

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CHARLESTON WATERKEEPER,)
SOUTH CAROLINA COASTAL)
CONSERVATION LEAGUE)

Plaintiffs,)

v.)

FRONTIER LOGISTICS, L.P.)

Defendant.)

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

C.A. No. 2:20-cv-01089-DCN

COMPLAINT

Plaintiffs Charleston Waterkeeper (“Waterkeeper”) and South Carolina Coastal Conservation League (“Conservation League”) (collectively, “Plaintiffs”), by and through their counsel, hereby allege:

NATURE OF THE CASE

1. This is a civil suit brought against Defendant Frontier Logistics, L.P. (“Frontier”), under the citizen suit enforcement provisions of the Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.* (“Resources Conservation and Recovery Act” or “RCRA”), and the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (“Clean Water Act” or “CWA”). Plaintiffs seek declaratory and injunctive relief, civil penalties, attorneys’ fees, and other relief the Court deems appropriate to remedy Frontier’s violations of federal law from its packaging and distribution facility at Union Pier Terminal Building 322 in Charleston County, South Carolina (“Facility”).

2. At the Facility, Frontier handles—and releases into the environment—small pre-production plastic pellets known as “nurdles.” As detailed more fully below, the Waterkeeper

has collected over 14,000 plastic pellets from the Cooper River, Charleston Harbor, and other Charleston area waterways, beaches, and parks since the organization began sampling in July of 2019. Some of these samples were recovered from the Cooper River immediately adjacent to the Frontier Facility and from the Facility fence line. Untold numbers of pellets remain in Charleston waters over seven months after Frontier was first identified as the likely source of this pollution.

3. Frontier’s violations of federal law include (1) that Frontier has contributed and is contributing to the past or present handling, storage, treatment, transportation, or disposal of solid waste which may present an imminent and substantial endangerment to health or the environment in violation of RCRA, and (2) that Frontier is discharging pollutants into waters of the United States without a National Pollutant Discharge Elimination System (“NPDES”) permit in violation of the CWA.

4. Frontier’s pervasive violations are harmful to area waterways, beaches, and marshes, and threaten the vast array of wildlife that depend on these natural resources for survival.

JURISDICTION AND VENUE

5. Plaintiffs bring this enforcement action under the citizen suit provisions of RCRA, 42 U.S.C. § 6972, and the CWA, 33 U.S.C. § 1365. This Court has jurisdiction over this action pursuant to those statutes and 28 U.S.C. § 1331 (civil action arising under the laws of the United States), and it has jurisdiction over the parties.

6. On October 29, 2019, Plaintiffs notified Defendant of their intention to file suit for violations of the CWA, in compliance with notice requirements in 33 U.S.C. § 1365(b)(1)(A) and the corresponding regulations at 40 C.F.R. §§ 135.2–135.3. Plaintiffs sent that notice letter via certified mail to Frontier CEO George Cook, the Administrator of the United States

Environmental Protection Agency (“EPA”), the Regional Administrator of EPA Region 4, and the Director of the South Carolina Department of Health and Environmental Control (“DHEC”), and personally served the letter on Frontier’s local operations manager, Brett Huddleston, and Frontier’s registered agent in South Carolina, Aimee Cook. More than 60 days have elapsed since the notice letter was served on Frontier and the state and federal agencies. A true and correct copy of Plaintiffs’ October 29, 2019 notice letter with documentation of its receipt is attached hereto as Exhibit 1.

7. On December 6, 2019, Plaintiffs notified Defendant of their intention to file suit for violations of RCRA, in compliance with notice requirements in 42 U.S.C. § 6972(b)(2)(A) and the corresponding regulations at 40 C.F.R. Part 254. Plaintiffs sent that notice letter via certified mail to Frontier CEO George Cook, the Administrator of the EPA, the Regional Administrator of EPA Region 4, and the Director of DHEC, and personally served the letter on Frontier’s local operations manager, Brett Huddleston, and Frontier’s registered agent in South Carolina, Aimee Cook. More than 90 days have elapsed since the notice letter was served on Frontier and the state and federal agencies. A true and correct copy of Plaintiffs’ December 6, 2019 notice letter with documentation of its receipt is attached hereto as Exhibit 2.

8. Neither the EPA nor DHEC has commenced or is diligently prosecuting a court action to redress the violations described in the notice letters and alleged in this complaint.

9. The violations identified in the notice letters are continuing at this time and are likely to continue in the future.

10. Venue is proper in this Court pursuant to 42 U.S.C. § 6972(a) because the action regards alleged violations and endangerment that occurred and may occur in this judicial district. Venue is also proper in this Court pursuant to 33 U.S.C. § 1365(c)(1) because the source of the

violations is located in this district. Plaintiff Waterkeeper and Plaintiff Conservation League are both based in this district, and although Defendant Frontier is incorporated in Illinois, and its principal office is located in Texas, it regularly conducts business and operates the Union Pier Terminal Facility in this district.

PARTIES

Charleston Waterkeeper and South Carolina Coastal Conservation League

11. Plaintiff Charleston Waterkeeper is a Charleston-based § 501(c)(3) not-for-profit organization working to protect and improve water quality, wildlife habitat, and recreation in the Charleston Harbor Watershed through advocacy, education, and enforcement of environmental laws. The Waterkeeper is an affiliate of the Waterkeeper Alliance, a global movement of on-the-water advocates who patrol and protect rivers and coasts all over the world.

12. Plaintiff South Carolina Coastal Conservation League is a Charleston-based § 501(c)(3) not-for-profit organization whose mission is to protect the resources of the South Carolina coastal plain, including its natural landscapes, wildlife, clean water, and quality of life.

13. Plaintiff organizations and their members have significant, particularized, and concrete interests in preventing Frontier's pollutant discharges from the Facility and the resulting endangerment to the environment. Plaintiffs' members live near, recreate on, and regularly visit the Cooper River and other Charleston waters and beaches harmed by Frontier's discharges, and intend to recreate on and visit these waters and beaches in the future. These individuals use and enjoy Charleston waters and beaches for recreational, commercial, educational, conservation, and aesthetic purposes, including, but not limited to, boating, scuba diving, swimming, fishing, and sightseeing. Frontier's ongoing discharges from the Facility harm Plaintiffs' members in part because these discharges contain pollutants that are known to be harmful to wildlife and to

persist in the environment. These harms fall within the zone of interests protected by RCRA and the CWA.

14. Neither DHEC nor the EPA is actively enforcing environmental laws and regulations despite the ongoing violations, which began on and have continued since at least March 10, 2018. Therefore, Plaintiff organizations and their members seek to prevent and remedy their ongoing injuries with this action. Relief from this Court addressing Frontier's non-compliance with RCRA and the CWA would redress the injuries of Plaintiff organizations and their members by increasing the likelihood, if not ensuring, that Frontier will cease its pollutant discharges and eliminate the endangerment to the environment.

Frontier Logistics, L.P.

15. Defendant Frontier Logistics, L.P., a corporation formed in the State of Illinois and headquartered in the State of Texas, provides supply chain management services to the plastics industry. Frontier has operated the Union Pier Terminal Facility in Charleston County, South Carolina, since at least April 2017. As detailed more fully below, at this Facility, Frontier receives plastic pellets via rail and packages them in bulk bags for shipment overseas, where the pellets are used to manufacture plastic goods.

16. Frontier is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

LEGAL BACKGROUND

Resource Conservation and Recovery Act

17. "RCRA's primary purpose . . . is to reduce the generation of hazardous waste and to ensure the proper treatment, storage, and disposal of that waste which is nonetheless generated, 'so as to minimize the present and future threat to human health and the

environment.” *Mehrig v. KFC W., Inc.*, 516 U.S. 479, 483 (1996) (quoting 42 U.S.C. § 6902(b)).

18. Section 7002(a)(1)(B) of RCRA provides that any person may commence a civil action against:

any person . . . including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment 42 U.S.C. § 6972(a)(1)(B).

19. Section 1004(3) defines “disposal” as “the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste . . . into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.” 42 U.S.C. § 6903(3).

20. Section 1004(27) defines “solid waste” as “any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities” 42 U.S.C. § 6903(27).

Clean Water Act

21. Congress enacted the CWA to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). To that end, Congress set a national goal that “the discharge of pollutants into the navigable waters be eliminated” 33 U.S.C. § 1251(a)(1).

22. Section 502(12) defines “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source” 33 U.S.C. § 1362(12); *see also* 33 U.S.C. § 1362(7) (defining “navigable waters”); 40 C.F.R. § 122.2 (defining “waters of the United States”).

23. The CWA identifies a number of materials and wastes that, if discharged into water, render them “pollutants,” including, but not limited to, solid waste, chemical wastes, wrecked or discarded equipment, and industrial waste. 33 U.S.C. § 1362(6).

24. Section 502(14) defines “point source” broadly to include “any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

25. Under the CWA, a point source polluter may only discharge pollutants pursuant to a NPDES permit issued by the EPA or by a State that has received approval to issue such a permit. 33 U.S.C. §§ 1311(a), 1342(a)-(b), 1362(12)(A). In South Carolina, DHEC is the entity approved to issue NPDES permits.

26. Each “discharge of any pollutant” that is not authorized by a NPDES permit is a violation of the CWA. 33 U.S.C. §§ 1311(a), 1342(a), 1365(f).

27. Section 505 of the CWA authorizes any citizen to commence a civil action “against any person . . . who is alleged to be in violation of . . . an effluent standard or limitation” 33 U.S.C. § 1365(a)(1). Enforcement pursuant to Section 505 encompasses an action to remedy unauthorized discharges in violation of Section 301, 33 U.S.C. § 1311(a). 33 U.S.C. § 1365(f).

28. Section 505 authorizes actions for injunctive relief. 33 U.S.C. § 1365(a).

29. Each separate violation of the CWA subjects the violator to a penalty of up to \$55,800 per day per violation for all violations occurring after November 2, 2015, pursuant to Sections 309(d) and 505(a). 33 U.S.C. §§ 1319(d), 1365(a); 40 C.F.R. § 19.4 (Civil Monetary Penalty Inflation Adjustments).

30. Section 505(d) permits prevailing or substantially prevailing parties to recover litigation costs, including attorney fees and expert witness fees. 33 U.S.C. § 1365(d).

FACTUAL BACKGROUND

Union Pier Terminal Facility

31. Frontier’s Union Pier Terminal Facility, located on a pier over the Cooper River, is a resin products packaging and distribution center that has operated since at least April 2017. The Facility, which is leased by Frontier from the South Carolina Ports Authority (“SCPA”), comprises a rail offloading zone, a truck loading dock, and an approximately 100,000-square-foot steel warehouse. *See* Exhibit 3, at 2.

32. Frontier is engaged in the transloading of pre-production plastic pellets for export through the Port of Charleston. The term “transloading” refers to the process by which a shipment is transferred from one mode of transportation to another. Plastic pellets are received at the Facility by rail and then transferred to storage silos within the warehouse using pneumatic hoses. From the storage silos, the pellets are packaged into plastic bags; the plastic bags are stacked onto wooden pallets; and the wooden pallets are stored in the warehouse awaiting shipping instructions. Once shipping instructions arrive, the pallets are loaded onto cargo containers at the truck loading dock and carried by truck from the Facility to an SCPA terminal.

33. The Facility is located at Union Pier Terminal, a concrete wharf that extends over the Cooper River. *See* Exhibit 3, at 1. The wharf and, more specifically, the Facility contain numerous openings that, upon information and belief, empty into or immediately adjacent to the river. These openings include, but are not limited to, drainage outlets along the rail lines (IMG_1796, IMG_1770, IMG_1776, IMG_1777), exposed seams between concrete slabs (IMG_1774, IMG_1781, IMG_1783, IMG_1785, IMG_1786, IMG_1787, IMG_1788, IMG_1789), space between the truck loading dock and the ground (IMG_1795), and unenclosed edges of the pier (IMG_1790). *See* Exhibit 3.

July 2019 Plastic Pellet Spill

34. The spilling of plastic pellets is a pervasive problem for the plastics industry. Due to their small size and light weight, pellets can spill at any stage of operations, including during the transloading process, and escape into the environment if not properly contained and cleaned up. An estimated 250,000 tons of plastic pellets enter oceans each year.

35. On July 19, 2019, DHEC received a complaint that plastic pellets were washing ashore on Sullivan's Island Beach in Charleston County. DHEC staff conducted a site visit at the beach that same day and collected samples of the pellets. DHEC staff observed that the pellets were uniformly small, round, and opaque white in color. *See* Exhibit 4, at 2.

36. On July 19, 2019, DHEC staff conducted a site visit at the Frontier Facility, during which agents of SCPA and Frontier personnel were present. In the spill Incident Report, DHEC staff noted:

Numerous areas of concern were observed. See photo log/image map in docs. Sample obtained during time of site visit. Plastic accumulation observed throughout facility. Most

of the facility is located over water. Numerous openings throughout facility were observed directly over water.

Exhibit 5, at 5. DHEC staff also observed that the pellets at the Facility appeared to resemble the pellets present on Sullivan's Island Beach. *See* Exhibit 4, at 2. Photographs taken by DHEC staff during the site visit show plastic pellets spilled along the rail lines, in seams between concrete slabs, beneath the truck loading dock, and inside a screened grate. *See* Exhibit 3. Many of these spilled pellets were in close proximity to openings in the Facility that empty directly into or immediately adjacent to the Cooper River.

37. Upon information and belief, plastic pellets are released from the Facility into the Cooper River and onto nearby land via wind.

38. Upon information and belief, plastic pellets are released from the Facility into the Cooper River and onto nearby land via stormwater.

39. Upon information and belief, plastic pellets are released from the Facility into the Cooper River and onto nearby land via washwater.

40. In addition to the allegations contained in paragraphs 37–39, upon information and belief, there are other mechanisms and pathways by which plastic pellets are released from the Facility into the Cooper River and onto nearby land, including, but not limited to, (1) during the pellet offloading process in the rail offloading zone, (2) during the pellet bagging and storage process, and (3) during the pellet loading process in the truck loading dock.

41. On July 23, 2019, DHEC staff conducted a follow-up visit at Sullivan's Island Beach. By that time, an environmental remediation contractor had begun removing plastic pellets from the beach, though DHEC staff still observed smaller quantities of pellets. *See* Exhibit 4, at 3.

42. On July 24, 2019, DHEC received a complaint that plastic pellets were washing ashore on Isle of Palms in Charleston County. DHEC staff conducted a site visit at Isle of Palms and observed pellets on the beach that resembled those present at the Facility and on Sullivan's Island Beach. *See* Exhibit 4, at 3.

43. On July 26, 2019, DHEC sent Frontier a Notice of Alleged Violation/Notice of Enforcement Conference, alleging that Frontier violated the Pollution Control Act, S.C. CODE ANN. § 48-1-90(A)(1), "in that it is unlawful for a person, directly or indirectly, to throw, drain, run, allow to seep, or otherwise discharge into the environment of the State organic or inorganic matter, including sewage, industrial wastes, and other wastes, except in compliance with a permit issued by [DHEC]." Exhibit 4, at 3.

44. On July 29, 2019, DHEC staff conducted an inspection of the Facility. Photographs taken by DHEC staff during the inspection show that Frontier had installed silt fencing, duct tape, and sand bags to cover some of the openings at the Facility, and that Frontier was using a plastic container to catch pellets during the rail offloading process. The photographs also show remaining vulnerabilities at the Facility, including exposed openings to the Cooper River and gaps in silt fencing. *See* Exhibit 6.

45. DHEC held an enforcement conference with representatives of Frontier on August 1, 2019, to discuss the July 26, 2019 Notice of Alleged Violation/Notice of Enforcement Conference.

46. Following the enforcement conference, Frontier sent a letter to DHEC on August 29, 2019, objecting to some of the findings in the Notice of Alleged Violation/Notice of Enforcement Conference. Frontier claimed that many of the pellets reported on Sullivan's Island Beach did not resemble pellets handled by Frontier at the Facility. Frontier also claimed that,

since the DHEC inspection of the Facility on July 19, 2019, Frontier had improved housekeeping procedures and physical barriers at the Facility. *See* Exhibit 7.

47. On October 17, 2019, DHEC sent a letter to Frontier stating that the agency had decided to close the matter “based upon the Department’s investigation and the supplemental information provided by Frontier during and subsequent to the enforcement conference” Exhibit 8, at 2.

48. Despite DHEC’s decision to close the matter and Frontier’s assurances that it has implemented sufficient housekeeping and containment procedures at the Facility, plastic pellet sampling conducted by Plaintiff Waterkeeper indicates that the problem is ongoing.

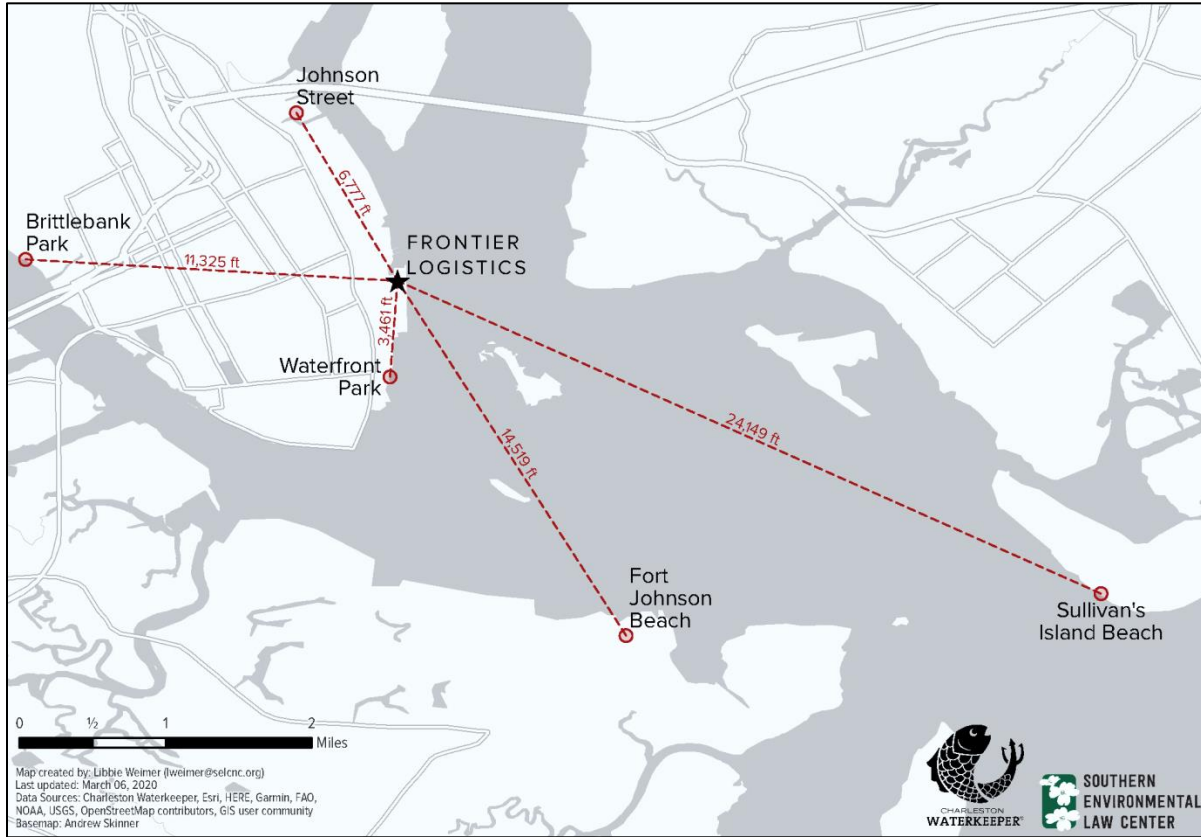
Post-Spill Sampling Protocol

49. Since plastic pellets were discovered on Sullivan’s Island Beach on July 19, 2019, the Waterkeeper has carried out a sampling protocol for pellets at dozens of beaches, parks, and other sites adjacent to water in Charleston County.

50. To ensure comparable data across sites, the Waterkeeper adopted the following sampling procedures beginning on September 18, 2019: (1) locate the high tide line, (2) collect plastic pellets for 10 minutes, and (3) document the number of pellets collected, the GPS coordinates, and the date. These protocols are consistent with the peer-reviewed sampling methodology developed by “Nurdle Patrol,” a citizen science project that works to gather information and generate awareness about plastic pellet pollution along the Gulf coast.

51. The Waterkeeper also selected five sites to conduct regular—typically weekly—sampling in an attempt to identify a pellet “hotspot(s).” Those five sites were selected based on their proximity to the Facility and their ability to accumulate aquatic debris such as plastic pellets. *See* Figure 1.

Figure 1: Map of Regular Sampling Sites



52. Since July 19, 2019, the Waterkeeper has collected a total of 14,281 plastic pellets. See Figure 2.

Figure 2: Sampling Data

Location	Date of Collection	Total Number in Sample
Sullivan's Island	7/19/2019	20
Sullivan's Island	7/21/2019	8
Sullivan's Island	7/21/2019	81
Sullivan's Island	7/21/2019	1608
Sullivan's Island	7/21/2019	271
Shute's Folly	8/28/2019	10
No Name Beach/Sumter	8/28/2019	44
Fort Johnson Beach	9/4/2019	50
Fort Johnson Beach	9/6/2019	30
Sullivan's Island	9/6/2019	208
Johnson Street	9/10/2019	64
Sea Breeze Marina	9/10/2019	91
Gadsdenboro	9/10/2019	28

Gadsdenboro	9/10/2019	12
Waterfront Park	9/10/2019	54
Capers Island	9/15/2019	17
Brittlebank Park	9/18/2019	1
Waterfront Park	9/18/2019	237
Johnson Street	9/18/2019	247
Fort Johnson Beach	9/18/2019	81
Sullivan's Island	9/18/2019	38
Johnson Street	9/21/2019	10
Brittlebank Park	9/25/2019	0
Johnson Street	9/25/2019	74
Waterfront Park	9/25/2019	202
Filbin Creek	9/25/2019	71
Fort Johnson Beach	9/25/2019	130
Sullivan's Island	9/27/2019	653
Sullivan's Island	9/28/2019	22
Brittlebank Park	10/2/2019	0
Johnson Street	10/2/2019	57
Sea Breeze Marina	10/2/2019	91
Waterfront Park	10/2/2019	58
Fort Johnson Beach	10/2/2019	19
Old Village TOMP	10/6/2019	28
Sullivan's Island	10/6/2019	66
Wappoo Cut Landing	10/9/2019	6
Brittlebank Park	10/9/2019	0
Sunrise Park	10/9/2019	10
Waterfront Park	10/9/2019	355
Johnson Street	10/9/2019	104
Fort Johnson Beach	10/9/2019	65
Johnson Street	10/16/2019	83
Waterfront Park	10/16/2019	70
Fort Johnson Beach	10/16/2019	20
Brittlebank Park	10/17/2019	1
Sunrise Park	10/17/2019	10
Brittlebank Park	10/23/2019	0
Wappoo Cut Landing	10/23/2019	1
Sunrise Park	10/23/2019	1
Johnson Street	10/23/2019	46
Waterfront Park	10/23/2019	89
Fort Johnson Beach	10/23/2019	4
Sullivan's Island	10/24/2019	96
Waterfront Park	10/28/2019	97
Sea Breeze Marina	10/29/2019	80

Brittlebank Park	10/30/2019	1
Sunrise Park	10/30/2019	11
Johnson Street	10/30/2019	39
Fort Johnson Beach	10/30/2019	9
Sullivan's Island	10/31/2019	20
Fort Johnson Beach	10/31/2019	18
Fort Johnson Beach	11/8/2019	37
Brittlebank Park	11/8/2019	0
Waterfront Park	11/8/2019	109
Johnson Street	11/8/2019	35
Sullivan's Island	11/13/2019	8
Fort Johnson Beach	11/13/2019	6
Sunrise Park	11/13/2019	3
Waterfront Park	11/13/2019	172
Johnson Street	11/13/2019	120
Brittlebank Park	11/13/2019	2
Hendricks Park	11/19/2019	205
Sea Breeze Marina	11/19/2019	242
Laurens/Washington RR	11/19/2019	171
Waterfront Park	11/19/2019	180
Frontier	11/21/2019	7
Childsbury Towne	11/21/2019	12
Rice Hope Plantation Inn	11/21/2019	2
Bushy Park Boat Landing	11/21/2019	12
Braddock Ave	11/21/2019	24
Fort Johnson Beach	11/22/2019	8
Brittlebank Park	11/22/2019	3
Johnson Street	11/22/2019	102
TOMP Waterfront Park	11/22/2019	74
Sullivan's Island	11/22/2019	129
Paper Mill	11/26/2019	46
Goose Creek	11/26/2019	17
Fort Johnson Beach	11/27/2019	11
Brittlebank Park	11/27/2019	1
Waterfront Park	11/27/2019	61
Laurens/Washington RR	11/27/2019	38
Hilton Head Island	11/27/2019	0
Johnson Street	11/27/2019	56
TOMP Waterfront Park	11/27/2019	51
Hilton Head Island	11/28/2019	0
Hilton Head Island	11/29/2019	0
Sullivan's Island	11/29/2019	56
Hilton Head Island	11/30/2019	0

Isle of Palms	12/2/2019	8
Sullivan's Island	12/2/2019	14
Edisto Beach	12/3/2019	0
Deweese Island	12/4/2019	0
Seabrook Island Beach	12/5/2019	2
Folly Beach	12/5/2019	22
Old Village TOMP	12/5/2019	9
Fort Johnson Beach	12/6/2019	29
Brittlebank Park	12/6/2019	1
Waterfront Park	12/6/2019	61
Laurens/Washington RR	12/6/2019	99
Johnson Street	12/6/2019	45
TOMP Waterfront Park	12/6/2019	36
Sullivan's Island	12/7/2019	15
Sullivan's Island	12/9/2019	64
Kiawah Island	12/9/2019	15
Isle of Palms	12/10/2019	10
Fort Johnson Beach	12/11/2019	10
Brittlebank Park	12/11/2019	0
Waterfront Park	12/11/2019	69
Laurens/Washington RR	12/11/2019	118
Johnson Street	12/11/2019	53
TOMP Waterfront Park	12/11/2019	35
Sullivan's Island	12/11/2019	33
Folly Beach	12/12/2019	5
Deweese Island	12/12/2019	0
Seabrook Island Beach	12/14/2019	3
Sullivan's Island	12/16/2019	88
Folly Beach	12/16/2019	7
Edisto Beach	12/16/2019	0
Sea Breeze Marina	12/17/2019	79
Isle of Palms	12/19/2019	3
TOMP Waterfront Park	12/19/2019	29
Laurens/Washington RR	12/19/2019	32
Waterfront Park	12/19/2019	25
Brittlebank Park	12/19/2019	0
Fort Johnson Beach	12/19/2019	16
Johnson Street	12/19/2019	36
Sullivan's Island	12/19/2019	40
Edisto Beach	12/20/2019	0
Seabrook Island Beach	12/21/2019	3
Deweese Island	12/22/2019	0
Rat Island, Folly Beach	12/24/2019	17

Lighthouse Inlet, Folly Beach	12/24/2019	34
Sullivan's Island	12/24/2019	38
Sunrise Park	12/24/2019	57
Sullivan's Island	12/24/2019	206
Old Village TOMP	12/24/2019	13
Deweese Island	12/25/2019	11
Seabrook Island Beach	12/25/2019	6
Northbridge Park	12/25/2019	0
Fort Johnson Beach	12/27/2019	21
Brittlebank Park	12/27/2019	10
Johnson Street	12/27/2019	66
Laurens/Washington RR	12/27/2019	36
Waterfront Park	12/27/2019	81
TOMP Waterfront Park	12/27/2019	2
Sullivan's Island	12/27/2019	29
Folly Beach	12/28/2019	33
Fort Johnson Beach	12/31/2019	71
Brittlebank Park	12/31/2019	1
Waterfront Park	12/31/2019	65
Laurens/Washington RR	12/31/2019	57
Johnson Street	12/31/2019	96
Treehouse Park	12/31/2019	6
Children's Park Daniel Island	12/31/2019	16
Remley Point Boat Landing	12/31/2019	84
Pitt Street Park	12/31/2019	22
Seabrook Island Beach (N. Edisto River)	12/31/2019	68
James Island Creek Bridge, James Island	1/1/2020	6
Sullivan's Island	1/1/2020	48
TOMP Waterfront Park	1/1/2020	35
Folly Beach County Park, Folly Beach	1/4/2020	2
Sullivan's Island	1/8/2020	31
TOMP Waterfront Park	1/8/2020	33
Fort Johnson Beach	1/10/2020	1
Waterfront Park	1/10/2020	59
Laurens/Washington RR	1/10/2020	68
Edisto Beach	1/10/2020	0
Frontier Fence	1/10/2020	238
Johnson Street	1/10/2020	68
Brittlebank Park	1/10/2020	3
Edisto Beach	1/11/2020	0

Sullivan's Island	1/13/2020	52
TOMP Waterfront Park	1/13/2020	54
Frontier Fence	1/13/2020	190
Folly Beach	1/14/2020	24
Sullivan's Island	1/14/2020	78
Fort Johnson Beach	1/17/2020	34
Brittlebank Park	1/17/2020	8
Waterfront Park	1/17/2020	64
Laurens/Washington RR	1/17/2020	69
Frontier Fence	1/17/2020	132
Johnson Street	1/17/2020	102
Isle of Palms	1/18/2020	5
Shem Creek Landing	1/22/2020	6
Sullivan's Island	1/24/2020	32
Johnson Street	1/24/2020	43
Brittlebank Park	1/24/2020	1
Waterfront Park	1/24/2020	112
Laurens/Washington RR	1/24/2020	27
Frontier Fence	1/24/2020	86
TOMP Waterfront Park	1/24/2020	25
Old Village TOMP	1/26/2020	4
Isle of Palms, County Park	1/28/2020	0
Isle of Palms, Breach Inlet	1/28/2020	3
Sullivan's Island, Fort Moultrie	1/28/2020	18
Fort Johnson Beach	1/30/2020	3
Waterfront Park	1/30/2020	86
Johnson Street	1/30/2020	105
Brittlebank Park	1/30/2020	2
Laurens/Washington RR	1/30/2020	28
Witherbee Road Train Tracks	2/1/2020	15
TOMP Waterfront Park	2/1/2020	69
Sullivan's Island	2/1/2020	90
Johnson Street	2/4/2020	96
Laurens/Washington RR	2/4/2020	44
Waterfront Park	2/4/2020	61
Brittlebank Park	2/4/2020	0
Fort Johnson Beach	2/4/2020	5
Old Village TOMP	2/4/2020	2
Sullivan's Island	2/9/2020	24
TOMP Waterfront Park	2/9/2020	31
Church Creek	2/10/2020	0
Shem Creek	2/11/2020	3
Fort Johnson Beach	2/12/2020	29

Johnson Street	2/14/2020	126
Laurens/Washington RR	2/14/2020	33
Frontier Fence	2/14/2020	124
Waterfront Park	2/14/2020	64
Fort Johnson Beach	2/14/2020	2
TOMP Waterfront Park	2/17/2020	25
Sullivan's Island	2/17/2020	33
Fort Johnson Beach	2/21/2020	17
Brittlebank Park	2/21/2020	0
Waterfront Park	2/21/2020	99
Laurens/Washington RR	2/21/2020	34
Frontier Fence	2/21/2020	157
Johnson Street	2/21/2020	87
Pitt Street Park	2/22/2020	37
Sullivan's Island	2/23/2020	30
TOMP Waterfront Park	2/23/2020	5
Fort Johnson East	2/27/2020	20
Laurens/Washington RR	2/27/2020	16
Fort Johnson Beach	2/27/2020	12
Waterfront Park	2/27/2020	81
Johnson Street	2/27/2020	98
Brittlebank Park	2/27/2020	0
Sullivan's Island	2/28/2020	17
Hendricks Park	2/29/2020	25
TOMP Waterfront Park	3/1/2020	26
TOMP Waterfront Park	3/1/2020	63
Fort Johnson Beach	3/3/2020	10
Brittlebank Park	3/3/2020	2
Waterfront Park	3/3/2020	25
Laurens/Washington RR	3/3/2020	34
Johnson Street	3/3/2020	56
Sullivan's Island	3/6/2020	30
TOMP Waterfront Park	3/6/2020	24
Sullivan's Island	3/12/2020	39
TOMP Waterfront Park	3/12/2020	13
Johnson Street	3/13/2020	66
Laurens/Washington RR	3/13/2020	29
Waterfront Park	3/13/2020	89
Brittlebank Park	3/13/2020	0
Fort Johnson Beach	3/13/2020	2
Total		14,281

53. Among the five sites sampled on a regular basis, Waterfront Park and Johnson Street consistently exhibit the highest pellet densities. For 16 of the 24 weeks sampled, the Waterkeeper found the most and second most pellets at Waterfront Park and Johnson Street. For the remaining eight weeks, either Waterfront Park or Johnson Street was among the two most contaminated sites. Waterfront Park and Johnson Street are located closest to the Frontier Facility of the five sites the Waterkeeper samples on a regular basis.

54. In addition to sites adjacent to water, the Waterkeeper has collected plastic pellets along the fence line of the Facility and along the rail line entering the Facility. Upon information and belief, the pellets collected from these two sites (1) were deposited on the rail line from train cars entering or exiting the Facility, (2) were carried by wind or stormwater from the Facility to the fence line, or (3) were carried by wind or stormwater from the rail line to the fence line. Upon information and belief, the pellets recovered from the fence line and the rail line were deposited there without ever interacting with the Cooper River.

55. Upon visual inspection, the plastic pellets the Waterkeeper has recovered from Charleston waters resemble those found along the fence line of the Facility and along the rail line entering the Facility. In general, the pellets are uniform in size, clear or opaque white in color, and one of four shapes (round, square, cylindrical, or disk-like). Some pellets have distinguishing features—for example, a bubble at the core. Many pellets appear pristine, whereas others have yellowed or grayed and show signs of deterioration and weathering.

56. Plaintiffs commissioned Fourier-Transform Infrared Spectroscopy (“FTIR”) analysis of 10 recovered pellets—six from Charleston waters and four from the rail line entering the Facility—to identify and compare their chemical compositions. The FTIR analysis concluded that all 10 of the pellets were polyethylene, and that one pellet collected from the rail line

contained an unidentified component in addition to polyethylene. *See* Exhibit 9, at 1. According to Frontier, the Facility handles only polyethylene pellets.

57. Even before the July 2019 spill, the Waterkeeper and local citizens had already begun finding plastic pellets at various Charleston County sites. On March 10, 2018, the Waterkeeper collected 44 pellets at Laurel Island in Charleston; on January 23, 2019, a college student collected 53 pellets at Waterfront Park in Charleston; and on June 21, 2019, a local kayak guide collected 233 pellets on Sullivan’s Island Beach. In general, these pellets resemble the tens of thousands of pellets recovered by the Waterkeeper in the aftermath of the July 2019 spill.

58. As of the filing of this Complaint, after six months of concerted sampling, the Waterkeeper continues to find plastic pellets in significant concentrations at sites across the Charleston area, particularly those closest to the Facility.

Harms from Plastic Pellets

59. Plastics, including plastic pellets, have been demonstrated to cause a variety of lethal and sub-lethal effects in animals.

60. The term “microplastics” refers to any plastic particle that is less than 5mm in size. A primary microplastic is one that was manufactured as a microplastic, whereas a secondary microplastic is one that degraded into a microplastic from larger plastic debris. Plastic pellets are a primary microplastic, but they are also capable of breaking down into smaller microplastic fragments as would a secondary microplastic.

61. Environmental contamination of plastic pellets has resulted in contamination to wildlife. Seabirds have been widely reported to ingest plastic debris, including pellets, and pellets have also been found in fish and marine turtles.

62. Organisms at every level of the aquatic food chain have been documented to ingest or interact with microplastics.

63. Microplastics can be physically harmful to an organism via ingestion, causing lacerations and/or starvation, which may lead to death. Ingestion of small microplastics (<100µm) may also be physically harmful if the particles translocate across the cell membrane into the circulatory, lymphatic, respiratory, and other biological systems.

64. Chemically, plastic pellets and other microplastics are associated with a “cocktail of contaminants,” including chemicals added or produced during manufacturing and chemicals present in the environment that accumulate onto plastic debris from surrounding water. Many of the chemicals associated with plastics are listed by the EPA as priority pollutants because they are persistent, bioaccumulative, and/or toxic.

65. Recent laboratory studies have shown lethal and sub-lethal effects in organisms exposed to plastic with sorbed environmental contamination. Those effects include changes in gene expression, inflammation, disruption of feeding behavior, decreases in growth, decreases in reproductive success, changes in larval development, reduced filtration and respiration rates, and decreased survival.

66. Several studies have reported a negative correlation between plastic load and body condition in birds.

67. Plastic pellets have also been shown to have physiological impacts on marine organisms via leachate as opposed to ingestion. Studies have reported decreased development in sea urchin and brown mussel embryos from exposure to leached chemicals from both virgin and beached pellets.

68. Coastal estuaries, such as Charleston Harbor, provide ecosystem services that are economically and ecologically indispensable. Often called nurseries of the sea, coastal estuaries are critical nesting and feeding habitats for many aquatic plants and animals, including most of the fish and shellfish eaten in the United States. More than 75 percent of the U.S. commercial catch complete at least part of their life cycles in estuaries, and that percentage is even greater for the recreational fish catch.

69. The ingestion of microplastics has been demonstrated in several estuarine species, including grass shrimp, shore crabs, oysters, and clams. Laboratory studies have shown increased mortality in grass shrimp and larval fish, changes in oxygen consumption in shore crabs, and declines in reproduction in oysters and zooplankton from exposure to microplastics.

70. Frontier's releases of plastic pellets into the Cooper River, just upstream from Charleston Harbor and the Atlantic Ocean, and onto surrounding land endanger vital ecosystems and the organisms that rely on them for survival.

CLAIMS FOR RELIEF

Count I: Violation of the Resource Conservation and Recovery Act – Imminent and Substantial Endangerment

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

72. Pursuant to Section 7002(a)(1)(B) of RCRA, citizens may commence a citizen suit against:

any person . . . including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal Facility who has contributed or who is contributing to the past or present handling, storage, treatment,

transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment” 42 U.S.C. § 6972(a)(1)(B).

73. Plastic pellets released from the Frontier Facility are “solid waste” because they are “other discarded material . . . resulting from industrial, commercial, mining, and agricultural operations” 42 U.S.C. § 6903(27).

74. As indicated above, plastic pellets are transported to and handled, stored, and disposed at the Facility.

75. As a result, Frontier, which is the operator of the Facility, contributes to the past and/or present handling, storage, treatment, transportation, or disposal of solid waste.

76. Frontier’s handling, storage, treatment, transportation, or disposal of plastic pellets has caused pellets to enter area waters and nearby land, and thus presents an imminent and substantial endangerment to health or the environment.

77. Specifically, as alleged above, many animals, including species of birds, fish, and marine turtles, have been reported to ingest plastic pellets. Exposure to microplastics, including plastic pellets, has been demonstrated to cause a variety of lethal and non-lethal effects in animals, such as disruptions in feeding behavior, reduced growth and development, decreases in reproductive success, and reduced filtration and respiration rates.

78. Plaintiffs and their members are harmed and will continue to be harmed by Frontier’s failure to abate the endangerment caused by their operations at the Facility, unless the Court grants the relief sought herein.

Count II: Violation of Section 301 of the Clean Water Act

79. The allegations of the preceding paragraphs are incorporated by reference as if

repeated and set forth herein.

80. The waters of the Cooper River are waters of the United States and are thus “navigable waters” as defined by the CWA and controlling authority. 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

81. The “point sources” at the Frontier Facility include, but are not limited to, the drainage outlets, seams, and other openings described in paragraph 33. 33 U.S.C. § 1362(14).

82. Plastic pellets are a “pollutant” under the CWA. 33 U.S.C. § 1362(6).

83. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from any point source to waters of the United States, except in compliance with a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

84. To date, Frontier has not obtained a NPDES permit for the Facility.

85. As operator of the Facility, Frontier is responsible for the CWA violations alleged herein as a result of its unpermitted discharges of plastic pellets into the Cooper River.

86. Each and every discharge of plastic pellets and each and every day plastic pellets remain in waters is a separate and distinct violation of Section 301(a) of the CWA. 33 U.S.C. § 1311(a).

87. Because Frontier has implemented insufficient prevention, containment, and cleanup procedures for plastic pellet spills, it is likely that its discharges into the Cooper River are ongoing, and thus, that its violation of the CWA are ongoing.

88. Plaintiffs and their members are harmed and will continue to be harmed by Frontier’s unpermitted discharges at the Facility, unless the Court grants the relief sought herein.

REQUEST FOR RELIEF

WHEREFORE, the Charleston Waterkeeper and the South Carolina Coastal

Conservation League respectfully request that this Court grant the following relief:

A. Declaratory and injunctive relief pursuant to § 7002 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972, ordering Frontier to perform and pay for such work as may be required to eliminate any present and future endangerment to health or the environment, and restraining Frontier from further violating RCRA;

B. Declaratory and injunctive relief pursuant to § 505 of the Clean Water Act, 33 U.S.C. § 1365, ordering Frontier to cease and desist unpermitted discharges, and restraining Frontier from further violating the CWA;

C. Civil penalties of up to \$55,800 per day per violation for all CWA violations occurring after November 2, 2015, pursuant to § 309(d) of the CWA, 33 U.S.C. § 1319(d), and the regulations governing the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4;

D. An award of the costs of litigation, including reasonable attorney and expert witness fees, pursuant to § 7002 of RCRA, 42 U.S.C. § 6972, and § 505(d) of the CWA, 33 U.S.C. § 1365(d); and

E. Such further and additional relief as the Court deems just and proper.

Respectfully submitted this 18th day of March, 2020.

/s/ Catherine Wannamaker

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