

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

No: 1:17-cv-561

ROANOKE RIVER BASIN
ASSOCIATION,

Plaintiff,

v.

DUKE ENERGY PROGRESS, LLC,

Defendant.

COMPLAINT

NATURE OF THE CASE

1. This citizen enforcement action challenges the unlawful closure plan of Defendant Duke Energy Progress, LLC, (“Duke Energy”) to permanently store millions of tons of coal ash and toxic pollutants in an unlined, leaking lagoon at its Mayo Steam Electric Plant coal-fired electricity generating plant (“Mayo”) in Person County, North Carolina. This plan will continue to impound groundwater and other waters within the lagoon and will leave coal ash sitting below the water table, where the coal ash will continue to leach pollutants into public waters of the United States and of North Carolina for hundreds of years, all in violation of the Resource Conservation and Recovery Act (“the Act”) and the Coal Combustion Residuals Rule (“the Rule”), 40 C.F.R. § 257.50 *et seq.*, adopted pursuant to the Act.

2. Duke Energy’s closure plan for its unlined coal ash lagoon at its Mayo Steam Electric Plant is open dumping in violation of the requirements of the Rule and the

Act. Duke Energy cannot be allowed to operate an illegal open dump at its Mayo coal ash site in perpetuity.

3. Duke Energy owns and operates Mayo. It stores approximately 6.6 million tons of coal ash in a leaking, unlined lagoon on the banks of Mayo Lake; on top of and in Crutchfield Branch; and in the groundwater. *See Site Map* attached as Exhibit 1.

4. At Mayo, Duke Energy is polluting Mayo Lake, an important fishing lake and popular recreational destination for the region; Crutchfield Branch, a tributary of the Dan River and the Roanoke River Basin that flows from North Carolina into Virginia; wetlands adjacent to these waters; and groundwater, as set forth in the Association's pending Clean Water Act citizen suit enforcement action against Duke Energy regarding the Mayo site. *Roanoke River Basin Ass'n v. Duke Energy Progress, LLC*, No. 1:16-cv-607 (M.D.N.C.).

5. Duke Energy's Mayo coal ash lagoon has polluted the surrounding groundwater, Crutchfield Branch, Mayo Lake, and adjacent wetlands with heavy metals including arsenic, boron, chromium, iron, manganese, thallium, and vanadium, among other pollutants.

6. As long as coal ash and other wastes remain in this leaking, unlined lagoon, it will continue to discharge pollutants into the groundwater and surface waters. These discharges will continue to place Crutchfield Branch, Mayo Lake, the Dan River, adjacent wetlands, groundwater, and the downstream waters of the Dan and Roanoke River Basins, as well as the people who use these waters, at risk of groundwater

contamination, surface water contamination, and potential catastrophic failure of the coal ash impoundment.

JURISDICTION, VENUE, AND NOTICE

7. Roanoke River Basin Association (“the Association”) brings this enforcement action under the citizens’ suit provision of the Act. 42 U.S.C. § 6972(a)(1)(A). This court has jurisdiction over this action pursuant to 42 U.S.C. § 6972(a) and 28 U.S.C. § 1331, and has jurisdiction over the parties.

8. Venue is proper in this court pursuant to 42 U.S.C. § 6972(a). The Mayo coal ash lagoon that is the subject of Duke Energy’s unlawful closure plan is located in Person County, in the Middle District of North Carolina.

9. In compliance with 42 U.S.C. § 6972(b) and 40 C.F.R. § 254.2, on April 11, 2017, the Association gave Duke Energy, the United States Environmental Protection Agency (“EPA”), and the North Carolina Department of Environmental Quality (“DEQ”) notice of the violations specified in this complaint and of the Association’s intent to file suit after sixty days should those violations continue. A copy of the notice letter with documentation of its receipt is attached as Exhibit 2.

10. More than sixty days have passed since the notice was served pursuant to law and regulation, and the violations identified in the notice letter are continuing at this time and reasonably likely to continue in the future.

11. EPA and DEQ have not commenced and are not diligently prosecuting a civil or criminal action to redress the violations of the Act and the Rule asserted in this citizen enforcement action.

PARTIES AND STANDING

The Association and Its Members

12. The Roanoke River Basin Association is a § 501(c)(3) non-profit public interest organization with members in North Carolina and Virginia operating in the Roanoke River Basin watershed. Its mission is to establish and carry out a strategy for the development, use, preservation, and enhancement of the resources of the Roanoke River basin in the best interest of present and future generations. The Association's membership includes local governments, non-profit, civic and community organizations, regional government entities, businesses, and individuals.

13. The Association and its members have been harmed by Duke Energy's unpermitted discharges and unlawful activities. They recreate, fish, and own property in the Roanoke River Basin, including in the vicinity of and downstream from Mayo, including Crutchfield Branch, Mayo Lake, and the Dan River and the waterways into which Duke Energy discharges and into which its waters flow.

14. The Association and its members fear contamination of drinking water, wildlife, and river water, by groundwater contamination, discharges, and pollution from coal ash in groundwater and Crutchfield Branch in Duke Energy's Mayo coal ash lagoon. Duke Energy's continuing storage of coal ash in groundwater and in Crutchfield Branch, its contamination, discharges, and pollution from coal ash in groundwater and Crutchfield Branch, and its unlawful plan to make this polluting and unsafe storage of coal ash permanent, are reducing the use and enjoyment by the Association and its members of the

Roanoke River Basin, Mayo Lake, Crutchfield Branch, the Dan River, and the waterways into which their waters flow. Affidavits showing standing are attached as Exhibit 3.

15. These injuries will not be redressed except by an order from this court requiring Duke Energy to file and comply with a closure plan for Mayo that satisfies the requirements of the Act and the Rule by eliminating infiltration of groundwater and other liquids into Duke Energy's coal ash, precluding the future impoundment of water, sediment, or slurry, and eliminating free liquids from the Mayo coal ash lagoon; as well as ordering Duke Energy to comply with other relief sought in this action.

Defendant

16. Duke Energy Progress, LLC, is a North Carolina limited liability corporation with its headquarters in Raleigh, North Carolina. It is engaged in the generation, transmission, distribution, and sale of electricity. Duke Energy owns and operates the Mayo Steam Electric Plant, which is the subject of the closure plan violations that give rise to this action.

17. Duke Energy is a "person" within the meaning of section 1004(15) of the Act, 42 U.S.C. § 6903(15).

STATUTORY AND REGULATORY BACKGROUND

18. Effective October 19, 2015, the United States Environmental Protection Agency (EPA) published a final rule to regulate the disposal and storage of coal combustion residuals (CCR) as a solid waste under Subtitle D of the Act. U.S. EPA, Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities; Final Rule, 80 Fed. Reg. 21,302, 21,312 (Apr. 17,

2015); *as amended by* Technical Amendments to the Hazardous and Solid Waste Management System, Disposal of Coal Combustion Residuals from Electric Utilities—Correction of the Effective Date, 80 Fed. Reg. 37,988 (July 2, 2015); 40 C.F.R. § 257.50 *et seq.*

19. Under the Act, any violation of the requirements of the Rule constitutes illegal open dumping: “Practices failing to satisfy *any of the criteria* in . . . §§ 257.50 through 257.107 constitute open dumping, which is prohibited under section 4005 of the Act.” 40 C.F.R. § 257.1(a)(2) (emphasis added). 40 C.F.R. § 257.2 (“Open dump means a facility for the disposal of solid waste which does not comply with this part.”).

20. Under the Rule, by no later than October 17, 2016, Duke Energy was required to “prepare an initial written closure plan consistent with the requirements specified in paragraph (b)(1) of [40 C.F.R. § 257.102]” for coal ash lagoons like the one at Mayo. 40 C.F.R. § 257.102(b)(2). The Rule contemplates two options for closure, either removal of the ash, also described as clean closure, or leaving the ash in place, sometimes called “cap in place.”

21. The Rule requires that a closure plan in which ash will be left in an unlined lagoon must describe “how the final cover system will achieve the performance standards specified in paragraph (d) of this section.” *Id.* § 257.102(b)(1)(iii).

22. In particular, the closure plan must demonstrate that if the ash is left in place, it will achieve the following performance standard requirements to:

- a. “Control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate,

or contaminated run-off to the ground or surface waters.” *Id.*

§ 257.102(d)(1)(i);

- b. “Preclude the probability of future impoundment of water, sediment, or slurry.” *Id.* § 257.102(d)(1)(ii); and the requirement that
- c. “Free liquids must be eliminated by removing liquid wastes or solidifying the remaining wastes and waste residues.” *Id.* § 257.102(d)(2)(i).

23. Thus, if an owner proposes to close a coal ash lagoon by leaving the ash in place with a cover on top, the closure plan must demonstrate that groundwater and other waters will not continue to flow through the coal ash, in order to satisfy the requirement to “[c]ontrol, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters.”

24. The closure plan must also “[p]reclude the probability of future impoundment of water, sediment, or slurry.” “[I]mpoundment means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.” 40 C.F.R. § 257.53. If groundwater and water from Crutchfield Branch will remain in the coal ash basin, the basin remains an impoundment that stores an accumulation of CCR and liquids. Further, if the closure plan retains the coal ash impoundment’s dam, in whole or in part, then the closure plan fails to preclude the impoundment of water. Similarly, such a closure plan that leaves coal ash saturated in groundwater and Crutchfield Branch within the impoundment leaves the wet coal ash impounded behind

the dam of the coal ash lagoon, and thus fails to prevent the impoundment of coal ash sediments and slurry.

25. Finally, if groundwater and Crutchfield Branch will continue to saturate coal ash within the proposed “cap in place” storage area, then the closure plan cannot satisfy the requirement that “[f]ree liquids must be eliminated by removing liquid wastes or solidifying the remaining wastes and waste residues.” “Free liquids” are defined under RCRA as “liquids that readily separate from the solid portion of a waste under ambient temperature and pressure.” 40 C.F.R. § 257.53. Groundwater and stream water that saturate coal ash in an unlined impoundment are free liquids that readily separate from the solid portion of the waste. Utilities regularly separate the water that saturates their impoundment coal ash by “stacking” the ash, *i.e.*, piling up the ash on dry land to let the water drain out. In addition, groundwater and stream water readily separate from coal ash because they flow *through* the coal ash, as shown by the movement of pollutants out of unlined coal ash basins into the surrounding groundwater; these waters do not remain in the coal ash indefinitely, but rather flow out of the ash and are replaced by new groundwater infiltrating into the basin and stream water flowing in. For this reason, a closure plan that fails to stop the ongoing flow of water into an unlined basin will violate this provision of the CCR rule because it does not eliminate free liquids and also because it fails to solidify the wastes in the basin.

26. The EPA has confirmed the plain language of the Rule. It has explained that a coal ash lagoon may not be closed by leaving coal ash submerged in groundwater. Instead, the operator of the unit must comply with the rule by “‘clean closing’

[excavating] the submerged portion” of the coal ash. EPA Response to “What are options and the performance standards for closure of units under the CCR Rule?” (Attached as Exhibit 4, at 6).

27. These violations of the Act and the Rule are enforceable by citizen suit. 42 U.S.C. § 6972.

FACTS

Duke Energy’s Coal Ash Storage and Pollution at Mayo

28. Duke Energy stores approximately 6.6 million tons of coal ash and other wastes in an unlined lagoon at Mayo on the banks of Mayo Lake in Person County. This coal ash sits 80 feet deep in groundwater, where it leaches pollutants that contaminate the groundwater and adjacent surface waters.

29. Duke Energy has constructed a 110-foot dam over Crutchfield Branch to impound water and create a pit for storing coal ash and other wastes from the Mayo Plant.

30. The damming of Crutchfield Branch created a 144-acre lagoon in the stream valley, filling the pit with water. Crutchfield Branch flows into the lagoon from the south, rain water flows into the pit from above, and groundwater flows into the pit from the sides and below.

31. For nearly forty years, Duke Energy has discharged coal ash into the pit, along with other wastewater streams and waste from burning coal, including coal pile runoff, stormwater runoff, cooling tower blowdown, reverse osmosis wastewater, plant

area wash down wastewater, equipment heat exchanger water, and treated domestic wastewater and sewage.

32. Duke Energy has placed millions of tons and approximately 80 vertical feet of coal ash, sludge, and pollutants into the groundwater at the Mayo coal ash lagoon. United States Geological Survey topography of the site before the basin was constructed shows the elevation at the bottom of what is now the basin is 400 feet above sea level, while Duke Energy's own reports show that currently the groundwater elevation within the basin is at least 480 feet above sea level. *See* Duke Energy, Comprehensive Site Assessment (Sept. 2, 2015) ("CSA"), Figure 6-2.¹ Thus, the coal ash currently is submerged approximately 80 feet deep in groundwater at Mayo.

33. The coal ash lagoon is over 30 years old, and its waters are held back only by a dam made of earth that leaks. The coal ash lagoon leaks pollution into the groundwater and into two water bodies, Mayo Lake and Crutchfield Branch.

34. Mayo Lake is an important public waterbody and recreational, fishing, and economic resource for North Carolina, the region, and Person County. Families live along the lake. Local residents, people who live in surrounding communities, and visitors from other areas fish, swim, and boat in and on the Lake. Over the years, Mayo Lake has been seriously harmed by the pollution from Duke Energy's coal ash lagoon.

35. A recent study by Duke University scientists determined that Duke Energy's pollution of Mayo Lake continues to contaminate fish with selenium, a coal ash pollutant. Brandt, et al., *Selenium Ecotoxicology in Freshwater Lakes Receiving Coal*

¹ Available at <http://edocs.deq.nc.gov/WaterResources/0/foI/305049/Row1.aspx>.

Combustion Residuals Effluent: A North Carolina Example, Environmental Science and Technology (January 2017).

36. Crutchfield Branch is part of the Roanoke River Basin and is a water of the United States and of North Carolina. It originates south of Duke Energy's Mayo coal ash lagoon, flows into and through the lagoon, and flows out of the lagoon to the north through North Carolina and into Virginia. Duke Energy's site assessment studies explain that the unlined coal ash basin at Mayo "acts as an elongated bowl-like feature with groundwater flowing to the basin from all sides, except from the northeast, which is the discharge side from the basin. Groundwater flows north-northeast from the ash basin into the small valley formed by Crutchfield Branch." CSA at 30. Crutchfield Branch becomes part of the Dan River, flowing into Virginia before flowing back into North Carolina further downstream.

37. The leaking, unlined coal ash lagoon at Mayo has contaminated the groundwater outside the lagoon with numerous coal ash pollutants, including antimony, arsenic, barium, boron, chromium, cobalt, iron, manganese, pH, thallium, total dissolved solids, and vanadium. For example, chromium has been detected at 301% above the state groundwater standard, and manganese – associated with nervous system and muscle problems – at 2,780% above the standard.

38. Duke Energy's coal ash in the groundwater at Mayo has polluted both Crutchfield Branch and Mayo Lake, as the polluted groundwater moves from the coal ash submerged in groundwater into Crutchfield Branch and Mayo Lake. Sampling in Crutchfield Branch and Mayo Lake has revealed elevated levels of many coal ash

pollutants, including boron, cobalt, copper, thallium, vanadium, and selenium, among others.

39. As long as the coal ash remains in the groundwater and in unlined storage, it will continue to contaminate groundwater and adjacent surface waters.

40. Duke Energy has faced extensive public pressure and litigation by the Association and other community organizations in North Carolina to force it to address its primitive, unlined, and leaking coal ash storage in North Carolina. In May of 2015, Duke Energy operating companies, including the owner of the Mayo coal ash lagoon, pleaded guilty 18 times to 9 Clean Water Act coal ash crimes across North Carolina. These Clean Water Act crimes included unpermitted coal ash lagoon discharges very much like those flowing from the Mayo coal ash lagoon. Duke Energy operating companies paid a \$102 million fine, and they are under nationwide criminal probation. Under court orders, the criminal plea agreement, statutes, regulatory requirements, and settlement agreements with conservation groups, Duke Energy is now required to excavate all the coal ash from unlined coal ash pits at 8 of its 14 coal ash storage sites in North Carolina, and all its sites in South Carolina.

41. Today, Duke Energy is required to excavate the coal ash from every North Carolina and South Carolina site with 7 million tons or less of coal ash – except Mayo.

42. Duke Energy has constructed a modern, lined landfill for the dry storage of coal ash on property it owns very near to the Mayo plant. This facility has, and its planned expansions are designed to have, more than enough capacity to contain the coal ash and other materials contained in the Mayo coal ash pit.

43. At Mayo and five other coal ash storage sites in North Carolina, Duke Energy has refused to commit itself to remove the ash from its unlined, leaking, polluting, dangerous, and primitive coal ash pits. Instead, Duke Energy hopes to pump some of the coal ash polluted water out of its leaking lagoons into nearby lakes and rivers and then leave its polluting coal ash in the groundwater, in unlined pits near water bodies, where the coal ash will continue to pollute the state's waters for hundreds of years.

Duke Energy's Plan to Leave Coal Ash in Groundwater at Mayo

44. On November 11, 2016, as required by the Rule, 40 C.F.R. § 257.102(b), Duke Energy published a closure plan for Mayo. This closure plan is attached as Exhibit 5. The closure plan leaves the coal ash in place in the Mayo coal ash lagoon, with partial "dewatering" of the basin and placing a cap on top. Likewise, under the North Carolina Coal Ash Management Act, N.C. Gen. Stat. § 130A-309.200 *et seq.*, Duke Energy was required to submit a Corrective Action Plan (CAP) setting out its plan for closure of the Mayo coal ash lagoon. The CAP recommends the same "cap in place" closure method.

45. However, Duke Energy's closure plan leaves coal ash in the groundwater within the unlined coal ash basin at Mayo, impounded behind the ash pond dam. Duke Energy's CAP Part 1² and its own modeling results show that much of the coal ash in the Mayo ash basin will remain submerged in the groundwater under the cap in place plan contained in Duke Energy's CCR Rule filing. Comparison of the modeled hydraulic head map for the Cap in Place option (CAP Pt. 1, Appendix E, Figure 17a, attached hereto as Exhibit 6) with the Closure in Place Profile (*id.*, Figure 16, attached hereto as Exhibit 7)

² Available at <http://edocs.deq.nc.gov/WaterResources/0/fol/321551/Row1.aspx>.

reveals that much of the disposed ash would remain saturated after capping. Indeed, Duke Energy's own data show that the coal ash at Mayo will remain submerged in the groundwater by as much as 70 feet if the ash is capped in place.

46. The closure plan contains no mechanism to stop the flow of groundwater into the basin or to separate the ash from the groundwater table, and Duke Energy witnesses have confirmed under oath that no such measures are part of the closure plan at Mayo.

47. Additionally, Duke Energy's closure plan makes clear that it does not intend to completely and permanently remove interstitial and pore water, which is the water saturating the ash and which has the highest concentrations of contaminants. Duke Energy's plan states that it "may" remove this water "as needed" only "to provide a workable surface for final cover system installation." The closure plan will "partial[ly] lower[]" – but not remove – the ash pond dam (Exhibit 5, at 2).

48. Thus, under Duke Energy's closure plan set out in its CCR Rule filing, the coal ash will be sitting in groundwater and will continue to leach pollutants into the groundwater and into Crutchfield Branch and elsewhere. This coal ash will remain saturated, allowing pollutants to leach out indefinitely, and will remain impounded behind the unlined ash pond dam under the closure plan.

49. The data presented in Duke Energy's figures are consistent with the hydrogeology of the site. A significant amount of groundwater will continue to infiltrate the ash basin from adjacent areas as it joins the flow of Crutchfield Branch into the bowl-like coal ash basin and is channeled into Crutchfield Branch as it flows out of the basin.

Groundwater that infiltrates the ash will continue to leach metals from the ash and transport those metals down-gradient before discharging into Crutchfield Branch. From there these pollutants will be flushed across the state line to Virginia and then back into North Carolina through the Roanoke River Basin.

50. In addition, under the North Carolina Coal Ash Management Act, Duke Energy was required to submit a Comprehensive Site Assessment (“CSA”) for Mayo. That Assessment confirms that the Mayo coal ash is in the groundwater and is polluting groundwater and surface water: “The CSA found that leaching of CCR [coal combustion residuals, *i.e.*, coal ash] accumulated in the ash basin is a source of COIs [constituents of interest, *i.e.*, pollutants] detected in groundwater and surface water downgradient of the basin.” CSA at 127. This pollution will continue if Duke is allowed to leave the ash in tens of feet of groundwater and in this unlined pit, where pollutants have been flowing into groundwater, Mayo Lake, and Crutchfield Branch for decades.

CLAIMS FOR RELIEF

51. The allegations of the preceding paragraphs are incorporated by reference as if repeated and set forth herein.

Duke Energy’s Violations of the CCR Rule

52. Duke Energy is violating 40 C.F.R. §§ 257.102(b) and (d). Duke Energy has prepared and published a CCR Rule closure plan that fails to meet the minimum requirements for closure plans and violates the CCR Rule by leaving the Mayo coal ash in water and impounded behind the dam.

53. The closure plan fails to “control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters.” As Duke Energy’s own modeling shows, the coal ash in the basin will remain saturated in water after capping in place.

54. The closure plan fails to “preclude the probability of future impoundment of water, sediment, or slurry,” because the closure plan will “partial[ly] lower[.]” – but not remove – the ash pond dam (Ex. 2, at 2), and thus the flow of groundwater and Crutchfield Branch will remain impounded by the ash basin dam, and the water-saturated coal ash, sediments, and slurry in the lagoon will also remain impounded by the ash basin dam.

55. The closure plan fails to “eliminate” “free liquids . . . by removing liquid wastes or solidifying the remaining wastes.” Capping in place and leaving the coal ash in water at Mayo will neither remove contaminated liquid wastewater, nor solidify the ash in the basin.

56. Duke Energy was required to prepare and publish a CCR Rule closure plan that complies with the Rule. Under the CCR Rule, Duke Energy’s Mayo closure plan must not leave coal ash in groundwater or Crutchfield Branch or leave wet ash and water impounded in the basin – yet it will do all of these things.

57. As a result of these deficiencies and failures to satisfy the requirements of the Rule, Duke Energy’s closure plan for its unlined coal ash lagoon at its Mayo Steam Station is open dumping in violation of the requirements of the Rule and the Act. 40

C.F.R. § 257.1(a)(2) (“Practices failing to satisfy any of the criteria in . . . §§ 257.50 through 257.107 constitute open dumping, which is prohibited under section 4005 of the Act.”).

58. Duke Energy thus violated and continues to violate the Rule and the Act.

59. To comply with the Rule and the Act, Duke Energy must prepare and publish a Coal Combustion Residuals Rule closure plan for the Mayo coal ash lagoon that does not leave any coal ash in the groundwater and in Crutchfield Branch and that is not an impoundment.

60. This violation occurred on October 17, 2016, on November 11, 2016, and is ongoing.

PRAYER FOR RELIEF

WHEREFORE, the Association respectfully requests that this court:

A. Issue a declaratory judgment stating that Duke Energy is violating the Coal Combustion Residuals Rule and the Resource Conservation and Recovery Act by failing to comply with the closure plan requirements of the Rule and violating the open dumping prohibition of the Act;

B. Enter appropriate preliminary and permanent injunctive relief to ensure that Duke Energy files a closure plan for its Mayo coal ash lagoon that satisfies the requirements of the Act and the Rule by eliminating infiltration of groundwater, Crutchfield Branch, and other liquids into Duke Energy’s coal ash, precluding the possibility of future impoundment of water, sediment, or slurry, and by eliminating free liquids from the Mayo coal ash lagoon;

C. Enter appropriate preliminary and permanent injunctive relief to ensure that Duke Energy files a closure plan for its Mayo coal ash lagoon that satisfies the requirements of the Act and the Rule by removing and separating the coal ash from groundwater and Crutchfield Branch and by eliminating the dam and any other impoundment of water, sediment, or slurry, and by eliminating groundwater, Crutchfield Branch, and other free liquids from the Mayo coal ash lagoon;

C. Award the Association the costs of this action, including reasonable attorney and expert fees, as authorized by 42 U.S.C. § 6972(e); and

D. Grant the Association such further and additional relief as the Court deems just and proper.

This 20th day of June, 2017.

/s/ Frank S. Holleman III

Frank S. Holleman III

N.C. Bar No. 43361

fholleman@selcnc.org

Nicholas S. Torrey

N.C. Bar No. 43382

ntorrey@selcnc.org

Leslie Griffith

N.C. Bar No. 50122

lgriffith@selcnc.org

Southern Environmental Law Center

601 West Rosemary Street, Suite 220

Chapel Hill, NC 27516-2356

Telephone: (919) 967-1450

Facsimile: (919) 929-9421

Attorneys for Plaintiff