

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

Robert Livingston Jr., Barbara Livingston,)	Civil Action No.: 3:17-2543-MGL
Robert Livingston Sr., Raye H. Livingston,)	
Lucious Albert Strickland, Jr.,)	
Wade H. Sellers, Robert E. Sellers,)	
Old Wire Road Paradise, LLC,)	
)	
Plaintiffs,)	THIRD AMENDED
)	COMPLAINT
vs.)	(JURY TRIAL DEMANDED)
)	
Copart of Connecticut, Inc.,)	
)	
Defendants.)	
_____)	

1. This is a civil suit brought under the citizen suit enforcement provision of what is commonly known as the Clean Water Act (CWA), 33 U.S.C. § 1251 *et seq.*, specifically, under 33 U.S.C. § 1365; the citizen suit enforcement provisions of the Resource Conservation and Recovery Act or RCRA, 42 U.S.C. § 6901, *et seq.*; and claims against the Defendant for, *inter alia*, negligence, negligence per se, nuisance, and trespass.

JURISDICTION AND VENUE

2. Plaintiffs bring this civil suit under the citizen-suit enforcement provisions of Section 7002 of the RCRA, 42 U.S.C. § 6972, and Section 505 of the CWA, 33 U.S.C. § 1365. This Court has subject matter jurisdiction over the parties and this action pursuant to those statutes and 28 U.S.C. § 1331 (providing district courts with original jurisdiction over an action arising under the Constitution and laws of the United States). Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over the state claims pled because they are related to the federal claims and form part of the same case or controversy under Article III, United States

Constitution. Jurisdiction in this Court is proper pursuant to 28 U.S.C. § 1332(a) because the parties are completely diverse and the amount in controversy is claimed to be in excess of \$75,000, exclusive of interest and costs.

3. Venue is proper in the U.S. District Court for the District of South Carolina, Columbia Division, pursuant to Section 7002(a) of the RCRA, 42 U.S.C. § 6972(a), Section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), and Local Civil Rule 3.01(A)(1), because the source of the violations – defendant’s facilities in Lexington County, South Carolina – are located within this judicial district and division.

4. On October 11, 2017, Plaintiffs notified Defendant of their intention to file suit for violations of the Clean Water Act, in compliance with the statutory notice requirements set forth in 33 U.S.C. § 1365(a)(1), and the corresponding regulations at 40 C.F.R. § 135.2. A true and accurate copy of Plaintiffs’ October 11, 2017, notice letter is appended hereto at Exhibit A. On November 3, 2017, Plaintiffs also notified Defendant of its intention to file suit for violations of RCRA, in compliance with the statutory notice requirements set forth in 42 U.S.C. § 6972(b)(2)(A), and the corresponding regulations at 40 C.F.R. A true and accurate copy of Plaintiffs’ November 3, 2017, notice letter is appended hereto as Exhibit B.

5. More than 60 days have elapsed since Plaintiffs served the October 11, 2017, notice letter on Defendant pursuant to the CWA, during which time neither the United States Environmental Protection Agency (EPA) nor the South Carolina Department of Health and Environmental Control (DHEC) have commenced and diligently prosecuted an action to redress the CWA violations alleged in this complaint. 33 U.S.C. § 1365(b)(1)(B).

6. More than 90 days have elapsed since Plaintiffs served the November 3, 2017, notice on the Defendant pursuant to the RCRA, during which time neither the EPA nor SCDHEC

has commenced and diligently prosecuted a court action to redress the RCRA violations alleged in this complaint. 42 U.S.C. § 6972(b)(1)(B).

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

PARTIES

8. Plaintiffs, Major General Robert Livingston, Jr. and Barbara Livingston, are citizens and residents of Lexington County, South Carolina.

9. Plaintiffs, Robert Livingston Sr. and Raye H. Livingston, are citizens and residents of Lexington County, South Carolina.

10. Plaintiff, Lucious Albert Strickland, Jr., is a citizen and resident of Lexington County, South Carolina.

11. Plaintiff, Wade H. Sellers, is a citizen and resident of Lexington County, South Carolina.

12. Plaintiff, Robert E. Sellers, is a citizen and resident of Lexington County, South Carolina.

13. Plaintiff, Old Wire Road Paradise, LLC, is a company organized and existing under the laws of the state of South Carolina.

14. Defendant, Copart of Connecticut, Inc., is a corporation organized under the laws of the States of Connecticut with its principal place of business (the company's "nerve center") in Dallas, Texas.

STATUTORY AND REGULATORY BACKGROUND

Resource Conservation and Recovery Act, 42 USC § 6901 *et seq.* (the RCRA)

15. Enacted in 1976, the RCRA governs the treatment, storage, and disposal of solid

and hazardous waste. *See e.g. Meghrig v. KFC Western, Inc.*, 516 U.S. 479, 483 (1996). Its 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.’” *Id.* (quoting 42 USC §6902(b)).

16. RCRA contains two citizen-suit provisions which enable private parties to sue under certain circumstances.

17. First, under 42 USC §6972(a)(1)(A), a private party “may commence a civil action on his own behalf against any person . . . who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition or order pursuant to” RCRA.

18. Second, under 42 USC §6972(a)(1)(B), a plaintiff must show that a person, including any past or present generator, transporter, or owner or operator of a treatment, storage, or disposal facility, has contributed 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.” *Id.* A suit under this section may be based on a past violation.

19. Violators of the RCRA are subject to a civil penalty up to \$37,500 per day for each separate violation of the RCRA from January 12, 2009 to present (with reduced penalties for violations prior to this date). 42 U.S. Code § 6928, 40 CFR 19.4.

Clean Water Act, 33 USC § 1251 *et seq.* (the CWA)

20. Congress enacted the Clean Water Act (CWA) to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). To accomplish that objective, Congress set as a national goal that “the discharge of pollutants into

the navigable waters be eliminated. . . .” *Id.* Accordingly, Section 301(a) of the CWA provides that the discharge of pollutants into navigable waters of the United States is illegal, unless the discharger complies with the Act’s requirements. *Id.* at § 1311(a).

21. The EPA administers the CWA within the context of cooperative federalism. While always retaining its oversight role, the Agency can delegate administration of parts of or all of the statute to states. The CWA, though, requires a delegated State program to be at least as stringent as the Federal program. 33 U.S.C. §1342. The EPA Administrator has authorized DHEC to administer aspects of the CWA. The South Carolina Pollution Control Act [PCA], SC Code Ann. 48-1-10 *et seq.* empowers DHEC to “take all action necessary or appropriate to secure to this [s]tate the benefits of the Federal [CWA].” S.C. Code Ann. § 48–1–50(17).

22. Section 301(a) of the CWA, prohibits the discharge of pollutants from a “point source” into navigable waters of the United States, unless in compliance with various enumerated sections of the law. 33 U.S.C. § 1311(a). Pursuant to the CWA, one defined as a “point source polluter” may only discharge pollutants pursuant to a National Pollutant Discharge Elimination System (NPDES) permit issued by the EPA, or by a state or Tribe that has received approval to issue such a permit pursuant to Section 402(b) of the Act. *See id.* §§ 1311(a), 1342(a)-(b), 1362(12)(A).

23. In South Carolina, South Carolina Code of Regulations, Rule 61-9, authorizes DHEC to “implement the [NPDES] program under sections 318, 402, and 405 of the [CWA].” SC Code of Regulations, R. 61-9, § 122.1(a)(1). The CWA, the South Carolina PCA, and the United States and South Carolina’s regulatory implementation of the same, prohibit discharges not authorized by, or in violation of the terms of a NPDES permit, issued pursuant to 33 U.S.C. § 1342. More specifically, 33 U.S.C. § 1342(p), as implemented, mandates NPDES permitting for

storm water discharges “associated with [certain] industrial activit[ies],” either under a promulgated “general permit” or permit with individual coverage for the specific industrial activity participant.

24. 40 C.F.R. § 122.26(b)(14) *et seq.* (and substantially identical DHEC regulations found within S.C. Code of Regulations R. 61-9 § 122.26(b)(14) *et seq.*) defines storm water discharges associated with industrial activity to nonexclusively include facilities where the following industrial activities take place, *inter alia*, hazardous waste storage, landfills or open dumps, salvage yards, automobile junkyards, and broadly defined “transportation facilities” that have vehicle maintenance or equipment cleaning areas.¹

25. A NPDES permit authorizes the discharge of only those pollutants contained in a wastestream disclosed in a permit application or specific pollutants disclosed in a permit application, and where the permitting agency has not expressly prohibited the wastestreams or pollutants. 33 U.S.C. 1342(k). Depending on the nature of the industrial activity permitted, NPDES discharge permits for industrial activities contain thorough and particularized pollutant sampling and monitoring requirements and can contain limits on the amount or concentration of

¹ Interestingly, the EPA, in its response to public comments regarding the proposed current language of 40 CFR 122.26(b)(14)(vi), had this to say about the importance of regulating stormwater releases at facilities like Copart’s:

In junkyards, the condition of materials and junked vehicles and the activities occurring on the yard frequently result in significant losses of fluids, which are sources of toxic metals, oil and grease and polychlorinated aromatic hydrocarbons. Weathering of plated and non-plated metal surfaces may result in contributions of toxic metals to storm water. Clearly such facilities cannot be classified as commercial or retail.

National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges, 55 FR 47990-01, part VI, “Today’s Final Rule and Response to Comments” para. (F)(2)(vi), November 16, 1990, 1990 WL 348331.

allowable pollutants, in addition to requirements regarding control measures, best management practices, and recordkeeping and reporting.

26. Each separate violation of the CWA subjects the violator to a sliding daily penalty that can be up to \$52,414 per day for violations that occurred after November 2, 2015. *See* 33 U.S.C. §§ 1319(d), 1365(a); 40 C.F.R. §§ 19.1–19.4. Similarly,

27. In addition to permitting requirements for industrial activities, the CWA separately provides for permitting for stormwater runoff from certain land disturbance activities (e.g. clearing or excavation). In South Carolina, the implementing statute and regulations fall under the South Carolina Stormwater Management and Sediment Reduction Act. SC Code § 48-14-10 *et. seq.*, SC Code of Regulations, 72-300 *et. seq.*

FACTUAL BACKGROUND

28. Defendant, Copart of Connecticut, Inc. (Copart), is a subsidiary of a multi-national, publicly-traded company, Copart, Inc., (NASDAQ: CPRT), which has over 160 facilities in at least eight countries and sales in excess of \$4.5 billion. Copart operates machine salvage junkyard and vehicle wash facilities in Lexington County, South Carolina.

29. In Lexington County, South Carolina, north of the town Gaston, South Carolina, near the intersection of Highway 321 and Busbee Road and to the west of Highway 321, Copart owns nearly 217 acres in Lexington County, South Carolina. For simplicity of identification, this area will be identified as “Copart Operations Area 1.”

30. Additionally, to the east and north-east, Copart currently owns approximately 70 acres near the intersection of Highway 21 and Interstate 26. An area of delineated wetlands, approximately 6.73 acres is found on this land, along with at least one stream according to Lexington County, South Carolina, records. Adjacent to this property, directly to the west, is a

mobile home community in which dozens of families reside and land containing additional natural ponds. On approximately 20.45 acres directly adjacent and to the east of these Copart-owned parcels, Copart operates a machine salvage junkyard and vehicle wash facility on land, according to Lexington County records, owned by an entity known as “Commercial Properties Associates LLP.” For simplicity of identification, these parcels will be identified as “Copart Operations Area 2.”

31. Plaintiffs own properties that are generally located to the east and north-east of Copart Operations Area 1 and to the west and southwest of Copart Operations Area 2.

32. A body of water, Tom’s Creek, originates on or directly east of Copart Operations Area 1 and is a tributary of the Congaree River. Its watershed begins directly east of Copart Operations Area 1, at the northeast corner of Highway 321 and an access road to the Big Country Mobile Home park. The wetlands for the watershed also begin at the same location; the outfall of stormwater discharges on and surrounding Copart Operations Area 1 discharge into this wetland area. There is no continuous flow of water south before this point. Near the beginning point, to the north, several continuous flowing natural springs are found that are the beginning of Tom’s Creek.

33. From this point, Tom’s Creek flows through four ponds, totaling approximately five miles of stream and eventually empties into the Congaree River, a significant water artery supporting extensive wildlife habitats, along with hunting, fishing, and recreational destinations. The Congaree River flows into numerous lakes and rivers containing wildlife refuges, vast wetlands supporting extensive waterfowl populations, and eventually empties into the Charleston harbor. The Congaree National Park, South Carolina’s only national park, and the largest intact expanse of old growth bottomland hardwood forest remaining in the southeastern United States,

is only one of many such ecosystems located just a few miles downstream from Tom's Creek.

34. Tom's Creek also exhibits many unique characteristics in its purity and hydrology, featuring some of the cleanest natural waters in South Carolina, previously characterized as "drinking quality water" by South Carolina authorities. It is fed by as many as 100 freshwater springs. As such, Tom's Creek is not an intermittent stream resulting from rainwater runoff; it is a continuously flowing spring-fed stream considered a water of the State, as well as a protected wetland.

35. Tom's Creek runs through Plaintiff Lucious Albert Strickland, Jr.'s property as a free-flowing stream.

36. Tom's Creek is classified as a perennial Relatively Permanent Stream (pRPW) stream by the United States Army Corps of Engineers.

37. Tom's Creek becomes Tom's Branch, which joins the Congaree River at a location that is approximately five miles from the head waters of Tom's Creek.

38. The Tom's Creek stream system also feeds wetlands on Plaintiff Strickland's properties.

39. Tom's Creek runs through the properties of the remaining Plaintiffs in part as a free-flowing stream and in part as an impounded stream forming pounds on their properties. *Figure 1* at Exhibit B shows a fair and accurate portrayal of the general location of the two Copart facilities and Plaintiffs' property within the Tom's Creek watershed.

40. All of the individual Plaintiffs derive personal enjoyment from their property and the area surrounding Tom's Creek and the surrounding environment. Historically, they have utilized their own property and the property of the other plaintiffs and other adjacent landowners for recreational purposes—a fact diminished by recent developments more particularly described

within this complaint. Variously, they used the Tom Creek's watershed as grounds for hunting, fishing, swimming, and recreational aviation. They are all concerned with potential broader environmental impact caused by Defendant's acts and omissions.

41. As part of Copart's business, it stores automobiles, recreational, and industrial vehicles and other machines and conveyances in unpaved lots on its property.

42. Substantially all of these vehicles are in a wrecked or salvaged condition and are variously leaking gasoline, oil, hydraulic fluids, antifreeze, and other hazardous fluids and materials into the soil.

Copart Operations Area #1

43. Upon information and belief, Copart has been operating a motor vehicle and machine salvage junkyard business on at least a portion of this property since at least 1998.

44. By December 2005, satellite imagery reflects that Copart cleared all trees and other large vegetation on an adjoining parcel of land – approximately 72.97 acres. By October 2006, satellite imagery reflects that thousands of vehicles were stored on this plot of land.

45. By February 2013, satellite imagery reflects that Copart had almost completely clear-cut an additional approximately 30 acres of land on an adjoining parcel. By October 2013, this 30-acre area was almost completely full of salvaged/wrecked machinery. Approximately 88 acres of generally wooded area on this parcel remain uncleared. *Figures 2-5* at Exhibit B are a fair and accurate representation of the satellite imagery described in this and the preceding paragraph.

Copart Operations Area #2

46. By February 2014, satellite imagery reflects the storage of likely thousands of individual motor vehicles and other machines stored in this area. It is approximately 20 acres in

size. The majority of this acreage currently house a salvaged/wrecked machinery storage lot and vehicle wash facility operated by Copart. Directly to the west and southwest of this leased property, Copart owns two adjoining pieces of property that are currently wooded. This Copart-owned acreage, approximately 60 acres in size, abuts a residential area, with several dozen families residing in single-family and mobile homes, directly to the west. *Figures 6 and 7* at Exhibit B show a fair and accurate portrayal of recent satellite imagery of Copart Operations Area 2 and the surrounding area.

NPDES Permitting – Construction

47. Up until March 17, 2016, Defendant never sought nor received any NPDES permits for its land disturbance activities at its facilities in Lexington County, South Carolina.

48. Nevertheless, over the course of 2012 and 2013, Copart disturbed approximately 38 acres of land in Copart Operations Area #1. Approximately 80 acres of land on this same plot remain wooded and generally undeveloped.

49. Copart regularly stores and utilizes heavy earth-moving equipment on its facilities, almost continuously disturbing the soil on the property.

50. Copart owns approximately 80 acres of undeveloped land adjacent to Copart Operations Area #1. Copart owns approximately 68 acres of wooded and generally undeveloped land at Copart Operations Area #2.

51. On March 17, 2016, Copart filed a “Notice of Intent” (NOI) for coverage under South Carolina’s “NPDES General Permit for Stormwater Discharges From Construction Activities SCR 100000.” Its application was approved on May 12, 2016. The title of the “Project/Site Plan” listed on this NOI was “Stormwater Management Improvements Copart Gaston Yard.” The total disturbed area was listed as “4.3” acres.

52. Copart, by failing to apply for and receive a permit for Construction Activities before beginning land-clearing activities, violated the CWA and state law.

Defendant's Historical and Ongoing Damage to the Environment

53. As a result of Defendant's ongoing (and recently expanded) business operations at their facilities near Gaston, South Carolina, Plaintiffs have and are presently directly suffering damage to their interests.

54. During any significant rainfall event, water, soil, sediment and hazardous materials and chemicals are washed from the Copart property into Tom's Creek ultimately through the Plaintiffs' properties.

55. The sediment and hazardous materials that flows from Defendant's property onto Plaintiffs' property has dramatically changed the nature of the Plaintiffs property. Besides the immediate damage to the aesthetics of their property in the form of cloudy water for several days, after each significant rain event, the chemical and sediment-laden water that flows from Defendant's property negatively impacts the flora and fauna in and around streams and ponds on Plaintiffs' property.

56. In addition to the obvious impact of the runoff material from Defendant's property visible to the naked eye, scientific testing conducted on a variety of samples from points on the periphery of Defendant's property and within the Tom Creek's watershed, reveal alarming levels of heavy-metals and other dangerous elements. These samples, taken during both dry and rainfall conditions, and from a variety of both wet and dry points in the downstream area, show, *inter alia*, large concentrations of aluminum, lead, titanium, arsenic, and copper throughout. These are the same elements found within various components of motor vehicles, such as

batteries, radiators and fuel. Samples taken from “control areas,” close, but not downstream of the Copart property, do not show similar levels of these elements. Numerous scientific studies have demonstrated that these elements, at significant quantities, can have a deleterious, or even fatal, effect on the environment and humans, plants, animals, and other organisms. As more particularly described below, the unpermitted and uncontrolled manner that these chemicals have been systematically released as a result of Defendant’s industrial activities violates the RCRA and CWA.

FOR A FIRST CAUSE OF ACTION
Violation of the Resource Conservation and Recovery Act, 42 USC § 6972(a)(1)(A)

57. Every allegation is incorporated as if set forth verbatim.

58. By its actions and omissions in the unpermitted generation, handling, treatment, storage, transport, and disposal of hazardous or solid waste, Defendant stands in violation of RCRA.

59. Defendant is in the business of accepting and storing damaged motor vehicles. Defendant’s business model is to acquire wrecked, damaged or salvage vehicles which will ultimately be sold to others – after varying periods of unsheltered storage on Defendant’s properties, including Copart Operations Area #1 and Copart Operations Area #2.

60. At Defendant’s aforementioned facilities near Gaston, South Carolina, these vehicles commonly leak, or are purposefully washed or drained of liquids. Drainage, residue, and leachate from these vehicles, and their sometimes-separate components, in various stages of disrepair, includes chemical compounds dangerous to people and the environment, *inter alia*, petroleum products, such as gasoline, waste oil, hydraulic fluids, antifreeze and other hazardous substances. Once removed from the motor vehicles, across hundreds of acres of Copart-owned property, this solid and very often hazardous waste, sits on the ground, whether it be paved or

raw earth portions of Copart's facilities.

61. Defendant Copart's past, current and ongoing actions and omissions in its handling of solid or hazardous waste in this fashion is unpermitted and otherwise unlicensed under the RCRA, 42 U.S.C. §6901 *et seq*, and South Carolina's implementing regulations of the same, found at SC Code of Regulations 61-107.19, *et seq*.

62. Copart is operating a facility for the disposal and storage of solid waste without any requisite permits and is thus, in violation, of the RCRA.

FOR A SECOND CAUSE OF ACTION
Violation of the Resource Conservation and Recovery Act, 42 USC § 6972(a)(1)(B)

63. Every allegation is incorporated as if set forth verbatim.

64. Exposed to the elements, substances from deteriorated vehicles and vehicle components on Defendant's property, contaminate and soak the ground underneath.

65. This now solid or hazardous waste is sometimes further disturbed by Defendant's ongoing earth-moving or other business operations at their facilities.

66. Consequently, large quantities of the waste leaches into the water table, or is transferred via stormwater, across the Defendant's property and into the surrounding environment and Plaintiffs' property.

67. Copart's industrial practices, acts, and omissions, in contributing to the past and present handling, storing, treating, transporting, and disposing of this solid or hazardous waste, over years and across hundreds of acres, have and continue to present, an ongoing and now substantial threat—imminent danger to health and to the environment. What few steps Defendant has taken to control this threat have been and continue to be insufficient. The threat is present in the form of deleterious potential impact not just to Defendant's hundreds of acres, but the aesthetics and natural state of the surrounding environment: The Tom's Creek Watershed; the

organisms that there reside; the water table underneath; and, the health of all those who live nearby, including Plaintiffs.

FOR A THIRD CAUSE OF ACTION
Violation of the Clean Water Act, 33 USC §1365(a)(1) – Unpermitted Discharge from
Industrial Activities

68. Every allegation is incorporated as if set forth verbatim.

69. By its acts and omissions, Defendant controlled, performed, or was otherwise responsible for the historical and ongoing discharge of pollutants in the form of sediment and suspended solids, i.e. Kaolin soil and other dirt, rock, and sand; solid waste; other chemical waste; nutrients; metals; oil and grease; and biological material.

70. During any major rainfall event, these pollutants historically were and presently are discharged from discrete conveyances controlled by Defendant and include earth-moving equipment; pipes, channels, surface impoundments; and other similar conveyances used to collect and funnel stormwater on the Copart property – all point sources, pursuant to the Clean Water Act. 33 USC § 1362(14).

71. These pollutants ultimately discharge into Tom’s Creek and its watershed, what is, for jurisdictional purposes, considered part of the navigable “waters of the United States.” 33 USC § 1362(7).

72. Copart ongoing actions are unpermitted by competent governmental authority.

FOR A FOURTH CAUSE OF ACTION
Violation of the Clean Water Act, 33 USC §1365(a)(1) – Unpermitted Land Disturbance

73. Every allegation is incorporated as if set forth verbatim.

74. By its acts and omissions, from 2006 until 2013, Defendant engaged in the unpermitted land disturbance activities of destroying vegetation, clearing, and excavating over 100 acres of its property—greatly expanding its existing operations at Copart Operations Area 1.

These areas are presently full of salvage motor vehicles.

75. Defendant presently owns 148 acres, adjoining Copart Operations Area 1 and Copart Operations Area 2, that are largely undisturbed and, upon information and belief, has the machinery on hand at its facilities, or otherwise at its easy disposal, to disturb this additional land. For the undeveloped parcels at Copart Operations Area 2, Defendant spent approximately one-million dollars to acquire this property—land that continues to sit substantially vacant.

76. Defendant's land at Copart Operations Area 2 abuts a residential subdivision, consisting of dozens of single-family homes and mobile homes and contains a stream and delineated wetlands.

77. By its activities in clearing land, this multi-national, multi-billion-dollar, out-of-state corporation, has repeatedly flaunted and continues to ignore the CWA's land-disturbance provisions, as implemented in the South Carolina Stormwater Management and Sediment Reduction Act. S.C. Code 48-14-10 *et. seq.*, S.C. Code of Regulations, 72-300 *et. seq.*

78. Defendant's repeated land disturbance actions, and its failure to become properly permitted, over the course of almost a decade, resulted in the dramatic expansion of its unlawful business operations that continue to negatively impact Plaintiffs' interests. Defendant's sole retroactive land disturbance permit only covered 4.3 acres – an area that is far exceed by its industrial operations and actual excavation and clearance activities.

79. The Defendant's acts and omissions described above, combined with Defendant's acquisition of hundreds of acres of additional property, adjoining its current operating locations, along with its prior and ongoing violation of the South Carolina Junkyard Control Act (described below) demonstrate a reasonable likelihood that it will continue to expand its current operations through additional unlawful land disturbance activities.

FOR A FIFTH CAUSE OF ACTION
Negligence and Negligence Per Se – South Carolina Pollution Control Act

80. Every allegation is incorporated as if set forth verbatim.

81. As a result of its unpermitted and improper land disturbance and industrial activities, Defendant owes a reasonable duty of care to prevent stormwater discharge from its property, laden with soil, sediment, and harmful chemicals, from harming Plaintiffs' property.

82. Defendant has breached and is breaching its duty to Plaintiffs by discharging, and failing to prevent the discharge, of stormwater laden with soil, sediment, and harmful chemicals onto Plaintiffs' property and failing to manage, mitigate or otherwise control its polluting activities.

83. Defendant knew or should have known that its acts and omissions were virtually certain to cause stormwater, laden with soil, sediment, and harmful chemicals, to reach Plaintiffs' property, thereby causing harm to Plaintiffs.

84. Defendant's acts and omissions resulted in harm to Plaintiffs and the environment and violated the South Carolina Pollution Control Act, SC Code § 48-1-10 et seq., the essential purpose of which is to regulate, abate, control, and prevent pollution. *See* SC Code § 48-1-20. Plaintiffs are within the class of persons the statute was intended to protect.

85. Despite Defendant's actual or constructive knowledge of the harm it was causing to Plaintiffs, it has failed to abate the harm it is causing.

85. Defendant has been made aware of the damage it has caused and continues to cause to the Plaintiffs' property. Yet it has ignored Plaintiffs' repeated requests to cease and desist and take action to abate and mitigate this damage.

86. As a direct and proximate result of Defendant's acts and omissions, and as a direct and proximate result of Defendant's negligence, gross negligence, recklessness, and

willful and wanton behavior, Plaintiffs have suffered damages.

87. Defendant has acted willfully, wantonly, and in reckless disregard for Plaintiffs' rights in its failure to properly manage hazardous materials and stormwater on its property, and continues to act in callous disregard to Plaintiffs' rights and property interests, entitling Plaintiffs to recover punitive damages from Defendant.

**FOR A SIXTH CAUSE OF ACTION
Negligence Per Se - Stormwater Statute and Ordinance**

88. Every allegation hereinabove is incorporated as if set forth verbatim.

89. In conducting unpermitted and improperly managed land disturbance, clearing and grading activities, Defendant violated the South Carolina Stormwater Management and Sediment and Reduction Act, SC Code Ann. § 48-14-10 *et seq.*, and Lexington County Ordinance #06-10, Stormwater Management. The essential purposes of the statutes and ordinance are to protect the environment from harm caused by stormwater as a result of improperly conducted and unpermitted land disturbance activities.

90. Plaintiffs are members of the class of persons the statute and ordinance were intended to protect.

91. Defendants' violations of this statute and ordinance has proximately caused and continues to cause harm to Plaintiffs' property.

92. As a result of Defendant's violations of this statute and ordinance, Plaintiffs have suffered damages and are entitled to recover from Defendant.

93. Defendant has acted and continues to act willfully, wantonly, and in reckless disregard for Plaintiffs' rights in its violation of this statute and ordinance, and Plaintiffs are entitled to recover punitive damages from Defendant.

FOR A SEVENTH CAUSE OF ACTION
Negligence Per Se – South Carolina Junkyard Control Act

94. Every allegation is incorporated as if set forth verbatim.

95. The South Carolina legislature implemented SC Code Ann. § 57-27-10, *et seq.*, the “Junkyard Control Act” and set out the essential purpose of the statute as a means to “promote the public safety, health, welfare, convenience, and travel enjoyment, to protect the public investment in highways, the scenic beauty of lands bordering public highways, and to promote the conservation of our natural mineral resources by encouraging the recycling of resalable scrap iron and metal.” SC Code §57-27-30, *Declaration of Purpose*.

96. Defendant, at Copart Operations Area 1 and 2, uses its property at these locations, as an “automobile graveyard” as that term is defined at SC Code § 57-27-20(b), to store, buy, and sell, wrecked, salvaged, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

97. A portion of Defendant’s facility at Copart Operations Area 1 is within 1000 feet of a portion of the nearest edge of the right-of-way of Highway 321, a connected main highway, officially designated by the Department of Transportation, and approved by appropriate authority, pursuant to Title 23 of the United States Code.

98. A portion of Defendant’s facility at Copart Operations Area 2 is within 1000 feet of a portion of the nearest edge of the right-of-way of Interstate 26, a connected main highway, officially designated by the Department of Transportation, and approved by appropriate authority, pursuant to Title 23 of the United States Code.

99. By not having a permit to establish, operate, or maintain its junkyards at Copart Operations Area 1 or 2 pursuant to SC Code § 57-27-45, Defendant is in violation of the South Carolina Junkyard Control Act. Defendant knows or should know of its obligations under this

law.

100. Plaintiffs are in the class of persons the statute is designed to protect. Plaintiffs' properties are nearby and substantially affected by Copart Operations Area 1 and 2. Plaintiffs utilize Highway 321 and Interstate 26 on a nearly daily basis for various professional and personal purposes. These roads represent Plaintiffs' primary route of travel from their homes for practically any purpose. Additionally, Plaintiff Strickland, is historically and presently engaged in the regular business of recycling computer components from a home office on his aforementioned property.

101. Defendant's violation of this statute has directly and proximately caused harm to Plaintiffs.

102. As a result of Copart's violation of this statute and ordinance, Plaintiffs have suffered damages and are entitled to recover from Copart.

103. Copart has acted and continues to act willfully, wantonly, and in reckless disregard for Plaintiffs' rights in its violation of this statute and ordinance, and Plaintiffs are entitled to recover punitive damages from Copart.

FOR AN EIGHTH CAUSE OF ACTION
Nuisance

104. Every allegation is incorporated as if set forth verbatim.

105. Defendant's improper control of stormwater discharge from its property, laden with soil, sediment, and harmful and toxic chemicals, resulting in the harms described above, constitutes a substantial and unreasonable interference with Plaintiffs' use and enjoyment of their properties.

106. Defendant knew or should have known of the existence of this nuisance, but have taken no steps to abate the harms suffered by Plaintiffs.

107. Plaintiffs have suffered damages as the proximate result of Defendant's improper management of hazardous materials and stormwater discharges.

108. Defendant's activities constitute a past, present and ongoing nuisance. Plaintiffs are entitled to recover actual damages as a result of Defendant's nuisance.

109. Plaintiffs are further entitled to injunctive relief, together with punitive damages as a result of Defendant's past, present and continuing willful, wanton and reckless disregard for the rights of the Plaintiffs.

**FOR A NINTH CAUSE OF ACTION
Permanent Injunction**

110. Every allegation is incorporated as if set forth verbatim.

111. Plaintiffs will suffer irreparable harm if Copart is not enjoined to take action to prevent further damage to Plaintiffs' properties and to repair the existing damage so as to restore the properties to their former conditions.

112. Copart's continuous activities and omissions have and continue to cause damages to Plaintiffs' properties for which there is no adequate remedy at law.

113. The harm that would be suffered by Plaintiffs if Copart is not so enjoined outweighs any harm that would be suffered by Copart as a result of any such injunction.

114. Plaintiffs are therefore entitled to a permanent injunction requiring Copart to take action to prevent further damage to Plaintiffs' properties and to repair the existing damage so as to restore their respective properties to their former conditions.

**FOR A TENTH CAUSE OF ACTION
Trespass and Continuing Trespass**

115. Every allegation hereinabove is incorporated as if set forth verbatim.

116. Plaintiffs are in legal possession of their properties.

117. Defendant has made a voluntary entry or caused harmful material to enter and flow onto Plaintiffs' properties by permitting its improperly controlled stormwater, laden with soil, sediment, chemicals and other pollutants, to be discharged onto Plaintiffs' properties.

118. This entry was without Plaintiffs' permission. Defendant's actions constitute a trespass and continuing trespass by encroachment of water, sediment, and other matter onto Plaintiffs' property.

119. Defendant knew or should have known that their activities in failing to properly manage their industrial and land disturbance activities in close proximity to Plaintiffs' property would, to a substantial certainty, result in the discharge of stormwater laden with soil, sediment, and harmful chemicals onto the property of Plaintiffs.

120. Defendant have known of the existence of these trespasses, but have taken no effective steps to abate the flow of stormwater laden with soil, sediment, and harmful chemicals onto Plaintiffs' properties during and after any major rainfall event.

121. Defendant has acted and continues to act willfully, wantonly, and in reckless disregard for Plaintiffs' rights in discharging improperly controlled stormwater, laden with soil, sediment, and harmful chemicals onto Plaintiffs' properties entitling Plaintiffs to the recovery of punitive damages from Copart.

WHEREFORE, having complained of Defendant, Plaintiffs pray the Court enter judgment awarding them all available and appropriate relief, including:

(a) Actual damages, including incidental and consequential damages, in an amount to be determined by a jury;

(b) Punitive damages in an amount to be determined by a jury intended to punish the Defendant for its willful, wanton and reckless conduct, and to deter it from acting in such a

manner to harm Plaintiffs or others;

(c) Injunctive relief;

(d) Fine and penalties, for past, current, and continuous violations of RCRA and the CWA, payable to the United States Treasury;

(e) Attorneys' fees and costs of litigation; and,

(f) For such other and further relief as the court may deem just and proper.

s/ Ian T. Duggan

Richard C. Detwiler, Attorney No. 510
Ian T. Duggan, Attorney No. 12670
CALLISON TIGHE ROBINSON, LLC
P.O. Box 1390

1812 Lincoln Street, First Floor (29201)
Columbia, South Carolina 29202

Phone: 803-404-6900

Fax: 803-404-6900

rickdetwiler@callisontighe.com

ianduggan@callisontighe.com

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

March 9, 2018

JURY TRIAL DEMANDED