

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

NO. _____

UPSTATE FOREVER AND SAVANNAH)
RIVERKEEPER,)

Plaintiffs,)

v.)

KINDER MORGAN ENERGY PARTNERS,)
L.P., AND PLANTATION PIPE LINE)
COMPANY, INC.)

Defendants.)

_____)
)

COMPLAINT
(JURY TRIAL DEMANDED)

FACTS AND NATURE OF THE CASE

1. This citizen enforcement action challenges ongoing, unlawful discharges of gasoline, gasoline and petroleum substances, and other contaminants by Defendants near Lewis Drive in Belton, South Carolina, into waters of the United States, Anderson County, and the Savannah River Basin in violation of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251-1376. This spill is one of the largest pipeline spills in South Carolina’s history.

2. Plaintiffs, Upstate Forever and the Savannah Riverkeeper (the “Conservation Groups”), are nonprofit membership public interest organizations that work to protect the waters of Anderson County and the Savannah River Basin, which have been and are being polluted illegally by Defendants.

3. Defendant Kinder Morgan Energy Partners, L.P. (“Kinder Morgan”), which is headquartered in Houston, Texas, owns an interest in and/or operates 84,000 miles of pipelines

in North America, making it the largest petroleum pipeline and energy infrastructure company in the United States.

4. Defendant Plantation Pipe Line Company, Inc. (“Plantation”), which is a subsidiary of Kinder Morgan, owns the Plantation Pipeline. The Plantation Pipeline carries over 20 million gallons of petroleum each day, and it cuts through Anderson County, South Carolina, on a 1,100 mile path from Louisiana to the Washington, D.C. area.

5. In December 2014, local citizens discovered dead plants, a petroleum odor, and pools of gasoline in an area near the pipeline and Lewis Drive in Belton, SC. It was later determined that an aged patch over a dent in the Plantation Pipeline in Anderson County failed. Defendants did not themselves detect or discover the spill.

6. Documents produced by the South Carolina Department of Health and Environmental Control (“DHEC”) indicate that at least an estimated 369,600 gallons, or 8,800 barrels, of gasoline and petroleum product have been released at the site.

7. In the month after the spill, the subsurface petroleum product was reportedly over fourteen feet thick.

8. Although a reported 209,000 gallons of gasoline were removed from the site by the end of 2015, no significant amount of additional material has been removed in 2016.

9. As such, at least approximately 160,600 gallons of gasoline, and possibly significantly more, remain in the environment as a source of ongoing pollution.

10. The gasoline that remains in the area of the spill is breaking down into the hazardous compounds that comprise gasoline—including benzene, toluene, ethylbenzene, xylenes, methyl tert-butyl ether (“MTBE”), naphthalene, and other contaminants—and making

its way into groundwater supplies, wetlands, and surface waters in Anderson County and the Savannah River watershed.

11. There are two streams and two wetlands near the spill site. Browns Creek—a tributary to Broadway Creek and headwater of the Savannah River—with an adjacent wetland and a Fish Pond, flows within 1,000 feet of the release point to the northeast. Cupboard Creek and a second wetland lie 400 feet south of the release point. These water bodies are located in the path of groundwater flow from the spill site.

12. The waters from these waterways flow into Broadway Lake, Lake Secession, Lake Russell, and the Savannah River.

13. Water sampling information obtained from DHEC reveals that hazardous petroleum compounds are in the groundwater near the site and have already reached Browns Creek.

14. Since the spill, Plantation has been testing samples against “screening values” that reference various standards designed to protect the environment and human health (hereinafter “standards”). These standards were established because exposure to petroleum contaminants can lead to serious health problems, including nervous system damage, anemia, liver or kidney problems, and increased risk of cancer.

15. Groundwater tests at the site show benzene levels over 2,000 times the relevant standard in one groundwater monitoring well. Groundwater samples from various locations near the spill site also exceed benzene, ethylbenzene, toluene, MTBE, and naphthalene standards.

16. The groundwater contamination plume and the petroleum products have moved toward both streams and wetlands since the spill was first discovered, and they continue to move to the streams and wetlands.

17. Petroleum was initially detected in Browns Creek in January 2015, a month after the spill, and was identified by a visible sheen on the water. In November 2015, benzene levels at four surface water locations spiked; by February 2016, over a year after the spill, Plantation detected benzene at five locations in the affected water body, and reported that surface water samples exceeded the standard for benzene at three of those locations. Toluene, ethylbenzene, and xylenes were also detected in the surface water in several locations between November 2015 and February 2016. Benzene levels remained above the standard through May 2016 at two of these locations south of Lewis Drive, reaching as high as 23.4 $\mu\text{g/L}$ —over four times the standard.

18. According to Plantation's June 2016 monthly report, one surface water location tested above the relevant benzene standard on June 27, 2016.

19. Plantation only samples Browns Creek once per month, and until August of 2016, no sampling took place near the bank where the gasoline products, groundwater, and seeps flow into surface water. Instead, Plantation sampled on the side of the creek opposite from where the spill occurred and where another tributary enters the stream—as far away as possible from where the contamination enters the creek and at a point where it is most diluted by the flow of the stream and a separate tributary.

20. In March 2016, DHEC instructed Defendants to sample for gasoline pollutants on the side of the creek where the spill occurred. For five months, Defendants failed to comply with DHEC's instructions, and Defendants failed to test the creek where it is most polluted for a full eighteen months.

21. Only in August 2016—after the Conservation Groups visited the site and took samples—did Defendants sample the stream where their pollutants are entering the creek.

Defendants' August samples showed high levels of gasoline pollutants, including benzene, ethylbenzene, toluene, xylenes, and naphthalene, in and entering the creek. Contamination levels were hundreds of times more than the levels of pollution that the Defendants had previously measured and reported from the diluted testing locations on the bank opposite from the spill site.

22. The Defendants' August tests also showed gasoline pollutants in the creek at many times the surface water standards.

23. News reports indicate that Kinder Morgan knew before the August 19, 2016 sampling that the creek would be contaminated nearer to the spill site. Kinder Morgan spokeswoman Melissa Ruiz has stated that the company "added sampling close to the source area (in August) knowing there was contamination there."¹

24. Subsequent testing by Defendants in September 2016 shows that pollution levels for benzene, ethylbenzene, toluene, xylenes, and naphthalene in the stream are increasing—over a year and a half after the spill was discovered. The Conservation Groups do not yet have access to the results from the monthly sampling Defendants conducted in October, November, or December.

25. During an August 2, 2016 visit, the Conservation Groups observed that the petroleum from Plantation's spill is visible on the surface of the water in the stream and wetlands. The area around the streams and wetlands also reeked with heavy smells of petroleum and gasoline.

26. In August of 2016, Plantation was using basic oil absorbent booms in the creek supposedly to address the surface water contamination. However, the booms had been

¹ Mike Eads, *KM plan for Belton spill criticized*, Independent Mail (Nov. 21, 2016, 7:25 PM), <http://www.independentmail.com/story/news/2016/11/21/km-spill-site-gets-worse-allegedly/94225524/>.

neglected, had not been maintained, and were not being regularly replaced. The Conservation Groups observed on their August visit that plants were growing out of some of the booms. Some had been neglected so long that they had gathered old litter. Many of the booms in the creek were darkly colored, indicating that they had long been saturated and therefore had not been contributing to cleanup activities.

27. Benzene, toluene, ethylbenzene, xylenes, and MTBE were detected in water and sediment samples that the Conservation Groups collected on August 2, 2016.

28. The Plantation Pipeline rupture is just one in a long list of accidents that have occurred at Kinder Morgan pipelines across North America in the last two decades. A survey of these accidents reveals that many of them stemmed from similar maintenance and inspection failures.

29. In July 2003, a Kinder Morgan pipeline in Tucson, Arizona ruptured due to stress corrosion cracking, showering 12,000 gallons of gasoline onto several houses that were under construction. The resulting pipeline closure caused gas shortages and price increases across the state. In April 2004, over 123,000 gallons of diesel spilled directly into Suisan Marsh—the largest saltwater wetland in the western U.S.—when external corrosion led to a rupture on the Santa Fe Pacific Pipelines system. Kinder Morgan eventually settled with state and federal agencies for \$5.3 million over violations associated with the Suisan spill and two additional 2005 spills into sensitive California water bodies. The company pledged to improve maintenance and pipe inspection practices to prevent future spills. Pipeline corrosion also caused an explosion at a facility near Tatum, Texas in May 2005, blowing 160 feet of pipe onto a neighboring property, releasing 280 million cubic feet of natural gas, and requiring evacuation of everyone within a mile of the facility. More recently, in April 2015, a structural failure on the Amarillo No. 4

pipeline in North Texas released 750,000 million cubic feet of natural gas and resulted in an explosion. The pipeline was originally constructed in 1968, and several other pipelines in the area that Kinder Morgan has a partial interest in have a “history” of stress corrosion cracking.

30. Kinder Morgan’s pipelines have also been plagued by accidents that might have been prevented or curbed with better oversight or leak detection systems. In July 2005, buckling and cracking from stress on the Trans Mountain Pipeline in Abbotsford, Canada resulted in the release of over 55,400 gallons of light crude oil, smothering 14,300 m² of wetlands with oil, and requiring local residents to evacuate. Kinder Morgan’s subsidiary, Terasen Pipelines, had failed to include the damaged portion of pipeline in its leak detection system, allowing a full week to pass before the leak was located. Two accidents in 2004 and 2007 resulted from miscommunications between Kinder Morgan employees and contractors. The November 2004 accident near Walnut Creek, CA killed five workers and injured four others after a welding flame ignited gasoline escaping from a punctured pipeline. The July 2007 excavation accident in British Columbia sprayed a 61,000-gallon “geyser” of crude oil over the surrounding neighborhood. 250 residents were displaced, eleven homes were damaged, and over 16,000 gallons seeped into the nearby Burnaby Inlet, affecting 10.5 miles of shoreline.

31. In 2011, the Pipeline and Hazardous Materials Safety Administration cited Kinder Morgan for safety violations across Montana, including: failure to update maps showing pipeline locations, failure to test pipeline safety devices, failure to maintain proper firefighting equipment, failure to inspect its pipelines as required, and failure to adequately monitor pipes’ corrosion levels. Later that year, the U.S. Department of Transportation cited Kinder Morgan for safety violations at a New Jersey facility, including the company’s failure to “have or use [] measures to detect abnormal operating conditions.” Other incidents include a 2011 fire at a New

Jersey facility, which led to a fine because Kinder Morgan did not have a written policy in place outlining how to safely repair certain valves, and a 2012 leak in California that released over 585,000 thousand cubic feet of natural gas due to a relief valve support system that was “poorly designed” and “insufficient” to support predicted loads.

32. Several accidents have occurred on the Plantation Pipeline at issue in this Complaint. In November 2008, Defendant Plantation settled a Clean Water Act lawsuit over spills in three states for \$725,000. Between 2000 and 2006, over 42,200 gallons of petroleum were spilled into streams in Virginia, Georgia, and North Carolina. The lawsuit cited Plantation for the leaks and for its failure to develop a plan to prevent and control spills in a large oil storage facility in Virginia. Plantation committed to upgrading certain pipelines and improving inspection practices as part of the settlement agreement. However, just seven months before the 2014 spill in Belton, improper installation and operation led to another 25,536-gallon spill along the Plantation Pipeline in Anderson, SC—resulting in \$1,170,300 in property damages. More recently, on July 6th, 2016, a new Plantation Pipeline leak was discovered in Goochland, VA, where the pipeline runs adjacent to Tuckahoe Creek.

33. In total, forty-nine incidents occurred along the Plantation Pipeline between 2006 and 2016, with five incidents involving more than fifty barrels of petroleum product. 11,139 barrels (467,838 gallons) were spilled from Louisiana to Virginia, causing \$22,298,444 in property damages.

34. Deferred maintenance may account for an increasing number of Kinder Morgan pipeline accidents along the Plantation Pipeline and across North America. The Pipeline and Hazardous Materials Safety Administration’s database indicates that faulty materials, welding, or equipment caused about 71% of incidents on the Plantation Pipeline in the last decade.

Corrosion caused 4% of failures, incorrect operation caused 16%, and weather events or outside forces caused only 8%.

35. Plantation has repeatedly delayed and violated deadlines for reports requested by DHEC regarding the Belton spill. The Corrective Action Plan was originally due on March 25, 2016. DHEC denied Plantation's request to extend the deadline, but after the date passed, DHEC and Plantation representatives met in person and arranged a new due date of September 5, 2016. The deadline for the Comprehensive Site Assessment was also pushed back six months. In addition, Plantation ignored DHEC's directive to submit a Pore Water Sampling Plan, originally due March 21, 2016. After Plantation missed the deadline, DHEC issued a *Notice of Alleged Violation* and stated that it would pursue an enforcement action if the new deadline of April 22, 2016 was not met. The day before this deadline, Plantation submitted a document explaining that they refuse to comply with the pore water sampling request. As set out above, Defendants delayed until August 2016 before testing for pollutants on the side of the stream where the spill occurred and where pollutants enter the stream.

36. A Corrective Action Plan has been made public and noticed for public comments. Public comments critical of the proposed Corrective Action Plan have been submitted to DHEC. Among other citizens and organizations, Anderson County Council has passed a resolution criticizing the weak Corrective Action Plan.

37. Among other things, the plan would allow Defendants to continue to pollute surrounding waterways; the plan does not require Defendants to continue to remove gasoline from the site; the plan does not require adequate monitoring; and the plan does not require so-called "biosparging" treatment to an adequate extent in the area where the contamination at the spill site originates.

JURISDICTION, NOTICE, AND VENUE

38. The Conservation Groups bring this enforcement action under the citizens' suit provision of the Clean Water Act, 33 U.S.C. § 1365. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and has jurisdiction over the parties. In compliance with 33 U.S.C. § 1365(b)(1)(A), and 40 C.F.R. § 135.2, on October 24, 2016, the Conservation Groups provided Defendants, the Administrator of the United States Environmental Protection Agency ("EPA"), and the South Carolina Department of Health and Environmental Control ("DHEC") with notice of the violations specified in this complaint and of its 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 A. More than sixty days have passed since the notice was served, and the violations identified in the notice letter are continuing at this time and are reasonably likely to continue in the future. Currently, neither EPA nor DHEC has commenced or is diligently prosecuting a civil or criminal action to redress the asserted violations.

39. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), 33 U.S.C. § 1365(c)(1), and Local Civil Rule 3.01(A)(1) DSC.

The Conservation Groups and Their Members

40. Upstate Forever is a § 501(c)(3) non-profit public interest organization headquartered in Greenville and operating throughout the Upstate of South Carolina, including Belton and Anderson County. Upstate Forever's vision for the Upstate of South Carolina, including Belton and Anderson County, is to be an environmentally healthy and economically prosperous region, with a high quality of life for all. Upstate Forever's mission is to promote sensible growth and protect special places in the Upstate region of South Carolina. Its goals are to develop clean water, healthy air and abundant green space across the entire Upstate;

encourage a pattern of development with reduced fiscal and environmental impacts; and support fully informed and engaged citizens throughout the region. It is a grassroots organization whose members support the mission of protecting the clean water, rivers, streams, communities, and lands of the Upstate of South Carolina, including Belton and Anderson County. Upstate Forever educates and advocates for the protection of the clean water and waterways of the Upstate of South Carolina.

41. Savannah Riverkeeper is a § 501(c)(3) non-profit public interest organization headquartered in Augusta, Georgia, and operating in the Savannah River Basin in South Carolina and Georgia, including Belton and Anderson County. The Savannah Riverkeeper serves as the primary guardian of the Savannah River striving to respect, protect, and improve the entire river basin through education, advocacy, and action. The Savannah Riverkeeper and its members share the commitment to creating a clean and healthy river that sustains life and is cherished by its people. The Savannah Riverkeeper strives to be an effective and sustainable organization solely focused on making the Savannah River a healthy and productive watershed, ensuring the natural, economic, and recreational viability of the basin as a whole now and for generations to come. The Savannah Riverkeeper works to restore water quality in the Savannah River and its lakes and tributaries to fully support the uses of fishing, swimming, drinking, recreation and habitat protection; to protect the Savannah River and its lakes and tributaries through the establishment of buffers and the use of best management practices for activities that affect water quality; and to educate the people of the Savannah River Basin by creating a culture of water quality protection, inspiring pride in water resources, and developing ways to protect those resources.

42. These Conservation Groups and their members have been harmed by Defendants' unpermitted discharges and illegal pollution of waterways from their pipeline spill. Their members recreate in the vicinity of and downstream from Defendants' pipeline spill. They fear contamination of wildlife and its habitat, river water, and drinking water by discharges and pollution from Defendants' pipeline spill containing gasoline, gasoline and petroleum contaminants, and other pollutants. Their members also own property near and downstream of Defendants' pipeline spill. Defendants' discharges of gasoline, gasoline and petroleum contaminants, and other contaminants from the pipeline spill are reducing the use and enjoyment by the Conservation Groups and their members of the polluted and downstream waterways, nearby lands, and their property.

43. Further, Upstate Forever owns and holds a conservation easement on property in the area. Upstate Forever is concerned about the effect of this spill and water pollution on this property and the environment of the area.

44. The waters that flow from, through, beneath, and beside the pipeline spill flow into Broadway Lake, Lake Secession, Lake Russell, and the Savannah River.

45. As set forth above, the Conservation Groups and their members have interests which have been and are adversely affected and irreparably harmed by Defendants' ongoing violations of the Clean Water Act. These actual and potential injuries have been and continue to be caused by the illegal discharges from Defendants' pipeline spill into waters of the United States, the Savannah River Basin, and Anderson County.

46. These injuries will not be redressed except by an order from this Court requiring Defendants to take immediate and substantial action to stop the flow of gasoline and gasoline

and petroleum contaminants into streams and waterways and to comply with the other relief sought in this action.

47. Moreover, this spill and Defendants' responsibility for the spill require that the Court impose substantial penalties against Defendants, as authorized by the Clean Water Act.

STATUTORY BACKGROUND

48. The objective of the Clean Water Act is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). To accomplish that objective, Congress set the national goal that “the discharge of pollutants into the navigable waters be eliminated.” *Id.* Accordingly, Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source to waters of the United States except in compliance with, among other conditions, a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to 33 U.S.C. § 1342.

49. Defendants do not have an NPDES permit to authorize any of the discharges from the Plantation Pipeline that are described in this Complaint.

50. Each discharge of a pollutant that is not authorized by a permit is a violation of the Clean Water Act. 33 U.S.C. §§ 1311(a); 1342(a); 1365(f).

51. The Clean Water Act defines a “point source” as “*any* discernable, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14) (emphasis added). This definition is intended to be broad and encompasses the discharge of pollutants from pipelines and spill sites.

52. In addition, a “point source need not be the original source of the pollutant; it need only convey the pollutant to ‘navigable waters.’” *S. Fla. Water Mgmt. Dist. v. Miccosukee*

Tribe of Indians, 541 U.S. 95, 105 (2004); accord *W. Va. Highlands Conservancy, Inc. v. Huffman*, 625 F.3d 159, 168 (4th Cir. 2010) (permits are required for discharges from point sources that “merely convey pollutants to navigable waters”). This includes unintentional conveyance of pollutants, for example, through naturally-formed ditches, gullies, or fissures. See *United States v. Earth Scis. Inc.*, 599 F.2d 368, 374 (10th Cir. 1979) (holding unintentional discharges of pollutants from a mine system designed to catch runoff from gold leaching site during periods of excess melting met the statutory definition of a point source); *O’Leary v. Moyer’s Landfill, Inc.*, 523 F. Supp. 642, 655 (E.D. Pa. 1981) (intent of the discharging entity is irrelevant).

53. The illegal discharges from the Plantation Pipeline contain elevated concentrations of pollutants, including benzene, ethylbenzene, toluene, xylenes, naphthalene, and MTBE.

54. Gasoline and gasoline and petroleum contaminants continue to pollute the site adjacent to wetlands and two creeks—Browns Creek and Cupboard Creek—and groundwater near and around the site of the spill. The gasoline, gasoline and petroleum contaminants, seeps, and the groundwater flow directly into wetlands and the streams. Contamination has been confirmed in Browns Creek.

55. The pollutants are flowing into the waterways of Anderson County and the Savannah River Basin, which are waters of the United States, through seeps, flows on the land, fissures, and channels.

56. The ruptured pipeline, the area soaked with and contaminated by Defendants’ leaked gasoline and petroleum products (hereinafter, the “Spill Site” or “Spill Area”), and the seeps, flows, fissures, and channels are point sources that continue to discharge pollution into

surface water and wetlands in violation of the Clean Water Act. Further, Defendants' pipeline and the Spill Site are contaminating groundwater, which is closely hydrologically connected to the surface water and wetlands and which is conveying Defendants' petroleum pollution to the surface water and wetlands, in violation of the Clean Water Act.

57. EPA has stated repeatedly that the Clean Water Act applies to such hydrologically-connected groundwater discharges. 66 Fed. Reg. 2960, 3015 (Jan. 12, 2001) (“EPA is restating that the Agency interprets the Clean Water Act to apply to discharges of pollutants from a point source via ground water that has a direct hydrologic connection to surface water.”); *accord* 56 Fed. Reg. 64876-01, 64892 (Dec. 12, 1991) (“the Act requires NPDES permits for discharges to groundwater where there is a direct hydrological connection between groundwaters and surface waters.”); 55 Fed. Reg. 47990, 47997 (Nov. 16, 1990); U.S. EPA, Report on Hydrological Connection Associated with MolyCorp Mining Activity, Questa, New Mexico, at 3 (Feb. 13, 1998). As a result, EPA has identified and regulated as point sources conduits or contaminated areas that convey pollutants into groundwater that discharge directly to a neighboring surface water—precisely the situation here.

58. In addition to EPA, “courts . . . have held that groundwaters that are hydrologically connected to surface waters are regulated waters of the United States, and that unpermitted discharges into such groundwaters are prohibited under section 1311.” *Williams Pipe Line Co. v. Bayer Corp.*, 964 F. Supp. 1300, 1319 (S.D. Iowa 1997).

59. These rulings include three recent decisions of United States District Courts in the Fourth Circuit. *Sierra Club v. Virginia Elec. & Power Co.*, 145 F. Supp. 3d 601, 607-08 (E.D. Va. 2015); *Yadkin Riverkeeper*, 141 F. Supp. 3d 428, 445 (M.D.N.C. 2015); *Ohio Valley Envtl.*

Coal. Inc. v. Pocahontas Land Corp., No. CIV.A. 3:14-11333, 2015 WL 2144905, at *8 (S.D.W. Va. May 7, 2015).

60. Numerous courts nationwide support this reasoning. *See, e.g., Waterkeeper All., Inc. v. U.S. E.P.A.*, 399 F.3d 486, 515 (2d Cir. 2005) (upholding EPA’s case-by-case approach to regulating feedlot pollutant discharges to surface waters through connected groundwater); *Quivira Mining Co. v. U.S. EPA*, 765 F.2d 126, 130 (10th Cir. 1985) (finding CWA coverage where discharges ultimately affected navigable-in-fact streams via underground flows); *San Francisco Herring Ass’n v. Pac. Gas & Elec. Co.*, 81 F. Supp. 3d 847, 863 (N.D. Cal. 2015) (CWA jurisdiction over pollutant discharges through groundwater conduit to navigable waters).

61. The pipeline, the Spill Site, and the seeps, flows, fissures, and channels are continuing discharges because gasoline and gasoline and petroleum pollutants remain in the environment and continue to reach surface water and wetlands—directly and through hydrologically connected groundwater. *See Am. Canoe Ass’n v. Murphy Farms*, 412 F.3d 536, 539 (4th Cir. 2005) (finding continuous violation even where defendant took remedial efforts because the efforts were insufficient to eliminate the “continuing likelihood of recurrence” of violations); *Ohio Valley Env’tl. Coal.* 984 F. Supp. 2d at 598 (“One may continue to be in violation of the Clean Water Act even if the activities that caused the violations have ceased”); *North Carolina Wildlife Fed’n v. Woodbury*, No. 87-584-CIV-5, 1989 WL 10517, at *2-*3 (E.D.N.C. Apr. 25, 1989) (holding that a tract with unremediated dredged and fill material was a continuing discharge).

62. Accordingly, Defendants’ unpermitted discharges from the Plantation Pipeline, the Spill Site, and the seeps, flows, fissures, and channels that are discharging contaminated

pollutants directly and via groundwater into Browns Creek, adjacent wetlands, and other downstream waters are ongoing violations of the Clean Water Act.

VIOLATIONS AND CLAIMS FOR RELIEF

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

I. Unauthorized Discharges of Point Source Pollution to Waters of the United States

A. Discharges from the Pipeline, the Spill Site, and from Seeps, Flows, Fissures, and Channels

64. Defendants have no Clean Water Act permit for their discharges of gasoline, gasoline and petroleum contaminants, and other pollutants into the stream system, waters of the United States, Anderson County waters, and waters of the Savannah River Basin in Belton, South Carolina, in the area where the spill occurred.

65. The pipeline, the Spill Site, and the seeps, flows, fissures, and channels through which pollutants and contaminants flow into the streams and waterways are all unpermitted point sources under the Clean Water Act.

66. This ongoing unpermitted pollution of the stream system, waters of the United States, Anderson County waters, and waters of the Savannah River Basin in Belton, South Carolina, in the area where the spill occurred violates the Clean Water Act.

B. Discharges through Hydrologic Flow into Anderson County and Savannah River Basin Waters

67. Unpermitted discharges of pollutants via hydrologically connected groundwater to surface waters of the United States violate the Clean Water Act.

68. As discussed above, the Clean Water Act prohibits “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12)(A). “[T]he touchstone for

finding a point source is the ability to identify a discrete facility from which pollutants have escaped.” *Wash. Wilderness Coal. v. Hecla Mining Co.*, 870 F. Supp. 983, 987 (E.D. Wash. 1994).

69. Because there is a direct hydrologic connection between the pipeline, the Spill Site, and the stream system that they are polluting, Defendants’ discharges of pollutants from the pipeline and the Spill Site via the groundwater to the stream system, waters of the United States, Anderson County waters, and waters of the Savannah River Basin are unauthorized point sources that violate the Clean Water Act.

70. All the violations of the Clean Water Act alleged above are continuing violations.

PRAYER FOR RELIEF

WHEREFORE, the Conservation Groups respectfully request that this Court:

A. Issue a declaratory judgment stating that Defendants are violating the Clean Water Act with their ongoing unpermitted discharges of gasoline, gasoline and petroleum contaminants, and other pollutants into the stream system near Lewis Drive in Belton, South Carolina, into waters of the United States, into Anderson County surface waters, and into the waters of the Savannah River Basin;

B. Enter appropriate preliminary and injunctive relief to ensure that Defendants:

- i. Prevent the flow of gasoline, gasoline and petroleum contaminants, and other pollutants into the stream system and adjacent wetlands;
- ii. Prevent the flow of contaminated groundwater into the stream system and adjacent wetlands;

- iii. Remove all existing free product gasoline from the Spill Site and groundwater using all technically feasible methods, and continue to do so while other treatment methods are employed;
 - iv. Continue free product removal and treatment of the Spill Site until gasoline, gasoline and petroleum contaminants, and other pollutants from the spill cease to flow into the stream system, Anderson County waters, and waters of the Savannah River Basin, and until gasoline and gasoline and petroleum contaminants are not detectable in the stream system;
 - v. Install biosparging wells at the source of contaminants at the Spill Site, not only near the stream itself, in order to treat the contaminants before they reach the stream;
 - vi. Conduct regular and adequate testing at the stream interface with the Spill Site and the groundwater, including pore water testing, testing of seeps, and testing of surface water at the stream side nearest to where the gasoline and gasoline and petroleum contaminants enter the stream; and
 - vii. Eliminate and remove gasoline and gasoline and petroleum pollutants from the stream system.
- C. Assess civil penalties against Defendants of up to \$37,500 per violation per day for the period through November 2, 2015, and \$51,570 per violation per day for the period after November 2, 2015 pursuant to 33 U.S.C. §§ 1319(d), 1365(a), and 81 Fed. Reg. 43091, 43095 (July 1, 2016) (to be codified at 40 C.F.R. pt. 19);
- D. Award the Conservation Groups the costs of this action, including reasonable attorney and expert fees, as authorized by 33 U.S.C. § 1365(d); and

E. Grant the Conservation Groups such further and additional relief as the Court deems just and proper.

THE PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY

This the 28th day of December, 2016.

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