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S.C. SUPREME COURT

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

Clyde Marcus Jones, II; Dennis Phillips, and Deborah Phillips, on behalf of themselves and all others similarly situated, Plaintiffs, v. Duke Energy Corporation and Duke Energy Carolinas, LLC, Defendants.	Civil Action No.: 3:24-cv-1281-MGL

PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

Duke Energy's 34-page response, coupled with 16 exhibits totaling 399 pages of mostly irrelevant documents, seeks to convolute the Court's Rule 23 analysis in this case. In so doing, Duke Energy omits material facts, attempts to inaccurately reframe Plaintiff's case, and relies heavily on a nonbinding district court opinion—*Tillman v. Highland Indus.*, C/A No. 4:19-cv-02563-SAL, 2021 WL 4483035 (D.S.C. 2021)—which it stretches beyond its facts to fit a narrative. The Court should reject Duke Energy's arguments and certify Plaintiff's proposed class.

I. ARGUMENT

Duke Energy's response implicitly concedes that Plaintiff's proposed class satisfies most of Rule 23's requirements of numerosity, typicality, commonality, and adequacy. Duke's only argument against certification is that the predominance requirement of Rule 23(b)(3) is unsatisfied. As explained below, however, common questions, particularly as to liability, predominate over any individual questions.

A. Duke Energy's Liability is Clear on a Class-wide Basis and Satisfies the Predominance Requirement of Rule 23(b)(3).

The evidentiary record establishes that the oil sprayed by Duke Energy's MCP contaminated Lake Wateree with PCBs. Duke Energy's mischaracterizations, omissions, and attempts to obfuscate do not change the foundational facts, which more than satisfy Rule 23(b)(3)'s predominance requirement as to Duke Energy's liability. *See, e.g., Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013) (observing that "common issues need only predominate, not outnumber individual issues.") (internal citations omitted). The Court should therefore find that common issues of fact and law predominate such that individualized fact-intensive inquiries are not necessary. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 362 (2011).

1. For Decades, the Duke Energy MCP Sprayed Thousands of Gallons of Transformer Oil Containing PCBs into Lake Wateree.

Despite Duke Energy's intentional omissions, the evidentiary record shows that, for decades, its employees sprayed transformer and waste oil on Lake Wateree in service of the MCP.

As Duke Energy's own documents reflect, MCP employees sprayed large quantities of used transformer and "waste oil" in the coves of Lake Wateree to curb mosquito breeding. *See, e.g.,* Dkt. 81, Ex. D, DUK_00000027 (noting that transformer oil was used in the MCP after 1942); Ex. G, DUK_00000172 (referring waste oils for use in the MCP); Ex. I, DUK_00000297 (draft speech for the 1970 workshop on mosquito control, noting that "[w]e are using transformer oil and number 2 diesel fuel at the present").

These facts are further corroborated by the deposition testimony of former Duke Energy employee Henry Beckham, who administered the MCP on Lake Wateree during the summers from 1968 to 1973. Ex. 1 (Excerpt - H. Beckham Dep. Tr., at p. 20:15-19). In his deposition, Mr. Beckham testified that "the people at Duke" told him that the oil Duke Energy provided "was burned transformer oil that Duke had taken out of transformers that were no longer in service." *Id.*

at 40:18-41:3. Mr. Beckham also testified to the quantity of oil he sprayed into the lake every day while working, estimating it at two 55-gallon drums per day, or 550 gallons per work week. *See id.* at 63:21-64:4 ("Well, it was two drums per day. And I got Kershaw County math, but 110 times 5 is, what, 550 gallons per week.").

It is well-established that the transformer oil used by Duke Energy contained PCBs, which were intentionally added to the oil due to their fire-resistant properties.[1] While the production of PCBs was banned by the Toxic Controlled Substances Act in 1979, the use of transformers containing PCBs was not. *See* U.S. Environmental Protection Agency, "Registering Transformers Containing Polychlorinated Biphenyls (PCBs) and Interpreting the PCB Transformer Database," available at https://www.epa.gov/sites/default/files/2019-09/documents/pcb_definitions.pdf (last accessed November 10, 2025).

Duke Energy does not refute these facts—but instead glosses over them by omitting from its response any mention of transformer or waste oil. Indeed, Duke Energy states that "[f]or the first several decades of the MCP, the major larviciding material used was fuel oil." *Id.* at 8. This statement is at best a half-truth, and the Court should find, consistent with the evidentiary record, that for decades Duke Energy sprayed thousands of gallons of PCB-containing transformer oil into

[1] For decades, Duke Energy used PCB-containing oil in its electrical transformers, capacitors, and other electrical equipment due to PCB's insulating properties and resistance to fire. It is unclear when exactly Duke Energy stopped using electrical equipment that relies on oil containing PCBs, or if it has even stopped today. For example, in December 2014, a Duke Energy electrical substation adjacent to a business park in Lincolnton, North Carolina was vandalized resulting in the release of "2,700 gallons of PCB containing oil" which "threatened to impact the Catawba River located less than 0.25 miles of the west of the release point." U.S. Environmental Protection Agency, On-Scene Coordinator, Duke Energy Lincolnton Transformer Release Pollution/Situation Report, available at https://response.epa.gov/site/sitrep_profile.aspx?site_id=9691&counter=22663 (last accessed November 10, 2025). "Based on Duke Energy inventory records the transformers contained PCB concentrations ranging from 200-230 ppm" and samples collected at the site "confirm[ed] the presence of PCBs." *Id.*

the coves of Lake Wateree.

2. The MCP Caused PCB Contamination in Lake Wateree.

Duke Energy's argument that there are "many potential causes" of Lake Wateree's PCB contamination (Dkt. 90 at 9), as well as Dr. Butler's report (Dkt. 90-11), whistle past the graveyard of the obvious: the MCP was the major contributor to Lake Wateree's PCB contamination. That there may be *other* causes of PCB contamination does not defeat class certification at this stage.

A 2021 peer-reviewed study concluded, with reasonable scientific certainty, that Duke Energy's MCP caused, "at least in part," the PCB contamination in Lake Wateree. *See* Dkt. 38-3 at p. 95 ("[T]he widespread contamination of PCBs within the Catawba River reservoirs…was caused, at least in part, by the direct application of used transformer oil as part of the mosquito control efforts by the reservoir operators.").[2] According to the study, "the culture of mosquito control and malarial eradication that co-evolved with the creation of hydroelectric plants in the early part of the twentieth century likely made the use of waste oil from transformers likely, if not inevitable, at some locations in the Carolinas." *Id.* at p. 93. The study uses Aroclor numbers—the trade numbering standard for PCBs—to distinguish and confirm the presence of transformer oil in the impacted reservoirs. *Id.* at 93-94. The study also controls for alternative sources. *Id.* at p. 95.[3]

Duke Energy does not refute these findings but rather highlights irrelevant evidence of PCB contamination in other South Carolina waterways located over 100 miles away from Lake Wateree in a different watershed, *see, e.g.,* Dkt. 90 at 9 (discussing a 1976 industrial spill at Lake Hartwell), and proffers an expert—Dr. Butler—to opine vaguely that there may be other potential

[2] In his initial disclosures, Plaintiff identified the 2021 study authors, Dr. James B. Glover, Ph.D, and Dr. Deke Gunderson, Ph.D., as expert witnesses he intends to call at trial.

[3] Despite repeated discovery requests, Duke Energy has yet to provide documents or information identifying which types of transformer oil it employed in its electrical equipment prior to 1976, or what transformer oil was used in the MCP.

causes of PCB contamination, *id.* at 10. Such considerations may be relevant to a "battle of the experts" at the merits stage of this case, but the court should refrain from turning class certification into a dress rehearsal for the trial on the merits. *See e.g. Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802 (7th Cir. 2012).

3. It is Irrelevant that Duke Energy's Spraying of PCB-containing Oil on Lake Wateree was Lawful at the Time.

For purposes of establishing liability, the fact that it was lawful or even required that Duke Energy control mosquitoes in its reservoirs does not preclude the Court from finding that the PCB contamination caused by the MCP constitutes a nuisance. *See Shaw v. Coleman*, 373 S.C. 485 (S.C. 2007) ("If a lawful business is operated in an unlawful or unreasonable manner so as to produce material injury or grate annoyance to others or unreasonably interferes with the lawful use and enjoyment of the property of others, it will constitute a nuisance.").

B. Defendants' Reliance on *Tillman* is Misplaced.

Defendants rely heavily on Judge Lydon's opinion and order denying class certification in *Tillman*, claiming it provides "compelling precedent" for the Court to deny class certification because of the "striking similarities" between *Tillman* and the case at bar. Dkt. 90 at 9. *Tillman* simply can't carry the heavy load Duke desires. As this Court is aware, *Tillman* is not binding on this Court. Moreover, and contrary to Defendants' contention, the facts in *Tillman* are distinguishable from the facts of this case.

In *Tillman*, the plaintiff sought certification of a class of landowners alleging claims against the defendant, Highland Industries, a successor in interest to a portion of a textile plant formerly owned by Burlington Industries, Inc. ("Burlington"). *Tillman v. Highland Indus.*, C/A No. 4:19-cv-02563-SAL, 2021 WL 4483035, at *2 (D.S.C. 2021). At summary judgment, the district court held that Highland could not be liable for its predecessor's discharge and release of

polychlorinated biphenyls (PCBs) onto the property. *Id.* at *2. The question of class certification therefore hinged on the defendant's post-purchase actions or inactions, which plaintiffs argued resulted in migration of PCBs from the defendant's portion of the plant onto class members' properties. *Id.* For the district court, this transfer of ownership—a circumstance not present in this case—raised significant factual hurdles that distinguished the case from other environmental contamination cases. *Id.* at * 9.

The district court thereafter discounted and distinguished *Tillman* from the single source, single contaminant, and single method of transport cases where other district courts repeatedly granted class certification. *Id.*, at *9 n. 4-6 (collecting environmental contamination cases where district courts granted class certification based upon a common source, contaminant, and mode of transport).

The district court's opinion denying class certification relied heavily on the absence of a single act or omission causing the plaintiffs' injuries. As the district court observed:

> The identification of the act or omission is the very place where this case diverges from the 14 cases heavily relied on by Plaintiff. In those cases, the plaintiffs point to a specific act or failure by the defendant, such as an emission, leak, or disposal, and they seek to determine the defendant's liability associated with the identified act, if any. The focus in those cases being, is the defendant liable for the identified act or failure? One act or failure, one set of evidence, one answer.

Id. at * 24.

The district court's concern regarding the plaintiffs' inability to demonstrate injury by common proof pervaded its opinion. *Id.* at * n. 20 ("In this case, [the plaintiffs] must show more than just the fact that PCBs came from the Highland Site. She must show that the PCBs at issue flowed from those portions of the Highland Site purchase by Defendant."). Because the district court found that the case before it was not one of the mass tort cases arising from a common cause, pattern, or disaster, the district court denied the plaintiff's motion for

class certification.

Defendants ignore this foundational distinction and ignore the portion of *Tillman* endorsing the class device in instances like the case at bar. While the district court in *Tillman* determined that the case before it was not an environmental mass tort alleging a single source, single contaminant, or single method of transport, this case, in fact, presents a common environmental tort well situated for class certification. *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591 (1997) ("[M]ass tort cases arising from a common cause or disaster may, depending on the circumstances, satisfy the predominance requirement.").

Defendants' memorandum lauds implementation of the MCP. But the requirement that Defendants control malaria on their reservoirs does not preclude a finding that the PCB contamination caused by the MCP constitutes a nuisance. *Shaw*, 373 S.C. 485, 496; *see also Lefurgy v. Long Cove Club Owners Ass'n*, 313 S.C. 555, 558 (S.C. Ct. App. 1994) (noting that the operation of a lawful business may become a nuisance *per accidens* by reason of the improper manner in which it is conducted). For decades, Defendants disposed of large quantities of transformer oil and used waste oil directly into Lake Wateree in service of the MCP, a fact which is corroborated by Defendants' own documents and which constituted a nuisance. This is consistent with Dr. Glover and Dr. Gundersen's findings in their peer-reviewed article.

Whereas the *Tillman* case presented questions regarding the source of PCBs, and the method of transmission, in this case Plaintiff posits a single disposal practice that equally applied throughout Lake Wateree. The question of whether the MCP was the predominant source of PCBs in Lake Wateree is a single question susceptible to common proof. Similarly, the fact of PCBs in Lake Wateree, which Defendants do not dispute, is a fact common to all class members who own property adjoining Lake Wateree. *See e.g. Freeman v. Grain Processing Corp.*, 895 N.W.2d 105,

120 (Iowa 2017) (granting the plaintiffs' motion for class certification and finding that the normal person standard is objective and susceptible to common questions and representative evidence). Duke Energy concedes that a water-front property owner's bundle of rights includes the right to peaceful use and enjoyment of their property. *See* Dkt. 90, at p. 18. Here, where the MCP contaminated Lake Wateree, the fact of this infringement by a single method of disposal applies to all properties.

This case presents a single contaminant and single method of disposal environmental tort. *Tillman* has no persuasive value factually or legally.

C. Under Fourth Circuit Precedent, the Need for Some Individualized Determinations on Damages Does Not Defeat Class Certification.

Defendants argue that individualized inquiries regarding damages will predominate over common questions such that certification under Rule 23(b)(3) is improper. In doing so, Defendants ignore controlling precedent holding that the need for individualized damages determinations does not defeat class certification under Rule 23(b)(3) if common issues as to liability predominate.

In *Gunnells v. Healthplan Servs.*, 348 F. 3d 417, 429 (4th Cir. 2003), the Fourth Circuit held that "the need for individualized proof of damages alone will *not* defeat class certification." *Id.* at 429 (emphasis in original) (citations omitted); *see also, e.g.*, *Stillmock v. Weis Mkts., Inc.*, 385 Fed. Appx. 267, 272-73 (4th Cir. 2010) (vacating a district court's denial of class certification that was based in part on finding individual damages issues would predominate over common issues); *Degidio v. Crazy Horse Saloon & Rest., Inc.*, No. 4:13-cv-2316, 2015 WL 5834280, at *21 n. 9 (D.S.C. Sept. 30, 2015) ("In the context of Rule 23, which imposes far more rigorous requirements for class certification, the Fourth Circuit has held that the need for individualized determinations on the issue of damages should not ordinarily preclude

class certification." (citation omitted)); Newberg and Rubenstein on Class Actions § 4:54 ("[T]he black letter rule is that individual damages calculations generally do not defeat a finding that common issues predominate, and courts in every circuit have uniformly held that the 23(b)(3) predominance requirement is satisfied despite the need to make individualized damages determinations.").

The Fourth Circuit in *Gunnells* further explained that: "[I]n actions for money damages under Rule 23(b)(3), courts *usually* require individual proof of the amount of damages each member incurred. When such individualized inquiries are necessary, if common questions predominate over individual questions as to liability, courts generally find the predominance standard of Rule 23(b)(3) to be satisfied." *Gunnells* at 428 (emphasis in original) (cleaned up) (citations omitted). The court noted: "this is precisely the same argument made by almost all defendants in mass tort cases"—that individual damages determinations defeat class certification under Rule 23(b)(3)—but "[c]ourts have routinely rejected this argument . . . ." *Id.* at 429. Moreover, the Advisory Committee Comments on Rule 23(b)(3) expressly contemplate class certification under the Rule even when individual damages determinations are required: "[A] fraud perpetrated on numerous persons by the use of similar misrepresentations may be an appealing situation for a class action, and it may remain so despite the need, if liability is found, for separate determination of the damages suffered by individuals within the class." Rule 23(b)(3), Notes of Advisory Committee on 1966 Amendment to Rule 23, Subdivision (b)(3).

Here, as in *Gunnells*, common questions of liability predominate even though there will be some individual inquiries in calculating damages. The core issues of this case surrounding Defendants' conduct in contaminating Lake Wateree and Defendants' resulting liability are

common to all class members. *See* ECF No. 82-1 at 26 for a summary of important liability issues common to the proposed class. Although the deadline for expert disclosures on the merits has not yet passed, Plaintiffs intend to produce a report from an expert appraiser who will use a standard appraisal methodology to appraise categories of Plaintiffs' properties (e.g., single family homes, vacant lots, mobile homes) and compare those values to the market value of corresponding categories of properties on a comparable lake. Plaintiffs also intend to disclose an economist expert specializing in the field of natural resource damages who will apply principles of economics to estimate the value of ecosystem services and natural resources to the Lake Wateree property owners. Defendants complain that appraising Plaintiffs' properties will be overly complex, but appraising real property values is a routine matter.

Under controlling Fourth Circuit precedent, the calculations needed to determine class members' damages in this case do not come close to predominating over the myriad common issues as to liability that are the crux of this case. If Defendants' argument were accepted that the predominance requirement of Rule 23(b)(3) is not met because damages calculations will ultimately be required, then no contamination class actions would ever be certified. Moreover, in the event the Court has concerns regarding damages determinations, it is within the Court's discretion to certify the proposed class as to liability only at this initial stage.

D. Defendants' Argument that the Class Members Must Assert Only Uniform Claims Is Without Merit

In its response, Duke Energy attempts to lure the Court to litigate the merits of Plaintiff's riparian rights as a landowner, framing as the argument as a challenges to the typicality and predominance of common issues in the proposed class. Dkt. 90 at 21-27. In doing so, Duke Energy advocates for what amounts to a perfect uniformity requirement; that all landowners have identical rights, desires, and purposes for their land or otherwise cannot bring their claims as a

class—and in fact contends that landowners can never bring a federal class action under a nuisance theory. *Id.* at 22 (questioning whether nuisance claims can proceed as a class action because "[w]hat may be a nuisance to one property owner may be meaningless to another"). Such arguments run counter to the law. Per Rule 23(b)(3), all that is needed is for common questions of law and fact to predominate in the class. *See, e.g., Bell v. Westrock CP, LLC*, Civil Action No. 3:17-cv-829, 2019 U.S. Dist. LEXIS 71209, at *7 (E.D. Va. Apr. 26, 2019) (granting class certification on landowner nuisance claims upon finding that "although minor factual variances may exist between the individual plaintiffs, the plaintiffs share common questions of law and fact, which have the capacity to produce common answers.") (citation, quotations omitted).

Here, the proposed class asserts and relies upon the same legal theories and set of facts regarding, among other things, actions taken by Duke Energy, environmental harm to Lake Wateree and its surrounding properties, and damages arising from that harm. Those facts and issues predominate in the proposed class, which therefore meets the requirements of Rule 23(b)(3).

E. Resolution of Defendants' Statute of Limitations Argument Involves Questions Common to the Class and Does Not Defeat Class Certification.

Defendants also argue that the predominance requirement of Rule 23(b)(3) is unsatisfied because Duke Energy raised a statute of limitations defense. In support of this position, Defendants suggest that class certification is improper any time a defendant might raise the statute of limitations as a defense. That, of course, is not the law.

Rule 23(b)(3) requires "that the questions of law or fact common to class members predominate over any questions affectingly only individual members . . . ." (emphasis added). It does not require that every question of fact and law pertaining to each claim and defense be common to class members and capable of determination on a class-wide basis, which

would be a virtually impossible standard to meet. Rather, "[t]he Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods.*, 521 U.S. 591, 623.

The Supreme Court has explained that "[w]hen one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) **even though other important matters will have to be tried separately, such as damages or some affirmative defenses** peculiar to some individual class members." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (internal quotations omitted) (citation omitted) (emphasis added); *see also, e.g.*, *Gunnells*, 348 F. 3d at 428 ("When such individualized inquiries are necessary, if common questions predominate over individual questions as to liability, courts generally find the predominance standard of Rule 23(b)(3) to be satisfied." (internal quotations omitted) (citation omitted)).

Here, the vast majority (if not all) of the questions surrounding Defendants' liability are common among class members. Such common questions are listed in Plaintiffs' memorandum in support of their motion for class certification, ECF No. 82-1 at 26.

Moreover, many of the questions raised by Defendants' purported statute of limitations defense will be common to the class. Plaintiffs maintain that Defendants are estopped from claiming the statute of limitations as a defense because of their actions in concealing their wrongful conduct in connection with the MCP, including Defendants' public misrepresentations about the safety of the program and their undertaking self-serving studies to downplay the contamination caused by the MCP.

Defendants' actions in concealing their tortious conduct from the public were common to all class members, and whether Defendants are estopped from claiming the statute of limitations

because of these actions is capable of determination on a class-wide basis. *See* Newberg and Rubenstein on Class Actions § 4:57 (explaining that "the question of whether alleged fraudulent concealment by the defendant should affect the limitations period" will be common among class members). Additionally, the question of when class members should have known of their claims is an objective inquiry capable of class-wide determination. *See, e.g.*, *Davis v. CitiMortgage, Inc.*, No. 0:15-cv-4643-MGL, 2016 WL 4040084, at *2 (D.S.C. July 28, 2016) ("The discovery rule is an objective, rather than subject test . . . ." (internal quotations omitted) (citation omitted) (Lewis, J.)); *Stokes-Craven Holding Corp. v. McKenzie*, 787 S.E.2d 486, 489 (S.C. 2016) (explaining that South Carolina's discovery rule for the statute of limitations is an objective not subjective standard).

Even if the Court were to find that some of the questions raised by Defendants' statute of limitations arguments require an individualized inquiry, that should not defeat class certification because the important issues regarding Defendants' liability are common to the class and predominate over any individual ones. *See, e.g.*, *Tyson*, 577 U.S. at 453; *see also, e.g.*, Newberg and Rubenstein on Class Actions § 4:57 ("Statute of limitations defenses—like damages calculations, affirmative defenses, and counterclaims—rarely defeat class certification."); *In re Energy Sys. Equip. Leasing Sec. Litig.*, 642 F. Supp. 718, 752-53 (E.D. N.Y. 1986) ("Courts have been nearly unanimous, however, in holding that possible differences in the application of a statute of limitations to individual class members, including the named plaintiffs, does not preclude certification of a class action so long as the necessary commonality and, in a 23(b)(3) class action, predominance, are otherwise present." (citations omitted)). Any individual issues regarding the statute of limitations could always be determined separately during the damages phase of the case if the Court wishes to certify a

class for liability only as an initial step. *See* Newberg & Rubenstein on Class Actions § 4:57.

Defendants rely heavily on *Thorn v. Jefferson-Pilot Life Insurance Co.*, 445 F. 3d 311 (4th Cir. 2006) to argue that their purported statute of limitations defense precludes class certification. The court in *Thorn*, however, explicitly stated that a statute of limitations defense does not necessarily defeat class certification and that the district court must carefully evaluate the facts of each case. *Id.* at 327 ("As our discussion reveals, this conclusion is not born of a view that individual questions necessarily arise any time a defendant raises a statute of limitations defense. Such a holding would be inconsistent with *Gariety's* requirement that the district court take a 'close look' at the facts relevant to the certification question." (citation omitted)). The *Thorn* court further noted the appellants in that case—which involved individual insurance contracts—failed to argue that common issues predominated over individual ones even if the statute of limitations defense could not be resolved on a class-wide basis. In contrast, Plaintiffs in this case expressly maintain that common issues predominate regardless of whether Defendants' statute of limitations arguments involve some individual issues.

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court grant Plaintiff's motion and certify the Proposed Class.

Respectfully submitted,

WYCHE, P.A.

s/Jessica L. Fickling

Jessica L. Fickling (Fed. ID No. 11403)
Jim May (Fed. ID No. 11355)
M. Lucy Dinkins (Fed. ID No. 11961)
P.O. Box 12247
Columbia, SC 29211-2247

P: (803) 254-6542
jfickling@wyche.com
jmay@wyche.com
ldinkins@wyche.com

SAVAGE, ROYAL & SHEHEEN, LLP

Vincent A. Sheheen (Fed. ID No. 7016)
Austin M. Sheheen (Fed. ID No. 13938)
P.O. Drawer 10
Camden, S.C. 29021
P: (803) 432-4391
vsheheen@thesavagefirm.com
asheheen@thesavagefirm.com

SPEIGHTS & SOLOMONS, LLC

A. Gibson Solomons, III (Fed. ID No. 7769)
Post Office Box 685
Hampton, SC 29924
P: (803) 943-4444
gsolomons@speightsandsolomons.com
Attorneys for Plaintiffs

November 10, 2025

Exhibit 1
(Henry Beckham Deposition Excerpts)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION
CASE NO. 3:24-cv-01281-MGL

CLYDE MARCUS JONES, II, DENNIS PHILLIPS, AND DEBORAH PHILLIPS, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

vs.

DUKE ENERGY CORPORATION AND DUKE ENERGY CAROLINAS, LLC,

Defendants.

DEPOSITION OF:	HENRY BECKHAM
DATE:	October 14, 2025
TIME:	9:14 a.m.
LOCATION:	Sheraton Myrtle Beach 2101 North Oak Street Myrtle Beach, South Carolina
TAKEN BY:	Counsel for the Defendants
REPORTED BY:	KAREN M. BECKMAN, CSR

Job No. CS7650964

there was a time when residents would complain about the mosquito issues. Do you see that?

A. Yes.

Q. And then it says, In the gasoline run pump days, the pumps ran continuously because they were notoriously hard to start, so water was sprayed continuously. When a crew arrived at a breeding habitat, they would turn a valve and allow fuel oil to be pulled into the water stream to be directed on the mosquito breeding area. This explanation still doesn't satisfy the older folks who want to see that spray, the 'placebo effect.'

Did I read that accurately?

A. Yes.

Q. And I believe you were -- if you want to keep your affidavit here beside you -- I believe you worked in the Mosquito Control Program between 1968 and 1973. Does that sound right?

A. Yes.

Q. And the subtitle of this article says Post World War II through the late 1980s. Do you see that?

A. Yes.

Q. And so you would have been a participant in the Mosquito Control Program during

A. No. 97.
Q. 97. Can you make that 7 a little more clear?
A. (The witness complies.)
Q. There you go. There.
When you would come in in the mornings to work here at the property, where would you park?
A. I don't remember.
Q. Okay.
A. Near the shed. Probably tried to find a shady tree to leave the car, you know, at the time.
Q. Okay. The container that was used, it was a large container, right? The tank?
A. The fuel oil?
Q. Yes.
A. Yes.
Q. And in terms of the content -- you've just referred to fuel oil -- how do you know what was in the tank?
A. I was under the impression speaking with the people at Duke that we would talk to from time to time and my impression of that whole operation had been that this was burned transformer oil that Duke had taken out of transformers that

were no longer in service. They were using that. Now, I don't know if that was there or if it was home heating oil. I don't know.

Q. So you personally don't know --

A. No.

Q. -- what was in it? Okay.

Can you estimate the size of the tank for me? I mean, are we talking something that was roughly the size of a tanker trunk used to transport gasoline via semi?

A. I think so. I want to say I remember, I want to say, around several thousand gallons. And, yeah, that probably would be a good description would be where you would see a fuel tanker on a truck.

Q. And was it there the whole time you worked there?

A. Again, they put it there when they built the shed.

Q. Right.

So it was there. I just want to confirm that?

A. Yes.

Q. Okay. What was on that spot before the container?

you?

A. No.

Q. And so in terms of the -- as a whole, you were not spraying all the waterfront on the lake? That wasn't what you were spraying, right?

A. No. We weren't spraying out in the big water into that frontage.

Q. Okay. I really appreciate your time. And at this time, I don't have any further questions. I may have a little bit of follow up based on his questions.

A. Okay.

EXAMINATION

BY MR. SHEHEEN:

Q. Mr. Beckham, my name is Austin Sheheen. I'm an attorney for the plaintiff in this matter. I'm just going to follow up with a quick couple kind of clarifications.

The first is what you just spoke about was where you sprayed the oil around the lake. Regardless of where you were spraying it, do you recall how much, let's say, a week you would have been putting out?

MR. DUNLAP: Objection.

Go ahead.

THE WITNESS: Well, it was two drums per day. And I got Kershaw County math, but 110 times 5 is, what, 550 gallons per week.

BY MR. SHEHEEN:

Q. And so just to be doubly sure here, regardless of where and how you were spraying it, you were putting out 550 gallons per week?

A. Yes.

MR. DUNLAP: Objection.

BY MR. SHEHEEN:

Q. You mentioned earlier, at least maybe in passing, as part of the questions that I believe defense counsel said the empty barrels sitting on the lot and then asked if you knew what happened to them. Did you know if they were empty or not?

A. Again, I think when I first started working, there would be -- it was just a section that we knew those had oil. Like I said, we would have to roll those barrels down and fill them at the boat. And then we'd go back up, we'd take them to the empty section. I don't think there was a fence or a demarcation or anything. But, yeah, they were barrels, some empty, some full.

Q. Okay. And you testified earlier that some of those had been leaking throughout your