

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

**CLERMONT COUNTY BOARD OF
COMMISSIONERS,
101 E. Main Street
Batavia, OH 45103**

Plaintiff,

-V-

**NEW RICHMOND DEVELOPMENT
CORPORATION, LLC
c/o Joseph E. Budde, Esq. (Registered Agent)
259 W. Schrock Road
Westerville, OH 43081**

-and-

**COMMERCIAL LIABILITY
PARTNERS, LLC**
c/o Tim Burgdorf (Registered Agent)
2275 Cassens Drive, Suite 118
Fenton, MO 63026

-and-

DUKE ENERGY BECKJORD, LLC
c/o CT Corp. System (Registered Agent)
4400 Easton Commons Way, Suite 125
Columbus, OH 43219

-and-

DUKE ENERGY OHIO, INC.
c/o CT Corp. System (Registered Agent)
4400 Easton Commons Way, Suite 125
Columbus, OH 43219

-and-

OWFLY, LLC
2275 Cassens Drive, Suite 118
Fenton, MO 63026

) **Case No.** 1:26-cv-00975
)
) **(Judge** _____**)**

) COMPLAINT FOR INJUNCTIVE RELIEF,
) CIVIL PENALTIES, AND OTHER RELIEF
) PURSUANT TO THE RESOURCE
) CONSERVATION AND RECOVERY ACT,
) 42 U.S.C. § 6972 AND STATE LAW

) JURY DEMAND ENDORSED HEREON

-and-)
)
TBDA INVESTMENTS, LLC)
c/o Thomas H. Bergman (Registered Agent))
4695 Lake Forest Drive, Suite 200)
Cincinnati, OH 45242)
)
Defendants.)

Plaintiff, the Clermont County Board of Commissioners (“Plaintiff” or “Clermont County”), by and through the undersigned counsel, brings this Complaint against Defendants New Richmond Development Corporation, LLC (“NRDC”), Commercial Liability Partners, LLC (“CLP”), Duke Energy Beckjord, LLC (“Duke Energy Beckjord”), Duke Energy Ohio, Inc. (“Duke Energy Ohio”) (together, “Duke”), TBDA Investments, LLC (“TBDA”), and Owlfly, LLC (“Owlfly”) (collectively, “Defendants”), and alleges as follows:

INTRODUCTION & NATURE OF SUIT

1. Clermont County brings this action under the citizen suit provision of the Resource Conservation and Recovery Act (“RCRA” or the “Act”), 42 U.S.C. § 6972(a)(1)(B), to abate an imminent and substantial endangerment to public health and the environment arising from the handling, storage, treatment, disposal, and closure of Coal Combustion Residuals (“CCRs” or “coal ash”) at the unlined coal ash ponds of the former W.C. Beckjord Station (the “Beckjord Dump”) in New Richmond, Clermont County, Ohio. The action also proceeds under 42 U.S.C. § 6972(a)(1)(A) for violations of the Act and the CCR Rules, 40 C.F.R. § 257.50, *et seq.* (the “CCR Rules”), as well as for related violations of state and common law.

2. Coal ash poses serious risks to human health and the environment. As one court in this District recently observed, coal ash is “a dangerous byproduct of coal-fired electrical power plants . . . [that] pose serious risks to human health and the environment.” *Gavin Power, LLC v. United States Env’t Prot. Agency*, No. 2:24-CV-41, 2025 WL 2908716, at *1 (S.D. Ohio Aug. 26,

2025) (Watson, J.). “Across the United States, power plants ... burn enough coal to collectively generate upwards of one hundred million tons of coal ash annually”—making coal ash “one of the largest industrial waste streams generated in the [country].” *Id.* (quoting *Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities*, 80 Fed. Reg. 21,302, 21,303 (April 17, 2015) (“2015 Rule”)). Coal ash contains “high quantities of arsenic and other carcinogenic, neurotoxic, [and] ecologically-devastating substances[,]” and can leak “into the fish we eat and the water we drink.” *Id.* “Bluntly, coal ash disposal threatens perhaps our most precious natural resource: water.” *Id.*

3. This case concerns a cluster of massive, leaking coal ash ponds at the Beckjord Dump—a former coal-fired plant adjacent to the Ohio River approximately 15 miles upstream from Cincinnati, Ohio. The plant operated for six decades, from approximately 1952–2014, and generated millions of cubic yards of coal ash. That coal ash was disposed of, and remains, in onsite unlined ponds, including Pond A, Pond B, Pond C, and Pond C Extension (“Cx”), Pond Run Phase 2, and Pond Run Phase 3 (collectively, the “Ash Ponds”). The Beckjord Dump lies in the Ohio River floodplain and directly upgradient from Clermont County’s public water-supply wells, which serve approximately 145,000 residents.

4. Clermont County brings this action to abate the imminent and substantial endangerment the unlined Ash Ponds pose to the raw drinking water drawn from its public wells. Millions of tons of coal ash sit in groundwater in the unlined Ash Ponds next to the wells, in the Ohio River floodplain, where the ash will continue to leach pollutants and threaten to contaminate the County’s raw drinking water. The Ash Ponds already caused one of the County’s public wells to be permanently taken out of service due to elevated levels of sulfate in groundwater migrating from the Ash Ponds. The contamination migrating from the Ash Ponds threatens the County’s

remaining wells and threatens to reduce the County's well field capacity by millions of gallons per day. If left unremedied, the contamination will require Clermont County to undertake significant upgrades or treatment measures to protect residents. Because the aquifer's water supply cannot simply be replicated or replaced, contamination would jeopardize the drinking-water source for approximately 145,000 Clermont County residents.

5. Unless the CCRs are removed or otherwise restrained, the Beckjord Dump will continue to contribute substantial quantities of contamination, including sulfate, to groundwater and surface waters for decades. In addition, the failures to comply with the CCR Rules' structural stability and emergency preparedness requirements threaten to catastrophically inundate neighboring homes and release millions of tons of coal ash into the Ohio River and surrounding properties, threatening the health and safety of Clermont County residents and the County's water supply.

6. In short, the unlawful practices and illegal closure of the Beckjord Dump violate RCRA and the CCR Rules, constitute illegal open dumping, and threaten surrounding communities and the environment. Defendants' ongoing handling, storage and disposal of CCRs present an imminent and substantial endangerment to Clermont County's public drinking water wells, violate federal and state law, and have resulted in contamination of a public drinking water supply above federal maximum contaminant levels ("MCLs") and other applicable public health guidance and advisories.

7. Clermont County therefore seeks orders requiring Defendants to remediate, abate, and control the contamination and protect the County's drinking water supply over the long term. Defendants alone made this mess. Now they must clean it up. And Defendants—not Clermont County taxpayers—are required to bear the resulting costs.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and 42 U.S.C. § 6972(a), which authorizes RCRA citizen suits against any person, including a corporation, “who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective” pursuant to RCRA, and who “has contributed to or 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)(A); 42 U.S.C. § 6972(a)(1)(B).

9. The Court has supplemental jurisdiction over the state-law claims under 28 U.S.C. § 1367 because they arise from the same transactions and occurrences as the federal claims and form part of the same case or controversy under Article III of the U.S. Constitution.

10. The Court has personal jurisdiction over each Defendant. Duke Energy Ohio and TBDA are domiciled in Ohio and subject to general jurisdiction in this District. The remaining Defendants are subject to specific personal jurisdiction under Ohio’s long-arm statute, Ohio Rev. Code § 2307.382(A):

- a. NRDC owns and operates the Beckjord Dump in Clermont County, Ohio. At all relevant times, NRDC has conducted business, made environmental and remediation decisions, submitted closure plans to Ohio EPA, and committed tortious acts and omissions in this state concerning the handling, storage, disposal, and closure of CCRs at the Beckjord Dump.
- b. CLP has at all relevant times transacted business in Ohio through its ownership and total operational control of NRDC and the Beckjord Dump.

It has made environmental, remediation, and disposal decisions concerning the Beckjord Dump and committed tortious acts and omissions in this state from which the injuries in this case arise.

- c. Duke Energy Beckjord owned and operated the Beckjord Dump for years before the 2018 transfer, continues to own at least one parcel at the site, retains contractual rights relating to the property, and committed tortious acts and omissions in Ohio that directly gave rise to the claims asserted in this action.
- d. Owlfly owned real property comprising portions of the Beckjord Dump in Clermont County, Ohio, entered into agreements in Ohio relating to closure of those parcels, and allowed the illegal disposal, storage, and closure of CCRs on its property.
- e. Each of the foregoing non-resident Defendants has purposefully availed itself of the privilege of conducting activities in Ohio—including owning, operating, or controlling real property and CCR disposal operations in Clermont County—and should reasonably anticipate being haled into court in this District.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 6972(a) because the RCRA violations occurred in this District and the Beckjord Dump, which is the source of the alleged endangerment and violations, is located in Clermont County, Ohio, within this District.

12. On June 1, 2026, in accordance with 42 U.S.C. § 6972(b)(2)(A), Clermont County served written notice to all Defendants and other required parties by registered mail of its intent to

file suit, including the Administrator of the United States Environmental Protection Agency (“EPA”) and the Ohio Environmental Protection Agency (“Ohio EPA”) (the “RCRA Notice”). The RCRA Notice identified the specific RCRA and CCR Rules provisions at issue, the activities alleged to constitute the violations and endangerment, the persons responsible, and the relevant dates as required by 40 C.F.R. § 254.3. More than ninety (90) days have elapsed since the notice was given, and the endangerment has not been abated. The same RCRA Notice informed Defendants and other required parties of Clermont County’s intent to sue under Section 6972(a)(1)(A) for violations of the CCR Rules, in accordance with 42 U.S.C. § 6972(b)(1)(A). More than sixty (60) days have elapsed, yet the RCRA and CCR Rules violations continue.

13. Neither EPA nor Ohio EPA has commenced or is diligently prosecuting a civil or criminal action against any Defendant to require compliance with RCRA’s open dumping prohibition, the CCR Rules, or any other federal requirement applicable to the Beckjord Dump, or to abate the imminent and substantial endangerment described in this Complaint. No federal or state enforcement action addresses the open dumping violations, CCR Rule violations, or the endangerment that form the basis of Count One and Count Two of this Complaint, so the “diligent prosecution” bars in 42 U.S.C. § 6972(b)(1) and (2) do not apply. Further, Ohio EPA has no authority to enforce federal CCR law and regulations. Despite this, the agency has nevertheless purportedly approved closure plans that, as alleged below, are federally non-compliant.

PARTIES

A. Plaintiff

14. Plaintiff Clermont County Board of Commissioners is a political subdivision of the State of Ohio and the governing body of Clermont County. It is responsible for ensuring a safe drinking water supply for its citizens and owns and operates the PUB well fields, which serve

approximately 145,000 Clermont County residents and draw from an aquifer adjacent to and downgradient from the Beckjord Dump. Clermont County is a “person” under 42 U.S.C. § 6903(15) and brings this action under 42 U.S.C. § 6972(a)(1)(A) and (B). Under Ohio Rev. Code § 305.12, Clermont County may sue in any court. Under Ohio Rev. Code § 6103.02, it has a direct interest and statutory authority to protect the county’s public water supply and residents’ health.

15. Clermont County has standing under Article III of the United States Constitution. This Court has already determined that Article III standing exists for RCRA citizen-suit claims challenging coal ash closure plans at the Beckjord Dump. *See Neighbors Opposing Pit Expansion, Inc. v. New Richmond Development Corp., LLC*, No. 1:20-cv-00091-MRB, Doc. 237 (S.D. Ohio Aug. 6, 2026) (reinstating RCRA claims after concluding plaintiff has standing based on the Eleventh Circuit’s decision in *Mobile Baykeeper, Inc. v. Alabama Power Co.*, 175 F.4th 1316 (11th Cir. 2026)). Clermont County’s standing is at least as strong as NOPE’s because the County owns and operates the public drinking water wells directly threatened by the same Defendants’ non-compliant closure activities at the same facility.

16. To establish Article III standing, a plaintiff must show: (1) a concrete and particularized injury in fact; (2) a causal connection tracing the injury to the defendant’s actions; and (3) a likelihood that prevailing will redress the injury. *E.g., Little Hocking Water Ass’n, Inc. v. E.I. du Pont de Nemours & Co.*, 91 F. Supp. 3d 940, 953 (S.D. Ohio 2015). With respect to a Section 6972(a)(1)(B) claim for imminent and substantial endangerment, the statute is expressly forward-looking and reaches waste that “may present” an imminent and substantial endangerment, so a plaintiff need not plead or prove that every threatened harm has already occurred. By way of summary, and as alleged throughout this Complaint:

a. ***Injury in Fact:*** Clermont County owns and operates public drinking water

wells serving approximately 145,000 residents, and has a direct interest and statutory duty to protect its water supply and residents' health. Coal ash contamination from the unlined Ash Ponds poses an actual and imminent threat to those wells through groundwater migration. Clermont County has already suffered a concrete, realized injury: PUB Well 6 was permanently taken out of service because elevated levels of sulfate in groundwater migrating from Pond A made the well unusable for public supply, and it has not returned to service. The loss reduced well field capacity by approximately 700,000 gallons per day. If the interceptor well system fails or is not maintained, the sulfate plume is expected to impact additional County wells, including PUB Wells 1, 2, 3, 4 and 5. If the County were required to remove additional wells from service, well field capacity could be further reduced by approximately 3.5 million gallons per day (1.3 billion gallons per year).

The threat of further contamination reaching additional PUB wells is imminent and certainly impending. Defendant NRDC's own groundwater monitoring reports confirm increasing trends of elevated sulfate concentrations next to the County's public supply wells (the PUB well field) to the immediate north of the Beckjord Dump. In 2022, in addition to sulfate, sampling in the area of Pond A also showed boron, molybdenum, iron, and manganese. During the same period, NRDC began analyzing additional CCR Rule constituents—including antimony, beryllium, cobalt, fluoride, lithium, mercury, radium-226, radium-228, and thallium—and

sampling affirmatively detected the presence of these CCR constituents, at least one of which (thallium) was detected above its MCL. Yet by 2025, NRDC stopped reporting fluoride, antimony, beryllium, cobalt, lithium, mercury, thallium, radium-226, and radium-228. There is a documented contaminant plume with increasing trends moving toward public drinking water wells. The facts establish a continuing injury and certainly impending risk of additional well loss. Indeed, the County's own sampling now confirms that CCR contamination—in the form of known manganese and sulfate—has reached the PUB well field.

In short, the sulfate plume and other CCR contaminants have migrated and are actively migrating toward the PUB well fields, causing the County reasonable concern about effects on human health and the environment. Those concerns affect the County's interest and duty in operating its water-distribution facilities and providing safe, usable and potable water to residents. The contamination also requires the County to incur ongoing costs for treatment, monitoring, and operation and maintenance, as well as potential additional well closure. On information and belief, only a single interceptor well is currently operational. That interceptor well is the only mechanism preventing known contaminants from flowing directly to the public drinking water well fields. If the single interceptor well fails or its capabilities are impaired, through improper maintenance or otherwise, it will jeopardize the County's remaining wells and the raw drinking water supply for its 145,000 residents, and force the

County to construct additional expensive treatment upgrades.

- b. ***Causation:*** Clermont County's injury is traceable to Defendants' conduct, including their handling, storage, and disposal of CCRs in unlined Ash Ponds; implementation of federally non-compliant closure plans that leave CCRs in contact with groundwater; and failure to operate and maintain redundant interceptor wells to prevent contaminated groundwater from reaching the PUB well fields. The County's injuries are traceable to each Ash Pond individually and collectively. Ponds A and B in the northern complex of the Beckjord Dump both contribute to the sulfate plume threatening the PUB wells; Ponds C and Cx received over one million cubic yards of CCR from Pond A and, on information and belief, also contribute to the endangerment and County's injuries through leaching into the aquifer; Pond Run Phases 2 and 3 generate leachate piped to the Ash Ponds; and the Beckjord Dump in its entirety as a facility has contributed to the sulfate plume and the endangerment. Indeed, according to recent testimony from Ohio EPA officials, the sulfate plume originates from an indistinguishable source area encompassing Pond A, Pond B, together with the coal storage area and the plant itself. Further, stability and emergency preparedness deficiencies at each Pond independently threaten the County's residents and property. In short, Clermont County has standing both as to the Beckjord Dump and also as to each Ash Pond.
- c. ***Redressability:*** Injunctive relief would redress Clermont County's injuries. Specifically, an order requiring Defendants to remediate the Ash Ponds—

including by excavating CCRs, implementing compliant closure, operating redundant interceptor wells, conducting comprehensive groundwater monitoring, and complying with structural stability and emergency preparedness requirements—would redress Clermont County’s injury by eliminating or reducing the contamination source and protecting the County’s public water supply.

- d. ***Standing for CCR Rules Violations (Count Two)***: In addition to the imminent and substantial endangerment, Clermont County has standing to assert claims under 42 U.S.C. § 6972(a)(1)(A) against CLP and NRDC for violations of the CCR Rules. One of the County’s wells was already permanently taken out of service, and CLP’s and NRDC’s violations of the CCR Rules threaten to further contaminate the County’s remaining wells—which will affect the County’s interest and duty to provide safe, usable and potable water to residents. Closure of the County’s remaining wells would cause catastrophic reduction and loss of the well field’s capacity, and could leave the County’s residents without access to an adequate and safe water supply essential to their lives.

17. Clermont County also has standing to assert its state-law claims. The injury, causation, and redressability facts alleged above and throughout the Complaint establish standing under Ohio law. Clermont County has suffered concrete injury to its property interests and water-supply operations traceable to Defendants’ conduct, and injunctive relief and compensatory damages would redress that injury. Under Ohio Rev. Code § 6103.02, Clermont County also has a direct interest and statutory authority to protect its public water supply and residents’ health.

B. Defendants

18. Defendant New Richmond Development Corporation LLC is a Delaware limited liability company with its principal place of business at 2275 Cassens Drive, Fenton, Missouri 63026. NRDC is a wholly owned subsidiary of CLP and the current record owner of the Beckjord Dump.

19. On information and belief, NRDC is an underfunded corporate shell wholly controlled by CLP and staffed entirely by CLP employees. CLP designed this structure to shield assets and corporate practices from public scrutiny and has disregarded NRDC's separate form, leaving NRDC with no independent mind or will. CLP has used its control over NRDC and the Beckjord Dump to perpetuate, or fail to prevent or abate, the environmental violations and torts described in this action. During the relevant periods, CLP made and continues to make environmental, remediation, and disposal decisions concerning the Beckjord Dump; exercised and continues to exercise authority to make environmental decisions on NRDC's behalf; and made and continues to make NRDC's business decisions concerning the Beckjord Dump. CLP also authorized expenditures for environmental matters, disposal operations, and remediation or lack thereof, and decided which environmental consultants and contractors would perform environmental services and disposal activities at the Beckjord Dump. Corporate form should therefore be disregarded as to NRDC, and liability assessed against CLP for the environmental violations described in this action. Those violations and torts resulting from CLP's control over NRDC directly and proximately caused Clermont County's injuries. On information and belief, all NRDC officers and employees are also officers and employees of CLP.

20. Defendant Commercial Liability Partners, LLC is a Florida limited liability company with its principal place of business at 2275 Cassens Drive, Suite 118, Fenton, Missouri

63026. On information and belief, CLP has two members which are limited liability companies under the laws of Delaware, and each of those limited liability companies has one individual member. Both of those individual members are domiciled in Puerto Rico.

21. On information and belief, CLP operates as a shell company that has assumed hundreds of millions of dollars in environmental liabilities for the Beckjord Dump and other properties. As alleged above, CLP totally controls NRDC, has disregarded NRDC's corporate form, and designed this structure to shield assets and corporate practices from public scrutiny. On information and belief, all officers and employees of NRDC are also officers and employees of CLP. Further CLP has made and continues to make environmental, remediation, and disposal decisions relating to the Beckjord Dump, and has exercised and continues to exercise authority to make environmental and business decisions on behalf of NRDC relating to the Beckjord Dump. CLP has used its control to perpetuate, or fail to prevent or abate, the environmental violations and torts described herein. Corporate form should therefore be disregarded and liability assessed against CLP for those violations.

22. Defendant Duke Energy Beckjord, LLC is a Delaware limited liability company with its principal place of business at 139 East Fourth Street, Cincinnati, Ohio 45202. Duke Energy Beckjord is a "past or present" owner, generator, and operator under 42 U.S.C. § 6972(a)(1)(B). It transferred the Beckjord Dump to CLP and NRDC in February 2018.

23. Defendant Duke Energy Ohio, Inc. is an Ohio corporation with its principal place of business at 139 East Fourth Street, Cincinnati, Ohio 45202. Duke Energy Ohio and its predecessor companies, including Cincinnati Gas & Electric Company ("CG&E"), owned and operated the Beckjord plant for more than 60 years, generated millions of tons of CCR, and selected, designed, operated, and maintained the unlined disposal areas in which that waste was

placed. Those disposal decisions created the source of conditions and contaminant plume alleged in this action. In 2006, CG&E merged with Duke Energy Ohio by statutory merger under Ohio law. As the surviving corporation, Duke Energy Ohio succeeded to all of CG&E's liabilities by operation of law, including all liabilities arising from CG&E's decades of CCR disposal at the Beckjord Dump. *See* Ohio Rev. Code § 1701.82(A)(3). Duke Energy Ohio's liability was not extinguished by the 2018 transfer of the property to CLP and NRDC. Duke Energy Ohio also continues to own a parcel at the Beckjord Dump. Duke Energy Ohio is a "past or present" owner, generator, and operator under 42 U.S.C. § 6972(a)(1)(B).

24. In February 2018, Duke publicly announced the transfer of the Beckjord facility and coal-ash disposal properties from Duke Energy Beckjord to CLP. CLP and NRDC then assumed complete ownership, management, and control of the coal-ash-contaminated Beckjord Dump, including associated environmental liabilities and permitting responsibilities. On information and belief, Duke paid CLP and/or NRDC approximately \$105 million for the transfer of the Beckjord Property and CLP's assumption of environmental liabilities associated with that property. On information and belief, the amount paid was not reasonably equivalent to the potential liabilities associated with the Beckjord facility and other contaminated properties for which CLP assumed liability. On information and belief, Duke did not merely transfer real property, it helped arrange CLP/NRDC's takeover of the same CCR disposal areas, permits, and environmental responsibilities so that CCRs would remain at the Beckjord Dump and continue to be handled, stored, moved, treated, and disposed of during closure—effectively contributing to the continued management and disposal of CCRs at the Beckjord Dump. Duke's decades of generation and disposal, its decisions that placed the CCRs in unlined ponds, and its arrangement of the 2018 transfer all relate to the same CCR waste that continues to leach and creates the imminent and

substantial endangerment at issue in this action.

25. Defendant Owlfly, LLC is a Delaware limited liability company with its principal office at 2275 Cassens Drive, Suite 118, Fenton, Missouri 63026—the same address as CLP and NRDC. Dennis Bennett (General Counsel for CLP) is the Manager of Owlfly. On information and belief, Owlfly is an affiliate of NRDC and CLP. On or about November 22, 2022, NRDC conveyed certain parcels at the Beckjord Dump to Owlfly by quit claim deed, including parcels encompassing Pond A (approximately 139.2 acres) and portions of the Pond Run area. On information and belief, the transfer was part of a corporate restructuring designed to separate ownership of contaminated parcels from the entity responsible for site operations.

26. Owlfly contributed to the handling, storage, and disposal of CCRs at the Beckjord Dump by knowingly entering into a perpetual Access Easement Agreement with NRDC granting NRDC access on and through Owlfly's property, including with machinery, to further conduct handling, storage and disposal of the CCRs. Dennis Bennett executed the Access Easement Agreement on behalf of both Owlfly (as grantor) and NRDC (as grantee). At all relevant times, Owlfly had actual knowledge of the CCR contamination at the property. Owlfly subsequently transferred title to TBDA Investments, LLC by quit claim deed. As a past owner who entered into agreements with NRDC authorizing the ongoing handling, storage and disposal of CCRs, Owlfly has contributed to the imminent and substantial endangerment described in this action.

27. Defendant TBDA Investments, LLC is an Ohio limited liability company with its principal office at 4695 Lake Forest Drive, Suite 200, Cincinnati, Ohio 45242. On or about November/December 2022, Owlfly conveyed the parcels described above at the Beckjord Dump to TBDA by quit claim deed. TBDA is the present owner of parcels comprising portions of the Beckjord Dump where CCRs are stored in unlined Ash Ponds in direct contact with groundwater,

including Pond A located immediately adjacent to Clermont County's PUB well fields. TBDA also owns portions of the Pond Run area. TBDA took title subject to the perpetual Access Easement Agreement authorizing NRDC to access the property to conduct handling, storage and disposal activities for the CCRs at the Beckjord Dump. As a result, TBDA has contributed to the imminent and substantial endangerment described in this action. TBDA is additionally a necessary party to any equitable relief in this action because court-ordered remediation of Pond A (such as excavation, operation of interceptor wells, or groundwater monitoring) must occur on TBDA's property.

28. Each Defendant is a person within the meaning of 42 U.S.C. § 6903(15) who has contributed or is contributing to the past or present handling, storage, treatment, transportation, or disposal of solid waste or CCR waste that may present an imminent and substantial endangerment to health or the environment.

29. Each Defendant, whether as a past or present owner, operator, generator, or controlling entity, bears responsibility for the conditions at the Beckjord Dump that give rise to this action.

BACKGROUND

A. Coal Ash and Its Dangers

30. Coal-fired power plants generate electricity by burning pulverized coal in a boiler. The resulting steam spins a turbine and generator, which converts kinetic energy into electricity; combustion gases escape through a flue. *E.g., Gavin Power*, 2025 WL 2908716, at *2 (citing *United States v. Ohio Edison Co.*, 276 F. Supp. 2d 829, 836 (S.D. Ohio 2003)).

31. Coal combustion creates residuals commonly known as "coal ash" or "CCRs." *See Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes*;

Disposal of Coal Combustion Residuals From Electric Utilities, 75 Fed. Reg. 35,128, 35,137 (June 21, 2010). Two forms are relevant here: (1) fly ash and (2) bottom ash. Fly ash is “a fine, spherical, powdery particle composed mostly of silica; gases carry it upwards into the flue where it is collected.” *Gavin Power*, 2025 WL 2908716, at *2. Bottom ash is a “coarse, angular, sand- or gravel-like ash particle too large to be carried up into the flue, so it gathers in the bottom of the boiler.” *Id.*

32. Operators generally dispose of coal ash in one of two ways: (1) dumping it dry into a “landfill” or (2) mixing it with water and pumping it into a “surface impoundment.” *Gavin Power*, 2025 WL 2908716, at *2 (citing 2015 Rule, 80 Fed. Reg. at 21,303–04). Landfills, surface impoundments, and other disposal sites are “coal-residual units” or “CCR units.” *Id.* The type of unit does not strictly correspond to a type of coal ash; either fly ash or bottom ash may be stored in either type of unit. *Id.*

33. Coal ash poses serious risks to human health and the environment. 80 Fed. Reg. at 21,449–52, 21,443–48. It contains “contaminants of concern,” including arsenic, boron, cadmium, hexavalent chromium, lead, lithium, mercury, molybdenum, selenium, and thallium. 75 Fed. Reg. at 35,153; 80 Fed. Reg. at 21,449. Exposure correlates with increased likelihood of skin, liver, bladder, and lung cancer. 80 Fed. Reg. at 21,451. These contaminants are also linked to neurological, psychiatric, gastrointestinal, cardiovascular, and other effects. 80 Fed. Reg. at 21,451. They harm wildlife as well, causing “elevated selenium levels in migratory birds, wetland vegetative damage, fish kills, amphibian deformities, snake metabolic effects, plant toxicity, mammal uptake, fish deformities, and inhibited fish reproductive capacity.” 75 Fed. Reg. at 35,172.

34. Coal-ash disposal can expose humans and the environment to these risks. 80 Fed.

Reg. at 21,451, 21,443–48. EPA has identified several “pathways” for human and ecological exposure. *Id.* at 21,443–44, 21,449–50. Those pathways arise from CCR units containing “thousands, if not millions, of tons” of coal ash in a single location. *Id.* at 21,328. Coal ash can leach contaminants into underlying soil and groundwater. *Id.* at 21,443–44, 21,449–50. Leaching is more likely in “unlined” CCR units, especially surface impoundments. *Id.* at 21,451.

35. The principal human exposure pathway is ingestion of contaminated groundwater used as drinking water. 80 Fed. Reg. at 21,450–51. Ingesting contaminated fish is another significant pathway. *Id.* at 21,450. Contaminated groundwater and runoff can also migrate into surface water, causing environmental harm. 75 Fed. Reg. at 35,172. “All told, coal-residual units can endanger us and many of our most important natural resources.” *Gavin Power*, 2025 WL 2908716, at *2.

B. Statutory and Regulatory Background

1. *The Resource Conservation and Recovery Act*

36. The Resource Conservation and Recovery Act’s (“RCRA”) overarching purpose is to protect human health and the environment from the dangers of solid waste disposal. To that end, the statute provides two independent enforcement mechanisms relevant here. First, RCRA authorizes citizen suits to address any past or present handling, storage, or disposal of solid waste that “may present an imminent and substantial endangerment to health or the environment.” 42 U.S.C. § 6972(a)(1)(B). Second, RCRA prohibits “open dumping”—*i.e.*, the disposal of solid waste at any facility that fails to meet EPA’s minimum criteria for protecting health and the environment, including criteria ensuring “no reasonable probability of adverse effects on health or the environment[.]” 42 U.S.C. §§ 6944(a), 6945(a).

37. These two independent provisions work in tandem at the Beckjord Dump: as

described in this Complaint, Defendants’ past and present handling, storage and disposal of CCRs at the Beckjord Dump present an imminent and substantial endangerment to Clermont County’s public drinking water wells. Further, CLP’s and NRDC’s violations of the CCR Rules constitute open dumping.

2. Coal Ash Regulation and The EPA’s 2015 Rule

38. To address these risks, EPA regulates coal-ash disposal under Subtitle D of RCRA. *See generally Final Regulatory Determination on Four Large-Volume Wastes from the Combustion of Coal by Electric Utility Power Plants*, 58 Fed. Reg. 42,466 (Aug. 9, 1993); *Notice of Regulatory Determination on Wastes from the Combustion of Fossil Fuels*, 65 Fed. Reg. 32,214 (May 22, 2000); *Util. Solid Waste Activities Group (“USWAG”) v. Env’t. Protec. Agency*, 901 F.3d 414, 421–25 (D.C. Cir. 2018). Subtitle D prohibits disposal of solid waste in “open dumps,” 42 U.S.C. § 6945(a), and directs EPA to “promulgate regulations containing criteria for determining which facilities . . . shall be classified as open dumps,” *id.* § 6944(a). Those criteria must, “[a]t a minimum,” ensure “no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility.” *Id.*

39. In 2015, EPA promulgated its first rule regulating coal residuals (the “2015 Rule”). *See* 80 Fed. Reg. 21,302, 21,303 (together with subsequent amendments, the “CCR Rules”).

40. In particular, the 2015 Rule required closure of coal-residual units where sampling revealed an excess of coal-residual constituents in the water table. 80 Fed. Reg. at 21,491 (codifying 40 C.F.R. § 257.101). This sampling was required to occur “at least semiannual[ly].” 80 Fed. Reg. at 21,397, 21,403, 21,485 (codifying 40 C.F.R. §§ 257.94(b), (d), 257.95(c)). But until a leak was detected, coal-residual units could continue as usual. This “innocent-until-proven-contamination” approach would apply to even existing unlined units—the most dangerous kind of

unit. *See Gavin Power*, 2025 WL 2908716, at *3 (citing 80 Fed. Reg. at 21,451). Even worse, corrective action (such as fixing a leak by retrofitting or closure) could take many years. 80 Fed. Reg. at 21,493 (codifying § 257.102(f)). “In short, the 2015 Rule required coal-residual units to close when—but not before—the unit contaminated the groundwater.” *Gavin Power*, 2025 WL 2908716 at *3.

41. Regarding the method of closure, the 2015 Rule provides two closure options: (1) “clean” closure and (2) “waste-in-place” closure. 80 Fed. Reg. at 21,491 (codifying 40 C.F.R. § 257.102(a)). Under “clean” closure, the operator must remove all coal ash from the unit and decontaminate it. *Id.* at 21,492 (codifying 40 C.F.R. § 257.102(c)). Under “waste-in-place” closure, the operator may leave coal ash in the unit subject to additional requirements. *Id.* (codifying 40 C.F.R. § 257.102(d)). Those requirements include:

- a. The operator must install a “final cover system” designed to “minimize infiltration and erosion” and meeting specified minimum standards. *Id.* at 21,491–92 (codifying 40 C.F.R. §§ 257.102(a), (d)(3));
- b. Before installing that system, the operator must eliminate “[f]ree liquids” “by removing liquid wastes or solidifying the remaining wastes and waste residues,” and the “[r]emaining wastes must be stabilized sufficient to support the final cover system.” *Id.* at 21,492 (codifying 40 C.F.R. §§ 257.102(d)(2)(i)–(ii)); and
- c. The operator must ensure, among other things, that “at a minimum, the CCR unit is closed in a manner that will: [c]ontrol, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or

surface waters or to the atmosphere[.]” *Id.* (codifying 40 C.F.R. § 257.102(d)(1)(i)).

3. *The EPA’s 2020 and 2024 Amendments*

42. After EPA promulgated the 2015 Rule, environmental organizations challenged its innocent-until-proven-contamination approach. *See USWAG*, 901 F.3d at 420. They argued that the approach, particularly for unlined units, conflicted with Congress’s instruction that EPA establish open-dump criteria ensuring “no reasonable probability of adverse effects on health or the environment.” *Id.* at 427 (quoting 42 U.S.C. § 6944(a)).

43. The D.C. Circuit in *USWAG* agreed, concluding that the 2015 Rule “addresses neither the risks to public health and to the environment before leakage is detected, nor the harms from continued leakage during the years before leakage is ultimately halted by retrofit or closure.” *Id.* at 429–430. Because the 2015 Rule did not address the risks posed by existing unlined surface impoundments, the court held that it was arbitrary, capricious, and contrary to RCRA. *Id.* at 449. The court therefore vacated and remanded provisions permitting unlined impoundments to continue receiving coal ash until a leak is detected. *Id.* The court also vacated the legacy pond exemption that permitted unlined impoundments to continue receiving coal ash until a leak is detected. *Id.*

44. In response to *USWAG*, EPA amended the 2015 Rule in 2020 and again in 2024. *Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; A Holistic Approach to Closure Part A: Deadline to Initiate Closure*, 85 Fed. Reg. 53,516 (Aug. 28, 2020) (“2020 Amendment”); *Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy CCR Surface Impoundments*, 89 Fed. Reg. 38,950 (May 8, 2024) (“2024 Amendment”).

45. The 2020 Amendment reclassified unlined coal-residual units as “open dumps,” which under RCRA must be retrofitted or closed. *See* 85 Fed. Reg. at 53,516–17. EPA set a default deadline of April 11, 2021 to stop receipt and begin closure, but permitted extensions through October 15, 2024. *Id.* at 53,546. To qualify for an extension, operators had to demonstrate, among other things, “compliance with all [of the] other requirements of [coal-residual regulations.]” *Id.* at 53,562 (codifying 40 C.F.R. § 257.103(a)(1)(iii)).

46. The 2024 Amendment primarily addressed surface impoundments at inactive facilities (*i.e.*, legacy ponds). 89 Fed. Reg. at 38,950. It specifically extended the 2015 Rule to electric utilities or independent power producers that ceased producing electricity prior to October 19, 2015, and have a legacy CCR surface impoundment onsite. *See* 40 C.F.R. § 257.50(e). Legacy CCR surface impoundments at inactive facilities were required to initiate closure no later than May 8, 2028. 40 C.F.R. § 257.101(e).

47. The 2024 Amendment also defined “liquids” and “infiltration” for purposes of the requirement that unit operators “[c]ontrol, minimize or eliminate, to the maximum extent feasible, post-closure *infiltration of liquids* into the waste.” Specifically, it defined “liquids” to mean

[A]ny fluid (such as water) that has no independent shape but has a definite volume and does not expand indefinitely and that is only slightly compressible. This encompasses all of the various types of liquids that may be present in a CCR unit, including water that was sluiced into an impoundment along with CCR, precipitation, surface water, groundwater, and any other form of water that has migrated into the impoundment, which may be found as free water or standing water ponded above CCR or porewater intermingled with CCR.

89 Fed. Reg. at 39,100. And for the term “infiltration,” EPA defined it to mean: “[T]he migration or movement of liquid, such as surface water or ground water, into or through a CCR unit from any direction, including from the surface, laterally, and through the bottom of the unit.” *Id.*

48. EPA explained that the definitions did not change the prior regulatory requirements

because they simply reflected the plain meaning of the terms. *See, e.g., id.* at 38,995, 39,077.

FACTUAL ALLEGATIONS

A. The Beckjord Dump and the Ash Ponds

49. The Beckjord Dump is a former coal-fired power plant along the Ohio River in Pierce Township, Clermont County, Ohio, north of New Richmond and approximately 15 miles upstream from Cincinnati.

50. From 1952 to 2014, as many as six coal-fired generating units operated at the Beckjord Dump and produced millions of cubic yards of coal ash. The ash was disposed of in onsite unlined ponds, including Pond A, Pond B, Pond C, and Pond C Extension (“Cx”), Pond Run Phase 2, and Pond Run Phase 3 (the “Ash Ponds”). The Ash Ponds are immediately adjacent to the Ohio River, a source of drinking water for millions of people, and lie in the river’s floodplain and regulatory floodway. Ponds A, C, and Cx are 200 feet from the Ohio River; Pond B is 800 feet away.

51. The Ash Ponds also lie directly upgradient from Clermont County’s public drinking water wells. Ash Pond A is approximately 1,000 feet from the Pierce-Union-Batavia Townships (“PUB”) well fields, which supply drinking water to Clermont County residents.

52. The Ash Ponds and other coal ash disposal areas were designed to hold coal ash and liquids and have stored and disposed of those wastes at all relevant times. They are therefore subject to the CCR Rules. In particular:

- a. **Pond A:** Pond A is approximately 34.4 acres and received coal ash continuously from 1952 through 1985. In total, Pond A has received over 1 million cubic yards of coal ash. From 2019 until at least 2021, CLP moved coal ash from Pond A to Ponds C and Cx. Accordingly, Pond A is subject

to and must comply with the CCR Rules.

- b. **Pond B:** Pond B is approximately 14.6 acres and received coal ash continuously from 1952 through 2014. From 2018 and continuing to the present, CLP has disposed of coal ash waste into Pond B, which is then discharged into nearby surface water, including the Ohio River. Accordingly, Pond B is subject to and must comply with the CCR Rules.
- c. **Ponds C and Cx:** Pond C is approximately 45.9 acres and was commissioned in 1966. Pond Cx is approximately 53.3 acres and was commissioned in 1985. Both ponds received coal ash until at least 2021, when CLP disposed of more than 1 million cubic yards of CCR waste from Pond A into Ponds C and Cx. In January 2022, the US EPA informed CLP that it was required to comply with the CCR Rule because of the disposal of CCR from Pond A into Ponds C and Cx. Accordingly, Ponds C and Cx are subject to and must comply with the CCR Rules.
- d. **Pond Run Phases 2 and 3:** Pond Run Phases 2 and 3 received coal ash during the Beckjord Dump's operations. On information and belief, coal ash waste remains in Pond Run Phases 2 and 3 after October 2015. Further, leachate generated from CCR in the Pond Run disposal area has been collected and piped to Pond B for disposal. Accordingly, Pond Run Phases 2 and 3 are subject to and must comply with the CCR Rules.

53. The Ash Ponds are unlined with no barrier to impede leachate from migrating into groundwater.

54. The Beckjord Dump as a "facility" is also subject to and must comply with the CCR

Rules. Under the CCR Rules, a “facility” means “all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.” 40 C.F.R. § 257.2; *see also* 40 C.F.R. § 257.53. All facilities “failing to satisfy any of the criteria in [the CCR Rule] are considered open dumps [and are] prohibited under Section 4005 of the Act.” 40 C.F.R. § 257.1(a)(1). Here, the open dumping designation applies to an entire facility, not on a unit-by-unit basis. Indeed, CLP’s disposal of CCR from Pond A into Ponds C and Cx, and its disposal of CCR waste into Pond B, by way of just two examples, make the entire Beckjord Dump an open dump in violation of the CCR Rules.

55. Groundwater currently flows from the unlined Ash Ponds at the Beckjord Dump toward the public drinking water wells serving Clermont County residents.

B. Nature of Endangerment at the Beckjord Dump

56. As alleged below, Defendants have created an imminent and substantial endangerment to Clermont County’s public drinking water wells and have failed to comply with the CCR Rules by failing to control, minimize, or eliminate—to the maximum extent feasible—infiltration of liquids into the waste and releases of CCR, leachate, or contaminated runoff to ground or surface waters at the Beckjord Dump.

1. *Groundwater Contamination and Threat to Public Water Supply*

57. “RCRA sets the baseline that solid waste disposal sites (including coal-residual units) pose ‘no reasonable probability of adverse effects on health or the environment.’” *Gavin Power*, 2025 WL 2908716, at *19 (*citing* 42 U.S.C. § 6944(a)). Allowing coal ash to saturate groundwater in unlined ash ponds—as alleged at the Beckjord Dump—poses an intolerably high probability of adverse effects on health and the environment.

58. Defendants have failed to control, minimize, or eliminate, to the maximum extent

feasible, infiltration of liquids into the waste and releases of CCRs, leachate, or contaminated runoff to ground or surface waters. The Ash Ponds remain unlined, allowing CCR contaminants to leach into groundwater, while groundwater can move upward into the ponds. The current closure plans also do not address the financial, operational, and maintenance obligations for the interceptor wells or establish a monitoring program to protect the public drinking water wells in perpetuity.

59. Due to the CCRs in the unlined Ash Ponds at the Beckjord Dump, sulfate from the CCRs has leached into the underlying groundwater creating a sulfate plume that has migrated towards the public drinking water wells. According to NRDC's own groundwater monitoring reports, sulfate concentrations are considered an indicator of coal ash-related impacts in groundwater for the northern complex. This is particularly concerning and problematic given the presence of the County's public well field immediately to the north of the Beckjord Dump.

60. The groundwater sulfate plume was first identified in the late 1980s as extending from Pond A towards the Clermont County public well field. At the time, it was reported to the Ohio EPA that the most likely source of the elevated sulfate levels in the groundwater at the site was the fly ash, bottom ash, and pyrites contained in Pond A. The estimated rate of groundwater travel between Ash Pond A and PUB 6 was 100 to 200 feet per year (ft/yr) or 10 to 20 years total. On information and belief, Ponds A and B in the northern complex of the Beckjord Dump both contribute to the sulfate plume threatening the PUB wells; Ponds C and Cx received over one million cubic yards of CCR from Pond A and also contribute to the endangerment and County's injuries through leaching into the aquifer; Pond Run Phases 2 and 3 generate leachate piped to the Ash Ponds; and the Beckjord Dump in its entirety as a facility has contributed to the sulfate plume and the endangerment. Indeed, according to recent testimony from Ohio EPA officials, the sulfate plume originates from an indistinguishable source area encompassing Pond A and Pond B,

together with the coal storage area and the plant itself.

61. Defendant NRDC's own groundwater monitoring reports confirm increasing trends of elevated sulfate concentrations next to the County's public supply wells (the PUB well field) to the immediate north of the Beckjord Dump. In 2022, in addition to sulfate, sampling also showed boron, molybdenum, iron, manganese and other constituents, including thallium, lithium, cobalt, fluoride, mercury, radium-226, and radium-228.

62. The sulfate plume has already caused the loss of a PUB well (PUB Well 6), which was permanently taken out of service due to elevated levels of sulfate in the groundwater originating from the Beckjord Dump. The loss of PUB Well 6 reduced Clermont County's well field capacity by approximately 700,000 gallons per day, or 255 million gallons per year. While the interceptor was expressly described as a "short term solution," no long term remedy (such as removal, containment, or neutralization) has been implemented. As a result, the risk to the remaining PUB wells is substantial, and pollution from the Beckjord Dump presents the greatest risk to the PUB well fields. If the County were required to remove additional wells from service, well field capacity could be further reduced by approximately 3.5 million gallons per day, or 1.3 billion gallons per year. The PUB Water Treatment Plant produces 60%–70% of the County's drinking water on an annual basis. Loss of additional PUB wells would require the County to produce replacement water at significantly higher cost at its other facilities.

63. The sulfate plume marks the Beckjord Dump's contaminants in the groundwater and demonstrates a pathway for other contamination to flow from the Beckjord Dump toward the downgradient public drinking water wells.

64. Indeed, the County's own quarterly sampling of raw water in 2026 at the PUB production wells now confirms that CCR contamination has reached the well field. Most recently,

in August 2026, independent laboratory analysis detected manganese—a known CCR constituent—above the EPA Secondary Maximum Contaminant Level (“SMCL”), with concentrations in some wells as high as 11 times the 0.05 mg/L (50 µg/L) standard, and substantially in excess of the EPA’s Lifetime Health Advisory standard of 0.3 mg/L (300 µg/L). The highest concentrations were found in PUB Wells 1, 2, 3, 4 and 5—the same wells identified above as most at risk if the interceptor well fails. *Supra* at ¶ 16(a). Sulfate was also detected in every well, consistent with the sulfate plume described in NRDC’s own groundwater monitoring reports. These detections demonstrate that the contaminant pathway from the Beckjord Dump to the public wells is active and worsening.

65. Despite these conditions, NRDC and CLP have no plan to close the Beckjord Dump in a manner that avoids contamination and complies with the CCR Rules and federal law. They also have no plan to protect human health and the environment from the CCRs in the unlined Ash Ponds, fund future interceptor-well maintenance, or conduct comprehensive monitoring to ensure that contaminants do not migrate to the public wells.

66. Rather than excavate the Ash Ponds, NRDC and CLP propose to leave the waste in place without a liner and without further measures to isolate it from groundwater that flows downgradient toward the public drinking water wells. NRDC and CLP have taken no action to ensure that closure complies with the CCR Rules. Instead, while regulators are turning a blind eye and rubber-stamping “closure” of the Beckjord Dump as if cleanup had occurred and public health and the environment have been protected, they continue to detect, pump and then dump contaminated groundwater 24/7 with zero treatment into the Ohio River, which their reports admit is connected to the groundwater near the Beckjord Dump. If there ever was a charade masquerading as a “cleanup” and “closure,” it is the Beckjord Dump.

67. Even worse, as of 2025, NRDC and CLP have stopped testing for CCR contaminants, including fluoride, antimony, beryllium, cobalt, lithium, mercury, thallium, radium-226, and radium-228. NRDC and CLP are deliberately ignoring known contaminants that are migrating toward public drinking wells.

68. Moreover, conditions at the Beckjord Dump are deteriorating. In 2026, the Ohio EPA found the facility in “significant non-compliance” citing 30 violations at Ash Ponds B and C between 2022 and 2026. During a 2026 inspection, Ohio EPA observed and photographed orange-colored leachate flowing from the Ash Ponds through an unlined trench and commingling with stormwater.

69. In sum, Defendants are attempting to walk away from the Beckjord Dump without corrective action. Contaminants will continue to leach and migrate toward the public drinking water wells, leaving Clermont County Public Water—and ultimately taxpayers—to pay for monitoring, detection, filtration, and maintenance needed to protect the supply.

70. Defendants are attempting to close the Beckjord Dump despite knowing that a public drinking-water aquifer lies downgradient from the leaching Ash Ponds. Their proposed closure leaves the contamination in place and available for groundwater to carry to the public wells rather than following federal requirements designed to prevent that result.

2. *Lack of Redundancy of Interceptor Wells to Ensure the Safety of a Public Drinking Water Supply*

71. In the 1980s, a single interceptor well (IW-1) was installed to intercept the sulfate plume to protect the well field. Its purpose was to intercept the flow of elevated-sulfate groundwater from Ash Pond A toward the PUB well field. Notably, the interceptor well was a “short term solution” to block migration of elevated sulfate groundwater to other PUB wells; long term solutions to groundwater contamination issues typically involve source removal,

containment, neutralization—or some combination of all three.

72. In August 2021, after pressure from Clermont County, a second interceptor well (IW-2) was completed to serve as a backup to the first interceptor well. However, as of the filing of this Complaint, on information and belief, only one well is currently operational, providing no redundancy in the event the single operational well fails.

73. The single operational interceptor well is the only mechanism preventing known contaminants from flowing directly to the public well fields. A failure would contaminate Clermont County's raw drinking water supply and require expensive treatment upgrades at the expense of County residents.

74. To prevent contaminated groundwater from continuing to flow toward the public wells, both interceptor wells must pump continuously at a rate and volume sufficient to offset the natural flow of groundwater. Notably, months pass between when NRDC samples a well and when any agency sees the results. For example, the results of sampling that occurred on August 12-15, 2024 were not reported to Ohio EPA until six months later on February 6, 2025. This delay period between sampling and results further underscores the critical need to have two functional interceptor wells at the Beckjord Dump.

75. Even if NRDC repaired both interceptor wells, it has no mechanism to ensure they operate in perpetuity or to allow interested parties such as Clermont County to require NRDC or CLP to keep them operating.

76. NRDC and CLP have no plan to keep the interceptor wells pumping in perpetuity or, at minimum, to sample continuously so they can identify contaminants migrating to downgradient property.

3. *Failure to Plan for Dam Safety and Emergency Preparedness*

77. As alleged above, the Ash Ponds sit next to the Ohio River in its floodplain. Flooding has inundated the ponds and threatens to do so again, mobilizing contaminants into surface waters and adjacent properties and causing acute ecological and human exposure. Yet NRDC and CLP propose to leave the Ash Ponds on the riverbank for future floods to inundate and overflow, potentially causing catastrophic flooding of neighboring properties and the environment with coal ash.

78. The CCR Rules require that an owner or operator prepare an Emergency Action Plan (“EAP”) which must “[a]t a minimum” provide the following: “Define responsible persons, their respective responsibilities, and notification procedures in the event of a safety emergency involving the CCR unit; Provide contact information of emergency responders; [and] Include provisions for an annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders.” 40 C.F.R. § 257.73(a)(3). NRDC and CLP have failed to meet these requirements.

79. Despite the foregoing, the current owners and operators have not planned the annual face-to-face meetings or exercises with local emergency responders required by the CCR Rules. NRDC and CLP have owned and operated the Beckjord Dump for eight years but have never held a face-to-face meeting or exercise with the local fire department. The 2019 EAP for Ponds B, C, and C Extension is also out of date.

80. The 2019 EAP itself is also severely deficient and contains multiple errors, inaccuracies, and incorrect or inconsistent information. These mistakes underscore the annual requirements that Defendants have ignored. For example, while the plan states that “New Richmond Development, LLC” is the owner, there is no such entity registered with the Ohio

Secretary of State. Two different Clermont County sheriffs are listed within the documents, neither of whom is the current sheriff, and neither has been for nine years. The Pierce Township Police Department is not listed on the stakeholder contact list but is likely to be a significant partner during an event. These types of errors are certain to lead to delays, problems, and response issues in the event of an emergency.

81. Moreover, emergency responders typically hold an annual meeting and exercise, but the last such meeting was with the prior owner, Duke. Following the sale of the Beckjord Dump, no updated plan was on file, and local responders had to work with state officials to obtain one; CLP and NRDC still had not updated it.

82. The Beckjord Dump is also under the regulatory authority of the Ohio Department of Natural Resources, Division of Water (“ODNR”). An ODNR dam inspection from 2023 noted that Pond Cx is classified as Class II and included “[l]oss of public water supply” as a category of potential losses. While ODNR sent CLP the existing Duke plan and advised it to update the contact information, ODNR and CLP/NRDC did not discuss the plan with, seek input from, or request communication with local emergency responders.

83. Local emergency responders also assist with tabletop exercises, but need current information to plan an effective exercise. Without communication or an updated plan, they cannot adequately prepare for an emergency. Before the change in ownership, responders met with Duke each year to review the plan, discuss updates, and conduct an exercise. Since CLP acquired the site, local responders have not had a meeting with CLP or NRDC, and annual face-to-face exercises involving local first responders have not been coordinated. Although ODNR oversees dams, the site lacks effective oversight of dam safety, creating a risk of catastrophic harm to human health and the environment.

84. CLP and NRDC have already demonstrated a lack of responsiveness and due care. During Ohio River flooding in March/April 2025, local responders could not reach either entity for confirmation that the site was being monitored. In a future emergency, responders will have no up-to-date information, tested plan, or established coordination with CLP or NRDC. Operating from an inaccurate and untested plan is a clear violation of the CCR Rules and creates an unacceptable risk.

85. The CCR Rules require owners and operators to develop an EAP for a CCR surface impoundment classified as having “significant hazard” potential. EPA has so classified the Ash Ponds, making the requirements applicable. NRDC’s and CLP’s failure to maintain and implement an EAP presents an additional imminent and substantial endangerment and violates 40 C.F.R. § 257.73(a)(3).

* * *

86. For over sixty years, millions of tons of CCRs were disposed of in unlined Ash Ponds at the Beckjord Dump. Those CCRs remain in contact with groundwater, and contaminants continue to leach from the Ash Ponds through groundwater toward the PUB well field each day—constituting an imminent and substantial endangerment to Clermont County citizens.

87. Defendants’ handling, storage and disposal of CCRs at the Beckjord Dump have contributed and are contributing to the imminent and substantial endangerment. Defendants know the CCR Rules and their obligations concerning the Ash Ponds, but have failed to comply. Defendants have failed to control, minimize, or eliminate—to the maximum extent feasible—infiltration of liquids into the waste and releases of CCR, leachate, or contaminated runoff to ground or surface waters at the Beckjord Dump.

88. Unless the CCRs are removed or otherwise restrained, the Beckjord Dump will

continue to contribute substantial quantities of contamination, including sulfate, to groundwater and surface waters for decades. Under RCRA and the CCR Rules, a coal ash pond like the Ash Ponds cannot simply be capped in place while CCRs remain in contact with groundwater; such capping does not control, minimize, or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste or releases of CCR pollution to ground or surface waters. Complete excavation of the ash and contaminated soil beneath the ash is the only method that will control infiltration of liquids into the waste and discharges of contaminants to the maximum extent feasible. Excavation is “feasible” because it is being done in other states. On information and belief, Duke’s own representatives have acknowledged that closure-by-removal (rather than closure-in-place) is the most prudent and reliable method of meeting the CCR Rules for unlined ash ponds in contact with groundwater like the Ash Ponds at the Beckjord Dump. Yet Defendants propose to do exactly the opposite at the Beckjord Dump: close by leaving all of the waste in place while in contact with groundwater. This is contrary to law and presents an imminent and substantial endangerment.

COUNT ONE
Imminent and Substantial Endangerment, 42 U.S.C. § 6972(a)(1)(B)
Against All Defendants

89. Clermont County repeats and realleges the foregoing allegations.

90. Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), authorizes any person to 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 is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste that may present an imminent and substantial endangerment to health or the environment.

91. CCRs are “solid waste” within the meaning of 42 U.S.C. § 6903(27) and 40 C.F.R. § 257.2.

92. Duke contributed to the past handling and disposal of CCR waste, and that past disposal is the disposal that continues to leach and presents the current endangerment. Duke’s contribution includes generating CCRs for more than 60 years, selecting and operating the unlined disposal areas, making the disposal decisions that created the contaminant source, and arranging the 2018 transfer so the same CCRs would continue to be handled and disposed of at the Beckjord Dump. NRDC and CLP have contributed and continue to contribute by owning, controlling, moving, storing, treating, disposing of, and closing CCR units at the site. Owlfly has contributed to the endangerment by entering into perpetual easement agreements authorizing NRDC to access and use Owlfly’s parcels (including Pond A) to conduct CCR handling, storage and disposal activities at the Beckjord Dump, all while granting a broad release from environmental liability and having actual knowledge of the contamination on the property. TBDA has contributed to the endangerment by accepting title to those same parcels subject to the same continued perpetual easement agreement and likewise continuing to authorize NRDC to conduct CCR handling, storage and disposal activities on the property.

93. The conditions at the Beckjord Dump present an imminent and substantial endangerment to public health and the environment, including: (a) CCRs disposed of in unlined Ash Ponds in direct contact with groundwater, with no barrier to impede leachate migration; (b) a sulfate plume and other contaminants migrating from the Ash Ponds toward the PUB well fields, which supply drinking water to approximately 145,000 residents; (c) federally non-compliant closure plans that leave CCRs in contact with groundwater; (d) only one operational interceptor well, with no redundancy or plan for perpetual operation; (e) no financial assurance for closure,

post-closure care, or corrective action; (f) cessation of sampling for dangerous constituents previously detected above MCLs; and (g) dam-safety and emergency-preparedness failures violating the CCR Rules.

94. The releases threaten ground and surface water in Clermont County, including water used for public drinking water. The endangerment is “imminent” because it presents a current threat of continuing or future harm and “substantial” because contamination of the aquifer serving 145,000 residents would cause serious, widespread, and potentially irreversible harm to public health and the environment.

95. Under 42 U.S.C. § 6972(a)(1)(B), the Court may order Defendants to take action necessary to address the imminent and substantial endangerment and may award other appropriate relief, including injunctive relief, attorneys’ fees, and costs.

COUNT TWO
Violations of RCRA and CCR Rules, 42 U.S.C. § 6972(a)(1)(A)
Against NRDC and CLP

96. Clermont County repeats and realleges the foregoing allegations.

97. Section 7002(a)(1)(A) of RCRA, 42 U.S.C. § 6972(a)(1)(A), authorizes any person to commence a civil action against any person alleged to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order that has become effective pursuant to RCRA.

98. RCRA Section 4005, 42 U.S.C. § 6945, prohibits solid waste management practices or disposal that constitute “open dumping.” Under the CCR Rules, any practice that fails to satisfy 40 C.F.R. §§ 257.50 through 257.107 “constitute[s] open dumping, which is prohibited under section 4005 of the Act.” 40 C.F.R. § 257.1(a)(2); *see also* 40 C.F.R. § 257.2 (defining “open dump” as “a facility for the disposal of solid waste which does not comply with this part.”)

99. As alleged above, CLP and NRDC are in violation of the following CCR Rules, each of which constitutes illegal open dumping prohibited under RCRA § 4005:

- a. **40 C.F.R. § 257.102(b) and (d):** CLP and NRDC prepared, published, and are implementing closure plans that fail to meet minimum federal requirements, including: (i) failing to eliminate free liquids in violation of § 257.102(d)(2)(i); (ii) failing to preclude future impoundment of water, sediment, or slurry in violation of § 257.102(d)(1)(ii); and (iii) failing to control, minimize, or eliminate post-closure infiltration of liquids into the waste and releases of CCRs, leachate, or contaminated runoff to ground or surface waters to the maximum extent feasible in violation of § 257.102(d)(1)(i). The cap-in-place activities at the Beckjord Dump and the non-compliant plans governing them therefore violate three independent CCR Rule standards and RCRA;
- b. **40 C.F.R. § 257.90:** CLP and NRDC have failed to take all immediate and necessary measures to control the sources of releases and reduce or eliminate, to the maximum extent feasible, further releases of contaminants into the environment, in violation of § 257.90(d);
- c. **40 C.F.R. § 257.91:** CLP and NRDC have failed to properly monitor groundwater at each contributing CCR unit;
- d. **40 C.F.R. § 257.95:** CLP and NRDC have failed to continue regular testing for CCR contaminants and therefore violate assessment-monitoring requirements, including by ceasing to test for antimony, beryllium, cobalt, fluoride, lithium, mercury, radium-226, radium-228, and thallium that had

previously been detected;

- e. **40 C.F.R. § 257.73(a)(3):** CLP and NRDC have failed to comply with Emergency Action Plan requirements, including by failing to conduct annual face-to-face meetings and exercises with local emergency responders;
- f. **40 C.F.R. § 257.60:** CLP and NRDC failed to demonstrate that the Beckjord Ash Ponds meet the minimum requirements for placement of CCR above the uppermost aquifer. There is an intermittent, recurring, and sustained hydraulic connection between the base of the Ash Ponds and the uppermost aquifer, including because of normal fluctuations in groundwater elevations. Groundwater directly contacts the coal ash residuals in the unlined Ash Ponds, and CLP and NRDC have made no demonstration to the contrary as required by the CCR Rules;
- g. **40 C.F.R. § 257.3-1(a):** The Beckjord Ash Ponds are located in the Ohio River floodplain in a manner that restricts the flow of the base flood, reduces the temporary water-storage capacity of the floodplain, and results in washout of solid waste, posing a hazard to human life, wildlife, and land and water resources; and
- h. CCRs remain in contact with groundwater in unlined ash ponds in violation of the CCR Rules, constituting ongoing illegal open dumping under 40 C.F.R. § 257.1(a)(2) and § 257.2.

100. Each day that CLP and NRDC violate the CCR Rules constitutes a separate RCRA violation for which civil penalties may be assessed under 42 U.S.C. § 6928(g).

101. Clermont County is entitled to injunctive relief requiring CLP and NRDC to comply with the CCR Rules, civil penalties for each day of violation, and attorneys' fees and costs under 42 U.S.C. § 6972(e).

COUNT THREE
Absolute Public Nuisance
Against NRDC, CLP and Duke

102. Clermont County repeats and realleges the foregoing allegations.

103. Defendants NRDC, CLP and Duke have created and maintained an absolute public nuisance by intentionally and unlawfully disposing of, handling, and storing CCRs in unlined Ash Ponds—an abnormally dangerous condition that has caused and continues to cause contaminants to leach into groundwater and migrate toward the PUB well fields serving approximately 145,000 Clermont County residents. Storing millions of tons of toxic coal ash in unlined impoundments adjacent to and upgradient from public drinking water wells, without a barrier to prevent leaching, constitutes an abnormally dangerous condition giving rise to absolute liability.

104. NRDC's, CLP's and Duke's closure activities at the Beckjord Dump are not authorized by a valid federal permit or approval. Ohio EPA has admitted that it lacks authority to enforce federal CCR law and regulations; its state-level approvals therefore cannot constitute lawful authorization of activities that violate federal law. Defendants cannot avoid nuisance liability by pointing to approvals that Ohio EPA lacks authority to issue in a federally compliant manner. No federal CCR permit has been issued for the Beckjord Dump, and Ohio does not have an EPA-approved state CCR permit program under RCRA § 4005(d). The Beckjord Dump therefore remains subject to the self-implementing federal CCR regulations, which Defendants are violating. Ohio EPA's state-level approvals are not federal permits and provide no permit shield under RCRA. Ohio solid waste law expressly excludes "ash that results from the combustion of

coal” from regulation. Ohio Rev. Code § 3734.01(E). Ohio EPA therefore has no authority under state law to regulate coal ash disposal at the Beckjord Dump, much less to authorize disposal under federal law. Most importantly, “a facility ***must still comply with the CCR rule requirements, even if the state has issued a permit that contains less stringent conditions or requirements*** than those in the CCR rule.” U.S. EPA, *Frequent Questions about Applicability of Other Regulations and Implementing the Final Rule Regulating the Disposal of Coal Ash Combustion Residuals (CCRs)*, available at <https://www.epa.gov/coal-combustion-residuals/frequent-questions-about-applicability-other-regulations-and-implementing#t3> (last visited Sept. 23, 2026) (emphasis added); *see also In re Nat’l Prescription Opiate Litig.*, 440 F. Supp. 3d 773, 808 (N.D. Ohio 2020) (holding that “safe harbor immunity” from absolute nuisance liability is available “only to those who perform in accordance with their applicable licensing regulatory obligations”); Ohio Rev. Code § 3734.10 (expressly preserving common law causes of action “to suppress nuisances or to abate or prevent pollution” relating to solid and hazardous wastes); Ohio Rev. Code § 6111.08 (expressly preserving common law causes of action to “suppress nuisances or to abate pollution” of water).

105. Plaintiff brings this public nuisance claim in its governmental capacity as the entity responsible for providing safe drinking water to Clermont County residents. Plaintiff has been injured through its ownership and operation of the PUB well fields, its obligation to monitor and treat the water supply, and the costs incurred and to be incurred to protect residents from NRDC, CLP and Duke’s contamination.

106. As a direct and proximate result of Defendants NRDC, CLP and Duke’s absolute public nuisance, Plaintiff has suffered and will continue to suffer damages, including monitoring, testing, treatment upgrades, and other costs necessary to protect the public drinking water supply

from contamination originating at the Beckjord Dump. The public nuisance is continuing, and Plaintiff seeks relief for ongoing injuries and occurrences. Plaintiff is entitled to injunctive relief abating the nuisance and compensatory damages.

COUNT FOUR
Qualified Public Nuisance
Against NRDC and CLP

107. Clermont County repeats and realleges the foregoing allegations.

108. Defendants NRDC and CLP have created and maintained a qualified public nuisance by negligently and carelessly handling, storing, disposing of, and closing CCR waste at the Beckjord Dump so as to create an unreasonable risk of harm to public health and the public drinking water supply, which has resulted in injury to the public. This public nuisance is continuing, as each ongoing release, migration, or act that perpetuates the condition creates a new occurrence and continuing injury. NRDC's and CLP's federally non-compliant closure plans, failure to maintain redundant interceptor wells, cessation of monitoring for dangerous contaminants, and failure to provide financial assurance for perpetual protection of the public water supply are continuing acts that maintain and exacerbate the qualified public nuisance. Accordingly, this claim is based on continuing conduct and continuing injury, not solely on historical acts and disposal practices.

109. NRDC's and CLP's closure activities at the Beckjord Dump are not authorized by a valid federal permit or approval. Ohio EPA has admitted that it lacks authority to enforce federal CCR law and regulations; its state-level approvals were *ultra vires* and therefore cannot constitute lawful authorization of activities that violate federal law. Defendants cannot avoid nuisance liability by pointing to approvals that Ohio EPA lacks authority to issue in a federally compliant manner. No federal CCR permit has been issued for the Beckjord Dump, and Ohio does not have

an EPA-approved state CCR permit program under RCRA § 4005(d). The Beckjord Dump therefore remains subject to the self-implementing federal CCR regulations, which Defendants are violating. *Supra* ¶ 104 (citations omitted).

110. Plaintiff brings this qualified public nuisance claim in its governmental capacity as the entity responsible for providing safe drinking water to Clermont County residents. Plaintiff has been injured through its ownership and operation of the PUB well fields, its obligation to monitor and treat the water supply, and the costs incurred and to be incurred to protect residents from NRDC's and CLP's contamination.

111. As a direct and proximate result of Defendants NRDC's and CLP's qualified public nuisance, Plaintiff has suffered and will continue to suffer damages, including monitoring, testing, treatment upgrades, and other costs necessary to protect the public drinking water supply from contamination originating at the Beckjord Dump. The public nuisance is continuing, and Plaintiff seeks relief for ongoing injuries and occurrences. Plaintiff is entitled to injunctive relief abating the nuisance and compensatory damages.

COUNT FIVE
Private Nuisance
Against NRDC and CLP

112. Clermont County repeats and realleges the foregoing allegations.

113. NRDC's and CLP's handling, storage, disposal, and closure of CCR waste at the Beckjord Dump have invaded Plaintiff's interest in the private use and enjoyment of its land and the aquifer beneath it. Groundwater contamination migrating toward and beneath the PUB well fields has diminished Plaintiff's use and enjoyment of its property and interfered with its ability to draw uncontaminated groundwater for public drinking water.

114. The nuisance is continuing because contaminants continue to leach from the

unlined Ash Ponds and migrate through groundwater toward Plaintiff's well fields. It is a continuing tort that accrues with each new occurrence of contamination.

115. The nuisance is also continuing because NRDC and CLP are making decisions and taking actions that perpetuate and intensify the harm, including implementing federally non-compliant closure plans; operating only one of two interceptor wells; ceasing to monitor for dangerous contaminants previously detected above MCLs; failing to provide financial assurance for perpetual well maintenance; and pursuing closure in place rather than excavation despite known groundwater contact. These ongoing choices maintain and exacerbate the nuisance and can be changed or abated. The nuisance is not merely the passive existence of historical infrastructure.

116. As a direct and proximate result of NRDC's and CLP's private nuisance, Plaintiff has suffered and will continue to suffer damages, including diminished use and enjoyment of its land and aquifer, monitoring and treatment costs, alternative-water-supply measures, and reasonable fear and concern about pollution affecting its interest and duty in operating a water-distribution facility and providing safe, usable and potable drinking water to its residents. Plaintiff seeks damages for these past and continuing injuries, and is entitled to injunctive relief and compensatory damages.

COUNT SIX

Trespass

Against NRDC and CLP

117. Clermont County repeats and realleges the foregoing allegations.

118. Clermont County owns and operates the PUB well fields and holds property interests in the underlying groundwater aquifer from which the wells draw drinking water.

119. Defendants NRDC and CLP have caused CCR contaminants—including sulfate, boron, molybdenum, iron, manganese, thallium, radium-226, radium-228, and other hazardous

constituents—to physically invade Clermont County’s property by migrating through groundwater from the unlined Ash Ponds into and toward the PUB well fields. On information and belief, contaminants from the Beckjord Dump have entered Clermont County’s property, are entering it, and/or will imminently enter it absent immediate remedial action.

120. This physical invasion was caused by Defendants’ disposal of CCRs in unlined impoundments without adequate barriers, failure to remove the CCRs, and implementation of non-compliant closure plans that allow continued leaching into groundwater flowing toward the PUB well fields.

121. NRDC’s and CLP’s trespass is intentional. NRDC and CLP know that CCR contaminants have migrated and are migrating from the Ash Ponds through groundwater toward Clermont County’s public water supply wells. Despite that knowledge, they continued to dispose of CCRs in the unlined Ash Ponds and now propose to leave the CCRs permanently in contact with groundwater. Their reports and consultants have confirmed the contaminant plume, the groundwater pathway to the PUB well fields, and the inadequacy of a single interceptor well to prevent contamination from reaching those wells. NRDC and CLP therefore acted with knowledge that their conduct caused and continues to cause a physical invasion of Clermont County’s property.

122. NRDC’s and CLP’s trespass is continuing because contaminants continue to leach from the unlined Ash Ponds and migrate through groundwater toward the well fields as a result of these Defendants’ ongoing conduct. Each new migration or deposit of CCR contaminants constitutes a new occurrence and continuing physical invasion, so the trespass accrues anew with each occurrence of contamination.

123. As a direct and proximate result of NRDC’s and CLP’s trespass, Clermont County

has suffered and will continue to suffer damage to its property interests, including diminished groundwater quality, monitoring and treatment costs, and potential loss of use of public water supply wells. Plaintiff is entitled to injunctive relief and compensatory damages.

COUNT SEVEN
Negligence
Against NRDC and CLP

124. Clermont County repeats and realleges the foregoing allegations.

125. NRDC and CLP owed Plaintiff and the public a duty of care to handle, store, dispose of, and close CCR waste at the Beckjord Dump without contaminating groundwater or threatening the public drinking water supply.

126. NRDC and CLP breached that duty by, among other things: (a) disposing of millions of tons of CCR waste in unlined Ash Ponds without a barrier to prevent leaching into groundwater; (b) failing to install liners or other engineering controls to prevent contaminant migration; (c) implementing federally non-compliant closure plans that leave CCRs in contact with groundwater; (d) failing to maintain redundant interceptor wells to prevent contaminated groundwater from reaching the PUB well fields; (e) ceasing to monitor for dangerous contaminants previously detected above MCLs; (f) failing to provide financial assurance for perpetual protection of the public water supply; (g) failing to comply with Emergency Action Plan requirements or communicate with local emergency responders; and (h) failing to close the Beckjord Dump in accordance with regulations designed to protect groundwater and public health.

127. NRDC's and CLP's breaches directly and proximately caused groundwater contamination that threatens Clermont County's public water supply wells. The pathway from the unlined Ash Ponds to the PUB well fields is well documented and well known by NRDC and CLP. The ongoing breaches and releases have caused continuing damages.

128. As a direct and proximate result of NRDC's and CLP's negligence, Clermont County has suffered and will continue to suffer damages, including costs of monitoring, testing, treatment, alternative water supply, interceptor well maintenance, and other expenses necessary to protect the public drinking water supply from contamination originating at the Beckjord Dump. Plaintiff is entitled to compensatory damages and injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Clermont County Board of Commissioners requests that the Court enter judgment in its favor and award the following relief:

- (a) On Count One (Imminent and Substantial Endangerment), an order requiring Defendants to take all actions necessary to abate the endangerment, including but not limited to: (i) conducting a complete investigation to identify all portions of the Northern and Southern Complexes and Pond Run areas contributing to groundwater contamination threatening Clermont County's public water supply; (ii) abandoning non-compliant closure activities and performing closure that eliminates the endangerment to Clermont County's public water supply, including but not limited to complete excavation and removal of CCR waste from the Ash Ponds and remediation of contaminated soils and groundwater beneath each Ash Pond, or such other corrective action as the Court determines is necessary to permanently prevent CCR contaminants from migrating to the PUB well fields and to restore groundwater quality to levels protective of the public drinking water supply; (iii) installing and operating a redundant system of interceptor wells sufficient to prevent contaminated groundwater from reaching the PUB well fields and maintaining that system until the source areas are remediated and groundwater

contamination is eliminated; (iv) immediately resuming and maintaining comprehensive groundwater monitoring of all CCR constituents, including antimony, beryllium, cobalt, fluoride, lithium, mercury, radium-226, radium-228, and thallium, at all monitoring locations; (v) updating groundwater monitoring locations and installing additional wells as needed to delineate contaminant plume(s) and monitor all source areas; (vi) providing financial assurances sufficient to maintain systems of intervention, remediation, groundwater monitoring, and other control measures until all threats are eliminated; (vii) immediately updating the Emergency Action Plans for all Ash Ponds and complying with all requirements of 40 C.F.R. § 257.73(a)(3), including annual face-to-face meetings and exercises with local emergency responders; and (viii) such further remedial measures as the Court deems necessary and appropriate to eliminate the imminent and substantial endangerment to health and the environment, protect Clermont County's public drinking water supply, and prevent future releases of CCR contaminants to groundwater and surface waters.

- (b) On Count Two (Violations of RCRA and CCR Rules), a declaratory judgment that Defendants NRDC and CLP are in violation of the CCR Rules and RCRA as set forth herein, injunctive relief requiring Defendants to come into compliance with the CCR Rules, and civil penalties for each day of violation pursuant to 42 U.S.C. § 6928(g);
- (c) On Count Three (Absolute Public Nuisance), injunctive relief abating the absolute public nuisance and compensatory damages for all costs incurred and to be incurred by Clermont County as a result of the nuisance, including monitoring, testing,

treatment upgrades, and other measures necessary to protect the public drinking water supply;

- (d) On Count Four (Qualified Public Nuisance), injunctive relief abating the qualified public nuisance and compensatory damages for all costs incurred and to be incurred by Clermont County as a result of the nuisance, including monitoring, testing, treatment upgrades, and other measures necessary to protect the public drinking water supply;
- (e) On Count Five (Private Nuisance), injunctive relief abating the private nuisance and an award of compensatory damages for diminished use and enjoyment of Clermont County's land and aquifer, costs of monitoring and treatment, and interference with Clermont County's operation of its water distribution facilities;
- (f) On Count Six (Trespass), injunctive relief enjoining NRDC's and CLP's continuing trespass and an award of compensatory damages for the physical invasion of Clermont County's property, including diminution of groundwater quality, costs of monitoring and treatment, and loss of use of public water supply wells;
- (g) On Count Seven (Negligence), an award of compensatory damages for all costs incurred and to be incurred as a result of NRDC's and CLP's negligence, including costs of monitoring, testing, treatment, alternative water supply measures, interceptor well maintenance, and other expenses necessary to protect the public drinking water supply;
- (h) On all Counts, a binding, enforceable, court-overseen obligation requiring Defendants to remediate the Beckjord Dump and protect Clermont County's public water supply in perpetuity;

- (i) On all Counts, an order retaining jurisdiction over this action to ensure compliance with and to oversee implementation of this Court's orders and any resulting remediation, monitoring, and corrective action obligations;
- (j) On all Counts, award Clermont County its costs and attorneys' fees in pursuing this action, including attorneys' fees pursuant to 42 U.S.C. § 6972(e); and
- (k) On all Counts, any other relief that the Court deems just and proper.

Respectfully submitted,

/s/ Jacob D. Rhode

Jacob D. Rhode, Trial Attorney (0089636)

James C. Kezele (00089610)

Collin L. Ryan (0095810)

Bozana L. Lundberg (0083663)

KEATING MUETHING & KLEKAMP PLL

One East Fourth Street, Suite 1400

Cincinnati, Ohio 45202

Phone: (513) 579-6400

Fax: (513) 579-6457

jrhode@kmklaw.com

jkezele@kmklaw.com

cryan@kmklaw.com

blundberg@kmklaw.com

Attorneys for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

/s/ Jacob D. Rhode

Jacob D. Rhode, Trial Attorney (0089636)