

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

OGEECHEE-CANOOCHEE
RIVERKEEPER, INC.,

Plaintiff,

v.

KING AMERICA FINISHING, INC.,

Defendant.

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CIVIL ACTION NO.

JURY TRIAL DEMANDED

CV 6 1 2 - 5 8

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

COMES NOW, OGEECHEE-CANOOCHEE RIVERKEEPER, INC.,
(hereinafter "Plaintiff" or "the Riverkeeper") and submits the following Complaint
for Damages and Injunctive Relief showing the Court as follows:

JURISDICTION, VENUE AND NOTICE

1.

This action is brought pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.* Thus, this Court has subject matter jurisdiction over this action under the provisions of § 505 of the Federal Water Pollution Control Act Amendment of 1972 (hereinafter the "Clean Water Act" or "CWA"), 33 U.S.C. § 1365(a)(1), and pursuant to 28 U.S.C. § 1331 (federal question).

2.

This Court also has subject matter jurisdiction over pendant state statutory and common law claims pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction).

3.

The CWA claims in this action are brought by Plaintiff as a private attorney general for past and ongoing violations of the CWA. Under the CWA, Plaintiff seeks civil penalties, injunctive relief, attorneys' fees, and costs and expenses of litigation. Plaintiff also asserts pendant state law and common law claims arising from the same actions and/or omissions giving rise to the federal claims seeking compensatory damages, special damages, punitive damages, injunctive relief, attorneys' fees, and costs and expenses of litigation as well as any other relief this Court deems just and equitable.

4.

There are no pending actions that defeat this Court's subject matter jurisdiction.

5.

A substantial part of the alleged events or omissions giving rise to Plaintiff's claims occurred and continue to occur in Screven County, Georgia within the Southern District of Georgia – Statesboro Division. Venue lies in this District

because the claims arose in this district, as provided by 28 U.S.C. § 1391, and because the discharges occurred and continue to occur in this district pursuant to CWA, 33 U.S.C. § 1365(c)(1).

6.

Pursuant to Section 505 of the CWA, 33 U.S.C. §1365(b), Plaintiff has provided Defendant with the requisite pre-compliant notification. Specifically, on or about July 27, 2011, Plaintiff mailed to Defendant the required Notice of Intent to Sue letter (“Notice Letter”), pursuant to CWA § 505, 33 U.S.C. § 1365(b), and provided a copy of the Notice Letter to the Administrator and the Regional Administrator of EPA, the Director of the Georgia Environmental Protection Division, and the President and Registered Agent of Defendant’s parent company, Westex, Inc. Defendant received the Notice Letter as evidenced by the return postage receipt. True and correct copies of the Notice Letter and return receipt are attached hereto and incorporated herein in their entirety by reference. *See Exhibit A.* The purpose of providing Defendant with notice of Plaintiff’s intent to file suit is to provide Defendant an opportunity to come into compliance without the need for litigation.

7.

To date, Defendant has refused and failed to cease the CWA violations and remedy the damage describe herein as well as abate the nuisances and trespasses or otherwise correct the problems within the sixty day period.

PARTIES

8.

Plaintiff Ogeechee-Canoochee Riverkeeper, Inc. (“Plaintiff” or “the Riverkeeper” or “Ogeechee Riverkeeper”) is a Georgia non-profit corporation with its principal office located in Statesboro, Georgia. The Riverkeeper’s members recreate in/on and derive aesthetic enjoyment from the Ogeechee River.

9.

Petitioner Ogeechee Riverkeeper is a not-for-profit corporation organized and existing under the laws of the State of Georgia. The Riverkeeper’s principal place of doing business is in Bulloch County, Georgia. The Riverkeeper is a non-profit environmental organization. From its establishment in 2005, the Riverkeeper’s mission has been to protect and preserve the Ogeechee, Canoochee and coastal rivers. The Riverkeeper’s 1400 members use, enjoy, recreate, work and reside near, as well as derive aesthetic enjoyment from, the waters, adjacent habitat, and dependent aquatic life and wildlife in and along the Ogeechee River,

which have been and are continuing to be damaged by the Defendant's discharge of pollutants complained of herein. The Riverkeeper and its members have recreational, aesthetic and economic interests in the Ogeechee River and its fish and other wildlife, which are and will be directly and irreparably injured by the degradation of these areas. Numerous individuals who are members of the Riverkeeper reside on or very near the River such that the River is an everyday part of their personal lives. Numerous other individuals who are members of the Riverkeeper have business or financial interests directly tied to the River such that the actions of defendant have threatened their livelihood.

10.

The Riverkeeper brings this action on behalf of itself and its members who have been injured by Defendants' failure to comply with federal and state laws as well as local ordinances governing the discharge of pollutants into a water of the United States without a permit. The Riverkeeper is a "citizen" pursuant to the Clean Water Act, capable of bringing a citizen suit under the citizen suit provisions of the Clean Water Act, 33 U.S.C. § 1365. Plaintiff and its members have suffered damage and continue to suffer damage as a result of Defendants' actions and/or omissions described in this Complaint.

11.

Defendant King American Finishing, Inc. (“KAF”) is a Foreign Corporation with its principal place of business in Chicago, Illinois, that conducts and transacts business in Screven County, Georgia. Defendant KAF is, or was at times relevant to this Complaint, an owner and/or operator of a woven fabric finishing facility located on the Ogeechee River, which is a source of pollutants flowing into jurisdictional waters, including the Ogeechee River. Defendant KAF is responsible for the activities at its finishing facility (“Facility”) which have and continue to result in violations of federal and state law governing the discharge of pollutants into waters of the United States. Service may be perfected on Defendant pursuant to Federal Rule of Civil Procedure 4 by serving its registered agent, CT Corporation System, 1201 Peachtree Street, N.E., Atlanta, Georgia 30361.

FEDERAL STATUTORY AND REGULATORY FRAMEWORK

12.

In 1972, Congress passed the Clean Water Act “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. §1251(a). To achieve this objective, Section 301 of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any “pollutant” into “waters of the United States” except in accordance with water quality standards promulgated and permits

issued under other sections of the CWA. Generally, the Clean Water Act prohibits the discharge of pollutants into jurisdictional waters without a properly issued and valid permit or in violation of the terms and conditions of a properly issued and valid permit. *See* CWA §§ 301, 402 and 404; 33 U.S.C. §§ 1311, 1342 and 1344.

13.

Section 402 of the CWA establishes the National Pollutant Discharge Elimination System (“NPDES”) permit program, which prohibits the discharge of pollutants from a point source into waters of the United States without an NPDES permit or in violation of an NPDES permit. 33 U.S.C. § 1342. CWA section 502(14) defines “point source” to include, *inter alia*, “any pipe....from which pollutants are or may be discharged.” 33 U.S.C. 1362(14).

14.

The Administrator of the Environmental Protection Agency (the “EPA”) has initial authority to issue permits, but the Clean Water Act likewise provides for the delegation of permitting to the States. 33 U.S.C. §1342(a),(b). Accordingly, each state may establish and administer its own permitting program. *See id.* Georgia has a delegated program. In Georgia, Section 402 permits (commonly referred to as NPDES Permits) are issued by the Georgia Department of Natural Resources,

Environmental Protection Division (“EPD”) or pursuant to agreement with EPD, by a Local Issuing Authority (“LIA”).

15.

Pursuant to delegated authority, the State Environmental Protection Division (“EPD”) issued Permit No. GA0003280 (“Permit”) to King America Finishing, Inc., allowing for the discharge of specific pollutants in regulated concentrations into the Ogeechee River at Outfall 001.

16.

King America’s permission to discharge under Permit GA0003280 is contingent upon its compliance with the federal water quality standards at CWA 307(a), 33 U.S.C. 1317(a), and state water quality standards at Ga. Comp. R. & Regs. 391-3-6-.03(5).

17.

The King America Permit contains technology-based limitations, water quality-based effluent limitations, monitoring requirements, and reporting requirements.

18.

Technology-based limitations were promulgated for the fabric finishing industry, to which King America belongs, at 40 C.F.R. 410.40-.47. These

limitations are required to be included in the Permit. CWA 301(b), 33 USC 1311(b); see 40 CFR 125.3.

19.

Water quality-based effluent limitations are incorporated into NPDES permits if technology-based limitations alone are not sufficient to ensure compliance with applicable water quality standards. 33 USC 1311(b)(1)(C), 1312(a), 1313(e)(3)(A); 40 CFR 122.44(d).

20.

The purpose of a water quality standard, as defined in the Clean Water Act, is to ensure that, wherever attainable, water quality provides for the protection and propagation of fish, shellfish, and wildlife, and provides for recreation in and on the water. 33 USC 1251(a)(2).

21.

Water quality standards are established for waters taking into consideration their use and value for public water supplies, propagation of fish and wildlife; and recreational purposes, among other uses. 33 USC 1313(e)(2)(A).

22.

The Ogeechee River has been designated a “fishing” river by the State of Georgia, which affords it certain additional protections under the law. Ga. Comp.

R. & Regs. 391-3-6-.03(6)(c)(14). The actions of defendant have substantially interfered with this designated use.

23.

Georgia water quality standards require that “[a]ll waters shall be free from material related to municipal, industrial, or other discharges which produce turbidity, color, odor or other objectionable conditions which interfere with legitimate water uses.” Ga. Comp. R. & Regs. 391-3-6-.03(5)(c).

24.

All NPDES permits must include limitations necessary to comply with water quality standards developed by the states. 33 USC 1311(b)(1)(C), 1313 (e)(3)(A).

25.

Section 307(a) of the CWA also provides effluent standards or prohibitions for toxic priority pollutants for all sources discharging into waters of the United States. 33 USC 1317(a).

26.

King America’s Permit mandates numeric effluent discharge limitations for Flow, Biochemical Oxygen Demand (BOD5), Chemical Oxygen Demand (COD), Total Suspended Solids (TSS), Sulfide, Total Phenols, Total Chromium, Dissolved Oxygen, and pH.

27.

The Permit includes standards or prohibitions on toxic priority pollutants.

28.

The Permit includes EPA's performance standards for members of the Woven Fabric Finishing industry.

29.

The Permit includes effluent standards or prohibitions mandated by state water quality standards.

30.

The Permit states that the permittee "may not discharge toxic pollutants in concentrations or combinations that are harmful to humans, animals, or aquatic life."

31.

Failure to obtain a permit for a discharge or to comply with a validly issued permit is a violation of the Clean Water Act.

STATEMENT OF FACTS

32.

The facility at issue is a woven fabric finishing facility located at Georgia Highway 17, Dover, Screven County, Georgia.

33.

On September 29, 2000, National Pollutant Discharge Elimination System permit number GA0003280 (hereinafter "Permit") was issued to King Finishing Company, Division of Spartan Mills.

34.

On December 12, 2001, that Permit was transferred to King America Finishing, Inc.

35.

On August 30, 2005, the Permit was administratively extended by the Director.

36.

King America's permit renewal application of October 28, 2005, disclosed the presence of formaldehyde only in trace amounts of chemicals and dyes.

37.

On December 28, 2005, EPD issued Air Permit Amendment number 2261-251-0008-V-02-3 to King America authorizing the construction and operation of two flame retardant fabric finishing lines.

38.

In April 2006, without requesting or obtaining any sort of NPDES permit or NPDES permit amendment and without notifying EPD as is required by the "Georgia Water Quality Control Act of 1964," (O.C.G.A. § 12-5-20 *et seq.*), King America began operating the two flame retardant fabric finishing lines and discharging the wastewater from these new lines into the facility's wastewater treatment system.

39.

At least since April 2006, King America has been continuously discharging pollutants into the Ogeechee River without a permit.

40.

Pollutants being discharged without a permit into the Ogeechee River from the flame retardant fabric finishing lines include, but are not limited to formaldehyde, ammonia, and color.

41.

In addition to having an un-permitted production line illegally discharging wastewater, King America violated the terms of its existing permit numerous times.

42.

As a result of King America's failure to provide proper operation and maintenance to its wastewater treatment system, resulting in effluent exceedances for pH in February, May, and December 2003, April and August 2004, January and May 2005, June 2006, and June and July 2007 in violation of the Permit, EPD and King America entered into a Consent Order EPD-WS-2710 on April 13, 2009.

43.

Despite this consent order, King America continued to violate effluent limitations in its permit.

44.

The facility has discharged and continues to discharge color in its effluent in violation of Georgia water quality standards and its permit, with documented high color discharges on dates including, but not limited to, June 4-5, 2007; July 30, 2007; August 4, 2007; December 17, 2007; July 8, 2008; April, May, and June, August, October, and December, 2009; January, March, April, May, June, July, August, September, October, November and December, 2010; and January, February, and March, 2011. On information and belief, these color discharge exceedences have continued through 2011 and are continuing in 2012.

45.

In May 2010, the facility exceeded effluent limitations for Total Phenols in violation of the Permit.

46.

In June 2010, the facility exceeded effluent limitations for Total Suspended Solids and pH in violation of the Permit.

47.

In December 2010, the facility exceeded effluent limitations for Biochemical Oxygen Demand in violation of the Permit.

48.

In January 2011, the facility exceeded effluent limitations for Biochemical Oxygen Demand and pH in violation of the Permit.

49.

The facility exceeded effluent limitations for pH in violation of the Permit again in February and June 2011.

50.

The facility has discharged ammonia in high levels, in violation of state water quality standards, on dates including, but not limited to 2007 and 2011.

51.

The various discharged pollutants combine with other chemicals in the waste water treatment process and in the river to create other toxic hazardous compounds that are hazardous to human health.

52.

On May 20, 2011, EPD was notified of a fish kill in the Ogeechee River and twice attempted to contact King America's emergency contact telephone but received no answer.

53.

Following EPD's notification, on May 21, 2011, the Wildlife Resources Division investigated the fish kill and saw dead fish of a wide variety of species and sizes beginning 50 yards below King America's effluent pipe.

54.

There were no dead fish observed above King America's effluent pipe.

55.

On May 22, 2011, the Environmental Protection Agency took sediment, surface water, and fish tissue samples for testing which showed the presence of formaldehyde and ammonia in the surface water and formaldehyde in the sediment.

56.

On May 24, 2011, EPD announced that testing had shown that the fish died from severe bacterial infections induced by environmental stress.

57.

As a result of its investigations into the fish kill in May, 2011, EPD discovered that King America was discharging waste water from its flame retardant fabric finishing lines, without a permit.

58.

On June 16, 2011, following further monitoring and inspections, EPD required that King America conduct additional sampling of the effluent and submit a permit application for the discharges by August 12, 2011.

59.

On August 12, 2011, King America submitted an application for the re-issuance of its Permit, which included a description of changes to the facility since the initial permit was issued in 2000, including the addition of the flame retardant fabric finishing lines.

60.

King America and EPD negotiated the terms of a Consent Order without public notice, comment, or other involvement.

61.

On September 21, 2011, the Director fully executed the Consent Order at issue.

62.

Although EPD was requiring that King America apply for a new permit for the waste water discharges from the flame retardant fabric finishing lines, the Consent Order did not require that King America discontinue the unpermitted discharges into the Ogeechee pending the issuance of a revised permit.

63.

This failure to require the cessation of the unpermitted discharges pending the issuance of a permit reveals that EPD had no intention of objectively considering whether it should issue the permit, or at what levels it should allow the discharges to occur under a permit.

64.

This Consent Order was not sent out for public notice or comment, and members of the public, including the Riverkeeper and its members, were shut out of the process.

65.

Even after the state's intervention, King America has continued to discharge pollutants into the Ogeechee River without a permit and in violation of the existing permit. Such unpermitted discharges are illegal under the CWA, which requires a NPDES permit for any discharge of a pollutant into waters of the United States.

66.

As a result of the continued discharges, there was another smaller fish kill immediately at and below King America's discharge pipes on or about May 23, 2012.

67.

As a further result of the continued discharges, there were reports of red colored discharges, and a blistered, dead catfish on or around July 4, 2012, that prompted EPD to issue yet another advisory for people not to fish or swim in the Ogeechee until further notice.

68.

Despite this second fish kill and the other telling signs of ongoing pollution, Defendant continues to discharge pollutants without a permit and in violation of its permit. These unpermitted discharges are ongoing as of the time of the filing of this Complaint.

GENERAL ALLEGATIONS

69.

Prior to filing this lawsuit, Plaintiff complained to Defendant about the unauthorized discharge of pollutants into the Ogeechee River, including specifically but not limited to formaldehyde, ammonia, pH, and color.

70.

Prior to filing this lawsuit, Plaintiff complained to Defendant that the discharges of pollutants are illegal and interfere with their rights.

71.

Defendant failed or refused to conform its behavior and abate the discharges of pollutants described herein.

72.

The pollutants discharged from Defendant's facility substantially impair the Riverkeeper's and its members' use and enjoyment of the Ogeechee River and interfere with their legitimate uses of the River.

73.

The Riverkeeper has incurred substantial cost and has spent a considerable amount of time performing investigations into the facts of the discharge of pollutants into the Ogeechee River, testing the effluent and the downstream water

quality, testing fish tissue for toxins, responding to public and member outcry over the disastrous fish kill, and conducting other related research and outreach efforts as a direct result of Defendant's illegal discharges.

74.

Defendant has failed or refused to abate Plaintiff's and its members' losses, damage and injury caused by the discharges of pollutants into the Ogeechee River.

75.

At all times relevant hereto, Defendant was and is responsible for complying with all applicable federal, state and local legal requirements concerning the discharge of pollutants into the Ogeechee River.

76.

At all times relevant hereto, it was foreseeable to Defendant that its discharge of pollutants into the Ogeechee River could harm the river, Plaintiff and/or Plaintiff's members.

77.

The Ogeechee River and Plaintiff's and its members' interests continue to be damaged by Defendant's discharges of pollutants.

78.

Plaintiff's remedies at law are inadequate to stop the continuing discharges by Defendant.

79.

Plaintiff continues to suffer irreparable injury as a result of the discharges of Defendant's pollutants into the Ogeechee River.

**COUNT ONE - VIOLATION OF THE CWA-UNPERMITTED
DISCHARGES**

80.

Paragraphs 1 through 79 are hereby incorporated by reference as if rewritten in their entirety.

81.

Section 301 of the Clean Water Act prohibits the discharge of pollutants into waters of the United States, except as otherwise expressly authorized by the Act. 33 U.S.C. § 1311(a).

82.

Section 505(a)(1) of the Clean Water Act authorizes citizens to commence a civil action against entities who are alleged to be in violation of a CWA effluent standard or limitation. 33 U.S.C. § 1365(a)(1).

83.

Effluent standard or limitation includes a permit or condition thereof issued under Section 402 of the CWA. 33 U.S.C. § 1365(f)(6).

84.

Section 402 of the Clean Water Act prohibits the discharge of pollutants from a point source into waters of the United States without a National Pollutant Discharge Elimination System (“NPDES”) permit or in violation of an NPDES permit. 33 U.S.C. § 1342.

85.

Beginning in or around 2006, King America commenced discharging industrial waste water into the Ogeechee River from two processing lines, which contained at least three pollutants: ammonia, formaldehyde, and hydrogen peroxide.

86.

Formaldehyde and ammonia are both recognized pollutants under the CWA, such that it is illegal to discharge them into waters of the United States without a permit.

87.

Upon information and belief, King America discharged these pollutants illegally every day for the last 5 years. Each daily discharge of each pollutant constitutes an individual illegal discharge subjecting King America to civil penalties of \$37,500 per discharge per day.

COUNT TWO – VIOLATIONS OF THE CLEAN WATER ACT --
GEORGIA WATER QUALITY STANDARDS

88.

Paragraphs 1 through 87 above are herein incorporated by reference as if rewritten in their entirety.

89.

Georgia's state water quality standards require that "[a]ll waters shall be free from material related to municipal, industrial or other discharges which produce turbidity, color, odor or other objectionable conditions which interfere with legitimate water uses." Ga. Comp. R. & Regs. 391-3-6-.03(5)(c).

90.

Defendant's ongoing discharges of colored effluent from its facility interfere with fish propagation and with the health and viability of other wildlife, in violation of the Georgia water quality standards.

91.

Defendant has failed or refused to utilize available technologies to adequately treat the discharge effluent so that it does not discolor the Ogeechee River.

92.

Defendant has failed to adequately monitor and report its violations of color discharges as required by law.

93.

Defendant's violations of state water quality standards for color discharges constitute violations of the NPDES permit under the Clean Water Act.

94.

Georgia's state water quality regulations mandate that pH must be within the range of 6.0 – 8.5 for rivers, specifically including the Ogeechee River, with a designated use of "fishing." Ga. Comp. R. & Regs. 391-3-6-.03(6)(c)(ii); 391-3-6-.03(14).

95.

Defendant's continuing violations of the pH limitation are illegal, are harmful to humans, animals, and aquatic life, and caused and/or contributed to the fish kills in May, 2011, and May, 2012.

96.

Defendant continues to discharge effluent with pH greater than 8.5.

97.

Defendant has failed to adequately monitor and report its violations of pH as required by law.

98.

Defendant's violations of state water quality standards for pH constitute violations of the NPDES permit under the Clean Water Act.

99.

Georgia state water quality standards mandate that all waters shall be "free from toxic, corrosive, acidic and caustic substances discharged from municipalities, industries or other sources, such as nonpoint sources, in amounts, concentrations or combinations which are harmful to humans, animals or aquatic life." Ga. Comp. R. & Regs. 391-3-6-.03(5)(e).

100.

Defendant has discharged ammonia, a toxic substance, in dangerously high concentrations into the Ogeechee River, in violation of state water quality standards.

101.

The ammonia discharges are harmful to humans, animals, and aquatic life, and caused and/or contributed to the fish kills in May, 2011, and May, 2012.

102.

Defendant continues to discharge ammonia in toxic levels.

103.

Defendant has failed to adequately monitor and report its violations of ammonia discharges as required by law.

104.

Defendant's violations of state water quality standards for ammonia discharges constitute violations of the NPDES permit under the Clean Water Act.

105.

Defendant has discharged formaldehyde, a caustic and toxic substance known to be a human carcinogen, in dangerously high concentrations into the Ogeechee River, in violation of state water quality standards.

106.

The formaldehyde discharges are harmful to humans, animals, and aquatic life, and caused and/or contributed to the fish kills in May, 2011, and May, 2012.

107.

Defendant continues to discharge formaldehyde in harmful amounts.

108.

Defendant has failed to adequately monitor and report its violations of formaldehyde discharges as required by law.

109.

Defendant's violations of state water quality standards for formaldehyde discharges constitute violations of the NPDES permit under the Clean Water Act.

110.

Defendant failed to notify the state in its NPDES permit fact sheets, in its applications for permit renewals, or in any other manner, that it had installed flame retardant process lines, and that its wastewater was therefore regulated, or should have been regulated, for the chemicals in that effluent.

111.

Defendants have failed to design, install and maintain Best Available Technology in order to meet the state and federal water quality control standards.

112.

Said violations have had and continue to have significant detrimental effects on the quality of waters of the United States into which they flow.

113.

The aforementioned Defendant's complete and knowing disregard for the requirements of the CWA and the General Permits indicates that it derives economic benefit from violating the law.

114.

Defendant will continue these violations until it is no longer economically advantageous for it to do so.

115.

In light of the foregoing, the CWA entitles the Plaintiff to injunctive relief by an Order of this Court that requires Defendant to remove or otherwise remedy the discharges and damage to waters of the United States by, *inter alia*:

- (A) enjoining any further violations of the CWA by the Defendant, including the discharge of pollutants into waters of the United States;
- (B) ordering Defendant to immediately change practices and conditions at its facility so as to cease violations of the CWA and all applicable state laws;
- (C) ordering Defendant to restore the physical, biological and ecological integrity of the impacted jurisdictional waters;

- (D) ordering all impacted jurisdictional waters be restored and/or remediated;
- (E) ordering any further relief this Court finds just and equitable.

116.

In light of the foregoing, the CWA also entitles Plaintiff to judgment against the Defendant requiring Defendant to pay civil penalties for the CWA violations, in an amount not to exceed thirty-seven thousand five hundred dollars (\$37,500) per day per violation, injunctive relief as specified herein, and payment of Plaintiff's litigation costs, including Plaintiff's reasonable attorneys' fees, expert witness fees, and expenses.

COUNT THREE - INJUNCTIVE RELIEF

117.

Paragraphs 1 through 116 are hereby incorporated by reference as if rewritten in their entirety.

118.

Plaintiff seeks a preliminary injunction seeking immediate injunctive relief necessary to prevent further irreparable harm to humans, the environment, wildlife, aquatic life and habitat.

119.

Plaintiff is entitled, under this Court's powers of equity, and the CWA to a preliminary injunction requiring that Defendants:

- (A) Cease the unpermitted discharge of effluent from its previously undisclosed fire retardant lines;
- (B) Disclose the full array of chemicals, toxins, and other constituent pollutants in the effluent from the fire retardant lines;
- (C) Immediately employ all necessary control technology to prevent continuing formaldehyde discharges into the Ogeechee River;
- (D) Immediately employ all necessary control technology to prevent continuing color discharges into the Ogeechee River;
- (E) Immediately employ all necessary control technology to prevent continuing ammonia discharges into the Ogeechee River;
- (F) Immediately employ all necessary control technology to prevent the ongoing pH exceedences in the effluent discharged into the Ogeechee River;
- (G) Employ all other necessary temporary measures to prevent further damage to all adjacent and downstream jurisdictional waters.

120.

In addition, Plaintiff seeks permanent injunctive relief requiring Defendant to restore and remediate the Ogeechee River and to effectuate changes to its facility's manufacturing or wastewater processing practices which are necessary to prevent further harm to the Ogeechee River, Plaintiff, and Plaintiff's members.

121.

Plaintiff is entitled, under this Court's powers of equity, and the CWA to a permanent injunction:

- (A) enjoining any further violations of the CWA by the Defendant, including the discharge of pollutants into waters of the United States in violation of federal and state laws and regulations;
- (B) ordering Defendant to immediately change practices and conditions at its facility so as to cease violations of the CWA, all applicable state laws, and its NPDES permit;
- (C) ordering Defendant to refrain from processing materials on its fire retardant lines unless or until the EPD has finalized a valid NPDES permit that includes specified limitations on the discharge of pollutants from those lines, including specifically for formaldehyde, ammonia, and color;

- (D) ordering Defendant to restore the physical, biological and ecological integrity of the impacted Ogeechee River;
- (E) ordering that all future production in the facility be carried out in strict compliance with all applicable laws;
- (F) ordering any further relief this Court finds just and equitable.

WHEREFORE, Plaintiff requests that:

- (A) service of process issue as authorized by law;
- (B) this Court temporarily and permanently enjoin the Defendant from committing any further violations of the CWA or other applicable laws;
- (C) this Court order Defendant to immediately change facility practices and conditions so as to cease all violations of the CWA, the Georgia Water Quality Control Act, and all applicable regulations;
- (D) this Court order the Defendant to restore the physical, biological and ecological integrity of the Ogeechee River;
- (E) this Court order specific remediation measures which must be undertaken to cease all violations and to restore the Ogeechee River,

in particular, the fish populations that suffered from the May, 2011, and May, 2012, fish kill events;

- (F) this Court require the design and installation of adequate control technology to abate the continuing discharges of pollutants;
- (G) this Court award Plaintiff actual damages from the Defendant, as determined at trial;
- (H) this Court, in issuing any final order in this action, order an award of litigation costs, including reasonable attorneys' fees and expert witness fees, to Plaintiff pursuant to 33 U.S.C. § 1365(d);
- (I) that Plaintiff be afforded its right to trial by jury;
- (J) that Plaintiff have such other and further relief as this court deems just and equitable.

Respectfully submitted this 23rd day of July, 2012.

____s/ **Donald D. J. Stack, Esq.**____
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