#) to dodge the suit after determining more information was needed before the court could rule on the merits of the permit violations at issue.

In a statement sent to Law360 on Wednesday, the university said it is pleased with the decision and "appreciate[s] the court's careful consideration of the facts and evidence in this case."

"The ruling makes clear the university's cogeneration facility remains compliant with state air quality permit regulations," UNC said. "The university remains committed to reducing its environmental footprint and advancing sustainability on campus and in the local community."

The environmental groups are collectively represented by Perrin W. de Jong and Robert Ukeiley of the Center for Biological Diversity.

The university is represented by Peter J. McGrath Jr. of [Moore & Van Allen PLLC](#).

The case is Center for Biological Diversity et al. v. University of North Carolina at Chapel Hill, case number [1:19-cv-01179](#), in the U.S. District Court for the Middle District of North Carolina.

--Additional reporting by Katie Pohlman. Editing by Kelly Duncan.

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Case Information

Case Title

[CENTER FOR BIOLOGICAL DIVERSITY et al v. UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL](#)

Case Number

[1:19-cv-01179](#)

Court

North Carolina Middle

Nature of Suit

Environmental Matters

Judge

[CATHERINE C. EAGLES](#)

Date Filed

December 03, 2019

Law Firms

- [Moore & Van Allen](#)

Companies

- [Center for Biological Diversity](#)
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