

limit the spread of the contaminant plume by removing contaminated groundwater and processing it through its on-site wastewater treatment system.

3. Alamac was only authorized to discharge this treated wastewater to the nearby Lumber River after it had undergone an in-depth permitting process whereby Alamac demonstrated that operation of the wastewater treatment plant and its resulting discharges would not cause a violation of North Carolina water quality standards. This included providing information to the state regarding the operation of the on-site wastewater treatment plant, including the flow and treatment of the wastewater, and disclosing the effluent characteristics of the discharge, including quantitative data for pollutants known or believed to be present.

4. When Active Energy purchased the industrial site from Alamac, the wastewater permit was transferred to Active Energy and amended to explicitly prohibit Active Energy from discharging *any* wastewater from the industrial site until it submitted information to the North Carolina Division of Water Resources regarding its planned wastewater discharges. This permit was merely a placeholder until Active Energy completed the permitting and disclosure requirements under North Carolina and federal law. The document noted the transfer of ownership and otherwise emphasized that the permit did not authorize any wastewater discharge to occur from the industrial site.

5. Despite this prohibition and the unambiguous requirements of the Clean Water Act, Active Energy has been discharging industrial pollutants into waters of the United States since the company first obtained operational control of the Lumberton industrial site nearly two years ago. These discharges have occurred and are occurring without authorization under the Act and otherwise in violation of the terms of the modified wastewater permit.

6. Active Energy's unauthorized wastewater discharges contain 20 different identified pollutants, including nitrogen, zinc, copper, chromium, and other heavy metals. Additionally, since the wastewater being discharged originates from the industrial site's contaminated groundwater wells, Active Energy's wastewater stream may also contain unknown quantities of the toxic industrial solvents that are contained in the site's groundwater—and which have previously been detected in the treated wastewater. Although Active Energy is treating the groundwater in its on-site wastewater treatment plant before discharging it, Active Energy has never made any demonstrations to the state regarding how it is operating the wastewater treatment plant. Moreover, the treatment process itself is not foolproof. In fact, there have been at least two instances where DCE was discharged in the wastewater *after* being treated on site.

7. The area of the Lumber River immediately downstream of these unpermitted discharges is a federally designated Wild and Scenic River and a state designated Natural and Scenic River due to its unique natural, scenic, recreational, fish and wildlife, and cultural values.

8. The last time the North Carolina Division of Water Resources analyzed the potential impact to the Lumber River from industrial wastewater discharges from the Lumberton site was in 2014, when Alamac submitted its last complete renewal application. Over the past seven years, several key parameters relevant to the Division's analysis have changed, including the adoption of more stringent freshwater quality standards and new requirements for effluent limitations for at least two heavy metals (zinc and copper) contained within Active Energy's discharges. It is also likely that available treatment technologies have advanced during the intervening years. Finally, the changing characteristics of the site's groundwater contamination over time and altered level of flow may both impact the effectiveness of the wastewater treatment plant.

9. Alamac's permit was transferred to Active Energy with the understanding that the new owners would submit a required renewal or modification permit for its planned operations. Almost two years later, Active Energy has yet to provide any information to the Division of Water Resources demonstrating that its discharges will not cause an exceedance of state water quality standards or otherwise harm the Lumber River.

10. The unauthorized discharges began when Active Energy first purchased the facility in March 2019 and have continued despite the unambiguous requirements of the Clean Water Act and the explicit prohibition in Active Energy's permit. This pollution will continue to harm the aesthetic, recreational, cultural, and ecosystem value of the Lumber River, Jacob's Branch,¹ and the people who use and enjoy them.

JURISDICTION, VENUE, AND NOTICE

11. Winyah Rivers Alliance brings this enforcement action under the citizen 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.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and 33 U.S.C. § 1365(c)(1). The Lumberton industrial site is located in, and all the challenged discharges and permit violations originate and are occurring in, Robeson County, North Carolina.

13. In compliance with 33 U.S.C. § 1365(b)(1)(A) and 40 C.F.R. § 135.2, on December 10, 2020, Winyah Rivers Alliance gave Active Energy Renewable Power, LLC, Lumberton Energy Holdings, LLC, Active Energy Group, PLC, the Administrator of the U.S. Environmental Protection Agency ("EPA"), and the North Carolina Department of

¹ Jacob's Branch is a creek that runs along the southern edge of the Lumberton industrial site and enters the Lumber River southeast of the site. Jacob's Branch is also sometimes referred to as "Jacob Branch," Jacob Swamp," or "Jacob's Swamp."

Environmental Quality notice of the violations specified in this Complaint and of Winyah Rivers Alliance's intent to file suit should those violations continue. Copies of the notice letter with documentation of its receipt are attached as Exhibit 1 and Exhibit 2.

14. More than 60 days have passed since notice was given pursuant to law and regulation, and violations identified in the notice letter are continuing at this time and are reasonably likely to continue in the future.

15. Neither the United States nor the State of North Carolina has commenced or is diligently prosecuting a civil or criminal action to redress the violations asserted in this citizen enforcement action. 33 U.S.C. § 1365(b)(1)(B).

16. This action is not barred by any prior administrative penalty under 33 U.S.C. § 1319(g)(6).

PARTIES

A. Plaintiff

17. Plaintiff Winyah Rivers Foundation, Inc. (dba Winyah Rivers Alliance) is a § 501(c)(3) nonprofit public interest organization operating in North and South Carolina. Its mission is "to protect, preserve, monitor and revitalize the health of the lands and waters of the greater Winyah Bay watershed." Winyah Rivers Alliance is a grassroots organization whose members support the mission of protecting the rivers in the greater watershed that empties into Winyah Bay in South Carolina, including the Lumber River. Winyah Rivers Alliance's Lumber Riverkeeper program educates and advocates for the protection of the Lumber River watershed in North and South Carolina.

18. Winyah Rivers Alliance works to improve water quality through monitoring and conservation advocacy, and works to increase public awareness through education and partnerships with other community and conservation groups. Winyah Rivers Alliance comments

on permits, regulatory proposals, and government actions that affect the Lumber River as part of the greater Winyah Bay watershed, including commenting on and participating in the public hearings on the recent Clean Air Act permit for Active Energy's planned wood pellet manufacturing facility, to be located at the Lumberton industrial site. Such comments are an essential part of Winyah Rivers Alliance's work and an important way that it carries out its mission. Winyah Rivers Alliance thereby expresses the views of its members, Board, and staff, and also shares its expert knowledge and experience with the government agencies and applicants seeking permits or other governmental authorization or benefits. Winyah Rivers Alliance's members also participate in this way, and Winyah Rivers Alliance encourages its members to do so.

19. Winyah Rivers Alliance and its members are harmed by Active Energy's unauthorized discharges. Members of Winyah Rivers Alliance recreate, fish, and even operate boating businesses on the Lumber River in the vicinity of and downstream from Active Energy's Lumberton industrial site. Members of Winyah Rivers Alliance also recreate on Jacob's Branch near Active Energy's Lumberton facility. They fear contamination of wildlife, river water, and riparian habitat by discharges of industrial pollution from Active Energy's Lumberton site. Members of Winyah Rivers Alliance also enjoy paddling on the Lumber River downstream of Active Energy's Lumberton facility, utilizing canoe-in campsites such as Buck Landing, Piney Island, and Pea Ridge, and visiting the Princess Ann Access of the Lumber River State Park for its picnicking, hiking, and camping amenities. Active Energy's unauthorized discharges of industrial pollution are reducing the use and enjoyment by Winyah Rivers Alliance and its members of the Lumber River and its tributaries.

20. Winyah Rivers Alliance and its members are also harmed by being denied their right to participate in the decisions concerning Active Energy's pollution of the Lumber River and the environment. If Active Energy had complied with the law, Winyah Rivers Alliance would have commented on Active Energy's pollution of the Lumber River and the terms and conditions under which it is allowed to pollute, particularly Winyah Rivers Alliance's concerns regarding the protection of important water resources and its expertise concerning them. Likewise, Winyah Rivers Alliance's members would have commented on Active Energy's pollution of the Lumber River and the terms and conditions under which Active Energy is allowed to pollute. Further, a public hearing should have been held on these topics to obtain additional information and to inform the public about the pollution and the effects on the Lumber River, and Winyah Rivers Alliance and its members should have had an opportunity to participate in such a hearing.

21. Winyah Rivers Alliance and its members should also have had an opportunity for judicial review of any permit, if the permit were issued with such terms and conditions that Winyah Rivers Alliance and/or its members considered to be inappropriate for the health and benefit of the Lumber River, the greater Winyah Bay Watershed, the environment of North Carolina, and the public.

22. As set forth above, Winyah Rivers Alliance and its members have interests which have been and are adversely affected and harmed by Active Energy's ongoing violations of the Clean Water Act. These actual and potential injuries have been and continue to be caused by the unauthorized discharges from Active Energy's Lumberton industrial site into Jacob's Branch and the Lumber River.

23. Winyah Rivers Alliance and its members have also been harmed by their exclusion from the process, the lack of an opportunity for public comment and public hearings, and the lack of an opportunity for judicial review.

24. These injuries will not be redressed except by an order from this Court requiring Active Energy to take immediate action to halt its illegal discharges unless and until it obtains proper coverage under a National Pollutant Discharge Elimination System (“NPDES”) permit, and to comply with any other relief sought in this action.

B. Defendants

25. Defendant Active Energy Renewable Power, LLC, is a North Carolina limited liability company, formed on October 10, 2018, with its principal place of business in Lumberton, North Carolina. The registered address for Active Energy Renewable Power is 575 Military Cutoff Road Suite 106, Wilmington, North Carolina 28405, and the registered principal office is at 1885 Alamac Road, Lumberton, North Carolina 28358 (the Lumberton industrial site).

26. Active Energy Renewable Power, LLC, is a “person” within the meaning of 33 U.S.C. § 1362(5).

27. Defendant Lumberton Energy Holdings, LLC, is a North Carolina limited liability company, formed on February 28, 2019, with its principal place of business in Lumberton, North Carolina. The registered address for Lumberton Energy Holdings is 575 Military Cutoff Road Suite 106, Wilmington, North Carolina 28405, and the registered principal office is at 1885 Alamac Road, Lumberton, North Carolina 28358 (the Lumberton industrial site).

28. Lumberton Energy Holdings, LLC, is a “person” within the meaning of 33 U.S.C. § 1362(5).

29. Defendants Active Energy Renewable Power, LLC, and Lumberton Energy Holdings, LLC, both hold environmental permits or are otherwise signatories on environmental documents for the Lumberton industrial site. The wastewater permit was transferred to Lumberton Energy Holdings, LLC, while the air quality construction permit and NPDES stormwater permit for the site are issued to Active Energy Renewable Power, LLC.

30. Defendants Active Energy Renewable Power, LLC, and Lumberton Energy Holdings, LLC, are both managed by Thomas Michael Rowan, Chief Executive Officer of Active Energy Group, PLC, and Antonio Esposito, Executive Director of Active Energy Group, PLC.

31. Defendants Active Energy Renewable Power, LLC, and Lumberton Energy Holdings, LLC, are both wholly owned by Active Energy Group, PLC.

32. Defendants are collectively referred to herein as “Active Energy.”

33. Active Energy currently owns and operates the industrial site located at 1885 Alamac Road, Lumberton, North Carolina, where the violations that gave rise to this action are occurring.

STATUTORY BACKGROUND

34. The Clean Water Act seeks 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.* § 1251(a)(1).

35. 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 or

“NPDES” permit issued by the EPA or an authorized state pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

36. In North Carolina, the Department of Environmental Quality has been delegated the authority to issue NPDES permits. N.C. Gen. Stat. § 143-211(c).

37. Each violation of an NPDES permit, and 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, 1365(f); 40 C.F.R. § 122.41(a).

38. The Clean Water Act defines “discharge of a pollutant” as “*any* addition of *any* pollutant to navigable waters from a point source.” 33 U.S.C. § 1362(12) (emphases added).

39. The Clean Water Act defines “pollutant” to include “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial . . . waste discharged into water.” 33 U.S.C. § 1362(6).

40. The Clean Water Act defines a “point source” to include “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).

41. The Clean Water Act defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

42. Under Section 505(a)(1) of the Clean Water Act, any citizen may commence a civil action in federal court on his own behalf against any “person” who is alleged to be in violation of an “effluent standard or limitation” under the Act. 33 U.S.C. § 1365(a)(1).

43. The Clean Water Act defines “person” to include “an individual, corporation, partnership, [or] association.” 33 U.S.C. § 1362(5).

44. Citizen suits may seek remedies for an unpermitted discharge in violation of Section 301 of the Clean Water Act, 33 U.S.C § 1311, as well as for the violation of a condition of a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. 33 U.S.C. §§ 1365(a), (f).

45. Federal courts are authorized to issue injunctive relief under the citizen suit provision of the Clean Water Act, 33 U.S.C. § 1365(a), and authorized to issue declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

46. In citizen suits, courts may assess civil penalties against violators of up to \$56,460 per day per violation for all violations of the Clean Water Act that occur after November 2, 2015, where penalties are assessed after December 23, 2020. 33 U.S.C. §§ 1319(d), 1365(a); 40 C.F.R. §§ 19.1–19.4 (updating statutory penalties to adjust for inflation).

FACTUAL ALLEGATIONS

A. Active Energy owns and operates the Lumberton industrial site.

47. Active Energy’s industrial site is located at 1885 Alamac Road, Lumberton, North Carolina. Upon information and belief, the industrial site includes approximately 415,000 square feet of covered factory space and approximately 145 acres of surrounding land.

48. Active Energy purchased the industrial site from Alamac American Knits, LLC, in March 2019.

49. Active Energy is currently operating a sawmill at the Lumberton industrial site that produces lumber and railroad ties for sale.

50. The sawmill also compiles feedstock materials, such as wood chips, bark, and sawdust, for Active Energy’s planned wood pellet manufacturing facility.

51. Upon information and belief, Active Energy's planned manufacturing of its proprietary "CoalSwitch" wood pellet will use water in its manufacturing process and will produce at least one wastewater stream.

52. On August 11, 2020, Winyah Rivers Alliance sent a letter to Active Energy notifying Active Energy that it was in violation of the Clean Water Act for discharging industrial stormwater from the site without an NPDES permit authorizing those discharges. The letter alleged that such violations had been ongoing since at least December 2019.

53. On August 25, 2020, the North Carolina Department of Environmental Quality, Division of Energy, Mineral and Land Resources received an application from Active Energy for coverage under North Carolina's general stormwater permit for the timber products industry.

54. On September 21, 2020, the Division of Energy, Mineral, and Land Resources issued a Certificate of Coverage to Active Energy for its industrial stormwater discharges.

55. Active Energy is also operating an on-site wastewater treatment plant.

56. Upon information and belief, the wastewater treatment plant was originally constructed and operated by the site's prior owners (most recently Alamac American Knits) pursuant to a permit issued by the North Carolina Department of Environment and Natural Resources (now the Department of Environmental Quality).

B. The Lumberton industrial site is contaminated by toxic industrial solvents.

57. The Lumberton industrial site is a designated brownfields site where the groundwater and soil have been contaminated for decades by toxic industrial solvents and volatile organic compounds, including tetrachloroethylene (perchloroethylene or "PCE"), trichloroethylene ("TCE"), dichloroethylene ("DCE"), vinyl chloride, and benzene.

58. The historical groundwater and soil contamination is believed to have originated from textile manufacturing and dry cleaning operations occurring from 1978 to 1997 when the

site was owned and operated by WestPoint Stevens, Inc., and its predecessor WestPoint Pepperell.

59. During the time period from 1978 to 1997, there were at least two documented spills of chlorinated solvents and other volatile organic compounds used in the manufacturing process.

60. The industrial site was purchased by the Dyersburg Corporation in 1997.

61. From 1997 to 2001, the industrial site was operated as Alamac Knit Fabrics, LLC, a subsidiary of the Dyersburg Corporation. Following a brief closure in 2001, the facility was reopened several months later under Alamac American Knits, LLC.

62. In 1999, the site underwent soil remediation.

63. In-situ groundwater bioremediation commenced on the site in 1999 and continued until 2005 pursuant to a Water Quality Monitoring Plan approved by the North Carolina Division of Water Quality, Groundwater Section.

64. The Water Quality Monitoring Plan also required the submittal of quarterly groundwater monitoring reports, which were subsequently reduced to semi-annual and then annual reports.

65. Since at least 1999, these reports have also contained sampling of wastewater effluent from the site. Effluent results were reported for one sampling event per year from 1999 to 2010 and quarterly sampling events from 2011 to 2019.

66. In 2006, Alamac American Knits entered into a Brownfields Agreement with the North Carolina Department of Environment and Natural Resources.

67. Pursuant to the Brownfields Agreement, Alamac conducted annual sampling and reporting of the site's groundwater.

68. Alamac's annual groundwater monitoring reports also included effluent samples from the wastewater treatment plant for PCE, TCE, DCE, and vinyl chloride.

69. Beginning by at least 2006, Alamac also undertook the operation of a pump and treat system whereby contaminated groundwater was pumped from specifically identified recovery wells and then processed through the on-site wastewater treatment plant.

70. Alamac operated the wastewater treatment plant and discharged the treated groundwater under an NPDES permit (NC0004618) issued by the North Carolina Division of Water Resources.

71. Despite this remediation, the groundwater at the Lumberton industrial site remains contaminated.

72. After purchasing the site, Active Energy, through Lumberton Energy Holdings, acknowledged and agreed to comply with specific land use restrictions that were incorporated into the original Brownfields Agreement.

73. In January 2020, through Lumberton Energy Holdings, Active Energy submitted groundwater monitoring data for the year 2019 to the North Carolina Division of Waste Management.

74. The groundwater at the Lumberton industrial site remains contaminated with high levels of PCE, TCE, DCE, vinyl chloride, and other volatile organic compounds.

75. In samples taken on December 5, 2019, groundwater drawn from Recovery Well 1 (RW-1) contained PCE at a concentration of 530 µg/L. This is more than 750 times higher than North Carolina's groundwater standard of 0.70 µg/L PCE.

76. In samples taken on December 5, 2019, groundwater drawn from Recovery Well 1 (RW-1) contained TCE at a concentration of 690 µg/L. This is 230 times higher than North Carolina's groundwater standard of 3.0 µg/L TCE.

77. In samples taken on December 5, 2019, groundwater drawn from Recovery Well 2 (RW-2) contained *cis*-1,2-DCE at a concentration of 7,100 µg/L. This is more than 100 times higher than North Carolina's groundwater standard of 70 µg/L *cis*-1,2-DCE.

78. In samples taken on December 5, 2019, groundwater drawn from Recovery Well 2 (RW-2) contained vinyl chloride at a concentration of 310 µg/L. This is more than 10,000 times higher than North Carolina's groundwater standard of 0.03 µg/L vinyl chloride.

79. These concentrations of chlorinated solvents and volatile organic compounds in groundwater at the site have fluctuated and, in several cases, increased over time. For example, PCE and TCE concentrations in Recovery Well 1 (RW-1) have increased over the last 20 years. Concentrations of PCE, TCE, *cis*-1,2,-DCE, and vinyl chloride measured in November 2017 from Recovery Well 1 (RW-1) were all the highest recorded since sampling commenced in 1999. Concentrations of *cis*-1,2-DCE from Recovery Well 3 (RW-3) have failed to decline and remained relatively stable from 2008 to 2019. Vinyl chloride concentrations reported from Recovery Well 3 (RW-3) in 2019 were the highest recorded since 2011.

C. Active Energy is discharging industrial pollutants from the Lumberton site into the Lumber River and Jacob's Branch.

80. Historically the wastewater treatment plant located at the Lumberton industrial site has discharged wastewater from two outfalls.

81. Upon information and belief, treated wastewater has been discharged via Outfall 001 into the Lumber River, located at approximately 34° 36' 32.6", -79° 0' 32.2", and filter

backwash wastewater has been discharged via Outfall 002 into Jacob's Branch, located at approximately 34° 35' 13.7", -79° 0' 12.4".

82. Since March 2019, Active Energy has operated and continues to operate the on-site wastewater treatment plant to treat the site's contaminated groundwater.

83. Active Energy, through Lumberton Energy Holdings, has been submitting discharge monitoring reports ("DMRs") to the Division of Water Resources from March 2019 until the present.

84. Upon information and belief, since March 2019, Active Energy has discharged and continues to discharge treated wastewater from Outfall 001 into the Lumber River.

85. Through the DMRs, Active Energy reported a total of 601 days of effluent discharge (flow) from March 1, 2019, to December 31, 2020, from Outfall 001.

86. During this time period, Active Energy reported that its Outfall 001 discharges contained 15 specific pollutants.

87. During this time period, Active Energy monitored for and detected levels of the following parameters from Wastewater Outfall 001: temperature, pH, dissolved oxygen, chemical oxygen demand, biological oxygen demand, total suspended solids, conductivity, total nitrogen, total Kjeldahl nitrogen, nitrite/nitrate, sulfide, zinc, copper, phenol, and total chromium.

88. The discharges from Outfall 001 may also include additional pollutants not specifically monitored for.

89. Upon information and belief, Active Energy's Outfall 001 discharge may also contain some amount of the toxic industrial solvents that contaminate the site's groundwater, including but not limited to, PCE, TCE, DCE, vinyl chloride, and benzene.

90. Samples of Outfall 001's effluent taken on December 7, 2004, and December 13, 2016, as part of annual groundwater monitoring reports show detectable levels of DCE.

91. Although Active Energy has been monitoring for some of the toxic solvents, it is only doing so on a quarterly basis.

92. Active Energy is not monitoring its Outfall 001 effluent for benzene or any other volatile organic compound contaminants found in the Lumberton industrial site's groundwater, aside from PCE, TCE, *cis*-1,2-DCE, and vinyl chloride.

93. Upon information and belief, since March 2019, Active Energy has discharged filter backwash wastewater from Outfall 002 into Jacob's Branch.

94. Through the DMRs, Active Energy reported a total of 519 days of discharge (flow) from March 1, 2019, to September 30, 2020, from Outfall 002 into Jacob's Branch.

95. During this time period, Active Energy reported that its discharges from Outfall 002 contained 10 specific pollutants.

96. During this time period, Active Energy monitored for and detected levels of the following parameters from Wastewater Outfall 002: pH, total suspended solids, turbidity, total nitrogen, total phosphorus, iron, manganese, aluminum, copper, and zinc.

97. The discharges from Outfall 002 may also include additional pollutants not specifically monitored for.

98. In addition to the DMRs, Active Energy's discharges are also documented in effluent monitoring data submitted to EPA, annual groundwater monitoring reports submitted to the North Carolina Division of Waste Management, and in letters from Active Energy's counsel to counsel for Winyah Rivers Alliance.

99. Upon information and belief, Active Energy's discharges of industrial wastewater from Outfalls 001 and 002 are continuing or otherwise likely to be repeated.

D. The modified NPDES permit does not authorize Active Energy to discharge wastewater from the industrial site.

100. Alamac American Knits held an NPDES permit (NC0004618) for the operation of the on-site wastewater treatment plant and discharges of industrial wastewater.

101. Upon information and belief, Alamac obtained this permit from the North Carolina Division of Water Resources (previously, the Division of Water Quality) after undergoing an in-depth permitting process whereby Alamac demonstrated that operations of its wastewater treatment plant and the resulting discharges would not cause a violation of North Carolina water quality standards.

102. Alamac requested renewal of its NPDES permit in 2009 and 2014, and in both instances Alamac submitted information to the Division of Water Resources regarding Alamac's operation of the wastewater treatment plant, including the flow and treatment process, and disclosed the specific effluent characteristics of its discharges.

103. The NPDES permit authorized Alamac to discharge treated wastewater to the Lumber River through Outfall 001. The NPDES permit defined the Outfall 001 effluent to include "treated wastewater from the treatment of non-contact cooling water, boiler blowdown, groundwater remediation, water softener wastewater, and other process wastewater."

104. The NPDES permit also authorized Alamac to discharge filter backwash wastewater to Jacob's Branch through Outfall 002.

105. On January 7, 2019, Alamac applied for renewal of its NPDES permit, which was set to expire on July 31, 2019, specifically "requesting to continue with permit NC0004618 until the facility is sold and the transfer of ownership is complete."

106. As part of this request, Alamac stated that the facility was “permanently closed” and that “[a]t present, production calculations and wastewater analyses would not reflect representative sampling for permit renewal.”

107. Accordingly, Alamac’s renewal documents did not include any information regarding existing discharge amounts or effluent characteristics. The section on the renewal form relating to the average flow for process water, cooling water, and remediated well water was left blank, and the section on intake and effluent characteristics was marked “N/A.”

108. On April 10, 2019, the NPDES permit was transferred to Active Energy, through Lumberton Energy Holdings (the “modified permit”). A copy of the modified permit is attached as Exhibit 3.

109. The modified permit included an expiration date of July 31, 2019.

110. Upon information and belief, Active Energy has never submitted a renewal application to the Division of Water Resources.

111. When the permit was transferred to Active Energy it was also modified to include a new condition—Condition A.(7): “Approval to Resume Discharge Requirements.” Condition A.(7) states:

The former Alamac Knits facility covered by permit NC0004618 is currently inactive, and does not discharge wastewater. Prior to any resumption of discharge, the permittee [i.e., Active Energy] must provide the Division [of Water Resources] with an updated renewal application to document the change in wastewater characteristics, as well as an updated analysis of alternatives to wastewater discharge.

112. The cover page for the modified permit summarizes Condition A.(7) as “requir[ing] submission of additional information prior to future discharges from the site” and otherwise explains that “the subject facility is currently inactive.”

113. To date, Active Energy has not submitted an updated application or relevant documentation to the Division of Water Resources pursuant to Condition A.(7).

114. Active Energy has also never submitted documents to the Division of Water Resources related to the type of waste being discharged, the flow and operation of the treatment system being used, or the characteristic of the effluent.

115. Upon information and belief, the last time the Division of Water Resources analyzed the impact of discharges from the Lumberton industrial site's wastewater treatment plant was in 2014 when Alamac submitted its last complete renewal application.

E. Active Energy's industrial pollution could harm the natural and scenic value of the Lumber River basin.

116. Active Energy's industrial site is situated between the Lumber River and Jacob's Branch, a tributary that enters the Lumber River southeast of the site.

117. The Division of Water Resources classifies the Lumber River and Jacob's Branch in the area near the facility as Class C surface waters and Swamp Waters. Class C surface waters are protected by state water quality standards and must remain in a condition suitable for aquatic life propagation and maintenance of biological integrity, wildlife, fishing, and secondary recreation, which includes wading, boating, and other uses not involving frequent human body contact with water.

118. Moreover, in 1998, the Lumber River was federally designated as a Wild and Scenic River, and the portion of the river into which Active Energy's discharges flow is designated as recreational.

119. The Lumber River is also included in the North Carolina Natural and Scenic River System, meaning that the North Carolina General Assembly has deemed it to "possess outstanding natural, scenic, educational, geological, recreational, historic, fish and wildlife,

scientific and cultural values of great present and future benefit to the people.” N.C. Gen. Stat. § 143B-135.142.

120. The North Carolina General Assembly classified the section of the river that flows by the industrial site, upstream of the junction of the Lumber River and Jacob’s Branch, as recreational; while it classified the portion downstream of the junction of the Lumber River and Jacob’s Branch (i.e., the area immediately downstream of the industrial site) as natural.

121. Natural river areas “are free of man-made impoundments and generally inaccessible except by trail, with the lands within the boundaries essentially primitive and the waters essentially unpolluted.” N.C. Gen. Stat. § 143B-135.148. It is the policy of the State that the Lumber River’s natural condition be maintained.

122. Active Energy’s discharges of industrial wastewater could harm the natural and scenic value of the Lumber River and Jacob’s Branch.

123. The groundwater being treated at the industrial site contains toxic pollutants. For example, benzene, dichloroethylene, naphthalene, tetrachloroethylene, toluene, trichloroethylene, and vinyl chloride are all federally classified as toxic pollutants, 40 C.F.R. § 401.15, and have all been found in the groundwater at the site.

124. Although Active Energy is monitoring the site’s groundwater, it is not monitoring the Outfall 001 effluent for all of the known toxic pollutants contained within the groundwater contamination.

125. Of the toxic pollutants that Active Energy is monitoring for in the Outfall 001 effluent, several have been detected in the effluent discharged from the treatment plant, including chromium, copper, zinc, and previously *cis*-1,2-DCE.

126. Chromium is a toxic pollutant, 40 C.F.R. § 401.15, and oral exposure to hexavalent chromium, a human carcinogen, has been found to cause lung cancer and stomach tumors. Exposure to the skin may cause dermatitis, sensitivity, and ulceration of the skin. Chromium is most toxic in its hexavalent form, which poses a significant threat to aquatic life and has acute and chronic toxicity in fish. Chromium uptake and toxicity in fish has been shown to increase dramatically with small increases in water acidity. The Lumber River is acidic by nature.

127. Copper is a toxic pollutant, 40 C.F.R. § 401.15. Though it is an essential trace element, it is toxic to aquatic organisms at sufficiently high concentrations. According to the EPA, in addition to acute effects such as mortality, chronic exposure of aquatic life to copper can lead to adverse effects on survival, growth, and reproduction as well as alterations of brain function, enzyme activity, blood chemistry, and metabolism.

128. Zinc is a toxic pollutant, 40 C.F.R. § 401.15. Though it is an essential trace element for humans and other organisms, it is highly toxic to aquatic species, including fish, crustaceans, *Daphnia*, and phytoplankton, in sufficiently high concentrations. Zinc toxicity has been shown to be inversely correlated with water hardness and pH.

129. In 2015 and 2019, North Carolina updated its water quality standards and associated requirements for effluent discharge limits of zinc and copper into Class C surface waters under 15A N.C. Admin. Code 2B .0211.

130. Chlorinated solvents such as PCE, TCE, and DCE are toxic to aquatic organisms, including fish, and may cause long-term adverse effects in aquatic environments.

131. Research has also demonstrated that chlorinated solvents are teratogenic to North American amphibians.

132. Benzene is a toxic pollutant, 40 C.F.R. § 401.15, and major effects of long-term exposure in humans are generally on the blood. According to the World Health Organization, benzene causes acute myeloid leukemia, and there is limited evidence that benzene may also cause acute and chronic lymphocytic leukemia, non-Hodgkin's lymphoma, and multiple myeloma. According to the Centers for Disease Control, benzene causes harmful effects on the bone marrow and can cause a decrease in red blood cells, leading to aplastic anemia.

133. Dichloroethylene ("DCE") is a toxic pollutant, 40 C.F.R. § 401.15. According to the U.S. Agency for Toxic Substances and Disease Registry ("ATSDR"), in animal studies, acute exposures through both inhalation and oral routes resulted in toxicity to the heart, liver, and lungs; it is also a central nervous system depressant.

134. Trichloroethylene ("TCE") is a toxic pollutant, 40 C.F.R. § 401.15, and a known human carcinogen. According to the ATSDR, TCE can cause kidney cancer in humans and may cause liver cancer and malignant lymphoma. TCE is linked to developmental effects such as spontaneous abortion, congenital heart defects, central nervous system defects, and small birth weight.

135. Tetrachloroethylene ("PCE") is a toxic pollutant, 40 C.F.R. § 401.15, and a probable human carcinogen according to the EPA and the International Agency for Research on Cancer ("IARC"). According to the ATSDR, PCE exposure is linked to increased risk of bladder cancer, multiple myeloma, and non-Hodgkin's lymphoma in humans.

136. Vinyl chloride is a toxic pollutant, 40 C.F.R. § 401.15, and a known human carcinogen. According to the National Cancer Institute, vinyl chloride exposure is associated with an increased risk of a rare form of liver cancer called hepatic angiosarcoma, as well as brain and lung cancers, lymphoma, and leukemia. The CDC reports that infants and young

children might be more susceptible than adults to vinyl chloride-induced cancer. According to the EPA, central nervous system effects including dizziness, drowsiness, fatigue, headache, visual and/or hearing disturbances, memory loss, and sleep disturbances, and peripheral nervous system effects including peripheral neuropathy, tingling, numbness, weakness, and pain in extremities have been reported in workers exposed to vinyl chloride.

137. 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 industrial 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.

FIRST CAUSE OF ACTION

Unauthorized Discharges to Waters of the United States in Violation of the Clean Water Act (33 U.S.C. § 1311)

138. The allegations of the preceding paragraphs are incorporated here by reference.

139. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), provides that the discharge of any pollutant by any person is unlawful, unless the discharge complies with various enumerated sections of the Act. Section 301(a) prohibits discharges not authorized by a valid NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

140. Active Energy has discharged and continues to discharge industrial pollutants from a point source directly into waters of the United States, in violation of the Clean Water Act's prohibition on unpermitted discharges.

141. Active Energy has discharged and continues to discharge industrial pollutants into the Lumber River and Jacob's Branch from Wastewater Outfalls 001 and 002 without an NPDES permit authorizing these discharges.

142. The treated groundwater and filter backwash are “industrial waste[s]” and therefore “pollutant[s]” under the Clean Water Act. The specific constituents contained within the industrial wastewater are also pollutants in the form of chemical waste, biological material, heat, or other industrial wastes.

143. Wastewater Outfalls 001 and 002 are point sources under the Clean Water Act.

144. The Lumber River and Jacob’s Branch are waters of the United States.

145. Each of Active Energy’s discharges without authorization under an NPDES permit is a separate and distinct violation of the Clean Water Act. 33 U.S.C. §§ 1311, 1319(d), 1342.

146. Upon information and belief, Active Energy’s unpermitted discharges commenced on March 1, 2019, and are ongoing.

147. Active Energy’s unpermitted discharges into the Lumber River and Jacob’s Branch have adversely affected members of Winyah Rivers Alliance by impairing their use and enjoyment of the Lumber River downstream of the industrial site.

148. Active Energy’s continuing unpermitted discharges alleged herein harm the waters of North Carolina, Winyah Rivers Alliance, and its members, for which harm Winyah Rivers Alliance has no plain, speedy, or adequate remedy at law.

SECOND CAUSE OF ACTION

Violations of the National Pollutant Discharge Elimination System Permit (33 U.S.C. § 1365; 40 C.F.R. § 122.41)

149. The allegations of the preceding paragraphs are incorporated here by reference.

150. Active Energy has discharged and continues to discharge industrial wastewater from its Lumberton site, in violation of the express terms of the modified NPDES permit.

151. Active Energy's modified NPDES permit expressly incorporates the requirements of 40 C.F.R § 122.41 by requiring that "[t]he Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action."

152. Active Energy has violated and continues to violate Condition A.(7) of the modified NDES permit prohibiting it from discharging any wastewater from the Lumberton industrial site. Condition A.(7) states:

The former Alamac Knits facility covered by permit NC0004618 is currently inactive, and does not discharge wastewater. Prior to any resumption of discharge, the permittee [i.e., Active Energy] must provide the Division [of Water Resources] with an updated renewal application to document the change in wastewater characteristics, as well as an updated analysis of alternatives to wastewater discharge.

153. The Clean Water Act provides that citizen suits may be brought for violations of "an effluent standard or limitation," which is defined to include "a permit or condition" thereof. 33 U.S.C. § 1365(f). The Clean Water Act's implementing regulations further state that "[a]ny permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action." 40 C.F.R. § 122.41(a). By violating an express condition of the modified NPDES permit, Active Energy has violated and continues to violate the Clean Water Act.

154. Each of Active Energy's discharges in violation of the modified NPDES permit is a separate and distinct violation of the Clean Water Act. 33 U.S.C. §§ 1311, 1319(d), 1342.

155. Upon information and belief, Active Energy's unauthorized discharges commenced on April 10, 2019, and are ongoing.

156. Active Energy's violations of Condition A.(7) of the modified NPDES permit have adversely affected members of Winyah Rivers Alliance by impairing their use and enjoyment of the Lumber River downstream of the industrial site.

157. Active Energy's continuing unauthorized discharges alleged herein harm the waters of North Carolina, Winyah Rivers Alliance, and its members, for which harm Winyah Rivers Alliance has no plain, speedy, or adequate remedy at law.

REQUEST FOR RELIEF

Wherefore, Plaintiff Winyah Rivers Alliance respectfully requests that this Court:

- A. Declare that Defendants have violated and continue to be in violation of the Clean Water Act by discharging industrial pollutants into the Lumber River and Jacob's Branch without an NPDES permit authorizing those discharges;
- B. Declare that Defendants have violated and continue to be in violation of Condition A.(7) of the modified NPDES permit by discharging wastewater into the Lumber River and Jacob's Branch;
- C. Enjoin Defendants from discharging pollutants from its facility except as authorized by and in compliance with a valid NPDES permit;
- D. Order Defendants to immediately apply for coverage under a new or renewed NPDES permit;
- E. Order Defendants to take appropriate actions to remediate the harm caused by the violations of the modified NPDES permit and the Clean Water Act, to the extent possible;
- F. Order Defendants to pay, jointly and severally, civil penalties of \$56,400 per day per violation, as provided by 33 U.S.C. §§ 1319(d), 1365(a), and 40 C.F.R. §§ 19.1–19.4;
- G. Award Winyah Rivers Alliance its reasonable fees, costs, and expenses, including attorneys' fees, associated with this litigation; and
- H. Grant Winyah Rivers Alliance any such further and additional relief as the Court may deem just and proper.

Respectfully submitted this 10th day of March, 2021.

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