

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

NO. _____

APALACHICOLA BAY AND RIVER
KEEPER INC. d/b/a APALACHICOLA
RIVERKEEPER, SOUTHERN ALLIANCE
FOR CLEAN ENERGY, and
WATERKEEPER ALLIANCE,

Plaintiffs,

v.

Gulf Power COMPANY,

Defendant.

COMPLAINT
(JURY TRIAL DEMANDED)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Apalachicola Riverkeeper, Southern Alliance for Clean Energy, and Waterkeeper Alliance sue Defendant Gulf Power Company for violating sections 301 and 402 of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311 and 1342, by violating its permit conditions and illegally discharging pollutants into the Apalachicola River without the required CWA permits. This complaint seeks a declaratory judgment, injunctive relief, and civil penalties.

NATURE OF THE CASE

1. This citizen enforcement action challenges ongoing, unlawful discharges of toxic metals and other pollutants by Defendant Gulf Power Company, at its coal-fired Herbert Scholz Generating Plant (“Plant Scholz”), in violation of the Clean Water Act (“CWA,” or the “Act”), 33 U.S.C. §§ 1251-1376.

2. Gulf Power Company (“Defendant” or “Gulf Power”) is engaged in the generation, transmission, distribution, and sale of electricity. Defendant is a Florida corporation with its headquarters in Pensacola, Florida. Plant Scholz is located along the banks of the Apalachicola River near Sneads, Jackson County, Florida. Plant Scholz is owned and operated by Gulf Power.

3. Local residents and visitors alike enjoy fishing, boating, and other recreational activities on the river, while others come simply to enjoy its scenic beauty. Many people who fish in Apalachicola River consume the fish they catch. The river also provides valuable economic services, including sustaining the multi-million-dollar Apalachicola Bay oyster fishery.

4. Plant Scholz includes an on-site waste impoundment into which Defendant flushes coal ash waste, the residue left behind after coal is burned in the plant, using a “wet sluicing” process. The coal ash waste impoundment spans approximately 40 acres and is divided into three settling ponds known as the “Upper,” “Middle,” and “Lower” Ponds. None of the ponds have a synthetic liner to prevent contamination from leaking out of the impoundment.

5. Professional engineers contracted by the United States Environmental Protection Agency (“EPA”) have inspected hundreds of coal ash impoundments within the last five years to assess the potential for structural failure. The impoundment at Plant Scholz is in a small minority of sites inspected by EPA contractors for which impoundment inspection reports and “hazard potential” ratings have not been made

available to the public, due to Gulf Power's claim that such information contains "confidential business information."

6. Toxic pollutants including arsenic and chromium—both known carcinogens—as well as aluminum, barium, beryllium, boron, cadmium, cobalt, copper, lead, iron, manganese, mercury, nickel, vanadium, and zinc, are leaking from Defendant's coal ash impoundment at Plant Scholz.

7. Unless authorized by a permit issued under the CWA National Pollutant Discharge Elimination System (NPDES), a discharge of a pollutant to a water of the United States is a violation of the Act. A violation of any term or condition of a discharge permit issued under the CWA is a violation of the CWA.

8. Gulf Power has violated the Scholz permit and the CWA by allowing harmful pollution to leak out of its coal ash impoundments and into the Apalachicola River through point sources that are not authorized by the Scholz permit, and by failing to prevent, monitor, and report these unauthorized discharges. Additionally, Gulf Power has violated the Scholz permit and the CWA by discharging pollutants from authorized outfalls in excess of numerical permit limits.

JURISDICTION AND VENUE

9. Apalachicola Bay and River Keeper Inc. d/b/a Apalachicola Riverkeeper, Southern Alliance For Clean Energy, and Waterkeeper Alliance, (collectively, the "Conservation Groups") bring this enforcement action under the citizens' suit provision of the CWA, 33 U.S.C. § 1365. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 2201 (declaratory relief).

10. In full compliance with 33 U.S.C. § 1365(b)(1)(A), and 40 C.F.R. § 135.2, on February 5, 2014, the Conservation Groups gave Defendant, the Administrator and Regional Administrator of the EPA, and the Florida Department of Environmental Protection (DEP) notice of the violations specified in this complaint and of the

Conservation Groups' intent to file suit after sixty days should Defendant's violations continue. A copy of the Conservation Groups' February 5, 2014 notice-of-intent-to-sue letter (the "NOI"), with documentation of its receipt, is attached as Exhibit A. More than sixty days have passed since service of the NOI. Neither DEP nor EPA have commenced or are diligently prosecuting a civil or criminal action to redress the violations alleged in the NOI and in this action.

11. The violations alleged in the NOI and in this action are continuing at this time and are reasonably likely to continue in the future.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and 33 U.S.C. § 1365(c)(1). Apalachicola Riverkeeper, the first listed plaintiff, is located in Franklin County in the Tallahassee Division

PARTIES

13. The Conservation Groups file this lawsuit on behalf of themselves and their members who have been injured by Defendant's unlawful acts alleged herein.

14. The members of the Conservation Groups on whose behalf the Conservation Groups file this lawsuit would otherwise have standing to sue Defendant in their own right for the unlawful acts alleged herein.

15. The purpose of this lawsuit is germane to each Conservation Groups' mission and purpose.

16. Neither the claims asserted herein nor the relief requested requires the participation of the Conservation Groups' members who have been injured by Defendant's actions.

17. Apalachicola Riverkeeper is a nonprofit corporation organized under the laws of Florida. Its mission is to provide stewardship and advocacy for the protection of the Apalachicola River and its tributaries and watersheds, including the Apalachicola Bay, in order to improve and maintain the environmental integrity of these waterways.

Apalachicola Riverkeeper's mission also includes preserving the natural, scenic, recreational, and commercial fishing character of the Apalachicola River system. Apalachicola Riverkeeper is based at 232 Water St., Apalachicola, Florida in Franklin County.

18. Southern Alliance for Clean Energy (SACE) is a not-for-profit, non-partisan organization working to promote responsible energy choices that solve global warming problems and ensure clean, safe, and healthy communities throughout the southeast. SACE is a leading voice for energy policy to protect the quality of life and treasured places across the region, including Florida. Since 1985, SACE has worked to minimize the impact of the energy sector on Southeastern communities, natural resources, and economies.

19. Waterkeeper Alliance Inc. is a non-profit New York corporation founded in 1999 which serves as the umbrella organization for approximately 200 local Waterkeeper organizations (including Riverkeepers, Baykeepers, Coastkeepers, etc.). The mission of Waterkeeper Alliance is to connect and support local Waterkeeper programs to provide a voice for waterways and communities worldwide. The Waterkeeper Alliance supports and empowers member Waterkeeper organizations to protect communities, ecosystems, and water quality; promotes the Waterkeeper model for watershed protection worldwide; and advocates for issues common to Waterkeeper programs. Apalachicola Riverkeeper is a member of Waterkeeper Alliance.

20. The Plaintiffs, (collectively, "Conservation Groups" or "Plaintiffs") and their members have been harmed by Defendant's unlawful discharges at Scholz. Members of the Conservation Groups recreate and fish on the Apalachicola River. Members of the Conservation groups worry about, and have their use and enjoyment of the Apalachicola River adversely affected by, contamination of river water, fish, and wildlife by discharges from Defendant's coal ash ponds containing arsenic, lead, and other harmful pollutants. Many of the pollutants Gulf Power Company is illegally

discharging bioaccumulate in the fish that members of the Conservation Groups catch and eat. Defendant's discharges of coal ash contaminants from the Plant Scholz coal ash impoundment are diminishing the ability of the Conservation Groups' members to use and enjoy of the Apalachicola River by the Conservation Groups and their members.

21. Plaintiffs' injuries will not be redressed except by an order from this Court assessing civil penalties against Defendant and requiring Defendant to take immediate and substantial action to stop its unlawful discharges of toxic pollution that is leaking from its coal ash impoundment into the Apalachicola River.

22. Defendant Gulf Power Company is headquartered in Pensacola, FL, in Escambia County.

23. Defendant owns and operates Plant Scholz and its associated coal ash waste impoundment. Defendant holds the NPDES permit for Plant Scholz (NPDES Permit No. FL0002283). The permit was issued in accordance with 33 U.S.C. § 1342.

STATUTORY BACKGROUND

24. The objective of the CWA 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, the CWA, 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.

25. Each violation of an NPDES permit, and each discharge of a pollutant that is not authorized by the permit, is a violation of the CWA. 33 U.S.C. §§ 1311(a); 1342(a); 1365(f).

26. The CWA defines a "point source" as "any discernible, 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). Under this broad definition, the discharge of pollutants from mining pits, slurry ponds, sediment basins, and mining leachate collection systems have been held to be point sources. The term “point source” has been taken beyond pipes and ditches and now includes less discrete conveyances, such as cesspools and ponds.

27. In addition, a “point source” need not be the original source of the pollutant; it need only convey the pollutant to “navigable waters.” Thus, ditches and channels that convey pollutants but are themselves not the original source constitute point sources. This includes unintentional conveyance of pollutants, for example, through naturally-formed ditches, gullies, or fissures.

28. The term “discharge of a pollutant” means any addition of any pollutant to navigable waters of the United States from any point source. 33 U.S.C. § 1362(12).

29. “Navigable waters” are the waters of the United States, including the territorial seas. 33 U.S.C. § 1362(7).

30. The term “pollutant” specifically includes, among other things, “industrial . . . waste discharged into water.” 33 U.S.C. § 1362(6). This industrial waste sent to the ash ponds at Plant Scholz is harmful and includes, but is not limited to, high levels of arsenic, cadmium, chromium, aluminum, barium, beryllium, copper, lead, nickel, zinc, selenium, and mercury.

31. Under section 505(a)(1) of the Clean Water Act, any citizen may commence a civil action for injunctive or declaratory relief against “any person,” including any corporation, alleged to be in violation of NPDES requirements and/or engaging in the unpermitted discharge of a pollutant. 33 U.S.C. § 1365(a)(1); *see also* 33 U.S.C. § 1365(5) (the term “person” includes “corporation, partnership, association”).

32. Section 309(d) of the Clean Water Act provides that any person who violates section 301 of the Act, 33 U.S.C. § 1311, or violates any permit condition or

limitation in a NPDES permit issued under 33 U.S.C. § 1342, shall be subject to a civil penalty payable to the United States of up to \$25,000 per day for each violation. 33 U.S.C. § 1319(d).

33. Pursuant to the Federal Civil Penalties Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, the Court may assess a civil penalty of \$37,500 per day for each violation that occurred after January 12, 2009. *See* 40 C.F.R. § 19.4.

34. Additionally, under section 505(d) of the Clean Water Act, the court “may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing party or substantially prevailing party, whenever the court determines that such award is appropriate.” 33 U.S.C. § 1365(d).

FACTUAL BACKGROUND

35. The Apalachicola River is a water of the State and a water of the United States, subject to the full protections of the CWA.

36. Pursuant to its delegated authority under the CWA, 33 U.S.C. § 1342(b), the Florida Department of Environmental Protection (“DEP”) issued NPDES Permit No. FL0002283-004, as renewed July 1, 2005 and Sept. 23, 2010 (the “Scholz Permit”).

37. The Scholz Permit authorizes Gulf Power, subject to certain terms and limitations, to discharge coal ash wastewater, along with chlorinated condenser cooling water, to the main body of the Apalachicola River through outfall D-001. Outfall D-001 is located in the middle of a discharge canal about 180 feet from the point where the trench from the ash ponds deposits coal ash wastewater into the canal, and it is the only outfall through which the Scholz Permit authorizes direct water pollution discharges to the Apalachicola River. *See* Attachment A to Exhibit A.

38. The lagoons at Scholz have received various waste streams, including coal ash that is sluiced to the lagoons in a wet form, coal ash transport water, coal pile runoff,

and sanitary wastewater. These waste streams are allowed to settle out in the ash impoundment.

39. The pollutants, solids, and sludges from Gulf Power's Plant Scholz coal ash ponds have for years been illegally entering waters of the United States through unpermitted point sources. The impoundment has leached, and will continue to leach, these substances and pollutants from the bottom and sides of the impoundment into the Apalachicola River and additionally into the ground water at Plant Scholz.

40. Gulf Power's unpermitted discharges include, but are not limited to, direct surface water discharges from boils, seeps, and other leaks from the ash ponds that go through ditches, channels, and other means of conveyance to enter the Apalachicola River without passing through an authorized discharge point. The locations of these ditches are described in Exhibit A, and are point sources under the Clean Water Act.

41. Data from the EPA demonstrates that leachate from the impoundment at Plant Scholz contains toxic heavy metals including arsenic, barium, cadmium, lead, and selenium. *See* U.S. Env't'l Prot. Agency, *Draft: Human and Ecological Risk Assessment of Coal Combustion Wastes* at App'x A, p. A-2-24 (Apr. 2010). *available at* <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-RCRA-2009-0640-0002>.

42. Arsenic is a known carcinogen that causes multiple forms of cancer in humans. It is also a toxic pollutant, 40 C.F.R. § 401.15, and a priority pollutant, 40 C.F.R. Part 423 App'x A. Arsenic is also associated with non-cancer health effects of the skin and the nervous system. According to the Agency for Toxic Substances and Disease Registry, there is some evidence that in childhood, long-term exposure to arsenic may result in lower IQ scores and exposure to arsenic in the womb and early childhood may increase mortality in young adults.

43. Manganese is known to be toxic to the nervous system. Manganese concentrations greater than 50 µg/L render water unusable by discoloring the water,

giving it a metallic taste, and causing black staining. Exposure to high levels can affect the nervous system; very high levels may impair brain development in children.

44. Iron can render water unusable by imparting a rusty color and a metallic taste and causing sedimentation and staining; to prevent these effects the EPA has set a secondary drinking water standard of 300 µg/L.

45. Lead is a very potent neurotoxin that is highly damaging to the nervous system. Health effects associated with exposure to lead include, but are not limited to, neurotoxicity, developmental delays, hypertension, impaired hearing acuity, impaired hemoglobin synthesis, and male reproductive impairment. Importantly, many of lead's health effects may occur without overt signs of toxicity. Lead is also classified by the EPA as a "probable human carcinogen."

46. Concurrent exposure to multiple contaminants may intensify existing effects of individual contaminants, or may give rise to interactions and synergies that create new effects. Where several coal ash contaminants share a common mechanism of toxicity or affect the same body organ or system, exposure to several contaminants concurrently produces a greater chance of increased risk to health.

47. The Apalachicola River flows into the Gulf of Mexico.

48. The Apalachicola River is a distinct, navigable water of the United States and a water of the State of Florida.

49. All violations of the CWA set forth herein are ongoing and are reasonably likely to continue.

CLAIMS FOR DECLARATORY JUDGMENT AND CIVIL PENALTIES

COUNT I: UNAUTHORIZED POINT-SOURCE DISCHARGES

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

51. A direct, hydrologic surface water connection exists on a recurring basis between the Apalachicola River and the boils, seeps, or leaks coming from the Plant Scholz coal ash impoundment.

52. Defendant has discharged and continues to discharge pollutants from a point source to a water of the United States.

53. In particular, Gulf Power has caused and continues to cause unpermitted point-source discharges of harmful pollutants leaking out of the coal ash impoundment at Plant Scholz into the Apalachicola River, in violation of section 301 of the Clean Water Act, 33 U.S.C. § 1311.

54. No permit issued under section 402 of the Clean Water Act, 33 U.S.C. §1342, authorizes the discharges described in the preceding paragraph.

55. Based on the foregoing facts, Plaintiffs request a declaration that Gulf Power has violated and is violating sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 & 1342.

56. By committing the acts and omissions alleged above, Gulf Power is also subject to an assessment of civil penalties pursuant to sections 309(d) and 505 of the Clean Water Act, 33 U.S.C. §§ 1319(d) and 1365.

**COUNT II:
PERMIT VIOLATIONS BY FAILURE TO REPORT AND MONITOR SPILLS**

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

58. Part VIII(B)(1) of the Scholz Permit requires that Gulf Power notify the Florida Department of Environmental Protection (DEP) as soon as it knows or has reason to believe:

- a. That any activity has occurred . . . which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following

levels: (1) One hundred micrograms per liter . . . , or (3) Five times the maximum concentration value reported for that pollutant in the permit application; or

b. That any activity has occurred . . . which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following levels: (1) Five hundred micrograms per liter . . . , or (3) Ten times the maximum concentration value reported for that pollutant in the permit application.

59. Part VII.1.a.4 of the Scholz Permit defines “toxic pollutant” as including: “any toxic substance listed in Section 307(a)(1) of the CWA, any hazardous substance listed in Section 311 of the CWA, or chemical listed in Section 313(c) of the Superfund Amendments and Reauthorization Act of 1986; and []any substance (that is not also a conventional or non-conventional pollutant except ammonia) for which EPA has published an acute or chronic toxicity criterion.” Pursuant to section 307(a)(1) of the Clean Water Act, arsenic, cadmium, chromium, copper, lead, mercury, nickel, selenium, and zinc are all listed as toxic pollutants. 40 C.F.R. § 401.15.

60. Gulf Power has failed to monitor and report its unpermitted point-source discharges of pollutants from the Plant Scholz coal ash impoundment into the Apalachicola River.

61. Defendant’s failure to report and monitor spills as required by Part VIII.B.1 of the Scholz Permit is a violation of CWA “effluent standard or limitation” as defined in section 505(f) of the Act. 33 U.S.C. § 1365(f).

62. Gulf Power has failed to notify DEP of these spills, or take any other action, as required by NPDES Permit FL0002283 at Part VIII.B.1.

63. Defendant Gulf Power has not obtained separate NPDES permits for these discharges.

64. Based on the foregoing facts, Plaintiffs request a declaration that Gulf Power has violated and is violating sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342.

65. By committing the acts and omissions alleged above, Gulf Power is also subject to an assessment of civil penalties pursuant to sections 309(d) and 505 of the Clean Water Act, 33 U.S.C. §§ 1319(d) and 1365.

**COUNT III:
FAILURE TO MAINTAIN COAL ASH IMPOUNDMENT TO PREVENT
UNAUTHORIZED DISCHARGE OF POLLUTANTS**

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

67. Part VIII.C.1 of the Scholz Permit requires that “[a]ll ash impoundments used to hold or treat wastewater and other associated wastes shall be operated and maintained to prevent the discharge of pollutants to waters of the State, except as authorized under this permit.”

68. Each unauthorized discharge of pollutants leaking from the Plant Scholz coal ash impoundment to the Apalachicola River violates Part VIII.C.1 of the Scholz Permit.

69. Based on the foregoing facts, Plaintiffs request a declaration that Gulf Power has violated and is violating sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, by failing to operate and maintain the Plant Scholz coal ash impoundment to prevent unauthorized discharges to the Apalachicola River.

70. By committing the acts and omissions alleged above, Gulf Power is also subject to an assessment of civil penalties pursuant to sections 309(d) and 505 of the Clean Water Act, 33 U.S.C. §§ 1319(d) and 1365.

**COUNT IV:
UNPERMITTED BYPASS OF TREATMENT WORKS**

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

72. Part IX.22 of the Scholz Permit prohibits pollution discharges resulting from bypass events, defining “bypass” as “the intentional diversion of waste streams from any portion of a treatment works.”

73. Part I.C.7 of the Scholz Permit states: “Any bypass of the treatment facility which is not included in the monitoring specified in [elsewhere in the Scholz Permit], is to be monitored for flow and all other required parameters.”

74. Defendant has received notice that waste streams from the Plant Scholz coal ash impoundment are being diverted from a portion of a treatment works and discharging into the Apalachicola River, however Defendant has continued to allow such diversions to continue unabated.

75. By allowing unauthorized point-source discharges to occur from the ash impoundment at Scholz to the Apalachicola, Gulf Power has created an ongoing bypass of the permitted treatment works, in violation of Part IX.22 of the Scholz Permit.

76. Defendant’s failure to monitor the ongoing bypass described above for “flow and other required parameters” is a violation of Part I.C.7 of the Scholz Permit.

77. Based on the foregoing facts, Plaintiffs request a declaration that Gulf Power has violated and is continuing to violate sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342.

78. By committing the acts and omissions alleged above, Gulf Power is also subject to an assessment of civil penalties pursuant to sections 309(d) and 505 of the Clean Water Act, 33 U.S.C. §§ 1319(d) and 1365.

**COUNT V:
PERMIT VIOLATIONS BY EXCEEDING NUMERICAL LIMITS**

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

80. Defendant's pollution discharges from the Scholz Plant are subject to various numerical effluent limits contained in the Scholz Permit. For example, Part I.A of the Scholz Permit limits the amount of copper and lead Defendant may discharge to the Apalachicola River through Outfall D-001.

81. The Scholz Permit requires Defendant to annually (i.e., once per year) monitor and report the concentrations of copper and lead in its discharges from Outfall D-001.

82. On three occasions between 2010 and 2013, Defendant submitted discharge monitoring reports to DEP on which it reported an exceedance of the numerical effluent limit for copper.

83. Defendant also reported an exceedance of the numerical effluent limit for lead in 2010.

84. Gulf Power has violated and is continuing to violate its numerical permit limits for copper and lead at Outfall D-001.

85. Each violation of its numerical permit limits is a violation of the terms and conditions of the Scholz Permit.

86. Based on the foregoing facts, Plaintiffs request a declaration that Gulf Power has violated and is violating sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342.

87. By committing the acts and omissions alleged above, Gulf Power is also subject to an assessment of civil penalties pursuant to sections 309(d) and 505 of the Clean Water Act, 33 U.S.C. §§ 1319(d) and 1365.

CLAIM FOR INJUNCTIVE RELIEF

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

89. Plaintiffs have no adequate remedy at law for Gulf Power's ongoing and routine unpermitted discharges of industrial pollutants from the coal ash impoundment at Plant Scholz; ongoing and routine failure to report and monitor spills as required by the Scholz Permit; ongoing failure to operate and maintain the ash pond impoundment to prevent unauthorized discharges in violation of Part VIII.C.1 of the Scholz Permit; continued failure to report and monitor these bypasses as required by Part IX.22 and Part I.C.7 of the Scholz Permit; and the ongoing and continuing discharge of pollutants in excess of permitted numerical limits at permitted discharge points in violation of the Scholz Permit.

90. Gulf Power's continuous and unlawful discharges of industrial pollutants from the coal ash impoundment at Plant Scholz, bypasses of permitted treatment works, failure to take reasonable steps, failure to maintain and operate the ash pond as required to prevent unauthorized discharges, failure to report and monitor spills, and discharge of pollutants in excess of permitted numerical limits are causing irreparable environmental degradation and adverse harm to Plaintiffs and other users of the Apalachicola River.

91. Gulf Power will continue to violate sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, in this manner, unless enjoined by the Court.

92. Therefore, Plaintiffs seek an injunction pursuant to section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), requiring Gulf Power to halt the unpermitted discharge of pollutants and comply with the terms of its permit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Issue a declaratory judgment stating that Defendant is violating the CWA with its ongoing unauthorized discharges of arsenic and other pollutants, and by allowing

and causing the entering of such pollutants into the Apalachicola River and the ground water at Plant Scholz in violation of Defendant's NPDES permit and the CWA;

B. Issue a declaratory judgment that Defendant's failure to monitor and report spills is a violation of its NPDES permit and the CWA;

C. Issue a declaratory judgment that Defendant's failure to operate and maintain its ash ponds at Plant Scholz so as to prevent unauthorized discharges is a violation of its NPDES permit and the CWA;

D. Issue a declaratory judgment that Defendant's bypass of permitted treatment works is a violation of its NPDES permit;

E. Enter appropriate preliminary and injunctive relief to ensure that Defendant:

- i. Ceases all unlawful discharges of pollutants from the Plant Scholz coal ash impoundment into the Apalachicola River;
- ii. Remediates the contaminated ground water beneath the Plant Scholz site resulting from its unpermitted discharges.

F. Assess civil penalties against Gulf Power of up to \$37,500 per violation per day pursuant to 33 U.S.C. §§ 1319(d), 1365(a), and 74 Fed. Reg. 626, 627 (Jan. 7, 2009);

G. Award Plaintiffs the costs of this action, including reasonable attorney and expert fees, as authorized by 33 U.S.C. § 1365(d); and

H. Grant Plaintiffs such further and additional relief as the Court deems just and proper.

THE PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY

Respectfully submitted on this 4th day of June, 2014.

/s/ Bradley Marshall

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