

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MICHELLE IRIZARRY, VALERIE
WILLIAMS, JOANNE NIXON, JOANN
ROBINSON, and BRANDON LITT,

Plaintiffs,

v.

CASE NO: 6:19-cv-268-Orl-37TBS

ORLANDO UTILITIES COMMISSION;
LENNAR CORPORATION; LENNAR
HOMES, LLC; U.S. HOME
CORPORATION; AVALON PARK
GROUP MANAGEMENT, INC., D/B/A
AVALON PARK GROUP; BEAT KAHLI;
BORAL RESOURCES, LLC; and
PREFERRED MATERIALS, INC.,

Defendants.

AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, Michelle Irizarry, Valerie Williams, Joanne Nixon, Joann Robinson, and Brandon Litt, in their individual capacities and on behalf of classes of similarly situated individuals defined herein, bring this action against the Orlando Utilities Commission; Lennar Corporation; Lennar Homes, LLC; U.S. Home Corporation; Avalon Park Group Management, Inc., d/b/a Avalon Park Group; Beat Kahli; Boral Resources, LLC; and Preferred Materials, Inc. In support of this action, Plaintiffs allege the following:

INTRODUCTION

1. This case is brought by Michelle Irizarry, Valerie Williams, Joanne Nixon, Joann Robinson, and Brandon Litt on behalf of themselves and on behalf of a class and subclasses of individuals with properties located in a defined area within the southeastern corner of Orlando (“Class Area”¹), arising from contamination of their properties by airborne particles that were contained in coal dust and coal combustion residuals, including fly-ash, bottom ash, brine concentrator and crystalline solids, FGD sludge , as well as harmful organic compounds, radionuclides (such as uranium, polonium and lead), and metals. These contaminants have been, and continue to be, blown through the Class Area from ash handling operations, ash piles, and activities associated with the treatment, storage, distribution, and disposal of coal ash from other off-site sources, and the use of haul roads to transport coal ash at the two coal-fired energy generation units at the Curtis H. Stanton Energy Center (the “Stanton Power Plant”), which is owned and operated by the Defendant Orlando Utilities Commission (“OUC”), as well as at the landfills and property associated with those activities.

2. In addition to the airborne dissemination of contaminants contained in coal dust and ash from the Stanton Power Plant, plaintiffs are informed and believe that contaminants from the Stanton Power Plant also have been discharged in the Class Area in other ways, including in concrete and other construction materials used in developing homes and communities throughout the Class Area, through emissions associated with the

¹ A diagram of the approximate boundary of the Class Area, which was defined by soil sampling and laboratory analysis, modeling procedures of the Environmental Protection Agency, and the power plant’s own monitoring data is attached for illustrative purposes only as **Exhibit A**.

transportation of fly ash within the Class Area, and through airborne emissions associated with batching concrete containing contaminated fly ash at a concrete manufacturing plant located adjacent to the Stanton Power Plant.

3. Under Florida law, the OUC is strictly liable and subject to claims for inverse condemnation for damages to Plaintiffs' properties and the properties of the putative class members.

4. Particulates comprised of coal combustion residuals, coal dust, harmful organic compounds, radionuclides, and metals blowing from the Stanton Power Plant have contaminated the Plaintiffs' properties with carcinogenic radionuclides, including polonium, polyaromatic hydrocarbons such as Benzo(a)Pyrene ("BaP"), and metals in concentrations exceeding safe levels and Federal and Florida regulatory standards (collectively, radionuclides, BaP, and metals from the Stanton Power Plant are referred to as "Contaminants.")

5. Pediatric and younger adult central nervous system, blood, bone, and brain cancer rates in the Class Area drastically exceed National and Orange County levels.

6. Plaintiffs and members of the proposed class have been deprived of the fair use and enjoyment of their properties; the value of the properties owned by Plaintiffs and the members of the class has been damaged; and the properties need remediation to prevent additional future harms.

7. Plaintiffs also allege the developers and managers of the master-planned residential communities in the Class Area, including Lennar Corporation; Lennar Homes, LLC; U.S. Home Group; Avalon Park Group Management, Inc.; and the principal of

Avalon Park Group, Beat Kahli, (collectively referred to as “Developer Defendants”), planned, marketed, built, and managed residential neighborhoods close to the Stanton Power Plant without addressing the risks and harms posed by the Contaminants, and, on information and belief, spread contaminated ash-laden soil and caused the further airborne dispersion and deposition of contaminated coal ash and constructional materials containing contaminated coal ash through their construction activities. Therefore, the Developer Defendants are strictly liable for damages to the properties of the Plaintiffs and the putative subclass members.

8. Plaintiffs further allege that Boral Resources, LLC (“Boral”) and Preferred Materials, Inc. (“Preferred Materials”) are responsible for their roles in marketing, handling, managing, and distributing contaminated coal ash and products containing contaminated coal ash within the Class Area.

9. Under a series of long-term contracts with the OUC, Boral is responsible for managing the coal ash stored at the Stanton Power Plant, and also participates in a revenue-sharing arrangement with the OUC pursuant to which it uses the Stanton Power Plant as a distribution facility for coal ash generated at the Stanton Power Plant and other coal burning power plants. As part of its operations, Boral transports coal ash within the Class Area. Through its operations, Boral has caused discharges of contaminated coal ash within the Class Area.

10. Preferred Materials operates a concrete factory immediately outside the gates of the Stanton Power Plant at which coal ash from the Stanton Power Plant has been used to manufacture concrete used in construction within the Class Area, and, in doing so,

generates fugitive dust emissions containing contaminated coal ash and distributes concrete products containing contaminated coal ash. Substantial portions of Preferred Materials' concrete factory are devoted to handling, processing, and storing fly ash.

11. The suburban residential communities in the Class Area were touted by the Developer Defendants as carefully planned developments that would provide luxurious, yet affordable, neighborhoods in which families and children could safely live, work, and play.

12. There is a causal relationship between exposure to these Contaminants and cancer and other health impacts—especially in children and younger adults impacted by cancer that is common only in the elderly.

13. The danger of such exposure is borne out by an epidemiologic analysis and a site investigation, which found a correspondingly higher incidence of pediatric brain and blood cancers in the Class Area, including two exceedingly rare pediatric cancers—Diffuse Intrinsic Pontine Glioma and Ewing's Sarcoma—that occur repeatedly in the Class Area.

14. As a result of exposure to Contaminants from the Stanton Power Plant, children and adults residing in the Class Area face a heightened risk of contracting cancer and other diseases.

15. The only significant source of these Contaminants is the Stanton Power Plant, Boral and Preferred Materials. The Contaminants have a unique Contaminant fingerprint that can be attributed only to these sources.

16. For more than 15 years, samples of the groundwater beneath the Stanton Power Plant's coal combustion residual piles have consistently shown gross alpha radiation above regulatory and any background levels.

17. As there is no significant background source of gross alpha radiation beneath the Stanton Power Plant and surrounding community in the groundwater. The only source of gross alpha radiation in the groundwater is the radionuclides that have percolated down with precipitation from the coal combustion residual piles into the groundwater. It therefore follows that the source of the excessive levels of radionuclides within the Class Area is the ash piles and other handling activities at the Stanton Power Plant and the transport and use of coal ash by defendants within the Class Area.

18. Stanton Power Plant purchases coal from a coal basin that has one of the highest radionuclide concentrations in the United States.

19. Properties throughout the Class Area have been contaminated with hazardous, radioactive, and other cancer-causing substances due to the deposition of Contaminants from the Stanton Power Plant in the Class Area, causing damages to Plaintiffs and the putative class members.

PARTIES

Plaintiffs

20. Plaintiffs own property located in the Class Area.

21. Plaintiff Michelle Irizarry is a resident of Orange County, Florida. Plaintiff Irizarry owns property located within the Stoneybrook community in the Class Area at

14851 Hawksmoor Run Circle, Orlando, Florida. Plaintiff Irizarry is a putative class representative and subclass representative for the Stoneybrook subclass.

22. Plaintiff Valerie Williams is a resident of Orange County, Florida. Plaintiff Williams owns property located within the Stoneybrook community in the Class Area at 14701 Chadbury Court, Orlando, Florida. Plaintiff Williams is a putative class representative and subclass representative for the Stoneybrook subclass.

23. Plaintiff Joanne Nixon is a resident of Orange County, Florida. Plaintiff Nixon owns property located within the Eastwood community in the Class Area at 14136 Deljean Circle, Orlando, Florida, and within the Stoneybrook community in the Class Area at 14701 Chadbury Court, Orlando, Florida. Plaintiff Nixon is a putative class representative and subclass representative for the Stoneybrook subclass.

24. Plaintiff JoAnn Robinson is a resident of Orange County, Florida. Plaintiff Robinson owns property located within the Avalon Park community in the Class Area at 14162 Tanja King Blvd., Orlando, Florida. Plaintiff Robinson is a putative class representative and subclass representative for the Avalon Park Group subclass.

25. Plaintiff Brandon Litt is a resident of Orange County, Florida. Plaintiff Litt owns property located within the Storey Park community in the Class Area at 10842 Ellison Avenue, Orlando, Florida. Plaintiff Litt is a putative class representative and subclass representative for the Storey Park and Moss Park Subclass.

Defendants

26. The OUC is a municipally-owned public utility, governed by a five-member commission (including the Mayor of Orlando), that provides water and electric service to the citizens of Orlando, St. Cloud, and unincorporated areas of Orange County, Florida.

27. Established in 1923 by a special act of the Florida Legislature, the OUC is the second largest municipal utility in Florida and 14th largest municipal utility in the country.

28. Defendant Lennar Corporation (“Lennar”), a public company headquartered in Miami, Florida, is the parent of Defendants U.S. Home Corporation (“U.S. Home”) and Lennar Homes, LLC (“Lennar Homes”).

29. Defendant U.S. Home is a Delaware corporation that constructed homes in the Stoneybrook community, located in the Class Area.

30. Defendant Lennar Homes is a Florida limited liability company headquartered in Miami, Florida, that constructed homes in the Storey Park and Moss Park communities, located in the Class Area.

31. The principal address of Defendants Lennar, Lennar Homes, and U.S. Home is 700 N.W. 107th Avenue, Suite 400, Miami, FL 33172, and their registered agent is located at 1200 South Pine Island Rd., Suite 250, Plantation, FL 33324.

32. Lennar acquired U.S. Home in or around 2000 and was responsible for developing and managing the Stoneybrook East Community following the acquisition.

33. Until 2013, Lennar operated the homeowner’s association for the Stoneybrook community.

34. Avalon Park Group Management, Inc., which does business as Avalon Park Group, is a Florida corporation that marketed the master-planned Avalon Park development, and constructed homes in the Avalon Park community, located in the Class Area.

35. Avalon Park Group's registered agent is Marybel Defillo, 3680 Avalon Park East Blvd., Suite 300, Orlando, FL 32828, which is also the principal address of the corporation.

36. Defendant Beat Kahli is the President and CEO of Avalon Park Group and has been responsible for developing and marketing Avalon Park since the underlying land was acquired by his predecessor firm, Kahli & Associates, in or around 1995.

37. Upon information and belief, Mr. Kahli is a resident of Florida.

38. Defendant Boral Resources, LLC f/k/a Headwaters, Inc. f/k/a VFL Technology, Inc. ("Boral"), a Utah-based marketer of fly ash and coal combustion products, acquired Headwaters, Inc., which, in turn, had acquired VFL Technology, Inc., providing operations, maintenance, and marketing for the Stanton Power Plant's combustion residuals as well as fly ash originating from other plants that are transported to, stored at, and marketed from the Stanton Power Plant.

39. Boral touts itself as "America's Largest Coal Ash Manager and Marketer" on its web site, which is located at the flyash.com, <https://flyash.com/>. Boral is part of Boral North America, an operating division of Boral Ltd., a publicly traded company headquartered in North Sydney, Australia, and is a wholly owned subsidiary of Boral Ltd.

40. Boral's principal address is 10701 S. River Front Parkway, Suite 300, South Jordan, UT 84095. Its registered agent is located at 1200 S. Pine Island Road, Plantation, FL 33324.

41. Defendant Preferred Materials, Inc., operates a concrete batch plant at 4001 S. Alafaya Trail, Orlando, FL 32831, immediately north of the gate to the Stanton Power Plant, and less than half a mile from Avalon Middle School and homes in the surrounding community in Avalon Park. That concrete batch plant was previously owned by Defendant Beat Kahli.

42. On information and belief, Preferred Materials used Contaminant-laced fly ash from the Stanton Power Plant to manufacture concrete, which was used to develop homes and other buildings and communities in the Class Area, thereby contributing to the contamination of Plaintiffs' properties.

43. Additionally, on information and belief, airborne fugitive dust containing contaminants from the Stanton Power Plant has been discharged within the Class Area as a result of operations at the concrete batch plant.

44. Preferred Materials is part of CRH Americas Materials, an operating division of CRH PLC, an international building materials company headquartered in Dublin, Ireland, and is a wholly owned subsidiary of CRH.

45. Preferred Materials' principal address is 4000 Forsyth Road, Winter Park, FL 32792. Preferred Materials' registered agent is located at 4636 Scarborough Drive, Lutz, FL 33559.

JURISDICTION AND VENUE

46. Plaintiffs originally filed this action in the Circuit Court of Florida's Ninth Judicial Circuit, which has both subject matter jurisdiction over the issues and personal jurisdiction over the defendants.

47. Defendant OUC removed this action because Plaintiffs' allegations that their properties have been contaminated by radioactive materials from the Stanton Power Plant, including products from the radium decay chain, amount to allegations of property damage arising out of or resulting from a "nuclear incident" as defined by the Price-Anderson Act, 42 U.S.C. § 2210, *see* 42 U.S.C. § 2014(q), giving rise to concurrent jurisdiction upon the defendants' election to remove.

48. The Price-Anderson Act does not supplant state law—it requires that "the substantive rules for decision . . . be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of" the Act. *See* 42 U.S.C. § 2014(hh).

49. Florida law is consistent with the provisions of the Price-Anderson Act and, therefore, applies to this action.

50. Since Plaintiffs' allegations against all Defendants stem from property damage arising out of or resulting from a nuclear incident, all of Plaintiffs' claims against all Defendants fall within the Court's original jurisdiction under the Price-Anderson Act.

51. Venue is proper in this Court because the nuclear incident and resulting harmful contamination of Plaintiffs' properties, and the properties of the putative class members, occurred in Orange County, Florida.

52. Defendant OUC, as a municipally-owned public utility, is not covered by the Eleventh Amendment's immunity from federal suits provided to states and state officials in some circumstances.

FACTUAL ALLEGATIONS

53. The OUC, which bills itself as "*The Reliable One*," is the municipal utility responsible for providing electric, water, chilled water, and/or lighting services to more than 435,500 people in the Orlando area.

54. The OUC owns and operates the Stanton Power Plant, located in east Orange County twelve miles southeast of Orlando, which can generate more than 1,800 megawatts of electricity.

55. Although the Stanton Power Plant also includes two natural gas-fired energy generating units that are jointly owned and operated with the Southern Company, the portions of the Stanton Power Plant that are relevant to this case are No. 001 ("Unit No. 1") and No. 002 ("Unit No. 2"), two 468-megawatt coal-burning facilities and especially the coal combustion residual disposal facilities associated with those units.

56. Unit No. 1 consists of a Babcock and Wilcox boiler/steam generator (Model RB 611) and steam turbine, which drives a generator with a nameplate rating of 468 megawatts.

57. Unit No. 2 consists of a Babcock and Wilcox boiler/steam generator (Model RB 621) and steam turbine, which drives a generator with a nameplate rating of 468 megawatts.

58. Each boiler/steam generator is a wall-fired dry-bottom unit.

59. The foundation for Units No. 1 and 2's development lies in the late 1970s and early 1980s, when the OUC determined that its then-existing generating capacity could not satisfy future energy demands in the Orlando area.

60. The OUC's engineering consultants recommended that the OUC develop a new coal-fired plant in order to accommodate rapid projected growth in Orlando and transition from the volatile oil market to coal.

61. The OUC adopted their recommendation and began developing Units No. 1 and 2 of the Stanton Power Plant, which began commercial operations in 1987 and 1996, respectively.

62. In addition to operating Units No. 1 and 2, the OUC is also responsible for other relevant aspects of operations at the Stanton Power Plant, including transporting and offloading coal for use in Units 1 and 2, storage and handling of coal for use in Units 1 and 2, and storage, handling, and disposition of solid fuels, coal, coal ash, coal combustion residuals, limestone, gypsum, and slag used in or generated from Units 1 and 2.

63. The OUC is responsible to ensure that the power plant and its waste storage facilities comply with its site certification issued under the Power Plant Siting Act.

64. The OUC also owns, and in connection with Boral or one of its divisions or subsidiaries, operates a facility on the grounds of the Stanton Power Plant where it accepts and processes coal ash from other off-site power plants before such ash is either disposed of either on-site or off-site, or sold to the concrete batch plant located just outside the plant fence line at 4001 S. Alafaya Trail. This ash is shipped to and from the Stanton Power Plant in dusty and damaged trucks that travel through the Class Area.

65. The Stanton Power Plant is located at 5100 S. Alafaya Trail, Orlando, FL 32831, less than two miles south of the southern portion of the northern residential portion of the Class Area, in the Hal Scott Regional Preserve and Park. The flat wetland nature preserve lacks any impediments to prevent particulates from being carried from the plant onto the Class Area.

66. A wind-rose from the Orlando International Airport shows that wind blows from all directions, permitting Contaminants to be transmitted from the Stanton Power Plant to the residential properties in the Class Area on a nearly continuous basis, to the present day.

67. Besides the sources mentioned in this Complaint, there are no other industrial facilities near the Class Area that could be the source of Contaminants in the Class Area.

Contamination of the Class Area

68. Laboratory analysis of soil samples from the Class Area found Contaminants from coal ash and coal dust at levels exceeding regulatory standards, including polynuclear aromatic hydrocarbons (“PAHs”) such as BaP; heavy metals; and gross alpha and gross beta radiation from radionuclides including radium, polonium-210 and lead-210.

69. Soil samples from multiple properties within the Class Area, collected on separate occasions, contained PAHs such as BaP, metals such as copper, and radionuclides, at concentrations exceeding state and federal cleanup standards. Soil samples were collected from sod and/or topsoil brought into the Class Area from different sources and,

therefore, were free of any conceivable Contaminants from indigenous soil. Samples were also collected beneath downspouts from the roofs of residents' homes that also had to be free of any conceivable Contamination from indigenous soil. Therefore, the only source of Contamination in the Class Area could be from airborne deposition of particulates.

70. For uranium mining facilities, the U.S. EPA has established 5 picoCuries per gram (pCi/g) above the background level as the maximum allowable concentration of alpha radiation in soil.

71. The U.S. EPA and state environmental agencies consider these regulations to be "applicable or relevant and appropriate" cleanup standards at Superfund sites pursuant to 40 U.S.C. 9621(d). *See* the EPA document "Use of Soil Cleanup Criteria in 40 CFR Part 192 as Remediation Goals for CERCLA Sites."

72. The concentrations of gross alpha measured at the Site range up to 39.6 pCi/g in the top one inch of soil and from 6.61 to 18.2 pCi/g in a composite sample from the top 6 inches of soil, and alpha radiation from polonium exceeds 16pCi/g. The concentrations of gross beta in soil range up to 38.6 pCi/g in the top one inch of soil. All residences that were tested had detections of these radionuclides.

73. The Florida BaP soil remediation objective is 100 parts per billion (ppb), and the Federal cleanup objective is 110 ppb.

74. Concentrations of BaP in the Class Area in excess of federal and state cleanup standards ranged from 120 to 310 ppb.

75. The concentrations of many metals also exceed the U.S. EPA's Soil Screening Levels. *See* U.S. EPA Regional Screening Levels (RSLs) Generic Tables for Residential Land Use (November 2017).

76. The collected samples exceed Florida's regulations regarding Target Levels for Containment Cleanup as set forth in Chapter 62-777 of the Florida Administrative Code.

77. Children are far more susceptible to alpha radiation than adults because of their lower body mass, rapidly developing cells, and more frequent contact with soil. However, younger adults exposed to Contaminants including radiation are also susceptible to cancers that normally strike only elderly populations.

78. Children in the Class Area were likely exposed to the Contaminants both before and after birth. Children exposed to Contaminants remain more susceptible to cancer throughout their lives. Numerous other health impacts are caused by exposure to the Contaminants found at the Class Area including behavioral and cognitive impacts.

79. PAHs, BaP, heavy metals, and radionuclides are an exclusive fingerprint of coal and coal combustion residuals.

80. The presence of these chemicals in the Class Area, individually or in combination, demonstrates there is no other entity that could have caused the presence of the Contaminants in the Class Area other than the Stanton Power Plant and the Defendants whose actions and omissions have caused Contaminants from the Stanton Power Plant to be present within the Class Area.

The Contaminants in the Class Area came from Stanton Energy Center

81. Coal contains naturally occurring radioactive materials consisting of uranium and its decay products, including radium and polonium, as well as organics including PAHs such as BaP, and metals.

82. Coal combustion residuals are the chemicals and materials remaining after coal is burned by power plants to produce electricity.

83. When coal is burned, ignitable compounds, which are largely organics, are converted into energy, *i.e.*, heat, which in turn boils water to create steam that powers the rotation of turbines and generates electricity.

84. The remainder of the coal, the ash, is comprised of less ignitable organics including BaP, metals, and radionuclides.

85. Burning coal's combustible materials creates a higher concentration of the naturally occurring radioactive materials in the coal combustion residuals to a concentration that is as much as 3 to 10 times higher than the concentrations in coal.

86. At the Stanton Power Plant, coal combustion residuals including and/or containing ash are trucked over open roads and dumped into uncovered piles.

87. Coal, which is also a source of PAHs including BaP, metals and radionuclides are also stored in open piles on the Stanton Power Plant.

88. Wind carries the coal and coal combustion particulates including ash from the piles, coal and ash handling equipment and haul roads over the flat surrounding nature preserve where they then settle onto the Class Area.

89. Air modeling of the Stanton Power Plant's air emissions from its coal combustion ash piles using the EPA's air dispersion modeling software referred to as "AERMOD," which incorporated results from the soil testing, and airborne particulate monitoring by the OUC and the Florida Department of Environmental Protection (FDEP), demonstrate that particulates from the Stanton Power Plant settle onto the Class Area, and that the source of those particulates is the Stanton Power Plant.

90. Samples of the groundwater beneath the Stanton Power Plant's coal combustion residual piles have consistently shown gross alpha radiation above FDEP Groundwater and Surface Water Clean-up Target Levels.

91. There is no significant background source of gross alpha in the groundwater.

92. The only source of gross alpha in the groundwater is radionuclides that have percolated down with precipitation from the coal combustion residual piles into the groundwater.

OUC and Boral Resources's Activities Cause the Contaminants' Dispersal

93. The Stanton Power Plant disposes of more coal combustion waste using an on-site surface impoundment than any other coal-fired electrical facility in the United States.

94. The Stanton Power Plant has a history of noncompliance with environmental regulations.

95. The OUC was aware that the Stanton Power Plant was releasing copious amounts of ash and coal dust into the environment.

96. As indicated in just a single excerpt from one of hundreds of pages of dust inspection reports, blowing dust was reported on more than 90% of the daily inspections.

97. Boral participates in nearly every aspect of the ash handling process at the OUC. At the January 2016 meeting of the OUC, Jan Aspuru, the Chief Operating Officer of the OUC, described the OUC's relationship with Boral (then Headwaters) as "unique," and stated that "the company has been integrated with OUC operations since SEC 1 went commercial." Aspuru further explained that Boral has "complete responsibility" for managing coal combustion residuals, which include fly ash, at the Stanton Power Plant, and that Boral is a "key part" of the OUC's plans to comply with its environmental obligations.

98. Under a series of long-term contracts with the OUC, Boral has marketed coal ash from the Stanton Power Plant and other coal-burning power plants to third parties, including for use in the manufacture of concrete. The OUC reported in January 2016 that, under those contracts, it expected a minimum of 60,000 tons of coal ash annually to be marketed to third parties and hauled from the Stanton Power Plant. Revenues generated by Boral's marketing of coal ash from the Stanton Power Plant are shared with the OUC.

99. As part of its comprehensive responsibilities relating to the management, storage, handling, and marketing of coal as at the Stanton Power Plant, Boral also makes daily inspections of blowing ash and dust. Boral has noted that nearly every day dust was observed coming from the haul roads and landfill.

100. While Boral Resources noted that water was applied to the dusting area, it obviously was not enough, since the dust blew from the site nearly every day it was inspected.

101. Below is a log for just a portion of 2017.

Date	Time	Is there any dust observed coming from roadways or landfill?	Was water applied to landfill?	Was water applied to roadways?	Was the sweeper truck operated on roadways?	If dust was observed, why was the sweeper truck or water truck NOT used?
05/05/2017	09:00	NO	NO	NO	NO	Rain
05/15/2017	09:00	YES	NO	YES	NO	
05/16/2017	09:30	YES	YES	YES	YES	
05/17/2017	09:00	YES	YES	YES	NO	
05/18/2017	09:30	YES	YES	YES	YES	
05/19/2017	09:30	YES	YES	YES	NO	
05/22/2017	09:00	YES	NO	NO	NO	Water truck down
05/23/2017	08:30	YES	NO	YES	YES	Water truck down
05/24/2017	10:00	YES	YES	YES	NO	
06/19/2017	13:00	YES	YES	YES	NO	
06/20/2017	09:00	YES	YES	YES	YES	
06/21/2017	09:30	YES	YES	YES	NO	
06/22/2017	08:30	YES	YES	YES	YES	
06/23/2017	08:00	YES	YES	YES	NO	
06/26/2017	10:00	YES	YES	YES	NO	
06/27/2017	10:30	NO	YES	YES	YES	
06/28/2017	08:30	YES	YES	YES	NO	
06/29/2017	-	YES	YES	YES	YES	
06/30/2017	-	YES	YES	YES	NO	
07/03/2017	08:30	YES	YES	YES	YES	
07/05/2017	09:30	YES	YES	YES	NO	
07/06/2017	09:00	YES	YES	YES	YES	
07/31/2017	09:00	YES	YES	YES	NO	
08/01/2017	08:30	YES	YES	YES	YES	
08/03/2017	09:00	YES	YES	YES	YES	
08/04/2017	09:30	YES	YES	YES	NO	
08/07/2017	09:00	YES	YES	YES	YES	
08/08/2017	10:00	YES	YES	YES	NO	
08/14/2017	09:40	YES	YES	YES	NO	
08/15/2017	10:00	YES	YES	YES	YES	
08/17/2017	09:00	YES	YES	YES	YES	
08/18/2017	08:30	YES	YES	YES	NO	
08/21/2017	09:00	YES	YES	YES	NO	
08/22/2017	09:00	YES	YES	YES	NO	
08/24/2017	09:00	YES	YES	YES	NO	
08/25/2017	08:45	YES	YES	YES	NO	
08/28/2017	09:30	YES	YES	YES	NO	
08/29/2017	09:00	YES	YES	YES	YES	
08/31/2017	09:30	YES	YES	YES	YES	
09/04/2017	10:00	YES	YES	YES	NO	
09/05/2017	09:00	YES	YES	YES	YES	
09/07/2017	09:00	YES	YES	YES	YES	

102. The Stanton Power Plant, in conjunction with Boral, also owns and operates a plant where ash is accepted from other off-site power plants, processed, and then disposed on-site or off-site or shipped to cement plants.

103. Trucks often carry ash through the Class Area and release ash into the residential community.

104. Boral and the OUC share revenue from this process.

105. Charged with handling the Stanton Power Plant's coal ash piles, Boral improperly operated the landfill, improperly filled the landfill, improperly conditioned the landfill and roads, and transported the coal combustion residuals in open trucks without covers, causing the coal ash components to escape into the atmosphere and contaminate Plaintiffs' properties and the properties in the Class Area.

106. Additionally, Boral marketed contaminated coal ash from the Stanton Power Plant for use in concrete and other construction materials and did not take adequate steps to warn purchasers of the contaminants contained in the coal ash or to ensure that constructional materials containing contaminated coal ash were not used in construction within the Class Area.

107. In addition to failing to adequately moisten the coal combustion residuals, the OUC and Boral Resources mishandled combustion waste in the Stanton Power Plant landfill by failing to (1) properly restrict active portions of the coal ash landfill to authorized levels; (2) cover coal ash to prevent air emissions; and (3) moisten coal combustion residuals to further prevent air emissions.

108. The OUC purchases coal for its Stanton Power Plant from the Illinois Basin, which has the highest radioactivity of any coal in the continental United States.

109. In 2004, OUC and CSX Transportation, Inc., entered into a 13-year term to transport approximately 2 million tons of coal annually from the Illinois Basin to the Stanton Power Plant.

110. A 1,000-megawatt coal-fired power plant that is not using the most radioactive coal in the United States could still generate more than 10 tons/yr. of radionuclides.

111. Fly ash from coal-fired power plants contains 100 times more radioactive material than the radionuclides discharged into the environment by a nuclear power generation facility of the same energy-producing capacity.

Developments at the Stanton Power Plant and in the Class Area

112. The OUC began developing its coal-burning operations at the Stanton Power Plant in the 1980's.

113. From the outset, the OUC knew that operating the Plant in a manner that would minimize pollution from coal dust, coal ash, and coal residuals was critically important.

114. In granting a permit for the development of the Stanton Power Plant and the project management plan prepared by the OUC's contractor, Black & Veatch, in 1982, the FDEP required that the OUC "minimize fugitive dust emissions from the coal storage and handling facilities" and ensure that "[a]ll conveyors and transfer points will be enclosed to preclude [particular matter] emissions," that "[i]nactive coal storage piles will be shaped,

compacted and oriented to minimize wind erosion,” use “[w]ater sprays or chemical wetting agents” to prevent pollution “as necessary,” and maintain a “fly ash handling system (including transfer and silo storage)” that was “totally enclosed and vented . . . through fabric filters.” Final Determination, OUC Stanton Energy Center Units 1 and 2, Orange County, Florida, Permit No. Federal- PSD-FL-084, Florida Dep’t of Environmental Protection, Bureau of Air Quality Management (May 14, 1982) at 8–9, *available at* <http://arm-permit2k.dep.state.fl.us/psd/0950137/0000D8F6.pdf>.

115. The Stanton Power Plant began coal-burning operations at Unit 1 in 1987 and at Unit 2 in 1996. But it did not determine the proper buffer of un-populated land needed to insulate the plant from development.

116. In the 1990s, real estate developers secured land for what ultimately became the suburban residential communities in the Class Area.

117. Even though these communities were built in the shadow of the Stanton Power Plant, neither the Stanton Power Plant nor the developers took steps to protect residents who bought homes in the Class Area from the Contaminants generated by the Stanton Power Plant, or take the actions needed to remediate the harms caused by the Contaminants and prevent future harms from the Contaminants.

118. Instead, the developers and the Stanton Power Plant have consistently provided residents of the Class Area with a false sense of security by promoting area communities as being safe for Class Area families.

119. Stoneybrook East was developed by U.S. Home Corp. in east Orange County in 1996.

120. Despite its location just four miles from the Stanton Power Plant, U.S. Home sought to attract a broad range of buyers by portraying the development as a prestigious golf course community offering condos, single-family homes, and paired villas.

121. After acquiring U.S. Home, Lennar remained involved in developing, promoting, and managing the Stoneybrook East community for many years, and continued to manage the homeowner's association for Stoneybrook East until 2013.

122. On information and belief, U.S. Home, Lennar, and their contractors have disseminated Contaminants from the Stanton Power Plant in developing Stoneybrook.

123. In developing Stoneybrook in the shadow of the Stanton Power Plant, U.S. Home and Lennar have not taken any steps to ensure that homes within Stoneybrook are not adversely impacted by contaminants from the Stanton Power Plant.

124. Eastwood was developed in 1992 and marketed as an affordable golf course community.

125. Although Eastwood is situated just five miles from the Stanton Power Plant, it was aggressively marketed to potential buyers and branded as "Homes for Tomorrow" with elaborate game and entertainment rooms, and garage workshops.

126. Eastwood had the highest volume of home sales among Orange, Osceola, and Seminole counties in the first half of 1998.

127. Storey Park is a master-planned community with approximately 2,700 home sites that Lennar and Lennar Homes began marketing in 2015, and that Lennar and Lennar Homes are continuing to develop, market, and manage.

128. Lennar and Lennar Homes market living in Storey Park as an opportunity to “bring a fairytale to life.”

129. Lennar Homes and Moss Park Properties, LLLP, acquired the land for the Moss Creek development in 2012, and are developing and marketing a master planned community in Moss Park that will include approximately 2,000 homes.

130. Both Storey Park and Moss Park are less than five miles south of the Stanton Power Plant, and, because of changing wind directions in the area, Contaminants contained in fly ash from the Stanton Power Plant are blown into those communities.

131. On information and belief, Lennar, Lennar Homes, and their contractors have disseminated Contaminants from the Stanton Power Plant in developing those communities.

132. In developing these communities in the shadow of the Stanton Power Plant, Lennar and Lennar Homes have not taken any steps to ensure that homes within those communities are not adversely impacted by contaminants from the Stanton Power Plant.

133. Storey Park was developed beginning in 2015 and is marketed as a “family-friendly community” where one could “bring a fairytale to life.”

134. While Storey Park is located less than five miles south of the Stanton Power Plant, with no structures or other communities in between Storey Park and the Stanton Power Plant, it was marketed to potential buyers as a “beautiful community...built on five pillars: Community, Nature, Health, Story and Home.” Moss Park, which likewise is located less than five miles south of the Stanton Power Plant and is currently in

development as a master-planned community of approximately 2,000 homes, also has been marketed as a safe community.

135. Beat Kahli, majority owner of the Avalon Park Group, marketed Avalon Park as a community designed to combat urban sprawl and offer affordable opportunities for families to live, work, and play.

136. The Avalon Park Group claims to have recreated the traditional neighborhood, woven together by a sense of community, in which doctors and lawyers live down the street from teachers and police officers, and Main Street is flanked by mom-and-pop businesses.

137. Kahli billed the development as “a city, a self-sustaining community,” which includes schools, shops, start-up businesses, and a state-of-the-art football stadium as its centerpiece.

138. Many of Avalon Park’s unique features were financed by Kahli himself, out of his own pocket, in order to stimulate the local economy and attract homebuyers, thereby increasing his own personal profit.

139. Despite acknowledging Avalon Park’s proximity to the Contaminant-spewing Stanton Power Plant, Kahli zealously pursued development and emphasized the neighborhood’s suitability for families and children.

140. Kahli engaged in this conduct on his own behalf as well as on behalf of Defendant Avalon Park Group.

141. On information and belief, Kahli, Avalon Park Group, and their contractors have disseminated Contaminants from the Stanton Power Plant in developing Avalon Park.

142. In developing Avalon Park in the shadow of the Stanton Power Plant, Kahli and Avalon Park Group have not taken any steps to ensure that homes within the community are not adversely impacted by contaminants from the Stanton Power Plant.

143. The Defendant Developers used conventional construction equipment to excavate and grade the land where the residences would come to be located causing ash-laden dust and Contaminants from the Stanton Power Plant to be dispersed throughout the developments.

144. On information and belief, the Defendant Developers have also used construction materials, including concrete, containing radioactive contaminants and other contaminants from the Stanton Power Plant in building homes in the communities.

145. At no time did any of the Developer Defendants warn residents of the hazards associated with pollution from the Stanton Power Plant, do anything to address the pollution that existed within these communities, or take measures to address the harms that resulted from that pollution.

Creation of Contaminated Concrete for Construction of Homes in the Class Area

146. Prestige AB Ready Mix is a concrete plant owned and operated by Defendant Preferred Materials. It is located at 4001 S. Alafaya Trail, Orlando, FL 32831, immediately north of the gates to the Stanton Power Plant and within half a mile of Avalon Middle School and homes in the surrounding community.

147. On information and belief, Defendant Preferred Materials manufactures concrete using Contaminant-laced fly ash from the Stanton Power Plant.

148. That contaminated concrete was used in the construction of homes and other buildings in the Class Area, causing rampant property contamination, and fugitive dust emissions from batching operations at the concrete plant itself further contributing to the discharge of Contaminant-laced fly ash from the Stanton Power Plant within the Class Area.

149. Prestige AB Ready Mix was formerly owned by Defendant Beat Kahli.

150. In 2007, Kahli sold Prestige AB Ready Mix to Brazilian conglomerate Hejoassu Administracao.

151. Hejoassu owned and operated Prestige AB Ready Mix through Votorantim Cement North America.

152. In 2017, Votorantim sold Prestige AB Ready Mix to CRH PLC, which spun off Prestige AB Ready Mix into a subsidiary, Defendant Preferred Materials, Inc., that is now part of the CRH Americas operating division of CRH PLC, an international building materials company headquartered in Dublin, Ireland that has approximately 85,000 employees worldwide and generated more than €26.7 billion in revenues last year.

153. Preferred Materials manufactures concrete from fly ash, and the Stanton Power Plant is a readily available source of coal ash for use in the operation of the Preferred Materials concrete plant on Alafaya Trail in Avalon Park.

154. The OUC sells approximately 180,000 tons of ash from the Stanton Power Plant for use in construction materials annually.

155. On information and belief, Prestige AB Ready Mix's operations caused fugitive dust emissions to spread throughout the Class Area. Preferred Materials uses fly

ash from the Stanton Power Plant to manufacture concrete used to construct homes and other buildings and hardscape fixtures in the Class Area, thereby contaminating Class Area properties.

The Class Area's Exposure to Coal Plant Emissions Is Life Threatening

156. The Contaminants have caused, and are continuing to cause, devastating harm to the health and property of residents in the Class Area.

157. There is a causal relationship between exposure to the Contaminants released from the Stanton Power Plant and various pathologies, including cancer—especially in children and younger adults.

158. The danger of such exposure is borne out by an epidemiologic analysis based on data from the Florida Cancer Disease Registry and a site investigation, which found a higher incidence of, for instance, pediatric brain and blood cancers including two exceedingly rare pediatric cancers that are causally associated with the Contaminants—Diffuse Intrinsic Pontine Glioma and Ewing's Sarcoma.

159. Although this proposed class action is not focused on individual personal injuries, the issues in the case do involve serious human health concerns.

160. An unusually high number of children residing in the Class Area have been stricken with cancer and a number of those children have died, and our investigation (including the opinions of experts in the relevant fields) indicates that those cancers resulted from exposure to Contaminants derived from the Stanton Power Plant.

161. Children are more vulnerable to exposures to coal-fired power plant emissions because of their prolonged time engaged in outdoor activities, greater air

consumption relative to lung mass and body weight, frequent mouth breathing (which allows for less filtering through nasal passages), and direct contact with contaminated soil.

162. Comprehensive studies of childhood brain tumors and other cancers report associations with particulate matter contained in both coal and coal combustion residuals.

163. The Class Area falls within the southern portions of the 32825 and 32828 zip codes, and includes the communities of Avalon Park, Stoneybrook, Eastwood, Cypress Springs, Andover Lakes/Cay, and Turnberry Pointe/Cay, as well as portions of the 32829 zip code, and northern portions of the 32832 zip code, including the Storey Park and Moss Park communities.

164. The Class Area contains in excess of 30,000 residents and more than 15,000 housing units.

165. One method for assessing the impact of environmental carcinogens on a community is to calculate the ratio of observed to expected cancer cases. This is referred to as the “cancer incidence ratio” or “CIR.”

166. In the 32828 Zip Code, the cancer incidence ratio for central nervous system cancer is **5 to 10 times higher** than the cancer incidence ratio in Orange County, Florida, and the United States.

167. The Florida Cancer Registry tracks the cancer incidence ratio by zip code.

168. Zip code 32828 accounted for 13% of the cancer in Orange County, but 32828’s population of 60,000 is only 5% of Orange County’s population of 1,200,000, making 32828’s pediatric cancer rate more than **3 times higher** than Orange County’s pediatric cancer rate.

169. Zip code 32828 accounted for 0.78% of the cancer in the State of Florida, but 32828's pediatric cancer rate is **3 times higher** than Florida's pediatric cancer rate.

170. The rate of Leukemia in males in 32828 was more than **twice as high** as the rate of Leukemia in Orange County.

171. The rate of brain and central nervous system cancer in males in 32828 was more than **twice as high** as the rate of brain and central nervous system cancer in Orange County.

172. The rate of neuroblastoma cancer in males in 32828 was nearly **5 times as high** as the rate of neuroblastoma cancer in Orange County.

173. Upon information and belief, a disproportionate number of these incidences of cancer occur in the Class Area, which has a population only one-third of the size of the population in the entire zip code of 32828, making it likely that the cancer incidence ratio in the Class Area is **far higher** than the incidence ratio for 32828 reported by the Florida Cancer Registry.

174. Due to the presence of the dangerous, cancer-causing Contaminants in the Class Area, the properties of Plaintiffs and the putative class members cannot be safely inhabited without remediation needed to abate the effects of the Contaminants and prevent future harm to residents of the Class Area.

175. At a minimum, soil and porous media at the residences should be removed to abate the risks to safe levels.

176. Plaintiffs seek damages on behalf of themselves and the putative class members in the form of damages for impairment of their property; remediation; economic

losses, such as loss of property value and the interference with the use and enjoyment of their property; and the prompt cleanup, excavation, treatment, and removal of radioactive wastes and related contaminants from their properties.

177. Contaminants generated by the Stanton Power Plant have damaged, and are continuing to damage, the properties owned by residents in the Class Area.

178. To protect the value of properties owned by Plaintiffs and members of the proposed class, and to prevent additional future harm from ongoing discharges of Contaminants from the Stanton Power Plant, the implementation of a comprehensive remediation plan is needed.

179. That plan would include, but not be limited to, changes to the OUC's methods for handling and storing coal and coal waste at the Stanton Power Plant to prevent pollution from the Contaminants; funding the replacement of soil, carpets, and furnishings polluted with Contaminants; and installing filtration systems to prevent future harms from the Contaminants.

180. All conditions precedent to this action have been met or waived.

**Radionuclides such as Polonium 210 emitting Gross Alpha and Gross Beta, ,
Contaminate the Class Area and Cause the Types of Cancer Found in the Class
Area**

181. Combustion of coal concentrates the radionuclides in the ash by a factor of 10.

182. Radionuclides contained in coal and fly ash emitting alpha radiation can include uranium, thorium, lead, polonium, and radium.

183. The carcinogenic effect of gross alpha radiation has been studied for more than 100 years and is one of the primary radiological emissions of nuclear accidents and nuclear weapons.

184. Such ionizing radiation, often manifested by the presence of gross alpha radiation, can cause cell death, chromosomal aberrations, DNA damage and replication errors, teratogenicity, mutagenesis, and cancer. Cells, tissues, and organisms respond to radiation in a manner that is not readily predicted by dose.

185. Persons exposed to increased levels of ionizing radiation have an increased risk of cancer, including bone cancer, brain cancer, and leukemia, and, later in life, breast and thyroid cancer.

186. There is a statistically significant 1.2- to 1.5-fold increased risk of childhood leukemia associated with various markers of air pollution from coal-fired power plants, including particulate matter.

187. A fetus can be exposed to radiation when the pregnant mother is exposed to radiation or breathes/swallows radioactive materials. The exposure of a fetus to radiation is referred to as prenatal radiation exposure. This can occur when the mother's abdomen is exposed to radiation from outside her body. Also, a pregnant woman who accidentally swallows or breathes in radioactive materials may absorb that substance into her bloodstream. From the mother's blood, radioactive materials may pass through the umbilical cord to the baby or concentrate in areas of the mother's body near the womb (such as the urinary bladder) and expose the fetus to radiation.

188. Unborn children are especially sensitive to the effects of higher-than-normal levels of ionizing radiation during early pregnancy, which increases the chance of brain abnormalities.

189. Fetal exposure to radiation has also been associated with severe mental retardation, the frequency and severity of which are related to the magnitude of the radiation dose.

190. The risk of breast cancer increases in women who were exposed to radiation during childhood.

191. Irradiation in childhood can also cause an enlarged thymus, enlarged tonsils, tinea capitis, acne, and an increased risk for thyroid cancer.

192. Diseases attributable to ionizing radiation (i.e., gross alpha) include, but are not limited to:

- a. Cancers of the bile ducts, bone, brain, breast, colon, esophagus, gallbladder, liver, lung, pancreas, pharynx, ovary, salivary gland, small intestine, stomach, thyroid, urinary tract;
- b. Leukemia;
- c. Lymphomas;
- d. Multiple myeloma; and
- e. Tumors of the brain and central nervous system.

193. Ionizing radiation adheres to and even penetrates porous materials such as fabric, soil, plants, wood, concrete, furniture, clothing, and equipment, often requiring complete replacement of an object to eliminate the radiation.

194. Based on 2018 sampling of air-borne particulates that had deposited on the lawns and roofs in the Class Area, Polonium-210 (chemical symbol Po-210) and gross alpha and beta contamination contaminates the Class Area.

195. In one sample collected 3.7 miles from the Stanton Power Plant, Polonium-210 was detected at a concentration of greater than 16 pCi/g—three times higher than U.S.EPA's benchmark for gross alpha radiation of 5 piC/g above background, which is based on the far less toxic radon and radium.

196. The International Agency for Research on Cancer has designated Polonium-210 a Group 1 Human Carcinogen.

197. The long-term, lifespan-shortening effects of polonium are comparable to plutonium, and five times greater than uranium and radium.

198. A single alpha particle of polonium is toxic at the cellular level, and alpha particles can cause double-strand chromosomal breaks and chromosomal translocations that can lead to cancer.

199. Polonium-210 is a product of the radioactive decay of natural radium 226 and uranium (U-238), which is found in coal.

200. Uranium-238 was also detected in particulates collected from the Class Area.

201. The presence of Polonium-210 in significant concentrations, as present in the Class Area, is exceedingly rare in nature.

202. Coal combustion releases substantial concentrations of Polonium-210 and its precursors.

203. Polonium-210 in the Class Area can be attributed only to coal combustion waste generated at the Stanton Power Plant.

204. Polonium-210 released during coal combustion and through improper waste disposal can be carried very far and inhaled deeply into the lungs.

205. Polonium-210 has a physical half-life of approximately 148 days and a biological half-life of approximately 50 days.

206. Physical half-life is defined as the amount of time required for one-half of the radioactivity to be lost due to decay, whereas biological half-life is defined as the time required to eliminate one-half of the substance retained by the body.

207. The time needed for Polonium-210 to disintegrate into the next radioactive isotope can be considerably longer than its half-life.

208. Polonium-210 enters the body through inhalation, ingestion, and through orifices, skin abrasions, and wounds.

209. Polonium-210 binds strongly to hemoglobin and plasma proteins and is not filtered by the kidneys.

210. Since Polonium-210 is being emitted from the continuous burning of coal by the Stanton Power Plant, the residents of the Class Area have been exposed on a continuous basis.

211. When there is a situation involving continuous intake, more Polonium-210 is retained due to chronic dosage exposure as opposed to acute dosage exposure.

212. Substantial doses of radiation are delivered to individual cells by a single alpha particle, no matter how low the dose, to the whole body.

213. Alpha particles can cause double-strand chromosomal breaks and chromosomal translocations, which can lead to cancer.

214. Once it enters the body, Polonium-210 becomes concentrated in red blood cells before spreading to the liver, kidneys, bone marrow, gastrointestinal tract, testicles or ovaries, and other organs.

215. Substantial radiation doses from polonium can be expected in many tissues of the body.

216. Bone marrow tissue is particularly susceptible to Polonium-210 because it creates the blood cells.

217. The impact of Polonium-210 on children would be especially severe because their cell multiplication rate is extremely high, and the impacts in the fetal and post-partum phases would be widely distributed and have long-term adverse consequences.

218. Polonium-210 accumulates in the ovaries, the yolk sac of the embryo, and in the placental and fetal tissues.

219. Polonium-210 can cross the placental barrier and accumulate in and irradiate the fetal tissue.

220. Alpha emitters can induce DNA lesions in stem cells resulting in the transmission of chromosomal instability to their progeny, and even a single alpha particle can induce long-term chromosomal instability leading to cancer.

221. As a result, even low-level exposure to Polonium-210 can have long-term biological effects by damaging early life phase critical cells and causing DNA alterations that can lead to cancer.

222. Leukemia in children is known to originate in the fetus, as demonstrated by the presence of cells with leukemia clone-specific mutations present at birth in children who later contract the disease.

223. Chromosomal translocation is a hallmark of childhood leukemias.

224. There is a significant increase in bone tumors following exposure to radiation.

225. As a result, Polonium-210 can cause an increased incidence of lymphomas and soft-tissue and malignant-bone tumors, such as Ewing's Sarcoma, which is a cancerous tumor that grows in bones and the soft tissue around bones.

226. The incidence ratio of Ewing's Sarcoma, an extremely rare form of cancer that occurs primarily in children and young adults, is approximately **9 times higher** than the rate expected for the Class Area.

227. While this cancer normally appears in only 1.7 children younger than 15, out of a million, in the Class Area there are new cases of Ewing's Sarcoma occurring every few years.

228. There is an association between ionizing radiation and heightened risk of brain and central nervous system tumors, including gliomas. Diffuse intrinsic pontine glioma (DIPG) is a highly aggressive and difficult-to-treat glioma found at the base of the brain.

229. Approximately 200 to 300 children in the U.S. are diagnosed with DIPG each year, but the incidence of this cancer in the Class Area is more than **5 to 7 times higher** than the expected rate.

PAHs, Including BaP, Contaminate the Class Area and Cause the Types of Cancer Found in the Class Area

230. PAH exposure can cause cellular disruption, damage, mutations, and cancer.

231. Benzo(a)pyrene (BaP) is one of the most carcinogenic PAHs.

232. PAH exposure causes increased risk of skin, lung, bladder, and gastrointestinal cancers.

233. PAH exposure creates an increased risk of childhood brain cancer.

234. Paternal preconception PAH exposure is associated with increased risks of childhood brain tumors.

235. Transplacental exposure to BaP from maternal inhalation can produce DNA damage in the developing fetus, which can lead to cancer, low birth weight, and birth defects.

236. There is an increased risk of childhood brain cancer associated with PAH and BaP exposure.

237. Air pollution affects fetal development and can continue to affect humans after birth and throughout their lives.

238. A child can be exposed to BaP and radionuclides both while in the womb (after a pregnant woman breathes polluted air or particulate matter, which passes to the placenta via the bloodstream) and after birth.

239. Adults are also placed at increased risk of cancer by exposure to PAHs and BaP.

240. PAHs can cause harmful effects to the skin, body fluids, and immune system after both short- and long-term exposure.

241. Under the EPA's Guidelines for Carcinogen Risk Assessment (U.S. EPA, 2005), BaP is "carcinogenic to humans" based on strong and consistent evidence in animals and humans. The Department of Health and Human Services has determined that benz[a]anthracene, benzo[b]fluoranthene, benzo[j]fluoranthene, benzo[k]fluoranthene, benzo[a]pyrene, dibenz[a,h]anthracene, and indeno[1,2,3-c,d]pyrene are known animal carcinogens. The International Agency for Research on Cancer has determined the following: benz[a]anthracene and benzo[a]pyrene are probably carcinogenic to humans; benzo[b]fluoranthene, benzo[j]fluoranthene, benzo[k]fluoranthene, and indeno[1,2,3-c,d]pyrene are possibly carcinogenic to humans; and anthracene, benzo[g,h,i]perylene, benzo[e]pyrene, chrysene, fluoranthene, fluorine, phenanthrene, and pyrene are not classifiable as to their carcinogenicity to humans. The EPA has determined that benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, chrysene, dibenz[a,h]anthracene, and indeno[1,2,3-c,d]pyrene are probable human carcinogens.

242. Prenatal PAH exposure increases the risk of medulloblastoma.

243. Paternal preconception exposure to PAHs increases the risk of childhood brain tumors.

**Metals Contaminate the Class Area and Cause the
Types of Cancer Found in the Class Area**

244. Copper and other metals from the Stanton Power Plant have extensively contaminated the Class Area.

245. Copper, lead, cadmium, mercury, and arsenic are the primary metals found in coal that also threaten human health.

246. Metals pose a risk of neurological damage to adults and, in particular, to fetuses.

247. Children are especially susceptible to metal exposure due to their frequency of mouthing behavior and high gastrointestinal uptake.

248. Cadmium exposure at low levels can cause children adverse health effects, including kidney damage and bone damage.

249. Copper was detected in soil in the Class Area at 2,200 milligrams per kilogram (“mg/kg”), far above Florida’s remedial objective of 310 mg/kg.

250. Copper exposure is a cause of sarcomas and can feed the growth of tumors.

CLASS ALLEGATIONS

251. Plaintiffs bring this class pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of themselves and all others similarly situated.

252. Plaintiffs seek to certify the following class, defined as:

The record title holders and owners as of the date of class certification of all privately-owned parcels of land that are contaminated by coal combustion residuals from the Curtis H. Stanton Energy Center and which are generally located within a 5.5-mile radius of the plant. Such properties are located in the 32825, 32828, 32832, and 32829 mailing zip codes in unincorporated Orange County, Florida and include the residential communities generally known as Avalon Park, Stoneybrook, Eastwood, Cypress Springs, Andover Lakes/Cay, Turnberry Pointe/Cay, Storey Park, and Moss Park. **Exhibit A**, which is included for illustration purposes only, depicts the approximate Class Area boundary based upon current data.

253. Plaintiffs also seek to certify the following subclasses, defined as:

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- a. Stoneybrook subclass—*all class members who own property in Stoneybrook and within the Class Area that was built or marketed by Defendant U.S. Home or Defendant Lennar or that was managed as part of the Stoneybrook homeowner’s association operated by Lennar until 2013.*
- b. Avalon Park Group subclass—*all class members who own property within the Class Area that is part of the Avalon Park master-planned community.*
- c. Storey Park and Moss Park subclass – *all class members who own property in Storey Park or Moss Park and within the Class Area that was built or marketed by Defendant Lennar Homes or Defendant Lennar.*

To the extent revealed by discovery and investigation, there may be additional appropriate classes and/or subclasses from the above class definitions that are broader and/or narrower in time or scope of exposure.

254. Excluded from the proposed class and subclasses are Defendants’ officers, directors, agents, employees, and members of their immediate families; the judicial officers to whom this case is assigned, their staff, and the members of their immediate families; and any local, state, or federal governmental entities.

255. This Court may maintain these claims as a Class Action pursuant to Federal Rule of Civil Procedure 23 as they satisfy the numerosity, commonality, typicality, adequacy, and superiority requirements, and share a well-defined community of interest in the questions of law and fact involved in this matter.

256. *Numerosity.* The proposed class numbers in the thousands, and each of the proposed subclasses numbers in at least the hundreds. There are thousands of residential housing units in the Class Area, and there are hundreds of housing units in each of the subdivisions covered by the proposed subclasses.

257. *Commonality*. There are common questions of law and fact that affect the rights of every member of the putative class. The same conduct by Defendants OUC, Boral Resources, and Preferred Materials has injured every member of the putative class, and the same conduct by Defendants Lennar, Lennar Homes, U.S. Home, Avalon Park Group, and Beat Kahli, has injured every member of their respective subclasses.

258. *Typicality*. Plaintiffs are members of the putative class and subclasses. The claims asserted by Plaintiffs in this action are typical of the claims of the members of the putative class and subclasses, as the claims arise from the same course of conduct by the Defendants, and the relief sought is common. Plaintiffs and each putative class member have suffered damages to their properties as a result of the Contaminants from the Stanton Power Plant blowing onto the Class Area.

259. *Adequacy*. Plaintiffs will fairly and adequately represent and protect the interests of the members of the putative class and subclasses as their interests are coincident with, not antagonistic to, the other class and subclass members. Plaintiffs have retained counsel competent and experienced in both environmental and class action litigation.

260. *Superiority*. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Questions of law and/or fact common to the putative class and subclasses include, but are not limited to:

- a. Whether the Stanton Power Plant discharged (or caused any other condition of pollution) a hazardous substance into the land or water on or under the Class Area;

- b. Whether the OUC, Boral Resources, Preferred Materials, and/or Developer Defendants are strictly liable for the discharge of a hazardous substance into the land or water on or under the Class Area;
 - c. Whether the OUC, Boral Resources, Preferred Materials, and/or Developer Defendants are strictly liable for the contamination on, in, or around the Class Area under Florida Statute § 376.313;
 - d. Whether the OUC, Boral Resources, Preferred Materials, and/or Developer Defendants, through their acts or omissions, proximately caused property damage, diminution of property values, cleanup costs, and health risks due to radioactive materials and related Contaminants deposited, released, or abandoned in the Class Area;
 - e. Whether the OUC, Boral Resources, Preferred Materials, and/or Developer Defendants, through their acts or omissions, deprived class members of the free and reasonable use and enjoyment of their properties due to the contamination of properties in the Class Area; and
 - f. Whether class members have suffered damages, including but not limited to property and economic damages, as a result of the conduct of the OUC, Boral Resources, Preferred Materials, and/or Developer Defendants.
261. These questions of law and/or fact are common to the class and subclasses and predominate over any questions affecting only individual class members.
262. A class action is an appropriate method for the adjudication of the controversy in that it will permit a large number of claims to be resolved in a single forum

simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense, and the burden on the courts that individual actions would create.

263. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of the class action.

Applicable Law

264. The Price-Anderson Act, which vests subject matter jurisdiction in this court, 42 U.S.C. § 2210(n)(2), provides that “the substantive rules for decision” in actions asserting property damage arising out of or resulting from a nuclear incident “shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent” with the Act.

265. The alleged nuclear incident took place in Florida, and Florida Statute § 376.313, which creates a private cause of action “for all damages resulting from a discharge or other condition of pollution covered by [Florida Statutes] ss. 376.30-376.317,” is consistent with the Price-Anderson Act.

266. Florida Statute § 376.313, therefore, supplies the substantive rule for decision in this case.

COUNT I—STRICT LIABILITY UNDER FLORIDA STATUTE
§ 376.313 AGAINST THE OUC

267. Plaintiffs reallege and reaffirm herein the allegations contained in paragraphs 1 - 266.

268. The OUC's wrongful acts and omissions in releasing and discharging (or other conditions of pollution) toxic pollutants, hazardous substances, and other Contaminants onto the lands and water of the state of Florida in general, and the Class Area in particular violated various environmental statutes in the State of Florida, including, but not limited to, the following:

- a. Discharging (or other condition of pollution) of any pollutants or hazardous substances into or upon land (or water) in violation of Florida Statute § 376.302(1)(a); and
- b. Failure to immediately remediate, contain, remove, and abate the discharges in violation of Florida Statute § 376.305(1).

269. Plaintiffs are each a "person" who may bring a cause of action for damages for such violations under Florida Statute § 376.313.

270. Defendant is a "person" who may be liable for violations under Florida Statute § 376.313. Florida Stat. § 376.301 defines "person" to include "any governmental entity."

271. Plaintiffs and the class members have been damaged by the OUC's discharge of hazardous substances onto their land and property, as those terms are defined in Florida Statutes §§ 376.30 – 376.319.

272. The OUC is strictly liable for damages to Plaintiffs and the class members resulting from such discharges (or other conditions of pollution) covered by Florida Statutes §§ 376.30 – 376.319, and Plaintiffs and the class members are not required to plead or prove negligence in any form or manner, pursuant to Florida Statute § 376.313, because

it is sufficient to plead and prove, as set forth in various paragraphs above, that the prohibited discharges or other polluting conditions occurred.

273. The OUC's acts and omissions violate numerous FDEP standards as well as other state and federal standards adopted by the FDEP, including, but not limited to:

- a. Florida Administrative Code 62-777, Contaminant Cleanup Target Goals;
- b. Florida Administrative Code 62-780, Contaminated Site Cleanup Goals;
- c. Florida Administrative Code regulations pertaining to the disposal of radioactive waste, including, but not limited to: 64E-5.333, Classification and Characteristics of Low-Level Radioactive Waste for Near-Surface Land Disposal, Labeling and Manifest Requirements; 64E-5.334 General Provisions; 64E-5.335 Records of Radiation Protection Programs; 64E-5.336 Records of Surveys; 64E-5.339 Records of Individual Monitoring Results; 64E-5.340 Records of Waste Disposal or Transfers; 64E-5.344 Notification of Incidents; 64E-5.345 Reports of Exposures, Radiation Levels, Concentrations of Radioactive Material Exceeding the Constraints or Limits, Medical Events and Dose to an Embryo/Fetus or a Nursing Child; and 64E-5.347, Notifications and Reports to Individuals;
- d. Florida Administrative Code 62-296.320(4)(c)(1), General Pollutant Emission Limiting Standards, General Particulate Emission Limiting Standards for Unconfined Emissions of Particulate Matter;
- e. U.S. EPA Regulation of solid and hazardous waste, 40 C.F.R Parts 239-280;

- f. Disposal of coal combustion residuals from electric utilities, promulgated pursuant to 42 U.S.C. 6907(a), 6944(a), 6945(a);
- g. 40 C.F.R. 257—Subpart D—Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments, including without limitation, § 257.80(a); and
- h. United States Nuclear Regulatory Commission, 10 CFR, Part 61 – Licensing Requirements for Land Disposal of Radioactive Waste.

274. The OUC's wrongful acts and omissions in releasing and discharging (or other conditions of pollution) toxic pollutants, hazardous substances, and other Contaminants onto the lands and water of the state of Florida in general, and the Class Area in particular, were not authorized pursuant to Chapter 403, Florida Statutes, under which the FDEP may prescribe conditions for the operations and maintenance of electric power plants.

OUC committed acts and omissions that were not authorized by the Florida Department of Environmental Protection, the Power Plant Siting Act, or any other state or federal regulation

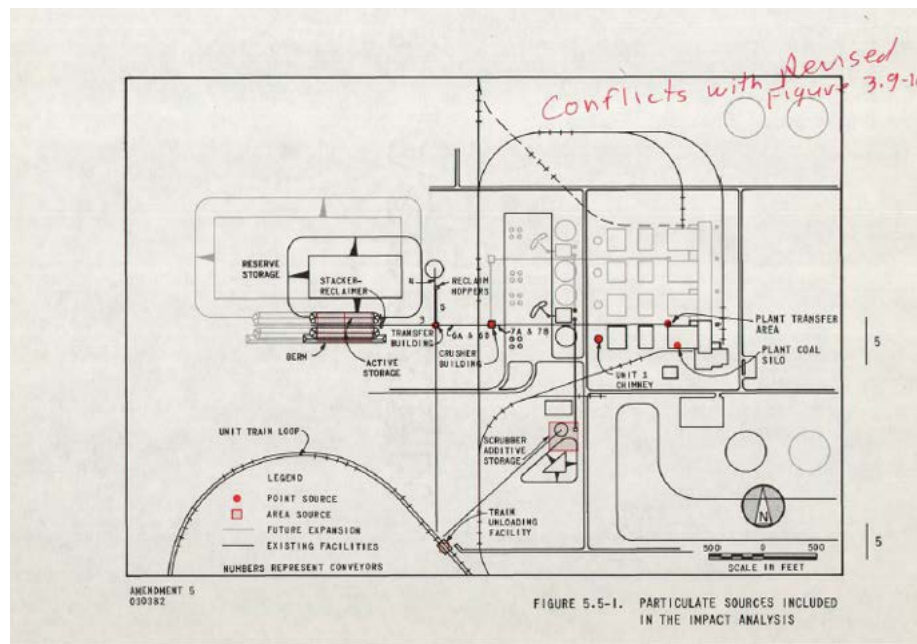
275. The OUC engaged in conduct unauthorized by Chapter 403 by either obtaining an invalid certification of the Stanton Power Plant, breaching the Stanton Power Plant's conditions of certification or violating federal law (which Chapter 403 could not have authorized).

276. The OUC obtained invalid certification of the Stanton Power Plant by misrepresenting the nature and extent of the health and safety risks stemming from the Stanton Power Plant's coal ash, or failing to disclose them at all.

277. When applying for certification of Unit No.1, the OUC was required to make a full and complete disclosure of all sources of fugitive dust emissions. *See Florida Statute § 403.5175(2)(c).*

278. In its 1982 application for certification, the OUC failed to list its coal ash landfill as a source of fugitive dust emissions associated with the Plant's operation, modeling or analyzing only fugitive dust from "the train unloading facility, transfer building, crusher building, plant transfer area, plant coal silo, active coal pile, and limestone pile."²

279. Indeed, the OUC failed even to include its coal ash landfill in a map of particulate sources it presented to the FDEP:



² Orlando Utilities Commission, Curtis H. Stanton Energy Center Unit 1 Site Certification Application at 5.5-2, available at http://publicfiles.dep.state.fl.us/Siting/Outgoing/Web/Stanton/Applications/Stanton_Modified_Unit_1_SC_A.pdf.

280. By neglecting to disclose the nature and extent of its coal ash landfill's fugitive dust emissions, the OUC failed to obtain a valid certification.

281. Further, the OUC obtained invalid certification of the Stanton Power Plant by misrepresenting its operations to the FDEP in its Best Available Control Technology Determination (BACTD), which it submitted to Florida before obtaining certification.

282. In documents attached to its BACTD, the OUC purported to evaluate cancer risks arising from the Stanton Power Plant.³

283. The OUC represented that the coal ash stored in its landfill posed "minimal" health and safety risks because the landfill provided a "natural earthen buffer to radioactivity."⁴

284. Yet, because the OUC left most of the coal ash in its landfill exposed to the elements, *see, e.g., infra* ¶ 297, the OUC offered no "natural earthen buffer to radioactivity" to protect the public, and therefore grossly understated the cancer risks stemming from the Stanton Power Plant.

285. In its BACTD, the OUC further represented that the cancer risks emanating from its coal ash landfill were slight because "[t]hese landfill areas are not the sort of areas frequented by the public."⁵ Even if that were true when the OUC submitted its BACTD in 1981, the OUC neglected to update its safety protocol accordingly once the residential

³ Orlando Utilities Commission, Best Available Control Technology Determination (Aug. 25, 1981) at 50–51 (available at [https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=view&\[guid\]=75.18170.1](https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=view&[guid]=75.18170.1)).

⁴ *Id.* at 51.

⁵ Best Available Control Technology Determination at 51.

communities developed around the Plant and the population surrounding the Plant proliferated.

286. In addition to obtaining invalid certification by misrepresenting material facts to the FDEP, the OUC's misconduct is unauthorized by Chapter 403 of the Florida Statutes because it violated key components of the OUC's landfill management plan.

287. Pursuant to the landfill management plan under which the OUC operated for decades, the OUC was authorized to dispose of ash only under the following conditions:

- a. "The landfill area will be developed as a series of small areas; that is, only small portions of the site will be developed/filled at any one time."⁶
- b. "Prior to commencing disposal operations, an area of approximately 10 acres will be prepared."⁷
- c. "The location of the brine concentrate disposal area will change each time it is brought to the landfill to insure the overall landfill stability by not concentrating the brine material in a specific area."⁸
- d. "[A]s the landfill achieves final grade, OUC will prepare an enhanced mix of fixated material to use as cap material . . . which should improve the permeability of the top layer of the fixated FGD material to less than 5 x 10⁻⁶ cm/seconds."⁹

⁶ Conversion Systems, Inc., Management Plan for the Combustion Waste Storage Area of Orlando (March 1987) at 28, available at <https://depdms.dep.state.fl.us/Oculus/servlet/shell?command=view&%5bguid=8.172345.1%5d>.

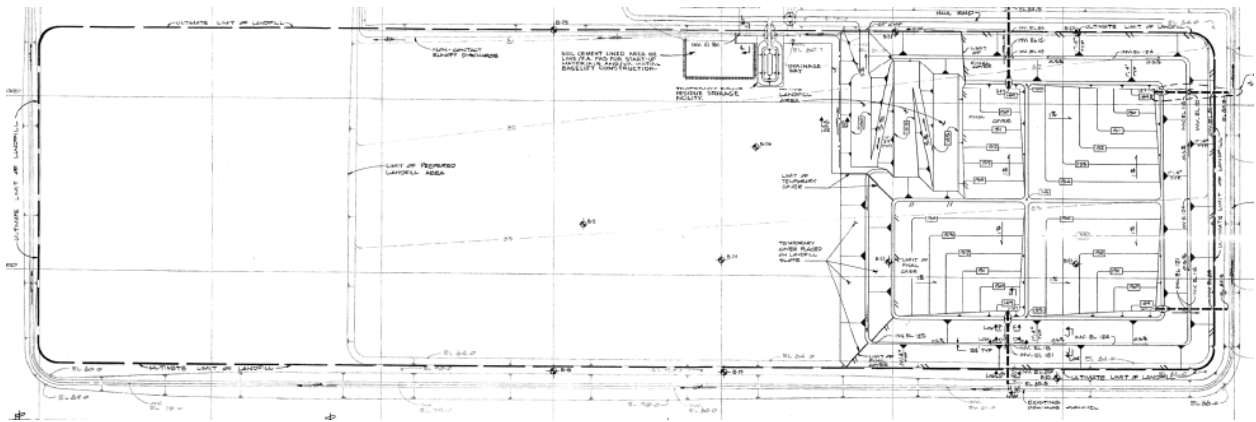
⁷ *Id.*

⁸ *Id.* at 22.

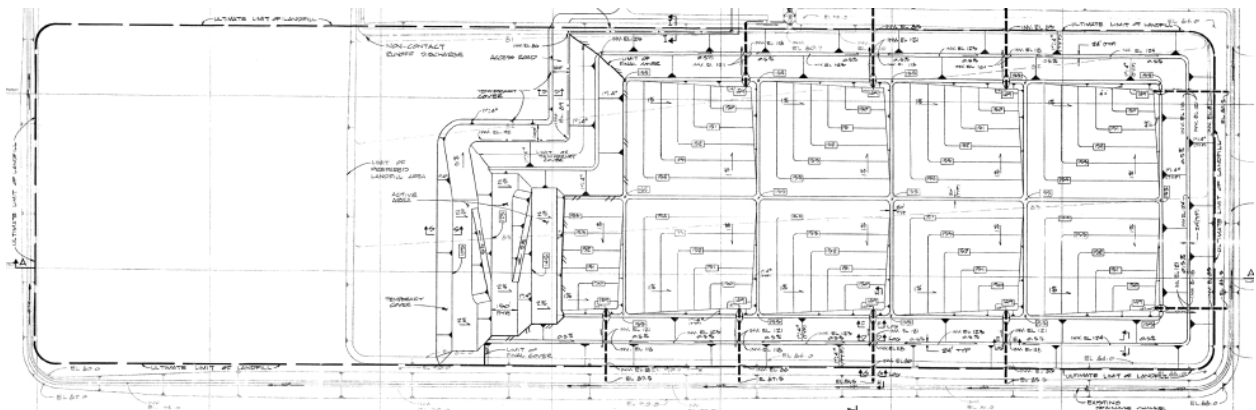
⁹ *Id.* at 34.

e. “[C]ontinuous planning, site preparation, temporary covers and site closure work must be done to assure an efficient and environmentally acceptable disposal operation.”¹⁰

288. Thus, the OUC was obligated to fill its coal ash landfill only incrementally while continuously placing temporary and final covers over inactive areas, as demonstrated in the following diagrams:



Landfill Management Plan: Phase 1¹¹

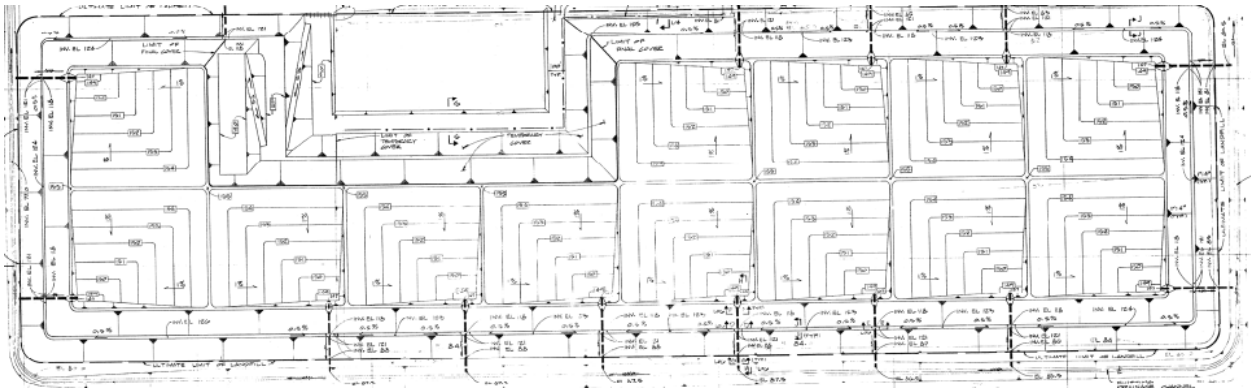


Landfill Management Plan: Phase 2¹²

¹⁰ *Id.*

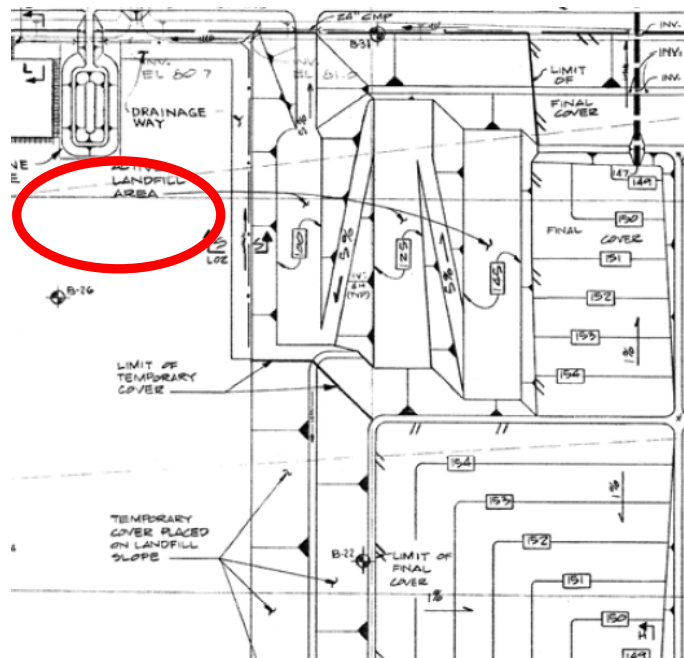
¹¹ Florida Department of Environmental Protection, Curtis H. Stanton Energy Center Conditions of Certification (Aug. 30, 2017) at 222, available at http://publicfiles.dep.state.fl.us/Siting/Outgoing/Web/Certification/pa81_14_2017_M.pdf.

¹² *Id.* at 223.



Landfill Management Plan: Phase 3¹³

289. Close examination of the OUC’s landfill management plan further demonstrates that only a small fraction of the landfill was authorized to serve as an “active landfill area,” with continuous placement of temporary and final covers.



Detail of Landfill Management Plan: Phase 2 (“Active Landfill Area” Emphasized in Red)¹⁴

¹³ *Id.* at 224.

¹⁴ *Id.* at 223.

290. The OUC violated those conditions, thereby engaging in conduct unauthorized under Chapter 403 of the Florida Statutes. Indeed, the OUC conceded that “the actual sequence of landfilling operations differed from the original [Conversion Systems, Inc.] management plan.”¹⁵

291. The OUC and Boral Resources appear to have haphazardly placed the ash with little regard for the management plan.¹⁶

292. On November 1, 2011, the FDEP approved an amendment to OUC’s Combustion Waste Management Plan regarding the method of depositing coal combustion residuals in OUC’s landfill.¹⁷ That amendment is incorporated into the OUC’s site certification.¹⁸

293. That management plan updated in 2011 did not alter the 1987 management plan’s cell-based filling operations.¹⁹ That plan required the OUC to divide the landfill into 16 cells of approximately 12 acres,²⁰ and the 2011 management plan kept the requirement that the OUC develop the landfill cell-by-cell.²¹

¹⁵ Orlando Utilities Commission, Landfill Operation and Maintenance Plan (Feb. 3, 2017) at 5, available at http://publicfiles.dep.state.fl.us/Siting/Outgoing/Web/Certification/append_81_14_M/Attachment_H_Ops_Maintenance_Plan_SW.pdf.

¹⁶ OUC’s May 5, 2011 Updated Management Plan at Appendix 4, available at [https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=view&\[guid\]=8.112444.1](https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=view&[guid]=8.112444.1).

¹⁷ November 1, 2011 correspondence from the FDEP to the OUC, available at [https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=view&\[guid\]=8.128843.1](https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=view&[guid]=8.128843.1).

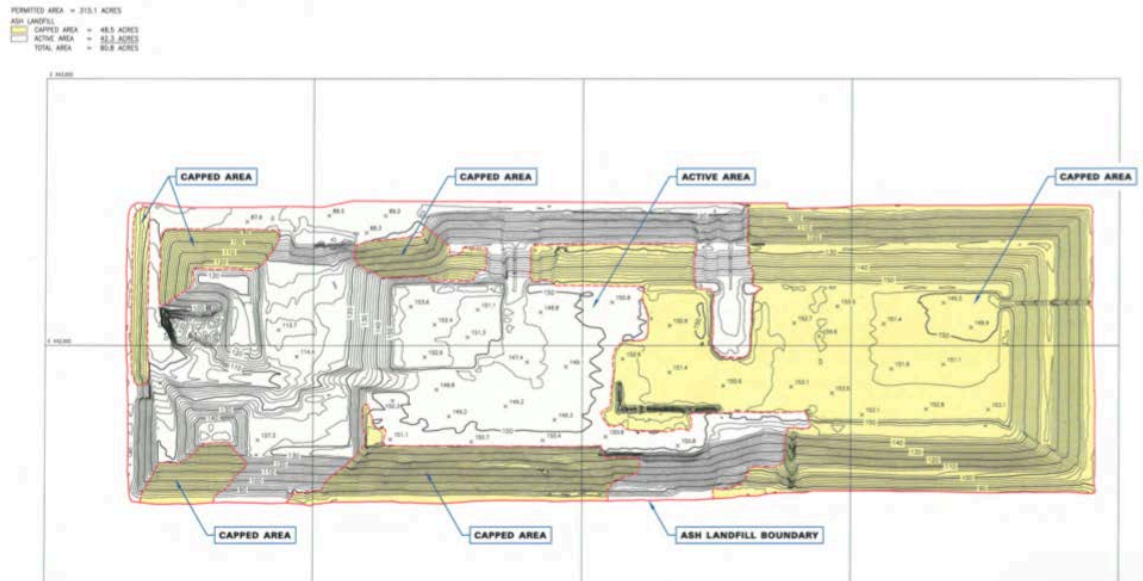
¹⁸ See April 8, 2011 correspondence from the FDEP to the OUC, available at [https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=view&\[guid\]=8.111943.1](https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=view&[guid]=8.111943.1).

¹⁹ OUC’s May 5, 2011 Updated Management Plan at 3, available at [https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=view&\[guid\]=8.112444.1](https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=view&[guid]=8.112444.1).

²⁰ *Id.*

²¹ *Id.* at 19 (“The proposed sequence for the vertical expansion starts at the top of the southernmost cell and proceed generally from the southernmost cell to the northernmost cell and, within each cell, from areas with higher to lower final elevations, so as to maintain drainage.”).

294. The OUC kept more of its landfill active than authorized by the FDEP in the various management plans. In 2010, the OUC listed 42.3 acres out of 90.8 acres—more than 45 percent—of the landfill as an “active area.”²² The figure below derives from a 2010 survey of the landfill’s topography:



*Active Area of the Landfill in White (2010)*²³

295. By filling nearly half of its landfill at a time, the OUC violated the condition that it develop “only small portions of the site . . . at any one time.”²⁴

296. The OUC’s failure to develop only small portions of the site at any one time caused unauthorized fugitive dust emissions.

²² January 19, 2011 proposed Updated Management Plan at Appendix 3.

²³ *Id.*

²⁴ Conversion Systems Inc. Management Plan at 28.

297. Second, the OUC failed to cover inactive portions of its landfill. The aerial image below vividly illustrates OUC's unauthorized failure to fill "only small portions" of its landfill, coupled with its unauthorized failure to cover inactive landfill areas:



25

298. Third, the OUC failed to distribute brine concentrate throughout the landfill, applying it only in discrete locations instead. Until the late 1990s, the OUC applied brine concentrate to only the "third and fourth cells" of the landfill, jeopardizing the landfill's stability and permeability and violating the OUC's 1987 landfill management plan.²⁶

299. Finally, the OUC's misconduct is unauthorized under Chapter 403 of the Florida Statutes because it violates federal law, and thus could not have been authorized by the FDEP.

300. The FDEP cannot authorize a permittee to engage in conduct prohibited by federal law.

²⁵ October 2012 aerial image of the Stanton Power Plant's coal ash landfill on Google Earth Pro

²⁶ Landfill Operation and Maintenance Plan at 13.

301. The U.S. EPA requires that operators of coal combustion residual (“CCR”) landfills formulate a fugitive dust control plan, under which they must “wet[] CCR with water to a moisture content that will prevent wind dispersal.” 40 C.F.R. § 257.80.

302. The OUC’s fugitive dust control plan, however, grants employees discretion to “determine if there is a need to apply water as a dust suppressant or to remove material from paved roadways with a sweeper,” but only “when visible emissions are observed.”²⁷

303. Thus, rather than requiring constant moistening to “prevent wind dispersal,” as required by EPA regulations, the OUC instructed employees merely to “determine” whether to moisten coal combustion residuals (or stir them up with a sweeper) *only after* they were airborne. By flouting its obligation to preempt wind dispersal of coal combustion residuals, the OUC violated federal law while severely jeopardizing human health and safety.

304. Worse still, OUC policy required employees to moisten coal combustion residuals only “until areas [were] observed to be sufficiently free of fugitive emissions.”²⁸ Again, rather than preempt dust emissions, the OUC moistened coal combustion residuals only when and while emissions were already occurring. The FDEP could not have authorized such reckless disregard for human safety (and federal law).

305. Plaintiffs’ allegations target the OUC’s misconduct that is unauthorized under Chapter 403 of the Florida Statutes.

²⁷ Landfill Operation and Maintenance Plan at 119.

²⁸ *Id.* at 120.

**Florida has waived sovereign immunity for actions arising
under Florida Statutes § 376.313**

306. The OUC's conduct as set forth in this Count is not subject to sovereign immunity protection. Florida has waived sovereign immunity for actions based on violations of Chapter 376, Florida Statutes, by explicitly authorizing actions against "any governmental entity." *See, e.g.*, Florida Statutes § 376.301(29) ("Person' means . . . any governmental entity."); § 376.302 (creating liability for any *person* in violation of the statute); § 376.305 (requiring any *person* discharging a pollutant in violation of statutory scheme to remediate condition); *see also Bifulco v. Patient Bus. & Fin. Services, Inc.*, 39 So. 3d 1255, 1258 (Fla. 2010) (holding Florida legislature intended to waive sovereign immunity in actions brought under § 440.205, Florida Statutes, as demonstrated by its explicit creation of statutory action that allowed for claim against State and its subdivisions). This waiver of immunity is further demonstrated by the express limitation of defenses available under § 376.313 to only those specified in § 376.308, which does not include a sovereign immunity defense. *See* § 376.313(3) ("The only defenses to such cause of action [brought under § 376.30-376.317] shall be those specified in s. 376.308."); § 378.308 (listing various defenses, but not including sovereign immunity among them). Under § 376.308, a defendant may assert a governmental action as a defense only by showing that the claim is based on "acts of other governmental bodies"; in specifying that defendant governmental bodies can assert a defense based on the actions of "other governmental bodies," the Legislature clearly contemplated, and chose not to waive, any defense based on a governmental body defendant's own actions. Here, Plaintiffs' claims

against the OUC are based on the acts and omissions of the OUC, not those of another governmental body.

COUNT II—INVERSE CONDEMNATION AGAINST THE OUC

307. Plaintiffs reallege and reaffirm herein the allegations contained in paragraphs 1 - 266.

308. Inverse condemnation is a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency.

309. The OUC has taken in fact the property of Plaintiffs and the class members in the Class Area by, as set forth above, discharging (or other condition of pollution) pollutants or hazardous substances into or upon land or water in the Class Area, and/or failing to remediate, contain, remove, and abate the discharges, thereby rendering the properties uninhabitable.

310. This taking of the property of Plaintiffs and the class members in the Class Area was without just compensation in violation of Article X, section 6(a) of the Florida Constitution.

311. The OUC's conduct as set forth in this Count is not subject to sovereign immunity because "sovereign immunity will not bar a claim against the State based on violations of the state or federal constitution." *Fla. Fish & Wildlife Conservation Comm'n v. Daws*, 256 So. 3d 907, 912 (Fla. Dist. Ct. App. 2018); *rev. denied*, No. SC18-1565, 2018 WL 6605838 (Fla. Dec. 17, 2018).

COUNT III— STRICT LIABILITY UNDER FLORIDA STATUTE
§ 376.313 AGAINST LENNAR

312. Plaintiffs reallege and reaffirm herein the allegations contained in paragraphs 1 - 266.

313. Plaintiffs are all persons entitled to bring actions under Florida Statute § 376.313. Under § 376.313, Lennar, as a developer, builder, or marketer of the Stoneybrook neighborhood in Avalon Park, the Storey Park neighborhood, and the Moss Park neighborhood, is strictly liable for the damages caused by all “conditions of pollution” in the Stoneybrook Subclass Area and in the Storey Park and Moss Park Subclass Area.

314. The Contaminants contained in the soil and within the homes in the Stoneybrook Subclass Area and in the Storey Park and Moss Park Subclass Area are “pollution” within the meaning of Florida Statute § 376.301(37).

315. In developing the Stoneybrook, Storey Park, and Moss Park neighborhoods, Lennar engaged in activities that constituted a “discharge” of pollution in the Stoneybrook Subclass Area and the Storey Park and Moss Park Subclass Area within the meaning of Florida Stat. § 376.313, and that resulted in a “condition of pollution” within the Stoneybrook Subclass Area and the Storey Park and Moss Park Subclass Area.

316. Those activities included grading and spreading fill and dust, transporting, or contracting for the transportation of, dirt, fill, and constructional materials containing Contaminants from the Stanton Power Plant for use in developing the communities and in building homes within the Stoneybrook Subclass Area and the Storey Park and Moss Park

Subclass Area, and collaborating with developers and building contractors for the completion of those activities.

317. The only defenses to a claim under Florida Statute § 376.313 are those set forth in Florida Statute §376.308. Defendant Lennar cannot meet its burden of establishing any of the defenses available under Florida Statute § 376.308, including any defense based on the fact that the Contaminants were generated by the Stanton Power Plant. Lennar cannot show that the “conditions of pollution” at homes in the Stoneybrook Subclass Area and Storey Park and Moss Park Subclass Area resulted solely from the actions of the OUC because Lennar developed, built, and marketed homes despite the existence of Contaminants and did not take adequate steps to prevent homes from being exposed to the Contaminants.

318. Plaintiffs and the subclass members have sustained damages resulting from the “conditions of pollution” on their land, as that term is defined in Florida Statutes §§ 376.30 –376.319.

319. Lennar is strictly liable for damages to Plaintiffs and the subclass members resulting from such “conditions of pollution” covered by Florida Statutes §§ 376.30 – 376.319, and Plaintiffs and the subclass members are not required to plead or prove negligence in any form or manner, pursuant to Florida Statute § 376.313, because it is sufficient to plead and prove, as set forth in various paragraphs above, that the prohibited discharges or other polluting conditions occurred.

COUNT III— STRICT LIABILITY UNDER FLORIDA STATUTE
§ 376.313 AGAINST LENNAR HOMES

320. Plaintiffs reallege and reaffirm herein the allegations contained in paragraphs 1 - 266.

321. Plaintiffs are all persons entitled to bring actions under Florida Statute § 376.313. Under § 376.313, Lennar Homes, as a developer, builder, or marketer of the Storey Park and Moss Park neighborhoods, is strictly liable for the damages caused by all “conditions of pollution” in the Storey Park and Moss Park Subclass Area.

322. The Contaminants contained in the soil and within the homes in the Storey Park and Moss Park Subclass Area are “pollution” within the meaning of Florida Statute § 376.301(37).

323. In developing the Storey Park and Moss Park neighborhoods, Lennar Homes engaged in activities that constituted a “discharge” of pollution in the Storey Park and Moss Park Subclass Area within the meaning of Florida Stat. § 376.313, and that resulted in a “condition of pollution” within the Storey Park and Moss Park Subclass Area.

324. Those activities included grading and spreading fill and dust, transporting, or contracting for the transportation of, dirt, fill, and constructional materials containing Contaminants from the Stanton Power Plant for use in developing the communities and in building homes within the Storey Park and Moss Park Subclass Area, and collaborating with developers and building contractors for the completion of those activities.

325. The only defenses to a claim under Florida Statute § 376.313 are those set forth in Florida Statute §376.308. Defendant Lennar Homes cannot meet its burden of establishing any of the defenses available under Florida Statute § 376.308, including any

defense based on the fact that the Contaminants were generated by the Stanton Power Plant. Lennar Homes cannot show that the “conditions of pollution” at homes in the Storey Park and Moss Park Subclass Area resulted solely from the actions of the OUC because Lennar Homes developed, built, and marketed homes despite the existence of Contaminants and did not take adequate steps to prevent homes from being exposed to the Contaminants.

326. Plaintiff and the subclass members have sustained damages resulting from the “conditions of pollution” on their land, as that term is defined in Florida Statutes §§ 376.30 –376.319.

327. Lennar Homes is strictly liable for damages to Plaintiff and the subclass members resulting from such “conditions of pollution” covered by Florida Statutes §§ 376.30 – 376.319, and Plaintiff and the subclass members are not required to plead or prove negligence in any form or manner, pursuant to Florida Statute § 376.313, because it is sufficient to plead and prove, as set forth in various paragraphs above, that the prohibited discharges or other polluting conditions occurred.

COUNT IV— STRICT LIABILITY UNDER FLORIDA STATUTE
§ 376.313 AGAINST U.S. HOME

328. Plaintiffs reallege and reaffirm herein the allegations contained in paragraphs 1 - 266.

329. Plaintiffs are all persons entitled to bring actions under Florida Statute § 376.313. Under § 376.313, U.S. Home, as a developer, builder, or marketer of the Stoneybrook neighborhood, is strictly liable for the damages caused by all “conditions of pollution” in the Stoneybrook Subclass Area.

330. The Contaminants contained in the soil and within the homes in the Stoneybrook Subclass Area are “pollution” within the meaning of Florida Statute § 376.301(37).

331. In developing the Stoneybrook neighborhood, U.S. Home engaged in activities that constituted a “discharge” of pollution in the Stoneybrook Subclass Area within the meaning of Florida Stat. § 376.313, and that resulted in a “condition of pollution” within the Stoneybrook Subclass Area.

332. Those activities included grading and spreading fill and dust, transporting, or contracting for the transportation of, dirt, fill, and constructional materials containing Contaminants from the Stanton Power Plant for use in developing the Stoneybrook community and in building homes within the Stoneybrook Subclass Area, and collaborating with developers and building contractors for the completion of those activities.

333. The only defenses to a claim under Florida Statute § 376.313 are those set forth in Florida Statute §376.308. Defendant U.S. Home cannot meet its burden of establishing any of the defenses available under Florida Statute § 376.308, including any defense based on the fact that the Contaminants were generated by the Stanton Power Plant. U.S. Home cannot show that the “conditions of pollution” at homes in the Stoneybrook Subclass Area resulted solely from the actions of the OUC because U.S. Home developed, built, and marketed homes despite the existence of Contaminants and did not take adequate steps to prevent homes from being exposed to the Contaminants.

334. Plaintiffs and the subclass members have sustained damages resulting from the “conditions of pollution” on their land, as that term is defined in Florida Statutes §§ 376.30 –376.319.

335. U.S. Home is strictly liable for damages to Plaintiffs and the subclass members resulting from such “conditions of pollution” covered by Florida Statutes §§ 376.30 – 376.319, and Plaintiffs and the subclass members are not required to plead or prove negligence in any form or manner, pursuant to Florida Statute § 376.313, because it is sufficient to plead and prove, as set forth in various paragraphs above, that the prohibited discharges or other polluting conditions occurred.

COUNT V— LIABILITY UNDER FLORIDA STATUTE
§ 376.313 AGAINST AVALON PARK GROUP AND BEAT KAHLI

336. Plaintiffs reallege and reaffirm herein the allegations contained in paragraphs 1 - 266.

337. Plaintiffs are all persons entitled to bring actions under Florida Statute § 376.313. Under § 376.313, Avalon Park Group and Beat Kahli, as developers, builders, or marketers of the Avalon Park master-planned community, are strictly liable for the damages caused by all “conditions of pollution” in the Avalon Park Group Subclass Area.

338. The Contaminants contained in the soil and within the homes in the Avalon Park Group Subclass Area are “pollution” within the meaning of Florida Statute § 376.301(37).

339. In developing the Avalon Park community, Avalon Park Group and Beat Kahli engaged in activities that constituted a “discharge” of pollution in the Avalon Park

Group Subclass Area within the meaning of Florida Stat. § 376.313, and that resulted in a “condition of pollution” within the Avalon Park Group Subclass Area.

340. Those activities included grading and spreading fill and dust, transporting, or contracting for the transportation of, dirt, fill, and constructional materials containing Contaminants from the Stanton Power Plant for use in developing the community and in building homes within the Avalon Park Group Subclass Area, and collaborating with developers and building contractors for the completion of those activities.

341. The only defenses to a claim under Florida Statute § 376.313 are those set forth in Florida Statute § 376.308. Defendants Avalon Park Group and Beat Kahli cannot meet their burden of establishing any of the defenses available under § 376.308, including any defense based on the fact that the Contaminants were generated by the Stanton Power Plant. Avalon Park Group and Beat Kahli cannot show that the “conditions of pollution” at homes in the Avalon Park Group Subclass Area resulted solely from the actions of the OUC because Avalon Park Group and Beat Kahli developed, built, and marketed homes, and encouraged and arranged for the development, building, and marketing of homes, in the Avalon Park master-planned community despite the existence of Contaminants and did not take adequate steps to prevent homes from being exposed to the Contaminants.

342. Plaintiffs and the subclass members have sustained damages resulting from the “conditions of pollution” on their land, as that term is defined in Florida Statutes §§ 376.30 –376.319.

343. Avalon Park Group and Beat Kahli are strictly liable for damages to Plaintiffs and the subclass members resulting from such “conditions of pollution” covered

by Florida Statutes §§ 376.30 – 376.319, and Plaintiffs and the subclass members are not required to plead or prove negligence in any form or manner, pursuant to Florida Statute § 376.313, because it is sufficient to plead and prove, as set forth in various paragraphs above, that the prohibited discharges or other polluting conditions occurred.

COUNT VI— LIABILITY UNDER FLORIDA STATUTE
§ 376.313 AGAINST BORAL RESOURCES LLC

344. Plaintiffs reallege and reaffirm herein the allegations contained in paragraphs 1 - 266.

345. Boral Resources operated and maintained the Stanton Power Plant's combustion byproduct conditioning facility.

346. Boral's wrongful acts and omissions in releasing and discharging (or other conditions of pollution) toxic pollutants, hazardous substances, and other Contaminants onto the lands and water of the state of Florida in general, and the Class Area in particular, violated various environmental statutes in the State of Florida, including, but not limited to, the following:

- a. Discharging (or other condition of pollution) of any pollutants or hazardous substances into or upon land (or water) in violation of Florida Statute § 376.302(1)(a); and
- b. Failure to immediately remediate, contain, remove, and abate the discharges in violation of Florida Statute § 376.305(1).

347. Plaintiffs are each a "person" who may bring a cause of action for damages for such violations under Florida Statute § 376.313.

348. Defendant is a “person” who may be liable for violations under Florida Statute § 376.313.

349. Plaintiffs and the class members have been damaged by Boral’s discharge of hazardous substances onto their land and property, as those terms are defined in Florida Statutes §§ 376.30 –376.319.

350. Boral is strictly liable for damages to Plaintiffs and the class members resulting from such discharges (or other conditions of pollution) covered by Florida Statutes §§ 376.30 – 376.319, and Plaintiffs and the class members are not required to plead or prove negligence in any form or manner, pursuant to Florida Statute § 376.313, because it is sufficient to plead and prove, as set forth in various paragraphs above, that the prohibited discharges or other polluting conditions occurred.

351. Boral’s acts and omissions violate numerous FDEP standards as well as other state and federal standards adopted by the FDEP, including, but not limited to:

- a. Florida Administrative Code 62-777, Contaminant Cleanup Target Goals;
- b. Florida Administrative Code 62-780, Contaminated Site Cleanup Goals;
- c. Florida Administrative Code regulations pertaining to the disposal of radioactive waste, including, but not limited to: 64E-5.333, Classification and Characteristics of Low-Level Radioactive Waste for Near-Surface Land Disposal, Labeling and Manifest Requirements; 64E-5.334 General Provisions; 64E-5.335 Records of Radiation Protection Programs; 64E-5.336 Records of Surveys; 64E-5.339 Records of Individual Monitoring Results; 64E-5.340 Records of Waste Disposal or Transfers; 64E-5.344

Notification of Incidents; 64E-5.345 Reports of Exposures, Radiation Levels, Concentrations of Radioactive Material Exceeding the Constraints or Limits, Medical Events and Dose to an Embryo/Fetus or a Nursing Child; and 64E-5.347, Notifications and Reports to Individuals;

- d. Florida Administrative Code 62-296.320(4)(c)(1), General Pollutant Emission Limiting Standards, General Particulate Emission Limiting Standards for Unconfined Emissions of Particulate Matter;
- e. U.S. EPA Regulation of solid and hazardous waste, 40 C.F.R Parts 239-280;
- f. Disposal of coal combustion residuals from electric utilities, promulgated pursuant to 42 U.S.C. 6907(a), 6944(a), 6945(a);
- g. 40 C.F.R. 257—Subpart D—Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments, including without limitation, § 257.80(a); and
- h. United States Nuclear Regulatory Commission, 10 CFR, Part 61 – Licensing Requirements for Land Disposal of Radioactive Waste.

352. Boral's wrongful acts and omissions in releasing and discharging (or other conditions of pollution) toxic pollutants, hazardous substances, and other Contaminants onto the lands and water of the state of Florida in general, and the Class Area in particular, while operating and maintaining the Stanton Power Plant's combustion byproduct conditioning facility were not authorized pursuant to Chapter 403, Florida Statutes, under which the Florida Department of Environmental Protection (FDEP) may prescribe

conditions for the operations and maintenance of electric power plants, because, as set forth in paragraphs 275-305, the OUC's operation was not in compliance with, or authorized by, any state or federal regulation.

353. Boral Resources was charged with transporting and disposing of fly ash at the Stanton Power Plant. Its mishandling of its responsibility by, for example, failing to cover and moisten the fly ash to prevent wind dispersal, contributed crucially to the "condition[s] of pollution" under which the Plaintiffs' properties, and all properties in the Class Area, suffer.

354. The only defenses to a claim under Florida Statute § 376.313 are those set forth in Florida Statute § 376.308. Defendant Boral Resources cannot meet its burden of establishing any of the defenses available under § 376.308, including any defense based on the fact that the Contaminants were generated by solely by the OUC. By mishandling the transportation and disposition of fly ash from the Stanton Power Plant through, for example, its failure to cover and moisten the ash to prevent the Contaminants' wind dispersal, Boral Resources is strictly liable for the property damage suffered by the Plaintiffs and other residents of the Class Area stemming from the Contaminants.

COUNT VII— LIABILITY UNDER FLORIDA STATUTE
§ 376.313 AGAINST PREFERRED MATERIALS, INC.

355. Plaintiffs reallege and reaffirm herein the allegations contained in paragraphs 1 – 266.

356. Preferred Materials operated a concrete plant that manufactured concrete from Contaminant-laced fly ash from the Stanton Power Plant and distributed the concrete for use in the construction of homes in the Class Area.

357. The wrongful acts and omissions of Preferred Materials in releasing and discharging (or other conditions of pollution) toxic pollutants, hazardous substances, and other Contaminants onto the lands and water of the state of Florida in general, and the Class Area in particular, violated various environmental statutes in the State of Florida, including, but not limited to, the following:

- a. Discharging (or other condition of pollution) of any pollutants or hazardous substances into or upon land (or water) in violation of Florida Statute § 376.302(1)(a); and
- b. Failure to immediately remediate, contain, remove, and abate the discharges in violation of Florida Statute § 376.305(1).

358. Plaintiffs are each a “person” who may bring a cause of action for damages for such violations under Florida Statute § 376.313.

359. Preferred Materials is a “person” who may be liable for violations under Florida Statute § 376.313.

360. Plaintiffs and the class members have been damaged by Preferred Materials’s discharge of hazardous substances onto their land and property, as those terms are defined in Florida Statutes §§ 376.30 –376.319.

361. Preferred Materials is strictly liable for damages to Plaintiffs and the class members resulting from such discharges (or other conditions of pollution) covered by Florida Statutes §§ 376.30 – 376.319, and Plaintiffs and the class members are not required to plead or prove negligence in any form or manner, pursuant to Florida Statute § 376.313,

because it is sufficient to plead and prove, as set forth in various paragraphs above, that the prohibited discharges or other polluting conditions occurred.

362. Preferred Materials's acts and omissions violate numerous FDEP standards as well as other state and federal standards adopted by the FDEP, including, but not limited to:

- a. Florida Administrative Code 62-777, Contaminant Cleanup Target Goals;
- b. Florida Administrative Code 62-780, Contaminated Site Cleanup Goals;
- c. Florida Administrative Code regulations pertaining to the disposal of radioactive waste, including, but not limited to: 64E-5.333, Classification and Characteristics of Low-Level Radioactive Waste for Near-Surface Land Disposal, Labeling and Manifest Requirements; 64E-5.334 General Provisions; 64E-5.335 Records of Radiation Protection Programs; 64E-5.336 Records of Surveys; 64E-5.339 Records of Individual Monitoring Results; 64E-5.340 Records of Waste Disposal or Transfers; 64E-5.344 Notification of Incidents; 64E-5.345 Reports of Exposures, Radiation Levels, Concentrations of Radioactive Material Exceeding the Constraints or Limits, Medical Events and Dose to an Embryo/Fetus or a Nursing Child; and 64E-5.347, Notifications and Reports to Individuals;
- d. Florida Administrative Code 62-296.320(4)(c)(1), General Pollutant Emission Limiting Standards, General Particulate Emission Limiting Standards for Unconfined Emissions of Particulate Matter;

- e. U.S. EPA Regulation of solid and hazardous waste, 40 C.F.R Parts 239-280;
- f. Disposal of coal combustion residuals from electric utilities, promulgated pursuant to 42 U.S.C. 6907(a), 6944(a), 6945(a);
- g. 40 C.F.R. 257—Subpart D—Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments, including without limitation, § 257.80(a); and
- h. United States Nuclear Regulatory Commission, 10 CFR, Part 61 – Licensing Requirements for Land Disposal of Radioactive Waste.

363. Preferred Materials’s wrongful acts and omissions in releasing and discharging (or other conditions of pollution) toxic pollutants, hazardous substances, and other Contaminants onto the lands and water of the state of Florida in general, and the Class Area in particular, while manufacturing and distributing concrete from Contaminant-laced fly ash, generating fugitive dust emissions containing Contaminated coal ash, and distributing concrete products containing Contaminated coal ash into the Class Area, were not authorized pursuant to Chapter 403, Florida Statutes.

364. The Contaminants contained in the soil and within the homes in the Class Area are “pollution” within the meaning of Florida Statute § 376.301(37).

365. In manufacturing concrete with Contaminant-laced fly ash and distributing concrete products containing Contaminated coal ash for the development of homes in the Class Area, Preferred Materials engaged in activities that constituted a “discharge” of

pollution in the Class Area within the meaning of Florida Stat. § 376.313, and that resulted in a “condition of pollution” within the Class Area.

366. The only defenses to a claim under Florida Statute § 376.313 are those set forth in Florida Statute § 376.308. Defendant Preferred Materials cannot meet its burden of establishing any of the defenses available under § 376.308, including any defense based on the fact that the Contaminants were generated solely by the Stanton Power Plant. Preferred Materials cannot show that the release and discharge of pollution or other “conditions of pollution” at homes in the Class Area resulted solely from the actions of the OUC because Preferred Materials manufactured concrete laced with Contaminants from Stanton Power Plant coal ash, and did not take adequate steps to assure the production of safe construction materials and protect residents from Contaminant exposure.

TOLLING OF LIMITATIONS

367. Plaintiffs and the putative class and subclass members could not have reasonably known or have learned through the exercise of reasonable diligence that their properties were contaminated and that those risks were the direct and proximate result of:

- a. OUC’s wrongful acts and omissions in discharging or releasing Contaminants and failing to contain, remediate, and clean up any contamination; and/or
- b. The Developer Defendants failing to restore or remediate conditions of pollution in the contaminated areas; and/or
- c. Defendant Boral’s wrongful acts and omissions in discharging or releasing Contaminants and failing to contain, remediate, and clean up any contamination; and/or

d. Defendant Preferred Materials, Inc.'s wrongful acts and omissions in discharging or releasing Contaminants and failing to contain, remediate, and clean up any contamination.

Thus, any applicable limitations periods did not begin to accrue until Plaintiffs and the putative class and subclass members discovered, or through the exercise of reasonable diligence should have discovered, Defendants' tortious acts and omissions.

JURY TRIAL DEMAND AND PRAYER FOR RELIEF

Plaintiffs and the putative class and subclass members hereby demand a trial by jury on all matters triable as of right by a jury.

WHEREFORE, Plaintiffs and the Class and Subclass Members request that the Court enter an order of judgment against the OUC, Lennar, Lennar Homes, U.S. Home, Avalon Park Group, Beat Kahli, Boral Resources, and Preferred Materials, Inc., as follows:

A. Enter an Order pursuant to Federal Rule of Civil Procedure 23 permitting this action to be maintained as a class action; appointing Plaintiffs as the representatives of the Class; appointing Plaintiff Michelle Irizarry as representative of the Stoneybrook subclass; appointing Plaintiff Valerie Williams as representative of the Stoneybrook subclass; appointing Joanne Nixon as representative of the Stoneybrook subclass; appointing Plaintiff Joann Robinson as representative of the Avalon Park Group subclass; appointing Brandon Litt as representative of the Storey Park and Moss Park subclass; and appointing Plaintiffs' counsel as counsel for such classes;

B. Enter judgment against the OUC, Lennar, Lennar Homes, U.S. Home, Avalon Park Group, Beat Kahli, Boral Resources, and Preferred Materials, Inc., for:

compensatory damages; permanent injunctive relief; the prompt testing, assessment, excavation, and removal of all contaminants to levels otherwise representative of background levels from the properties of the Plaintiffs and class and subclass members; attorneys' fees under Florida Statute § 376.13, and costs of suit as provided for by law; and such other relief as the Court may deem just and proper in favor of Plaintiffs and the class and subclass members against the Defendants for property damage, including diminution of property values, the cost of remediation of properties, cleanup costs, loss of use and enjoyment of their property and destruction of their community, and for all other relief, in an amount to be proven at trial, as to which they may be entitled, including interest, expert fees and costs of this suit;

C. Award pre-judgment and post-judgment interest as provided by law; and

D. Award such other relief as this Court deems necessary, just, and proper.

DATED this 27th day of March 2019.

Respectfully submitted,

s/ DIANA L. MARTIN

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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

s/ DIANA L. MARTIN

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Exhibit A

5.5 miles from the center of the Combustion Waste Storage Area shown in red

