

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

CENTER FOR BIOLOGICAL
DIVERSITY, TAMPA BAY
WATERKEEPER, SUNCOAST
WATERKEEPER, MANASOTA-88, *and*
OUR CHILDREN'S EARTH
FOUNDATION,

Plaintiffs,

v.

GOVERNOR RON DeSANTIS,

and

SHAWN HAMILTON, *in his official capacity*
as ACTING SECRETARY, FLORIDA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

and

HRK HOLDINGS, LLC,

and

MANATEE COUNTY PORT
AUTHORITY,

Defendants.

Case No. 8:21-cv-1521

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. For decades, Defendants have known that the Piney Point Phosphate Facility (“Piney Point”) threatens imminent and substantial endangerment to Floridians’

lives, health, and environment. Described as a “ticking time bomb” by Senator
COMPLAINT

Case No. 8:21-cv-1521

Marco Rubio, the wastewater infrastructure at Piney Point is inadequate and incapable of treating all the wastewater and stormwater accumulating at the site; the impoundments (sometimes referred to as “reservoirs”) retaining hundreds of millions of gallons of wastewater are leaking and are at risk of further catastrophic failure; and the single, inadequate plastic liner overlaying the hazardous phosphogypsum stacks is tearing, cracking, ripping, and failing, creating direct pathways for dredged material from the Port Manatee Berth 12 expansion project and precipitation to leach beneath the liner, where it mixes and combines with radioactive and toxic waste.

2. Defendants correctly predicted that the impoundments at Piney Point could not safely retain anticipated precipitation and stormwater. Nevertheless, Defendants took no corrective action to redress this known risk. As such, in April 2021, Defendants chose to discharge at least 215 million gallons of untreated, hazardous wastewater directly into Tampa Bay. As of the filing of this complaint, that nutrient-laden pollution has triggered the beginnings of a harmful algae bloom with associated fish kills, putting Tampa Bay, neighboring waterways, and all Floridians that make use of these impacted waterways in jeopardy.

3. Defendants’ malfeasance must stop. Plaintiffs are public interest organizations focused on securing and safeguarding Floridians’ health and the environment. They bring this lawsuit to ensure Piney Point is operated and closed in a manner that complies with the Resource Conservation and Recovery Act and abates the present

imminent and substantial endangerment to human health and the environment, including endangered species such as manatees and sea turtles.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972(a). This Court also has jurisdiction under 28 U.S.C. § 1331 (federal question).

5. As required by RCRA, 42 U.S.C. § 6972(b)(2)(A), Plaintiffs provided pre-suit notice of their intent to sue on Defendants via Registered Mail, return receipt requested. That notice was served on May 17, 2021. A copy of Plaintiffs’ Notice of Intent to Sue is attached hereto as Exhibit A.

6. Pursuant to 42 U.S.C. § 6972(b), Plaintiffs bring this suit prior to expiration of the statutory 90-day notice period. *Id.* (“No action may be commenced under subsection (a)(1)(B) of this section prior to ninety days after the plaintiff has given notice of the endangerment...except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter.”). Plaintiffs allege herein that Defendants’ actions and omissions at Piney Point have caused solid and otherwise exempt¹ hazardous waste to mix and comingle, creating a new material that satisfies the

¹ Pursuant to the “Bevill” amendment, phosphogypsum stacks and related process wastewater are typically exempt from RCRA’s hazardous waste regulations. *See* 40 C.F.R. § 261.4(b)(7)(D). Defendants’ actions and omissions at Piney Point, as alleged herein, vitiate that exemption.

statutory and regulatory definitions of hazardous waste.

7. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

8. Venue is proper in this district under 42 U.S.C. § 6972(a) because the alleged violations occurred in the United States District Court for the Middle District of Florida. Piney Point is located at 13300 Highway 41 North, Palmetto, FL 34221.

9. Neither the United States Environmental Protection Agency nor the State of Florida has commenced an action concerning Piney Point under RCRA, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9604, incurred costs to initiate a Remedial Investigation and Feasibility Study under Section 104 of the CERCLA, or obtained a court order or issued an administrative order under Section 106 of CERCLA. *See* 42 U.S.C. § 6972(b)(2)(B) & (C).

III. PARTIES

Plaintiffs

10. Plaintiffs are not-for-profit, public interest organizations whose members who live, work, and recreate in the State of Florida. Plaintiffs share similar interests in improving, protecting, and preserving regional water bodies and groundwater.

11. Plaintiff Center for Biological Diversity (the “Center”) is a national, not-for-profit conservation organization with offices throughout the United States. The

Center has more than 84,000 members nationwide, and thousands in Florida, with many living near and recreating in Tampa Bay. The Center is dedicated to the protection of native species and their habitats through science, policy, and law. The Center has an office in St. Petersburg, Florida.

12. The Center and its members are directly injured and harmed by Defendants' violations of RCRA. The Center has members that live, work, and recreate in proximity of Piney Point. These members also make use of the waterways and natural areas in proximity to Piney Point for recreational, aesthetic, and related purposes. These members' aesthetic, recreational, and other constitutionally-protected interests are injured by Defendants' actions and omissions at Piney Point.

- a. For instance, the Center has two members who routinely recreate in Tampa Bay and its wild areas, and know first-hand how devastating a harmful algae bloom can be for these fragile ecosystems. These members are long-term volunteers for Tampa Bay's National Wildlife Refuges, something they do for recreational enjoyment and in furtherance of their after-retirement professional pursuits. They have a deep appreciation for Tampa Bay and the diverse wildlife that inhabits it. They conduct monthly bird inventories for the Refuges and have together donated in excess of 15,000 hours of time protecting and preserving these critical places for Tampa Bay. They are significantly

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.