RECEIVED
Nov 09 2026
S.C. SUPREME COURT

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

Clyde Marcus Jones, II, *on behalf of himself and all others similarly situated*,

Plaintiffs,

v.

Duke Energy Corporation and Duke Energy Carolinas, LLC,

Defendants.

Case No. 3:24-cv-01281-MGL

DUKE ENERGY CORPORATION AND DUKE ENERGY CAROLINAS, LLC'S AMENDED REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Plaintiff's Opposition confirms what Duke Energy's opening brief demonstrated: Plaintiff cannot carry his burden on any element of any surviving claim. Rather than confront the dispositive deficiencies identified in the opening brief, Plaintiff repackages speculation as evidence and asks this Court to deny summary judgment based on the conjecture that Rule 56 is designed to prevent. Plaintiff's Opposition does not change the following undisputed facts: (1) Jones knew of the fish consumption advisory by 2010, yet waited until 2024 to file suit—11 years after the three-year limitations period expired; (2) there is no evidence of PCBs on Jones's property or any putative class member's property; (3) Jones has suffered no particularized injury sufficient to give him a cause of action for nuisance, and his use and enjoyment of his Property remains unchanged; (4) Jones has no forensic evidence that Duke Energy's Mosquito Control Program, rather than other sources, caused PCBs to enter Lake Wateree; and (5) Jones has no competent evidence of diminution in rental value, usable value, or market value. Summary judgment is required.

I. FACTS

Plaintiff, an owner of property in the Lake Wateree community, claims that his property

has been damaged as result of Duke Energy's alleged use of PCB-contaminated transformer oil in its MCP, an anti-malaria public health program carried out on five Duke Energy reservoirs between 1923 and 2016. *E.g.*, Defs.' Br. at 3–4; Opp'n at 3. Although Plaintiff has known of the presence of contaminants in Lake Wateree's fish since at least 2010—the only evidence of PCBs in the Lake Wateree environment—he did not bring this lawsuit until 2024. Defs.' Br. at 14, 23–24.

There is no direct evidence that transformer oil was ever applied to Lake Wateree, *id*. at 9, and Plaintiff has presented no evidence of physical contamination to his property, Opp'n at 17, despite admitting that it was tested for PCBs, Defs.' Br. at 27. Moreover, Plaintiff and his family continue to use the property for gatherings and recreation, including boating, and have marketed it as a rental property with amenities that include fishing equipment. *Id*. at 33. Plaintiff has not presented evidence of any individual damages calculation for his property's lost rental value, market diminution, or otherwise. Defs.' Br. at 34–35; Opp'n at 29. Although Plaintiff claims he personally fishes less often in Lake Wateree as a result of fish consumption advisories, his damages expert concedes this injury is no different from any suffered by the public at large. *Id*. at 30.

II. ARGUMENT

A. Plaintiff Relies on Pure Speculation to Create a Purported Factual Dispute.

This Court and the Fourth Circuit have consistently held that a litigant "'cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another.'" *Scottsdale Insurance Co. v. GS Thadius LLC*, 328 F. Supp. 3d 527, 530 (D.S.C. 2018) (quoting *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985)). Yet that is exactly what Plaintiff's Opposition attempts to do. Plaintiff assumes that the MCP applied transformer oil to Lake Wateree; that such transformer oil was *used* transformer oil having been drained out of transformers rather than clean transformer oil; that such used transformer oil was contaminated with PCBs, that Duke

Energy knew (or had reason to know) of such PCB contamination in used transformer oil at the time; that these actions caused PCB contamination of the fish in Lake Wateree; that PCBs in Lake Wateree fish tissue impact Plaintiff's property rights or affect him in some manner different from the public at large; and that a PCB fish consumption advisory has impacted area property values. On each one of these assumptions, Plaintiff lacks the admissible evidence to proceed to trial.

i. There is No Evidence that Duke Energy Applied Transformer Oil—Much Less Used, PCB-Contaminated Transformer Oil—to Lake Wateree.

It is undisputed that over the history of the Mosquito Control Program, the main larvicide applied to Lake Wateree was No. 2 fuel oil (a.k.a. tax-exempt diesel fuel), which no one contends contained any PCBs. Yet Plaintiff asks the Court to infer that Duke Energy applied transformer oil to Lake Wateree because certain documents reference use of "transformer oil" in the Mosquito Control Program generally. Plaintiff assumes that references to use of transformer oil *in the MCP*—which covered five Duke Energy reservoirs—means that transformer oil must have been applied *to Lake Wateree*. Opp'n at 3. There is no direct evidence that this occurred. *E.g.*, Defs.' Br. at 10. But even if one assumes that transformer oil was also applied to Lake Wateree, there is no evidence that any such oil would have contained PCBs.

First, the only "transformer oil" Duke Energy ever had was mineral oil, manufactured without PCBs. Some transformers used askarels, which contained PCBs and are not considered an "oil", but there is no evidence that Duke Energy applied askarels in the MCP program. Defs.' Br., Ex. 14 at 30:15–18. Plaintiff cites a 1997 document that refers to the use of "transformer oil" generally, as a substitute oil during World War II when No. 2 fuel oil/diesel fuel became scarce. *See* Opp'n, Ex. 5 at DUK_00000027. Plaintiff asks the Court to infer, based on *no* evidence, that the phrase "transformer oil" refers to askarel (PCB) fluid. Meanwhile, the *undisputed* evidence is that "transformer oil" historically referred to the ordinary *mineral oil* that was (and still is) used in

the vast majority of transformers. Defs.' Br. at 9; *id*., Ex. 14. at 55:1–13; *id*., Ex. 15 at 53:15–18.

Second, there is no evidence that any transformer oil applied in the MCP actually contained any PCBs. Mineral oil, the primary form of transformer oil, was never made with PCBs. Plaintiff therefore speculates that any reference to "transformer oil" must mean "used" transformer oil that had been contaminated with PCBs via use or handling. Plaintiff ignores the fact that the references to "transformer oil" in the general MCP documents do not say anything to suggest that such oil was recycled or used. Instead, Plaintiff relies upon the fact that Duke Energy lacks pre-1972 records reflecting the specialized disposal of used transformer oil, and suggests that must mean used transformer oil was disposed of in the MCP and not by other means. Opp'n at 6. Plaintiff is not entitled to this inference. Plaintiff waited until 2024 to bring claims involving a nearly century-long program that was discontinued in 2016, requiring Duke Energy to search for information and documentation dating back decades. Defs.' Br. at 19. Due to the passage of time, documents relevant to Plaintiff's claims (or Duke Energy's defenses) that once existed are no longer in Duke Energy's custody and control. *Id*. Third, even if Plaintiff could establish some recycled or "used" transformer oil was utilized in the MCP, there is absolutely no evidence any such material would have had PCBs in it. Instead, Plaintiff asserts any "used" mineral oil taken from a transformer must have had some level of PCB content because—Plaintiff claims—"[t]he utility industry routinely used the same pumps, hoses, filtration units, and storage tanks for both mineral oil and PCB-filled equipment, and Defendant has no record of any different practice or any separation of waste oils before 1974." Opp'n at 7. Here as well, Plaintiff baldly speculates based on the absence of surviving documents from over 50 years ago. Plaintiff has not introduced any admissible evidence to support this premise. His only evidence is the testimony of his expert Robert Workman, who is neither a utility operations expert nor transformer expert and lacks the qualifications to offer such

an opinion. ECF No. 123. Moreover, Plaintiff's speculation is contradicted by the factual record. By 1972, Duke Energy shipped used askarel to Monsanto for incineration, clearly reflecting its separate treatment of used mineral oil and askarel. *See* Ex. 44, DUK_00023367–23368.

ii. There Is No Evidence Duke Energy Knew About the Possibility for PCB Contamination of Mineral Oil Prior to 1976.

Plaintiff speculates Duke Energy was applying PCB-contaminated transformer oil into the 1970s even though, "by 1970" the utility industry knew that mineral oil used in transformers could be contaminated by PCBs. Opp'n at 6. Plaintiff further speculates—without citation to the record—"[b]y 1968…Defendant was on notice that its mineral oil and mineral-oil-filled transformers were cross-contaminated with PCBs." *Id*. at 8. To the contrary, Westinghouse thought it prudent to report, in 1976, its discovery that transformers filled with mineral oil might be cross-contaminated with trace amounts of askarels during the manufacturing process. Defs.' Br. at 12; *id*. at Ex. 38. Moreover, *Duke Energy* had "no reason to believe prior to implementation of our testing, that… transformers other than the askarel-filled transformers that we ordered were contaminated [with] PCBs." Ex. 49, Lineberger 30(b)(6) Dep. at 66:14–24; *id.* at 66:21–24 (confirming "[o]ur testing first began as part of the implementation of that first PCB plan in 1978").

Plaintiff asks the Court to infer that in or around 1970, Duke Energy was warned by Monsanto—the manufacturer of PCBs—to prevent releases of PCBs to the environment. Opp'n at 5. This assertion is premised on a purported letter from Monsanto not to Duke Energy, or to power companies, but *to transformer manufacturers*, and in any event, the document is inadmissible. Plaintiff's Exhibit 17 contains no bates number and was obtained from a website called toxicdocs.org by Plaintiff's expert Robert Workman. When asked whether he could authenticate the document, Workman admitted he tried but could not. Ex. 45, Workman Dep. at 42:21–43:8. Plaintiff offers nothing to authenticate this document.

iii. No Admissible Evidence Shows Duke Energy is the Source of PCBs.

Relying on the foregoing assumptions and evidence of Duke Energy's ownership of PCB transformers and capacitors as an electric utility, Plaintiff asks the Court to infer that Duke Energy must be the source of the PCBs that have been found in Lake Wateree's fish. *E.g.*, Opp'n at 6. But Plaintiff's only "evidence" to support this conclusion is an article written by his expert Dr. James Glover, who admits having no expertise in either PCBs or utility operations. Defs.' Br. at 13. Critically, that article does not analyze any sediment data to characterize the presence of PCBs in Lake Wateree or to relate those PCBs to Duke Energy operations, and Dr. Glover improperly assumes that all transformer oil must contain PCBs. *Id*. at 14. Dr. Glover's testimony is inadmissible. *See* ECF No. 132.

Plaintiff asserts that PCB results obtained from soil samples taken near the Lake Wateree Mosquito Control Facility in August 1997 confirmed the presence of PCBs in the environment. Opp'n at 2. Plaintiff's theory ignores uncontradicted evidence introduced by Duke Energy that the PCB "results" at issue were, in fact, *false positives*. Ex. 46, Hall 30(b)(6) Dep. at 42:1–5; 43:12–15. For example, a Pace Analytical memo from October 1997 indicates that in testing a second round of sampling collected in September 1997, Pace also noted five peaks it had initially associated with Aroclor in three of the samples. Ex. 47, DUK_00104526–104527. After Duke Energy inquired, Pace had "several analysts" review the data, and "it was a general consensus that the peaks did not match any PCB pattern." *Id*. "The fingerprint for the sample[,] however, doesn't appear to be a characteristic 1260 aroclor. Depending on results from the SCDHEC lab[,] GC/MS confirmation may be desired." *Id*.

Crucially, Plaintiff has not presented expert testimony analyzing the August 1997 PCB results and declaring them to be accurate, rather than false positives. He cannot overcome summary judgment with speculation that contradicts the factual record on this point.

iv. No Evidence Shows an Impact on Plaintiff's Property Rights or Property Values.

Plaintiff has presented no admissible evidence of injury. The Opposition refers to the rights of "shoreline property owners" and Plaintiff's property rights generally. Opp'n at 11, 21. As a matter of law, Plaintiff has failed to establish that he owns property with riparian or littoral rights. As stated in Duke Energy's opening brief, Plaintiff's property does not physically abut Lake Wateree. *See* Defs.' Br. at 15–16. Plaintiff has not presented any evidence to contradict this undisputed fact. *See* Duke Energy's Motion *in Limine* to Exclude Evidence and Testimony Referencing Plaintiff's Purported "Riparian and/or Littoral" Rights and "Shoreline" or "Lakefront" Property, ECF No. 124.

Tellingly, the Opposition's "Factual Background" contains no discussion of Plaintiff's property or his purported injury. Plaintiff argues the Court must infer that PCBs have interfered with the use and enjoyment of his property. Opp'n at 21. But that inference is contradicted by Plaintiff's own testimony. *See infra* Section III(D). Moreover, rather than respond to Duke Energy's argument about the highly speculative nature of his damages calculations, Plaintiff asks the Court to disregard that argument as premature. Opp'n at 31–32. His lack of evidence is fatal to his claims.

v. Plaintiff Relies on Inadmissible Expert Testimony.

Finally, as noted throughout this brief, given the absence of other evidence to support his claims, Plaintiff's claims turn on the opinions of his liability, causation, and damages experts, whose testimony Duke Energy is contemporaneously moving to exclude under Fed. R. Evid. 702. *See* ECF Nos. 123, 126, 132. The testimony of these experts is not sufficient to create an issue of fact, particularly to the extent that the experts' opinions are themselves speculative.

B. Plaintiff's Equitable Estoppel Argument Fails Without Evidence of Concealment.

Plaintiff's arguments in support of equitable estoppel rely on interpretations of technical

and scientific data that are not supported by expert testimony. Such inadmissible speculation is insufficient, as a matter of law, to carry Plaintiff's burden of establishing equitable estoppel.

i. Plaintiff cannot dispute the August 13, 1997 Results Were False Positives.

In support of his equitable estoppel argument, Plaintiff asserts that "[c]rucially, Defendant hid the results of its August 13, 1997 soil samples from the Lake Wateree Mosquito Control facility that were positive for PCBs." Opp'n at 14. However, as the record clearly demonstrates, the PCB results were a false positive, and thus there were no results to hide. *Supra* Section III(A)(iii). Plaintiff has not presented any expert testimony analyzing the results. *See, e.g.*, *Babb v. Lee Cnty. Landfill SC, LLC*, 747 S.E.2d 468, 481 (S.C. 2013) ("The general rule in South Carolina is that where a subject is beyond the common knowledge of the jury, expert testimony is required."); *see also Brotemarkle v. Washum*, 2024 WL 3520855, at *6 (D.S.C. July 24, 2024) ("Under South Carolina law, expert evidence is required where a factual issue must be resolved with scientific, technical, or any other specialized knowledge." (quotation marks and citation omitted)). Indeed, Plaintiff has not designated an expert that could even potentially opine on this subject, given the admissions of both Dr. Glover and Mr. Workman that they are not analytical chemists. Ex. 48, Glover Dep. at 34:5–9; Ex. 45 at 17:18–20.

ii. Plaintiff Cannot Dispute the 1993 Fish Study Was Properly Done.

Plaintiff claims that Duke Energy misled the public with a statement in a document entitled "Talking Point[s] Regarding EPA" that its 1993 study "found PCBs below detectable limits based on our study methodology and indicated no areas of gross PCB contamination." Opp'n at 15; *id*., Ex. 39. Duke Energy's statement conveys nothing but the truth—that PCBs, if present at all, were present at concentrations too low to have been detected by the study. Plaintiff argues that the "below detectable limits" portion of this statement "concealed the actual testing limits from class

members." Opp'n at 15. However, the testing methodology employed by Duke Energy's team was "an EPA approved analysis technique" at the time. Ex. 49 at 191:5–13. And the fact that the detection limit of that analysis differed from the detection limit later used by others to determine a fish consumption advisory, Opp'n at 15, is inapposite. "[T]he purpose of [Duke Energy's] study was an initial screening to begin to understand the potential contaminants in fish….It was no[t] intended to be – to determine [whether] fish consumption advisories needed to be issued. That was DHEC's role." *Id.* at 188:1–8.

At any rate, Plaintiff cannot use his Opposition to create a fact issue surrounding PCB analytical detection limits. Again, this is a scientific topic that requires expert testimony, which Plaintiff has not offered. Critically, Dr. Glover refused to answer any questions about detection limits, noting that he is not an analytical chemist. Ex. 48 at 130:4–131:8. And Mr. Workman, testified that analytical chemistry is outside the scope of his expertise. Ex. 45 at 17:18–20. As such, Plaintiff has failed to provide any evidence to establish that Duke Energy's 1993 study, or its statements about that study nearly two decades later, were improper in any way.[1]

Plaintiff's equitable estoppel argument is based on pure speculation. For the foregoing reasons, the Court should find that Plaintiff's claims are time-barred and grant summary judgment in Duke Energy's favor.

C. Plaintiff's Claims Fail for Lack of Physical Impact.

Plaintiff concedes that he has not presented evidence of any contamination to his property,

[1] In apparent furtherance of his equitable estoppel argument, Plaintiff also asserts that "[a]fter 1970, Swearingen never again publicly acknowledged Duke Energy's use of waste transformer oil in mosquito control." Opp'n at 9. The fact is that the documents cited by Plaintiff never said that "waste" transformer oil was used by the MCP. Defs.' Br. at 10, 12. In any event, Plaintiff ignores the fact that Duke Energy would not have used any waste oils in the MCP after 1970, when Congress amended the Clean Water Act to regulate the discharge of "oil" into waters of the United States. Defs.' Br. at 10.

arguing instead that physical impact to property is not required under South Carolina law. Opp'n at 17.[2] Plaintiff is wrong on the law. Defs.' Br. at 27–28. Duke Energy incorporates by reference its Reply in Support of its Motion for Order Certifying Questions of Law. *See* ECF No. 133.

D. Plaintiff Has Not Presented Any Evidence of An Injury Supporting a Nuisance Claim.

The pivotal question for Plaintiff's nuisance claim—be it premised on a public or private nuisance—is whether he has pled any injury to the use and enjoyment of his property. Opp'n at 20. He has not. Defs.' Br. at 27–29. In an effort to persuade the Court otherwise, Plaintiff misstates his own testimony. He claims to have testified that "he can no longer use his waterfront property as intended, that his wife fears swimming in the water, and that he no longer eats fish from the lake." Opp'n at 21. But the portion of his transcript that he cites for these bald assertions does not actually reflect any of the purported facts for which it is cited. Opp'n, Ex. 46 at 113:11–14. Jones did not testify that his wife fears swimming in the water. And, as set forth in Duke Energy's opening brief, he did not testify that he no longer uses his property as intended, including gathering with his family, taking his boat on the water, and occasionally swimming. Defs.' Br. at 17. Although Jones no longer eats fish from Lake Wateree, he testified that he does not advise his renters that they should not eat the fish, and he could not speak as to whether others in his family continue to consume fish. Ex. 51, Plaintiff Dep. at 135:17–20, 191:14–25, 153:6–154:8.

Plaintiff also did not "testif[y] that PCB contamination has reduced his property's value" or that it "has depressed the value of lakefront properties on Lake Wateree." Opp'n at 21. Rather, he opined that the property's value had changed "in the spirit that the house was purchased," but

[2] Plaintiff claims that a jury could find evidence to support physical contamination in this case based on the deposition testimony of Duke Energy's expert Dr. Eric Butler. Opp'n at 17, fn. 3. Plaintiff's argument mischaracterizes Dr. Butler's testimony, in which he merely stated that it would be *possible* for spraying to create contamination. Ex. 50, Butler Dep. at 122:17–123:3. Such evidence falls short of evidence that it more likely than not would have occurred.

could not testify to any dollar value decrease. Ex. 51 at 69:14–70:8. With respect to other properties near the lake, he opined that at "all property values have been affected by PCBs in the lake," but to what degree, amount, or percentage "would be for the experts to determine." *Id*. at 73:1–20.

Plaintiff's argument about the rights of "waterfront property owners," Opp'n at 21, is a red herring. As discussed earlier, Plaintiff's property does not actually abut Lake Wateree. *See supra* Section III(A)(iv). Plaintiff cannot claim any "particularized injury tied to his unique property rights," Opp'n at 21, because he does not possess any rights in Lake Wateree.

Plaintiff's only injury results from the fish consumption advisories, which have allegedly caused him to fish in Lake Wateree with less frequency. But this injury is not distinct to him as a property owner. Defs.' Br. at 30. On this point, Plaintiff's expert testimony is, for once, abundantly clear: home ownership is not required to fish in Lake Wateree or consume its fish. *See* Defs.' Br., Ex. 23 at 22:11–24:3; 27:21–28:19 (noting that the only difference between class member anglers and angling members of the public is where they live—the two groups experienced the same type of damage, at the same rate, and in the same amounts). Plaintiff hangs his hat on attempting to distinguish his claims from *Carnival Corp. v. Historic Ansonborough Ass'n*, 753 S.E.2d 846 (S.C. 2014)—a case in which the South Carolina Supreme Court held that a neighborhood association *lacked standing* to bring a claim for public nuisance without alleging its harms in any "personal, individual way." Opp'n at 22. He cites no case in which a private individual successfully established the special injury to support a public nuisance claim and avoids any discussion of *Belton v. Wateree Power Co*., 115 S.E. 587, 589 (S.C. 1922), which Duke Energy cited in its opening brief and is directly applicable to this case. Defs.' Br. at 29–30. In *Belton*, the South Carolina Supreme Court held that an owner of property near Lake Wateree could not sue Duke Energy's predecessor for a mosquito problem created by formation of Lake Wateree because it

was a public nuisance. 115 S.E. at 591.

Because Plaintiff has not presented evidence of any injury sufficient to bring a *private or public* nuisance claim, the Court should grant summary judgment and dismiss his nuisance claim.

E. There is No Evidence That Duke Energy Contaminated Lake Wateree With PCBs.

The record is devoid of evidence that Duke Energy caused the PCBs found in Lake Wateree's fish. Defs.' Br. at 21. In a "long line of decisions," the Fourth Circuit has "emphasized that proof of causation must be such as to suggest 'probability' rather than mere 'possibility,' precisely to guard against raw speculation by the fact-finder." *Sakaria v. Trans World Airlines*, 8 F.3d 164, 172 (4th Cir. 1993). Plaintiff does not pass this test because he relies on inadmissible expert opinion and an overt misunderstanding of Duke Energy's own expert testimony.

i. Plaintiff's Liability and Causation Arguments Cite Inadmissible Testimony.

Plaintiff relies on the opinions of his experts Mr. Robert Workman and Dr. James Glover to make his case. Opp'n at 24–26. Neither of these experts' testimony is admissible, as established by Duke Energy's Motions to Exclude. *See* ECF Nos. 123, 132.

ii. Plaintiff Mischaracterizes the Dr. Butler's Alternative Source Hypothesis.

Plaintiff plainly misunderstands the testimony of Duke Energy's expert Dr. Eric Butler regarding alternative sources of PCBs to Lake Wateree. Opp'n at 27. Plaintiff claims that Dr. Butler admitted in his deposition that many of the known sources of PCB contamination identified in his expert report are not sources at all. *Id*. This is demonstrably incorrect. Notably, Plaintiff does not cite any portion of Dr. Butler's deposition transcript for his claim that "Dr. Butler admitted in his deposition [that] many of the 'known and potential sources of PCB contamination' identified in his expert report are not sources at all." Opp'n at 27. In fact, Dr. Butler criticized Dr. Glover for ignoring the conclusions of EPA's 1992 nationwide fish study, which "found that samples with

the highest PCB concentrations were associated with paper mills, refinery -- other industry sites, Superfund sites, wood preserving facilities, and industrial urban areas." Ex. 50 at 160:18–161:3.

With respect to the two EPA Superfund sites referenced in the Opposition, Plaintiff misses the point. It is immaterial to the alternative source analysis that PCBs are not *presently* contaminants of concern at either site. Opp'n at 27. EPA intervened at the sites because they were contaminated with PCBs, and after conducting emergency removal of PCB-contaminated soil at both sites, EPA determined that PCBs were no longer a significant concern. Ex. 50 at 82:1–86:1; 114:22–116:10. As Dr. Butler noted, "removal actions typically are done when there's an imminent threat to health or the environment ... this material that was removed was highly contaminated, and that's why they removed it." *Id*. at 88:1–8. PCBs were present and being released into the environment near Lake Wateree until EPA removed the contaminated soil. The inference Plaintiff seeks defies reason. Because Plaintiff has not presented evidence that Duke Energy caused the PCBs in Lake Wateree's fish, the Court should grant summary judgment and dismiss the FAC with prejudice.

F. The Record Contains No Evidence of Damages.

Plaintiff states that he "has produced expert reports of two highly-qualified experts to support the damages in this case." Opp'n at 29. However, neither of these experts opined as to *Plaintiff's* damages, a fact acknowledged by Plaintiff in his Opposition. *See* Opp'n at 29 ("Dr. Tachovsky calculates the total unimpaired value of the class properties…."); *id*. ("Dr. Greene opines the total amount of diminution in value of the class properties…."). The Opposition fails to justify the admission of Plaintiff's speculative damages calculations and his about-face to a permanent injury claim fares no better.

i. Plaintiff's Damages Calculations Are Speculative.

Plaintiff has not offered competent evidence of any damages he has incurred. His Initial Disclosures did not provide any individual damage value. Moreover, as Duke Energy has explained, Dr. Gretchen Greene's damages calculations are entirely speculative. Defs.' Br. at 34–35. Plaintiff's Opposition does not substantively dispute this argument but instead urges the Court to find that "Defendant's argument goes to the weight and credibility of Plaintiff's expert's damages opinion, which may not be decided by the court on summary judgment." Opp'n at 31–32. Plaintiff is incorrect. "While cross-examination may be a proper tool to determine which of two competing experts' theories more credibly explains an event, even a '"thorough and extensive examination" does not ensure the reliability' or relevance 'of [an] expert's testimony.'" *Sardis v. Overhead Door Corp.*, 10 F.4th 268, 282 (4th Cir. 2021) (citation omitted); *see* Fed. R. Evid. 702 Advisory Committee's note to 2023 amendments (Rulings of courts holding "that the critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology, are questions of weight and not admissibility…are an incorrect application of Rules 702 and 104(a)."). In any event, Duke Energy has moved to exclude the testimony of Dr. Greene as methodologically unsound and unreliable. *See* ECF No. 126. Plaintiff has no admissible evidence on damages with which to withstand summary judgment.

ii. Plaintiff Has Not Shown a Permanent Injury.

Plaintiff now asserts that he believes remediation is impossible and pursues damages for permanent injury. Opp'n at 30. But he has presented no evidence that his property cannot be remediated. Defs.' Br. at 33. He concedes in the Opposition that he does not know where "the line might be" between temporary and permanent injury. Opp'n at 31. Plaintiff's newfound perspective on remediation—that if it "were even possible at all, which Plaintiff doubts, it would be cost prohibitive, extremely difficult, and to say the least, impracticable," *id*. at 30–31—is entirely

speculative. He has introduced no expert testimony or other evidence in this case addressing remediation. Moreover, Plaintiff did not produce the results of PCB testing conducted on his property, Defs.' Br. at 18, and concedes that he has not established any physical contamination to his property, *supra* Section III(C). Thus, it stands to reason that he would have zero clean-up costs.

Plaintiff has presented neither evidence of a permanent injury to his property nor evidence of any category of damages that is recoverable for a temporary injury to property. Accordingly, the Court should grant summary judgment and dismiss the FAC with prejudice.

III. CONCLUSION

For the foregoing reasons, Duke Energy respectfully requests that the Court grant its Motion for Summary Judgment, dismiss with prejudice Plaintiff's First Amended Complaint in its entirety, and grant such other and further relief as the Court deems just and proper.

Dated: June 18, 2026

Respectfully Submitted,

s/Kevin A. Dunlap

Kevin A. Dunlap (Fed. ID No. 5564)
Steven D. Weber (Fed. ID No. 8042)
PARKER POE ADAMS & BERNSTEIN LLP
110 E. Court St., Ste. 200
Greenville, SC 29201
(864) 253-6105
kevindunlap@parkerpoe.com
steveweber@parkerpoe.com

Attorneys for Defendants

Nash E. Long (admitted pro hac vice)
HUNTON ANDREWS KURTH LLP
101 S. Tryon Street, Suite 3500
Charlotte, NC 28280
(704) 378-4728
nlong@hunton.com

Douglas M. Garrou (pro hac vice)
Merideth S. Daly (pro hac vice)
Paul T. Nyffeler (pro hac vice)
Katharine W. Durante (pro hac vice)
HUNTON ANDREWS KURTH LLP
951 E. Byrd Street
Richmond, VA 23219
(804) 788-8200
dgarrou@hunton.com
mdaly@hunton.com
pnyffeler@hunton.com
kdurante@hunton.com

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

Clyde Marcus Jones, II, *on behalf of himself and all others similarly situated*,

Plaintiffs,

v.

Duke Energy Corporation and Duke Energy Carolinas, LLC,

Defendants.

Case No. 3:24-cv-01281-MGL

DUKE ENERGY CORPORATION AND DUKE ENERGY CAROLINAS, LLC'S EXHIBIT LIST FOR REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

DUKE ENERGY CORPORATION AND DUKE ENERGY CAROLINAS, LLC'S EXHIBIT LIST FOR REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

EXHIBIT LIST, CONTINUING FROM DUKE ENERGY CORPORATION AND DUKE ENERGY CAROLINAS, LC'S MOTION FOR SUMMARY JUDGMENT

Exhibit	Title / Description
44	DUK00023367
45	First Deposition of Robert C. Workman, March 11, 2026 (excerpted)
46	30(b)(6) Deposition of Zachary Hall, April 20, 2026 (excerpted)
47	DUK00104526
48	Deposition of Dr. James Glover, March 27, 2026 (excerpted)
49	30(b)(6) Deposition of Jeff Lineberger, April 20, 2026
50	Deposition of Dr. Eric Butler, April 8, 2026 (excerpted)
51	Deposition of Plaintiff Clyde Marcus Jones, II, October 8, 2025 (excerpted)

Dated: June 18, 2026

Respectfully Submitted,

s/Kevin A. Dunlap
Kevin A. Dunlap (Fed. ID No. 5564)
Steven D. Weber (Fed. ID No. 8042)
PARKER POE ADAMS & BERNSTEIN LLP
110 E. Court St., Ste. 200
Greenville, SC 29201
(864) 253-6105
kevindunlap@parkerpoe.com
steveweber@parkerpoe.com

Nash E. Long (admitted pro hac vice)
HUNTON ANDREWS KURTH LLP
101 S. Tryon Street, Suite 3500
Charlotte, NC 28280
(704) 378-4728
nlong@hunton.com

Douglas M. Garrou (admitted pro hac vice)
Merideth S. Daly (admitted pro hac vice)
Paul T. Nyffeler (admitted pro hac vice)
Katharine W. Durante (admitted pro hac vice)
HUNTON ANDREWS KURTH LLP
951 E. Byrd Street
Richmond, VA 23219
(804) 788-8200
dgarrou@hunton.com
mdaly@hunton.com
pnyffeler@hunton.com
kdurante@hunton.com

Attorneys for Defendants

Exhibit 44

Monsanto

MONSANTO INDUSTRIAL CHEMICALS CO.
800 N. Lindbergh Boulevard
St. Louis, Missouri 63166
Phone: (314) 694-1000

Labels for Pyranol Returning ? etc - 10 8-15-72

August 7, 1972

Mr. F. M. Wagstaff
Duke Power Company
Power Building
422 South Church Street
Charlotte, North Carolina 28202

Dear Mr. Wagstaff:

Confirming our telephone conversation of August 7, 1972 concerning the incineration of used Pyranol fluids, I am enclosing ten (10) pre-addressed labels marked "disposal only". You will need to clearly indicate the drum contents on each label.

We request you use return drums that meet DOT 17E Specification (55 gallon drums, 18 gauge minimum, 2 bung head; 5 gallon drums, 24 gauge minimum) to prevent leakage. The outside of the return drums should be free of fluid material and free of leaks. Cleanup or other costs effecting the carrier related to fluid leaking from drums will be charged to the shipper.

Please ship your two drums freight prepaid to:

Monsanto Company
Department 246, Incinerator
Sauget, Illinois 62201

We will invoice you 3¢/pound for incineration against the purchase order which you will include with your shipping papers.

As you accumulate additional drums for incineration, please use these extra labels, let us know your purchase order for billing, and send the drums freight prepaid to our Sauget incinerator.

Thank you for your cooperation. Please feel free to contact me at (314) 694-2500 if you have any additional questions.

Sincerely,

Paul W. Gann
Project Coordinator
Heat Transfer Fluids

PWG:clg

Enclosures:
Return Shipping Labels (10), Sauget, Illinois

Exhibit 45

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

Clyde Marcus Jones, II, on behalf of himself and all others similarly situated,

Plaintiffs,

vs. Case No. 3:24-cv-01281-MGL

Duke Energy Corporation and Duke Energy Carolinas, LLC,

Defendants.

VIDEOTAPED TELECONFERENCE

DEPOSITION OF: ROBERT CURTIS WORKMAN

DATE: Wednesday, March 11, 2026

TIME: 9:06 a.m.

TIME ENDED: 5:32 p.m.

LOCATION: PARKER POE ADAMS & BERNSTEIN, LLP
110 East Court Street, Suite 200
Greenville, South Carolina

REPORTED BY: YVONNE R. THURSTON-BOHANNON
Registered Merit Reporter,
Certified Realtime Reporter

the raw cost of cleanup and assessment?

Q. Either. And -- and use your own words. What -- I mean --

A. It's day-to-day to figure out how much environmental damage translates into capital, who's going to pay for it.

Q. Okay. All right. Would you consider yourself to be an expert in soil analysis?

A. Yes.

Q. How about sediment analysis?

A. Yes.

Q. Okay. What about the analysis of PCBs in the environment?

A. Yes.

Q. Do you consider yourself an expert in PCB freight and transport in the environment?

A. Yes.

Q. Okay. How about analytical chemistry, do you consider yourself an expert?

A. No.

Q. Okay. Would you consider yourself an expert in PCB fingerprinting?

A. No.

Q. But you are aware of what PCB fingerprinting is?

report to the court that was originally produced for litigation on behalf of plaintiffs in PCB lawsuits."

Did I get that right?

A. Yes.

Q. So in general at the end of this report starting around page 530, if you want to look, but many of the references include hyperlinks for the cited documents that allow you to see the documents on the ToxicDocs.org website, correct?

MS. FICKLING: Objection to form.

Go ahead.

THE WITNESS: I do see hyperlinks --

BY MR. NYFFELER:

Q. Okay.

A. -- under the references.

Q. Did you after reviewing this article use any of the hyperlinks to obtain documents cited in Exhibit WM3 for part of your report?

A. Not that I'm aware of.

Q. Okay. So does ToxicDocs.org website and the documents provide something that you regularly rely on in your work as a registered geologist?

A. No.

Q. Okay. Do you view the contents of this website -- the documents that they have, do you view them as being authentic and reliable?

MS. FICKLING: Objection. Form.

Go ahead.

THE WITNESS: I can't defend that they're authentic, but I don't have any reason to doubt them.

BY MR. NYFFELER:

Q. Okay. And this mentioned that there were different litigations that these documents came from. So -- let me back up again.

Did you view any documents from the website ToxicDocs.org?

A. Yes.

Q. Did you attempt to figure out from which litigation a document you reviewed may have originated?

A. Yes.

Q. Did you identify which litigations they came from?

A. No.

Q. Okay. Let's go back to the 1971 NIPCC report. That's Exhibit 2. On the bottom of the first page there is some text that says -- is the

CERTIFICATE OF REPORTER

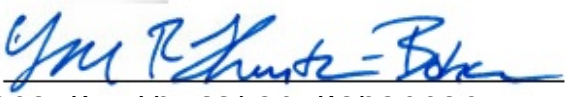
I, Yvonne R. Thurston-Bohannon, Registered Merit Reporter, Certified Realtime Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify:

That the reading and signing of the foregoing deposition by the witness was not requested.

That the foregoing transcript was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal March 16, 2026, at Columbia, Richland County, South Carolina.



Yvonne R. Thurston-Bohannon
Registered Merit
Reporter, CRR
My Commission expires
May 14, 2035

Exhibit 46

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

CLYDE MARCUS JONES, II, on behalf of himself and all others similarly situated,

Plaintiff,

Vs.

DUKE ENERGY CORPORATION and DUKE ENERGY CAROLINAS, LLC

Defendants.

Civil Action No 3:24-cv-1281-MGL

Videotape Deposition of
Zachary Hall 30(b)(6)
Monday, April 20, 2026
Taken at 3:40 p.m.

Taken at:
Parker Poe
620 South Tryon Street
Charlotte, North Carolina

Reported by LeShaunda Cass-Byrd, CSR, RPR

I think it's a reasonable way to do that sampling. But how specifically it was selected or if other methods were considered, I don't know.

Q. And that was not the method that was utilized in August of 1997; is that right?

A. That is correct.

Q. And the August 1997 testing went deeper than the September 1997 testing; is that correct?

A. I would have to -- I would have to look at the exact -- at the exact depths that they went.

Q. Have you seen any documentation to indicate that Duke invited DHEC to the August of 1997 sampling event?

A. No, counselor. I have not seen such documentation.

Q. Have you seen any information exchanged with DHEC that provides the results of that initial August 1997 sampling?

A. No, counselor.

Q. Okay. And the August 1997 sampling did test positive for PCBs; is that correct?

MR. LONG: Object to the form.

You can answer.

THE WITNESS: Yes, counselor. There were hits for PCBs in the August of '97

data. However, from what we know now, if you look at the full body of evidence and you look at the totality of information, it's -- it's -- it's clear that the PCBs were a false positive. One of the reasons that they were a false positive, is what we just talked about, the subsequent sampling event and the ambiguity associated with the chromatography that was present from the September of '97 sampling event. PCBs, it's why we are here, they notoriously usually linger in the environment, right? They -- they exist. They don't break down under atmosphere conditions.

If you look at the totality of all of the sampling events, the only time that PCBs were identified was in that August of '97 sampling event, counselor. There were no PCBs that were identified in subsequent sampling events, either the September sampling event, the June '98 or the September of '98 sampling event.

In addition, on that, as we have discussed, the second event, the September '97 event, it was independently sampled by

DHEC and had they seen PCBs at the levels that were -- you just referred to from the August of '97 event, there would have been some additional work that would have had to be done at this site, and the record just -- just doesn't support that. That was an independent assessment by -- by DHEC with their own bottles in their own lab, which verified that the presence of PCBs were not there.

BY MS. FICKLING:

Q. So the testimony of Duke is that the August sampling has to have been a false positive. That is the testimony, correct?

A. That is correct, counselor.

Q. The June 1998 testing did not test for PCBs, did it?

A. It tested for compound specific 8260. I think it was 8260. I know it was 8270, which is -- that has the mass spec confirmation that we were just talking about. And they look for what are called TICs, or tentatively identified compounds.

Had PCBs been present, they certainly would have shown up in that list of tentatively identified compounds. That is the way you detect PCBs, by a GC

REPORTER'S CERTIFICATE

I, LESHAUNDA CASS-BYRD, CSR No. B-2291, RPR, Registered Professional Reporter, certify that the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony of the witness, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes to taken.

I further certify that I am not a relative or employee of any attorney or the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of North Carolina that the foregoing is true and correct.

Dated this April 22, 2026.

LeShaunda Cass-Byrd

LESHAUNDA CASS-BYRD, CCR-B-2291, RPR

Exhibit 47

Pace Analytical Services, Inc.
9800 Kincey Avenue, Suite 100
Huntersville, NC 28078
Tel: 704-875-9092
Fax: 704-875-9091

Pace Analytical

Date: 10/8/97

To: Jay Perkins - Duke Power

From: Sandra Johnson - Pace Analytical

Re: Additional Comments for the Level III data package for project # 670909.509

I am writing in response to your comments on project #970909.509 made during our phone conversation on 10/6/97. If you have any questions or need additional information, please give me a call at 875-9092.

1. Retention Time Window - Our retention time window is 0.10 minutes.

2. Clean-Up - No clean-up was performed on any of your PCB samples.

3. Calibration on 9/15/97 -

   a. Peak 1 of the PCB-1016 calibration on column 1701 on 9/15/97 had a %RSD of 25%. This column was used for confirmation only. Results were reported based on the DB5 column which had an acceptable calibration for PCB-1016.

   b. Raw data for calibration results for peaks 2-4 of PCB-1260 on 9/15/97 were missing from the data package. I am submitting a copy of these calibration results to insert into your data package.

4. PCB Identification - Analysis of sample 18061.5 on 9/13/97 had 5 PCB-1260 peaks identified on both columns. Analysis of samples 18060.7(1:10) and 18059.3 (1:5) on 9/15/97 had 5 PCB peaks detected on both columns. Your data was reviewed by several analysts and it was a general consensus that the peaks present did not match any PCB pattern. Section 7.5.2.1 of method 8000A states that "For multiresponse analytes (i.e. PCBs), the analyst should use the retention time window, but should primarily rely on pattern recognition.".

5. Reporting Limits and the true value of the matrix spike were not adjusted for percent moisture. - This was an error on our part. We have adjusted the matrix spike reporting limits and true value for percent moisture and are re-issuing the corrected final report.

6. Surrogate Recoveries on instrument HP-6 - The surrogate recoveries of the laboratory control sample and the matrix spikes analyzed on HP6 on 9/16/97 were relatively low in comparison to the PCB recoveries. I have reviewed this group of data and cannot explain the difference in recoveries. Data was accepted as the recoveries were within laboratory control limits.

Where we are at present with these samples.

All samples were sent to Pace Analytical in Huntersville, N. C. Below is a summary of Organic Chemistry's data review of these samples results.

General Comments:

1) All samples were extracted within holding time requirements.
2) Quality control in general followed EPA protocol.
3) Case narratives were written summarizing Pace Analytical treatment of samples.
4) Where deviations from the method were noted the case narrative addressed what actions were taken to correct the problem.
5) PCB analysis was performed both on an analytical and confirmation colume.
6) Data accuracy appears to be acceptable with possible exception concerning PCB results of samples DP04, DPO3, DP02 where low concentrations of PCB could be present. If PCB's are present in these samples concentrations would approximate 0.4 to 2.0 PPM.
7) An unknown contaminate(s) is also present in samples DP01, DP02, and DP03,
8) If PCB's are present in samples DP02, DP03, and/or DP04 they would be at low concentrations as mentioned in # 6 above.
9) I've asked Pace to retain these soil samples depending DHEC results and interpretation.

Sandra Johnson is to resolve the following issues either today or tomorrow:

1) The Level 3 data pkg didn't have the following calibration curve records: 1260 curve points 2, 3, 4.
2) Sandra is having Pace chemists to reevaluate samples DP04, DP03, and DP02 for PCB contamination. It's really a difficult call, but all 1260 retention time peaks found in the standard are also present in the sample. The fingerprint of the sample; however, doesn't appear to be a characteristic 1260 aroclor. Depending on results from the SCDHEC lab GC/MS confirmation may be desired.
3) One or more of the MS recoveries need to be recalculated to reflect correction of the theoritical value. (Recoveries will still be acceptable once this change has been made.)

MEMO FROM PACE 10/9/97 ADDRESSES OUR CONCERNS

3:24-cv-01281-MGL Date Filed 06/18/26 Entry Number 141-5 Page 3 of 3

DUK_00104527

Exhibit 48

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

CLYDE MARCUS JONES, II, on behalf of himself and all others similarly situated,

Plaintiffs,

vs. CASE NO. 3:24-cv-01281-MGL

DUKE ENERGY CORPORATION and DUKE ENERGY CAROLINAS, LLC,

Defendants.

VIDEOTAPED
DEPONENT: DR. JAMES GLOVER
DATE: March 27, 2026
TIME: 9:06 a.m.
LOCATION: Parker Poe Adams & Bernstein
1221 Main Street
Columbia, SC
TAKEN BY: Counsel for the Defendants
REPORTED BY: KIMBERLY T. POWER, CR

Q. How about we turn to the first page of GL-2, the article. Actually, the cover page. Left side, bottom column, there's a paragraph that starts that says, "Structurally, PCBs were produced by the chlorination of biphenyl rings resulting in 209 possible configurations, which are generally referred to as congeners. These congeners can be grouped based on the number of chlorine atoms, regardless of position, into ten possible classes called homologs (e.g., tetrachlorobiphenyls)." Do you see that?

A. Yes.

Q. So was that something you wrote in the article?

A. I don't recall. I cite Carins et al. 1986 is where, I assume, that was -- I think I probably did write that, but it's not -- it's citing literature, basically.

Q. Right. So you would -- how would you rate your -- your general knowledge and expertise on the structures and nomenclature of PCBs?

MS. FICKLING: Objection to form. Go ahead.

THE WITNESS: I am familiar with the congeners -- the 209 congeners. There's actually not 209 congeners because the monochlors are not

polychlorinated. They're monochlorinated. But, by convention, they're grouped just for the sake of simplicity that they are considered polychlorinated even though they're monochlorinated. I know what homologs are. I know what Aroclors are. I know the history of these things. It's not something I would consider myself an expert on, but I am familiar with it. I'm not an analytical chemist. I don't know the chemical names for all the congeners.

BY MR. NYFFELER:

Q. You just cut out a big section of questions. Just kidding. Okay. I want to ask you about fish advisories. Can you explain how the state of South Carolina would decide to issue a fish consumption advisory?

MS. FICKLING: Objection to form.

THE WITNESS: Yes, I can. That was my job. It -- we would collect fish. We had an electroshock boat that would go out. These fish would be stunned. They would float to the surface of the water. My staff would gather the ones they wanted. They would kill them and take them back to the laboratory, homogenize them with dry ice, take it to the lab, and we'd get data back.

When those data would come back, we

sure. But the lowest in that -- in that page would be 0.17, which is higher than 0.05, but much lower than the 0.38.

Q. So I appreciate that. I guess one question I had is you understand that -- what is your understanding of the concept of a minimum detection limit?

A. Dr. Gundersen really is the expert on this. I'm not an analytical chemist.

Q. Okay.

A. I know the literature. I know what I've seen in environmental studies, including all of the many different data sources that we used for this paper and the 0.05 for Aroclors are around the detection limits, whether it's EPA, whether it's contract lab, whether it's North Carolina Department of Environmental Quality, whether it's SCDHEC, whether it's the state of Georgia. They're in that ballpark. And in this old Aldridge and Marcus, that's what we're getting from -- from them even if they're silent on what the specific detection limits are.

Q. One of the reasons I'm asking this is because you can have a reported value of 0.05 parts per million. But if your analysis doesn't use the

right calibration or doesn't have the right sort of quality controls, that 0.05 number might be a false positive, right?

MS. FICKLING: Objection to form.

THE WITNESS: I really shouldn't answer that. I'm not an expert on this.

BY MR. NYFFELER:

Q. That's fine. That's fine.

(DEF. EXHIBIT GL-15, Priority Pollutants Analyses of Fish Tissue From Lake Marion, South Carolina, Autumn 1986, Bates No. Jones_001675 - 001756, marked for identification.)

BY MR. NYFFELER:

Q. Dr. Glover, you've been handed an exhibit marked GL-15, a report from James M. Marcus entitled, "Priority Pollutants Analyses of Fish Tissue from Lake Marion, South Carolina," and it has Bates No. Jones_001675, correct?

A. Yes.

Q. Do you recognize this document?

A. Yes.

Q. Is this the Jones -- sorry, the Marcus reference cited in your 2021 article?

A. It is.

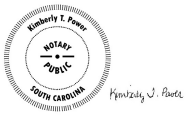
Q. Okay. I would like you to turn in this

CERTIFICATE OF REPORTER

I, Kimberly T. Power, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed by official seal this 1st day of April, 2026, at Lexington, Lexington County, South Carolina.



Kimberly T. Power, Court Reporter
My Commission Expires: 5/29/2035

Exhibit 49

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

CLYDE MARCUS JONES, II, on behalf of himself and all others similarly situated,

Plaintiff,

Vs.

DUKE ENERGY CORPORATION and DUKE ENERGY CAROLINAS, LLC

Defendants.

Civil Action No 3:24-cv-1281-MGL

Videotape Deposition of
Jeff Lineberger 30(b)(6)
Monday, April 20, 2026
Taken at 9:15 a.m.

Taken at:
Parker Poe
620 South Tryon Street
Charlotte, North Carolina

Reported by LeShaunda Cass-Byrd, CSR, RPR

those transformers were contaminated with PCBs. Is that your testimony?

A. I -- I have not seen a record of testing of transformer fluid for PCBs prior to the PCB plan, which was implemented in response to the Toxic Substances Control Act, and that plan was implemented in 1978.

Q. And so was Duke Power not performing any sort of testing prior to that time to determine whether its stores of oil had been contaminated by PCBs?

MR. LONG: Object to the form.

You can answer.

THE WITNESS: We had no reason to believe prior to implementation of our testing, that other transformers -- other -- transformers other than the askarel-filled transformers that we ordered were contaminated PCBs.

BY MS. FICKLING:

Q. And, again, your testimony is that the testing began in 1978; is that right?

A. Our testing first began as part of the implementation of that first PCB plan in 1978.

Q. Are you aware when the first studies were

Q. Then he does talk about the FDA action level for total PCBs; is that right?

A. Yes, ma'am. He does.

Q. And he says: No Catawba River location indicates such a high level of contamination. However, the high detection limits preclude the determination of low level PCB concentrations. The U.S. EPA screening value for total PCBs is 10 -- I don't even know. But an evaluation of the safety of consumption of large mouth bass fillets, relative to U.S. EPA screening value for PCBs is not possible with the data generated by this study.

Is that correct?

A. That is what it says.

Q. So he acknowledges in this study that he is using high detection limits; is that right?

MR. LONG: Object to the form.

THE WITNESS: He's comparing the detection limit there to the detection limit for safety of consumption, which is much lower. So it's higher. The detection limit analysis technique that Dave used was higher than what would have been used to determine if the fish were safe to consume or not.

But, again, the purpose of Dave's study was an initial screening to begin to understand the potential contaminants in fish, and it was an appropriately designed study for that initial screening. It was no intended to be -- to determine the fish consumption advisories needed to be issued. That was DHEC's role.

BY MS. FICKLING:

Q. But DHEC couldn't have used this study to analyze that; is that correct?

A. DHEC could have used this study, just as Dave explained here as an initial screening. If they were going to issue a fish consumption advisory, they would have to do some additional work.

Q. And Duke was not interested in doing that additional work; is that right?

MR. LONG: Object to the form.

THE WITNESS: That -- that additional work was DHEC's role. That was not Duke Energy's role. What we were intending to do here is have a high level initial screen of contaminants in fish in the lake system.

BY MS. FICKLING:

Q. And so whose decision was it to use the FDA

and I'm not sure you have fully complained it. Mr. Coughlan used the action level versus the EPA screening value; is that correct?

A. Yes, he -- he did.

Q. What was the purpose of his use of the action level as opposed to the screening value?

A. The action level that he took was the first screening level, and it was a lower cost analysis option. It was also an EPA approved analysis technique by a certified lab.

So it had credentials. It's not like the study didn't have credentials. We had credentials behind it.

Q. But what was it intended to find, is my question.

A. It was intended to find gross contamination levels, gross regions of PCB contamination if they in fact existed.

Q. And why was Duke concerned in 1993 with the existence of gross contamination levels?

MR. LONG: Object to the form.

You can answer.

BY MS. FICKLING:

Q. Of PC -- I'm sorry, let me rephrase that.

Why in 1993 was Duke evaluating whether

REPORTER'S CERTIFICATE

I, LESHAUNDA CASS-BYRD, CSR No. B-2291, RPR, Registered Professional Reporter, certify that the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony of the witness, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes to taken.

I further certify that I am not a relative or employee of any attorney or the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of North Carolina that the foregoing is true and correct.

Dated this April 23, 2026.

LESHAUNDA CASS-BYRD, CCR-B-2291, RPR

Exhibit 50

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

- - -

CLYDE MARCUS JONES, II, ON BEHALF OF HIMSELF AND OTHERS SIMILARLY SITUATED,	:	CASE NO.:
Plaintiff,	:	3:24-cv-1281-MGL
vs.	:	
DUKE ENERGY CORPORATION AND DUKE ENERGY CAROLINAS, LLC,	:	
Defendants.	:	

DEPOSITION OF DR. ERIC BUTLER

DATE TAKEN: Wednesday, April 8, 2026

TIME BEGAN: 9:13 a.m.

TIME ENDED: 3:35 p.m.

LOCATION: Parker, Poe, Adams & Bernstein
1221 Main Street, Suite 1100
Columbia, South Carolina

REPORTER: Deidre Osborne, RPR

Q. The next sentence, it says, "There were no contaminants of concern as discussed in the baseline risk assessment," correct?

MR. NYFFELER: Objection to form.

THE WITNESS: I see that, yes.

BY MR. STONE:

Q. So, sir, based on the EPA's record of decision, PCBs were not a contaminant of concern on this site, correct?

A. Based on this record of decision. By the time this remedial investigation was done, the -- the findings did not support PCBs as a contaminant of concern. However, there were removal actions at the site prior to this investigation which removed material, contaminated material, from the site.

Q. How do you know that, sir?

A. It's written in this report.

Q. Sir, can you please turn -- so the -- it's not -- it's not labeled very well.

Sir, it's about the 54th page. It says "Results of Remedial Investigation."

MR. NYFFELER: Counsel, can you provide maybe, like, a page or two before with a page number?

MR. STONE: Sure. It's...

BY MR. STONE:

Q. So if you go to -- the last page of that is page 38. That's the last page of the record of decision. If you go about eight sheets of paper past that, you'll find it.

A. Eight sheets or eight sides?

Q. It's titled -- eight sheets, yeah. It is titled "Results of the Remedial Investigation."

MR. NYFFELER: Counsel, does it have the numbers "59" and "003" at the top?

MR. STONE: Those are -- "59 0031."

Correct.

BY MR. STONE:

Q. Sir, if you'd like a minute to read that before I ask you some questions about it --

A. Thank you.

Q. -- that would be fine.

MR. NYFFELER: Just to confirm, you're looking at a page that has the numbers "59" and "0031" at the top?

MR. STONE: Yes.

THE WITNESS: Yes, I am.

MR. NYFFELER: Thank you.

BY MR. STONE:

Q. That's the page one I want. It's titled

"Results of the Remedial Investigation."

A. Okay.

Q. Did you have a moment to read that page, sir?

A. Yes.

Q. And that page discusses the results of remediation -- remedial investigation on the Rock Hill Chemical Superfund site, correct?

MR. NYFFELER: Objection to form.

THE WITNESS: It does.

BY MR. STONE:

Q. It sort of summarizes some of the analysis that we read earlier in the record of decision, correct?

MR. NYFFELER: Objection to form.

THE WITNESS: I believe that's correct.

BY MR. STONE:

Q. And that results of that remedial investigation shows that the levels of PCBs found in the soil, the surface water and sediment, and the groundwater is low enough not to pose a threat to human health and the environment, correct?

MR. NYFFELER: Objection to form.

THE WITNESS: Yeah. Based on the baseline risk assessment that they'd done -- they

did to this particular site.

BY MR. STONE:

Q. Well, it's based on the remedial investigation and the baseline risk assessment, correct?

A. Yes.

Q. And so after reviewing this, is it still your position that the Rock Hill Chemical Superfund site is a known and potential source of PCBs in the Catawba-Wateree Basin?

A. Yes.

Q. Why is that?

A. Well, this remedial investigation was performed after a removal action, according to this report, in 1986. Well, it says, "In late 1987, EPA's emergency response team used CERCLA funds to remove approximately 46,000 gallons of waste from above the ground -- from the aboveground tanks along with an unknown amount of contaminated soil. This material was transferred to a regulated facility."

So it tells me that there was a lot of removal of contamination prior to the investigation. So this investigation doesn't really represent the potential source that this site represented up until the time that -- all the time before that this

removal action occurred.

Q. So it's your position that this site was effectively remediated of PCBs such that the levels are reduced so that they don't pose a hazard to the -- to humans or the environment.

MR. NYFFELER: Objection to form.

THE WITNESS: Well, I cite a concentration here which came from a 1993 study, I believe, from CDM, and it shows a level of 33 mg/kg of PCBs and soil contamination. That is not reflected in this remedial investigation, so there's a little bit of a disconnect between the information that I found representing the PCB contamination at this site and what is represented by this study.

So that's -- that's one thing. I mean, so I -- I would have to review this to see -- to reconcile a 33 mg/kg versus less than 1 mg/kg for soil here. And, furthermore, 46,000 gallons of waste from aboveground tanks and an unknown amount of contaminated soil is a -- is a fairly significant fact with regard to this site's potential for having been a source of PCBs to the watershed.

BY MR. STONE:

Or removal actions typically are done when there's an imminent threat to health or the environment. So I think it's logical to -- well, it's, I think, fair to say that this site investigation does not represent this material that was removed and that this material that was removed was highly contaminated, and that's why they removed it.

BY MR. STONE:

Q. So you don't think it was -- the site was remediated of PCBs.

MR. NYFFELER: Objection to form.

THE WITNESS: They -- I believe that there's a -- a likelihood that contamination was removed from the site during this removal, including PCBs which were found at the site.

BY MR. STONE:

Q. But, yet, you still don't think it was effective remediated.

MR. NYFFELER: Objection to form.

THE WITNESS: I would have no -- that would -- effectively remediated according to whom? According what standard or measure? I mean, it hadn't -- it was still -- it certainly -- effectively remediated, no. It

A. Yes.

Q. This is similar to what we saw in the report, the fifth five-year report, on the Rock Hill Chemical Superfund site, correct?

A. Yes.

Q. Where it has the contaminants of concern listed and the media in which those contaminants of concern are found, correct?

A. Yes.

Q. Do you see PCBs listed among those contaminants of concern?

A. No.

Q. You cited this document in your report, correct?

A. Yes.

Q. And so PCBs were not a contaminant of concern on this site.

MR. NYFFELER: Objection to form.

THE WITNESS: For the purposes of this RI and ROD, they were not.

BY MR. STONE:

Q. But, yet, you list the Carolawn Superfund site as a known and potential source of PCBs in the Catawba-Wateree Basin, correct?

A. Indeed, yes.

Q. Sir, I want to turn to...

A. For a very similar reason that I included Rock Hill Chemical Company. That is because there was a removal action, extensive removal action, prior to this remedial investigation. It's listed in the abstract for the full ROD.

"Drums, waste, and contaminated soil were removed from the site by EPA in 1981. An additional 17 storage tanks were removed in 1986 by the PRPs."

Q. So the site --

A. And remedial --

Q. So the -- the 60-acre site, of which 3 acres were used for the disposal of waste, correct?

A. More than 3 acres. There was -- 3 acres was the fenced-in portion.

Q. Okay. So the 60-acre site that was used -- we'll just say "60-acre site" because the entire Superfund site is 60 acres -- which was used for nine years, correct? 1970 to 1979.

A. Something like that, yes.

Q. And waste was removed from the site in 1981, correct?

A. Yes.

Q. And after that removal, there were no contaminants of concern on that site, no PCB

contaminants of concern on that site, according to the EPA, correct?

A. Well, there was removal in 1981 and another removal in 1986, an additional 17 storage tanks. And I believe this document, which is the RI -- this is the sixth -- fifth year -- does have a finding of PCBs in the soil, even after the removal, which exceeded the non-carcinogenic hazard quotient for Aroclor 1254. So it's not like -- wasn't PCB-free apparently.

Q. No. But the EPA considered the Carolawn Superfund site to not have PCBs as a contaminant of concern, correct?

A. That's true.

Q. So you have these listed, this 4.5-acre site and the 60-acre site located upstream of Lake Wateree, as, in your own words, known and potential sources of PCBs in the Wateree-Catawba Basin; is that correct?

A. Yes.

Q. Sir, I want to go back to -- I want to go to Exhibit 2, which is your second report.

Well, before I do, sir: Your first report, Exhibit 1, you offered it in support of Duke's opposition to plaintiff's motion for class

THE WITNESS: It would -- let's say if somebody buried a fish that was -- had PCBs in it from Lake Wateree on their property, that that would be an example of evidence that there's PCBs on their property.

The -- the -- the connection between a fish and an upland neighboring section of soil is I don't think significant enough to be considered as a route or a mechanism for PCBs to make it onto that property. And if you did some work, collected fish, put them on the property, perhaps, in that one location, that would be a vector or an example. But as a general -- as a general notion, I'm unfamiliar with that as a -- as a mechanism.

BY MR. STONE:

Q. If, say, a company sprayed PCB-containing substances on the water abutting those properties, would that be evidence that there is PCBs on the property?

MR. NYFFELER: Object to the form of the question.

BY MR. STONE:

Q. Even if just circumstantial evidence?

A. Depending on the nature of the spraying, if

it was -- if it was distributed by mist and if the -- and, like you say, you're stipulating the liquid that they're spraying has PCBs, then it's possible.

Q. Going on to your second bullet, sir, "Glover and Gundersen" -- I'm reading from your second bullet on page 7 of Exhibit 2. You write, "Glover and Gundersen (2021), Dr. Glover (2026), and Mr. Workman (2026a), all seem to make the incorrect assumption that 'transformer oil,'" in parentheses -- or, sorry, in quotation marks -- "refers to Askarel transformer fluid."

Did read that correctly?

A. Yes.

Q. So, sir, you're saying that they're making an incorrect assumption here, correct?

A. I'm saying that my reading of those documents reveals to me that they think that either all transformer oil -- all fluids from transformers have PCBs in them and that -- that people over time have casually used "transformer oil" to mean Askarel PCB-containing dielectric fluids.

Q. So it's your position that Dr. Glover and Dr. Gundersen and Mr. Workman have assumed that -- they've incorrectly assumed that the transformer oil that Duke sprayed on Lake Wateree all contained

account for those Superfund sites that you listed in Table 3.1 of Exhibit 1, correct?

A. Yes.

Q. You also criticized them for not including fish data -- fish tissue data from other studies, correct?

MR. NYFFELER: Object to the form.

THE WITNESS: From additional studies, yes.

BY MR. STONE:

Q. This includes the Coughlan study in 1995; is that correct?

A. Yes.

Q. It includes the EPA 1992 study.

A. Let me go to that place.

Q. You can look at page 15 of your second report, Exhibit 2.

A. I -- I don't criticize them for not using that '92 fish data. I discussed that data because -- not because they omitted it. I'm not saying that. It's that they ignored the findings of that study. It had mentioned that -- the study found that samples with the highest PCB concentrations were associated with paper mills, refinery -- other industry sites, Superfund sites, wood preserving facilities, and

industrial urban areas. So not for their lack of inclusion of the data but for not mentioning that this national fish study came to that conclusion.

Q. Well, you did criticize them for not including -- not discussing the Coughlan data --

A. Yes.

Q. -- correct?

A. Yes.

Q. All right. And in the Coughlan study, what sort of fish were analyzed?

A. Largemouth bass, I believe.

Q. And how were those tissues prepared for analysis?

MR. NYFFELER: Object to the form.

THE WITNESS: They were, I believe, groups of ten fish for each of the water bodies he's examined, and they homogenized them, and I believe it was -- looks like it's fish fillets, the bass fillets.

BY MR. STONE:

Q. Skin on or skin off?

MR. NYFFELER: Object to the form.

THE WITNESS: I don't know as I sit here right now.

BY MR. STONE:

CERTIFICATE OF REPORTER

I, Deidre Osborne, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof. Witness my hand, I have hereunto affixed my official seal this 10th day of April, 2026, at Lexington County, South Carolina.



Deidre Osborne, RPR
Registered Professional Reporter
Notary Public
State of South Carolina at Large
My Commission Expires:
June 13, 2029

Exhibit 51

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

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

Plaintiffs,

vs. CASE NO. 3:24-cv-01281-MGL

DUKE ENERGY CORPORATION AND DUKE ENERGY CAROLINAS, LLC,

Defendants.

*CONFIDENTIAL DESIGNATIONS MAY BE PENDING

VTC VIDEOTAPED
DEPOSITION OF: CLYDE MARCUS JONES, II
(Appearing by VTC)
DATE: October 8, 2025
TIME: 9:06 a.m.
LOCATION: Zoom Videoconference
TAKEN BY: Counsel for the Defendants
REPORTED BY: Susan M. Valsecchi, Registered Professional Reporter, CRR
(Appearing by VTC)

Job No. CS7650959

A. Oh, I don't personally remember filing a challenge.

Q. Do you know -- do you recall any such challenge having been filed?

A. Um...

I don't -- I don't recall.

Q. Do you believe value the of your property has decreased since the purchase by your family in 2001?

MS. FICKLING: Objection to form.

Go ahead.

THE WITNESS: Ask that question again.

BY MR. LONG:

Q. Do you believe the value of your property has decreased since its purchase by your family in 2001?

MS. FICKLING: Same objection.

THE WITNESS: What is your definition of value?

BY MR. LONG:

Q. You can apply whatever definition that common word means to you.

MS. FICKLING: Objection to form.

THE WITNESS: Well, in the spirit that the house was purchased, yes.

BY MR. LONG:

Q. And the dollar value for which it was purchased, has there been a decrease?

A. Um, I'm -- I'm -- I don't --

MS. FICKLING: Objection to form.

Go ahead.

THE WITNESS: Yeah, I don't -- I don't assign those values.

BY MR. LONG:

Q. We looked at Exhibit 3 where there was an appraised valuation of $460,000 for your property. Do you know whether there has been any change in the dollar value of your property since that time?

A. Since 2020?

Q. Yes.

A. I'm -- I'm not aware of the value of the property.

Q. Has any Realtor, appraiser, or other real estate professional advised you that there has been a decrease in the value of your property?

MS. FICKLING: Objection, form.

Go ahead.

THE WITNESS: Ask that question again.

BY MR. LONG:

Q. Are you able to say to what degree, amount, or percentage anybody's property value around the lake has been impacted by PCBs?

MS. FICKLING: Objection to form.

THE WITNESS: That would be for the experts to determine.

BY MR. LONG:

Q. And do you have any opinion you're prepared to offer me at this point?

MS. FICKLING: Objection to form.

Go ahead.

THE WITNESS: Opinion of what?

BY MR. LONG:

Q. To what degree, amount, or percentage anybody's property value has been impacted as a result of PCBs in the lake?

MS. FICKLING: Same objection.

THE WITNESS: I would say that all property values have been affected by PCBs in the lake.

BY MR. LONG:

Q. Yeah, I heard your testimony on that, but my question is different. My question is to what degree, whether it's percentage or amount, has any impact of any individual property occurred?

A. No.
Q. Was there --
A. You asked me if I fished --
Q. Okay.
A. -- prior.
Q. So --
A. And then consumption's two different things, correct?
Q. Right.
A. Okay.
Q. So was there any -- any consumption of any fish that you ever caught out of Lake Wateree at any time?
A. Yes.
Q. There was?
A. Yes.
Q. Okay. When was the period of time that you would eat the fish that you caught out of Lake Wateree?
A. I would say prior to 2010.
Q. What made you stop eating the fish that you caught in 2010 out of Lake Wateree?
A. The knowledge from the South Carolina Department of Health and DNR about the contamination of the lake.

stop eating the fish at that time?
MS. FICKLING: Objection to form.
THE WITNESS: I can't speak for everybody.
BY MR. LONG:
Q. To your knowledge, did everybody agree not to eat the fish from Lake Wateree starting at that time?
MS. FICKLING: Objection to form.
THE WITNESS: I don't remember there being an agreement.
BY MR. LONG:
Q. What do you remember about what was decided in terms of whether anyone would be eating from -- Lake Wateree fish after you had that discussion with them around 2010?
MS. FICKLING: Objection to form.
THE WITNESS: Would you repeat the question, please?
BY MR. LONG:
Q. Yeah, what do you best remember about how you-all left it, this issue of the concern raised by the fish consumption advisory?
MS. FICKLING: Same objection.
THE WITNESS: We were concerned about

the advisory.
BY MR. LONG:
Q. Do you believe that the fish advisory in 2010 affected your entire family's consumption of fish from Lake Wateree?
MS. FICKLING: Objection to form.
THE WITNESS: I can't speak for my entire family.
BY MR. LONG:
Q. Have you ever had any concerns about contamination in Lake Wateree for anything other than PCBs?
A. Well, to my knowledge, PCBs weren't mentioned until 2021.
Q. I got your testimony on that, but my question is a little bit different.
A. Okay.
Q. So I'm asking you whether you have any concerns about any other pollutants in Lake Wateree other than the PCBs.
A. Any pollutants would be a concern.
Q. Okay. And are there any pollutants that you're aware of, other than the PCBs, that are causing you concern as you sit here today?
MS. FICKLING: Objection to form.

of what is actually there in what capacity.

Q. Is there still fishing equipment at the property that renters can use?

A. Yes.

Q. And is there still water toys and floats at the property for renters' children to use?

A. To my knowledge. Again, we don't provide the water toys and floats, but often people that rent will leave stuff like that.

Q. Did you have any discussions with any of your renters about fishing from your property?

A. None that I can remember.

Q. Did you give any kind of warnings to any of your renters about fish consumption advisories in Lake Wateree?

A. I'm pretty sure I stated that already.

Q. Specifically as to fish consumption advisories, did you tell them not to eat the fish?

A. I don't recall telling them that. The public signs, I think, speak for themselves.

Q. Okay. But you specifically did not warn your renters against eating the fish, correct?

A. I had no conversations to renters about the fish in the lake.

CERTIFICATE OF REPORTER

I, Susan M. Valsecchi, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 9th day of October, 2025, at Columbia, Richland County, South Carolina.



Susan M. Valsecchi, RPR, CRR
My Commission expires
November 12, 2034