STATE OF NORTH CAROLINA

MECKLENBURG COUNTY

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BY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 17562

STATE OF NORTH CAROLINA, *ex. rel.*, NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY,

Plaintiff,

vs.

COLONIAL PIPELINE COMPANY,

Defendant.

COLONIAL PIPELINE COMPANY'S ANSWER TO COMPLAINT

The Complaint filed by Plaintiff, the State of North Carolina ex rel. North Carolina Department of Environmental Quality ("the Department"), lacks factual and legal basis. Upon discovery of the release of gasoline (the "release") at the site in Huntersville, North Carolina (the "Site") on August 14, 2020, Defendant Colonial Pipeline Company ("Colonial") immediately took action to stop the release, to control the spread of any constituents, to assess the Site, and to commence recovery and remediation. Colonial has been accountable and has worked diligently since that time on recovery and remediation, and, to date, has successfully recovered over 1.2 million gallons of free product. The release did not impact any drinking water wells, and Colonial's recovery and remediation efforts have ensured that the release poses no risk of harm to human health or the environment. Colonial will continue its recovery and remediation efforts, as required by North Carolina law, until cleanup is complete. Colonial is committed to operating its pipelines in a manner that is protective of human health and the environment, as shown in its response to the release and compliance with applicable laws.

Throughout this process, Colonial has worked closely with the Department and other regulatory authorities to collect and analyze the data necessary to assess and remediate the Site.

Representatives of Colonial and employees of the Department have met over one hundred times to date to discuss plans for assessment and remediation of the Site. Promptly after collection and validation of Site data, Colonial has shared the results with the Department. Third-party expert scientists and engineers have evaluated the Site and provided reports to Colonial that have been shared with the Department. This includes the Revised Comprehensive Site Assessment, submitted to the Department on October 30, 2021, developed in close collaboration with the Department, and spanning over 40,000 pages.

In its response to the release, Colonial has complied with the applicable law and with all reasonable requests by the Department. Where it has not been feasible for Colonial to comply with requests for action or requests for information by the Department, Colonial has explained to the Department why. Colonial has also explained to the Department why it has no responsibility for PFAS contamination or remediation at the Site, as there were no PFAS in the release, and Colonial did not introduce PFAS to the Site at any point.

The Department filed this litigation purportedly to obtain compliance with its requests for information concerning the release or concerning the Site. However, all of the information that the Complaint alleges to be missing from Colonial's comprehensive submittals to the Department was either (1) provided by Colonial prior to the initiation of suit, (2) to be submitted later pursuant to a schedule agreeable to the Department, or (3) not feasible to provide. Colonial is committed to continuing to work with the Pipeline and Hazardous Materials Safety Administration ("PHMSA"), which has exclusive jurisdiction over pipeline safety and the operation, inspection, maintenance, and repair of Colonial's Line 1 Pipeline (the "Pipeline"). Similarly, Colonial remains committed to working with the Department to address issues within the Department's jurisdiction. This includes cooperation with the Department during its review

and approval of the recently-submitted Revised Comprehensive Site Assessment and the forthcoming Corrective Action Plan—the means required by North Carolina law for addressing any impacts of the release.

PARTIES

1. Colonial admits the allegations in the first sentence of Paragraph 1. The remaining allegations in Paragraph 1 are legal conclusions to which no response is required. To the extent a response is required, Colonial denies the remaining allegations in Paragraph 1.

2. Colonial admits the allegations in the first sentence of Paragraph 2, and answering further, states that Colonial is also incorporated in Virginia. Regarding the second sentence of Paragraph 2, Colonial admits that it is an interstate carrier of petroleum products operating a system of petroleum pipelines that transports refined petroleum products from origins including Houston, Texas, to destinations in the southern and eastern United States. Colonial denies the remaining allegations in the second sentence of Paragraph 2. Colonial admits the allegations in the third sentence of Paragraph 2.

JURISDICTION

3. Paragraph 3 states legal conclusions to which no response is required. To the extent a response is required, Colonial denies the allegations in Paragraph 3.

VENUE

4. Paragraph 4 states legal conclusions to which no response is required. To the extent a response is required, Colonial denies the allegations in Paragraph 4, and states that it is not contesting venue in this action.

NATURE OF THE ACTION

5. Regarding the first sentence of Paragraph 5, Colonial admits that the State of North Carolina seeks injunctive relief in this action. Colonial denies the remaining allegations in the first sentence of Paragraph 5.

Regarding the second sentence of Paragraph 5, Colonial admits only that gasoline, which is a petroleum product, was released from a subsurface section of the Pipeline in the Oehler Nature Preserve. Colonial denies the remaining allegations in the second sentence of Paragraph 5.

Regarding the third sentence of Paragraph 5, Colonial admits only that constituents from the release reached areas in the Oehler Nature Preserve and nearby privately owned property, but denies any significant impact from the release. Colonial denies the remaining allegations in the third sentence of Paragraph 5.

Regarding the fourth sentence of Paragraph 5, Colonial admits that it has taken all necessary steps related to control, assessment, and remediation of the release. The remaining allegations in the fourth sentence of Paragraph 5 are legal conclusions to which no response is required, but to the extent a response is required, Colonial denies those allegations.

Colonial denies all remaining allegations in Paragraph 5.

a. Colonial denies the allegations in the first and second sentences of Paragraph 5(a). In January 2021, Colonial informed the Department that it estimated the volume of the release to be 1.2 million gallons of product, and later informed the Department that the number would likely need to be adjusted upward due to newly-learned information. Answering further regarding Paragraph 5(a), Colonial states that an estimate of the volume of product released is not needed for successful remediation at the Site. Such remediation activities are guided by constituent concentrations and the horizontal and vertical extent of petroleum-related

constituents present as delineated through groundwater and soil sampling. *See, e.g.*, 15 N.C.A.C. 2L .0106(g). Colonial has provided that information to the Department. Colonial denies all remaining allegations in Paragraph 5(a).

i. Colonial denies the allegations in the first sentence of Paragraph 5(a)(i), and incorporates by reference its responses to Paragraph 5(a) above, as if fully set forth herein. Answering further regarding the first sentence of Paragraph 5(a)(i), Colonial denies that an updated estimate of the volume of gasoline released from the Pipeline is "necessary for proper regulatory oversight and remediation." To the contrary, as Colonial has explained to the Department, the API model and other models based upon environmental data cannot produce a more accurate calculated estimate of the total release volume without stopping or substantially modifying Colonial's ongoing remediation efforts at the Site for a substantial period of time to collect additional data, and even then the results would have a wide margin of error. Ceasing or modifying current remediation activities could result in the further migration of gasoline, which would also increase the risk of receptor exposure and would prolong cleanup efforts.

With respect to the second sentence of Paragraph 5(a)(i), Colonial admits that 1.3 million gallons of gasoline have been recovered from the Site, but denies that all of this volume was released to the environment.

Colonial is without sufficient information to form a belief as to the truth of the allegations in the third sentence of Paragraph 5(a)(i), and therefore denies them.

Regarding the fourth sentence of Paragraph 5(a)(i), Colonial admits only that "free product" and "aqueous phase" petroleum mixed with groundwater remain in the subsurface. Colonial denies any allegation in Paragraph 5(a)(i) that purports to characterize the amount of petroleum in the subsurface.

Colonial denies all remaining allegations in Paragraph 5(a)(i).

ii. Colonial denies the allegations in the first sentence of Paragraph 5(a)(ii). Regarding the second sentence of Paragraph 5(a)(ii), Colonial admits only that 15A N.C.A.C. 2L.0106(g) states that a site assessment "shall include" the "vertical extent of soil and groundwater contamination." Colonial denies all remaining allegations in the second sentence of Paragraph 5(a)(ii).

b. Colonial denies the allegations in the first sentence of Paragraph 5(b).

Regarding the second sentence of Paragraph 5(b), Colonial admits that one purpose of the hydraulic control wells at the Site is to prevent further spread of groundwater containing contaminants attributable to the gasoline release at the Site, but denies that hydraulic control wells are the only means to accomplish that purpose. Colonial denies the remaining allegations in the second sentence of Paragraph 5(b). Answering further, Colonial states that it is running the hydraulic control wells to the fullest extent possible under the circumstances, consistent with protection of human health and the environment and Colonial's current capacity to process the water produced by the hydraulic control wells. Colonial has applied for a National Pollutant Discharge Elimination System ("NPDES") permit, which requires approval by the Department, to handle the additional water that would result from any increase in pumping by these wells.

Colonial denies the allegations in the third sentence of Paragraph 5(b).

c. Paragraph 5(c) states legal conclusions to which no response is required. To the extent a response is required, Colonial denies the allegations in Paragraph 5(c). Answering further, Colonial states that it is not responsible for the introduction of any PFAS to the Site.

6. Paragraph 6 states a legal conclusion to which no response is required. To the extent a response is required, Colonial denies the allegations in Paragraph 6 of the Complaint.

LEGAL BACKGROUND

The Oil Pollution and Hazardous Substances Control Act of 1978

7. Colonial admits that the language quoted in the first sentence of Paragraph 7 appears in N.C.G.S. § 143-215.76; that the second sentence summarizes portions of N.C.G.S. § 143-215.78 and N.C.G.S. § 143-215.79; and that N.C.G.S. Chapter 143, Article 21A, Part 2, titled "Oil Discharge Controls," is a statute pertaining to the discharge of oil and hazardous substances. Except as expressly admitted herein, denied.

8. Regarding the first sentence of Paragraph 8, Colonial admits that the definition of "discharge" in N.C.G.S. § 143-215.77(4) includes the quoted language. Regarding the second sentence of Paragraph 8, Colonial admits that the definition of "Waters" in N.C.G.S. § 143-215.77(8) includes the quoted language. Except as expressly admitted herein, denied.

9. The first sentence of Paragraph 9 states legal conclusions to which no response is required. To the extent a response is required, Colonial denies the allegations in the first sentence of Paragraph 9. Regarding the second sentence of Paragraph 9, Colonial admits that the quoted language appears in N.C.G.S. § 143-215.83(a), and states that Paragraph 9 incorrectly cites the statute as N.C.G.S. § 143-215-83(a). Except as expressly admitted herein, denied.

10. Regarding the first sentence of Paragraph 10, Colonial admits that the cited language appears in N.C.G.S. § 143-215.84(a). Regarding the second sentence of Paragraph 10, Colonial admits that the language quoted in the second sentence of Paragraph 10 appears in N.C.G.S. § 143-215.77(5). Except as expressly admitted herein, denied.

11. Colonial admits that the cited language appears in N.C.G.S. § 143-215.85(a). Except as expressly admitted herein, denied.

12. Colonial admits the allegations in the first sentence of Paragraph 12, but denies that N.C.G.S. § 143-104AA(a)(2)a is the correct statutory provision. Regarding the second

sentence of Paragraph 12, Colonial admits that the cited language appears in 15A N.C.A.C. 2L .0501(a). Except as expressly admitted herein, denied.

13. Paragraph 13 states legal conclusions to which no response is required. Further, the cited regulatory provision speaks for itself. To the extent a response is required, Colonial denies any allegations in Paragraph 13 that vary from or contradict the terms of that provision.

North Carolina's Water Quality Program

14. Paragraph 14 states legal conclusions to which no response is required. Further, the provisions of the cited statute speak for themselves. To the extent a response is required, Colonial denies any allegations in Paragraph 14 that vary from or contradict the terms of those provisions.

15. Paragraph 15 states legal conclusions to which no response is required. Further, the cited statutory provisions speak for themselves. To the extent a response is required, Colonial denies any allegations that vary from or contradict the terms of those provisions.

Groundwater Classifications and Standards

16. Paragraph 16 states legal conclusions to which no response is required. To the extent a response is required, Colonial admits the allegations in the first sentence of Paragraph 16, and admits that the language cited in the second and third sentences of Paragraph 16 appears in 15A N.C.A.C. 2L .0101(a) and 15A N.C.A.C. 2L .0102(11), respectively. Except as expressly admitted herein, denied.

17. Colonial admits that the cited language appears in 15A N.C.A.C. 2L .0103(a). Except as expressly admitted herein, denied.

18. Colonial admits that the cited language appears in 15A N.C.A.C. 2L .0103(a). Except as expressly admitted herein, denied.

19. Colonial admits that the cited language appears in 15A N.C.A.C. 2L .0103(d). Except as expressly admitted herein, denied.

20. Colonial admits that the cited language appears in 15A N.C.A.C. 2L .0202(a). Except as expressly admitted herein, denied.

21. Colonial admits that the cited language appears in 15A N.C.A.C. 2L .0102(4). Except as expressly admitted herein, denied.

22. Regarding the first sentence of Paragraph 22, Colonial admits that the cited language appears in 15A N.C.A.C. 2L .0202(c). Colonial denies the remaining allegations in the first sentence of Paragraph 22. Regarding the second sentence of Paragraph 22, Colonial admits that the cited language appears in 15A N.C.A.C. 2L .0102(15). Except as expressly admitted herein, denied.

23. Colonial admits that the cited language appears in 15A N.C.A.C. 2L .0102(16). Except as expressly admitted herein, denied.

24. The first sentence of Paragraph 24 states a legal conclusion to which no response is required. To the extent a response is required, Colonial denies the allegations in the first sentence of Paragraph 24. The second sentence of Paragraph 24 states a legal conclusion to which no response is required. To the extent a response is required, Colonial admits that the cited language appears in 15A N.C.A.C. 2L .0507(d). Except as expressly admitted herein, denied.

25. Colonial admits that the cited language appears in 15A N.C.A.C. 2L .0106(c)(3). Except as expressly admitted herein, denied.

26. Colonial admits that the cited language appears in 15A N.C.A.C. 2L .0106(f). Except as expressly admitted herein, denied.

27. Colonial admits that the cited language appears in 15A N.C.A.C. 2L .0106(g). Except as expressly admitted herein, denied.

28. Colonial admits that the cited language appears in 15A N.C.A.C. 2L .0106(h). Except as expressly admitted herein, denied.

Standard for Injunctive Relief Under N.C.G.S. § 143-215.6C

29. Paragraph 29 states legal conclusions to which no response is required. To the extent a response is required, Colonial denies the allegations in Paragraph 29.

30. Paragraph 30 states legal conclusions to which no response is required. To the extent a response is required, Colonial denies the allegations in Paragraph 30.

FACTUAL ALLEGATIONS

The Colonial Pipeline and the Pipeline Spill

31. Regarding the first sentence of Paragraph 31, Colonial admits that it owns and operates a pipeline system consisting of approximately 5,500 miles of transmission pipeline for petroleum products within the United States. Colonial denies the remaining allegations in the first sentence of Paragraph 31. Colonial admits the allegations in the second sentence of Paragraph 31, and answering further, states that Colonial's pipeline system also travels through Delaware and Tennessee. Colonial admits the allegations in the third sentence of Paragraph 31.

32. Colonial admits the allegations in the first sentence of Paragraph 32. Regarding the second sentence of Paragraph 32, Colonial admits that the Pipeline traverses the five counties in North Carolina referenced in Paragraph 32. Answering further, Colonial states that the Pipeline also traverses Davidson, Guilford, and Rockingham counties in North Carolina. Colonial denies the remaining allegations in Paragraph 32.

33. Regarding the first sentence of Paragraph 33, Colonial admits that the Pipeline is 40-inches in diameter and that portions of it were manufactured in 1978 by Bethlehem Steel.

Colonial denies the remaining allegations in the first sentence of Paragraph 33. Colonial admits the allegations in the second sentence of Paragraph 33.

34. Colonial admits the allegations in the first sentence of Paragraph 34. Regarding the second sentence of Paragraph 34, Colonial admits that one Colonial employee confirmed a product release visible at the ground surface at 6:42 p.m., and that employee contacted the Control Center, which initiated shutdown of the Pipeline at 6:43 p.m. Regarding Exhibit 1 (dated September 14, 2020), Colonial denies that it is the most recent supplement to the Form PHMSA F 7000.1 regarding the release. The most recent supplement to the Form PHMSA F 7000.1 is dated April 17, 2021. Colonial denies the remaining allegations in Paragraph 34.

35. Regarding the first sentence of Paragraph 35, Colonial admits that the release originated from a location where a Type A sleeve was placed in 2004 to reinforce a portion of the Pipeline at which an anomaly was detected, consistent with industry standards and PHMSA regulations. Colonial denies the remaining allegations in the first sentence of Paragraph 35. Regarding the second sentence in Paragraph 35, Colonial admits that repairs utilizing Type A sleeves involve placing a sleeve around a portion of a pipeline where an anomaly is detected. Colonial denies the remaining allegations in the second sentence of Paragraph 35. Regarding the third sentence in Paragraph 35, Colonial admits that repairs utilizing Type A sleeves are not designed to maintain pressure inside a pipeline. Colonial denies the remaining allegations in the third sentence Paragraph 35.

36. Colonial admits that gasoline was released from the Pipeline from a crack that formed under a previously-installed Type A sleeve; that the Type A sleeve was used to reinforce and protect an anomaly (a shallow dent) identified by an integrity assessment; and that the

presence of water underneath the sleeve led to corrosion. Colonial denies the remaining allegations in Paragraph 36.

37. Colonial admits to effectuating other repairs to reinforce a pipeline at locations with certain anomalies identified by integrity management inspections, and that Type A sleeves were used as one such type of repair, consistent with industry standards and PHMSA regulations. Colonial denies the remaining allegations in Paragraph 37.

38. Colonial admits the allegations in the first clause of Paragraph 38, but denies that all such releases were from pipeline sections with Type A sleeves.

a. Colonial admits the allegations in the first sentence of Paragraph 38(a). Regarding the second sentence of Paragraph 38(a), Colonial admits that the release was discovered by a contractor and reported to Colonial personnel. Colonial denies the remaining allegations in the second sentence of Paragraph 38(a). Colonial admits the allegations in the third sentence of Paragraph 38(a).

b. Colonial admits the allegations in Paragraph 38(b). Answering further, Colonial states that the repair referenced in Paragraph 38(b) was performed by a contractor for Colonial.

c. Colonial admits the allegations in Paragraph 38(c).

39. Colonial admits that it employs a process in accordance with PHMSA 49 C.F.R. Part 195 regulations to track over/short trends in the volume of product transported, which is in part manual and which in part derives from data generated from a computerized operational system that is used to monitor the Pipeline. Colonial also admits that the over/short monitoring system did not detect the release of gasoline from the Pipeline that was discovered on August 14, 2020. Colonial denies all remaining allegations in Paragraph 39. Answering further, Colonial states that while computational pipeline monitoring is not required by the federal pipeline safety

regulations, Colonial has been in the process of installing computational monitoring on its Pipeline.

40. Colonial admits that the Site of the release currently has the stated classification under the North Carolina Petroleum Release Rules, but denies that such classification has any bearing on the Site's classification under federal pipeline safety regulations. Colonial denies that the cited information is set forth on the page labeled "Page 10" in the document filed as Exhibit 2 to the Complaint. Colonial admits that the cited information is set forth on the page labeled "Page 2," which is the tenth page of the filed Exhibit. Colonial denies the remaining allegations in Paragraph 40. Answering further, Colonial states that the Site could in the future be reclassified pursuant to the reclassification provision of the Petroleum Release Rules if conditions or uses for the Site change. *See* 15A N.C.A.C. 2L .0507.

41. Colonial admits that at the time of the Pipeline release, it did not have a permit allowing the discharge of petroleum at the Site, but denies that the release gives rise to liability under the Clean Water Act. Colonial denies the remaining allegations in Paragraph 41.

Spill Response

42. Colonial admits that it submitted the referenced initial incident report, and that the incident report estimated the size of the release to be 75 barrels due to "equipment failure," but denies that Exhibit 1 is the August 14, 2020 National Response Center Incident Report 1284598. Colonial denies the remaining allegations in Paragraph 42.

43. The allegations in Paragraph 43 refer to a document attached to the Complaint as Exhibit 3. Exhibit 3 speaks for itself, and no response is required. To the extent a response is required, Colonial denies the allegations in Paragraph 43.

44. Paragraph 44 refers to documents attached to the Complaint as Exhibits 1 and 4. Exhibits 1 and 4 speak for themselves, and no response is required. To the extent a response is

required, Colonial denies any allegations in Paragraph 44 that vary from or contradict the terms of those documents.

45. The allegations in Paragraph 45 refer to a document attached to the Complaint as Exhibit 5. Exhibit 5 speaks for itself, and no response is required. To the extent a response is required, Colonial denies the allegations in Paragraph 45.

46. The allegations in the first, second, and third sentences of Paragraph 46 refer to a document attached to the Complaint as Exhibit 6. Exhibit 6 speaks for itself, and no response is required. To the extent a response is required, Colonial denies the allegations in the first, second, and third sentences of Paragraph 46.

Regarding the fourth sentence of Paragraph 46, Colonial admits that a conceptual site model identifies and characterizes potential sources of contamination, potential human and environmental receptors, and receptor pathways associated with a site, which may include soil, air, groundwater, surface water, and sediment. Colonial denies the remaining allegations in the fourth sentence of Paragraph 46.

Regarding the fifth sentence of Paragraph 46, Colonial admits that a conceptual site model estimates the approximate extent and nature of contamination at a site and is an input to a corrective action plan, which helps guide cleanup and remediation efforts at a site. Colonial denies the remaining allegations in the fifth sentence of Paragraph 46.

47. The allegations in Paragraph 47 refer to a document attached to the Complaint as Exhibit 7. Exhibit 7 speaks for itself, and no response is required. To the extent a response is required, Colonial denies the allegations in Paragraph 47.

48. Regarding the first sentence of Paragraph 48, Colonial admits that on April 14, 2021, it received initial Optical Image Profiling ("OIP") data indicating that unique geologic and

hydrogeologic conditions in the northern portion of the Site resulted in gasoline beneath the water table, the presence of which was not previously known to Colonial. Colonial admits that on or about April 14-15, 2021, Colonial employees discussed those data with Department personnel and informed those Department personnel that the modeling approach to estimate the volume of the gasoline release would need to be reevaluated because the model Colonial had used prior to April 14, 2021 could not account for product below the water table. Colonial denies the remaining allegations in Paragraph 48.

49. Regarding the first sentence of Paragraph 49, Colonial admits that it did not expect the presence of petroleum free product beneath the surface of the water table, as that is not typical for a refined product release, and for that reason did not attempt to model for those locations prior to April 14, 2021. Colonial denies the remaining allegations in the first sentence of Paragraph 49. Answering further regarding the first sentence of Paragraph 49, Colonial states that no accurate estimate of the amount of petroleum free product beneath the surface of the water table at the Site is possible without shutting down remediation and recovery efforts for a substantial period of time while additional data is collected. Even then, the resulting estimate can have a significant margin of error.

Colonial denies the allegations in the second sentence of Paragraph 49. Answering further, Colonial states that its 1.2 million gallon estimate comes with a margin of error, and that the federal Environmental Protection Agency ("EPA") recognizes that such estimates can vary from actual volumes by up to 100%.

Except as expressly admitted herein, Colonial denies all allegations in Paragraph 49.

50. Regarding the first and second sentences of Paragraph 50, Colonial admits that on April 21, 2021, Colonial sent a letter to the Department, stating that Colonial was "actively working on addressing the items that NCDEQ set forth in the [February 24, 2021 notice of

continuing violation] and [was] prepared to submit the majority of the items by April 26," but that there were "a few items (specifically, items 6, 14 and 18) that [were] directly related to ongoing field activities," including additional soil delineation and well installation, "which [would] not be completed by April 26," and that "[c]ompletion of those items [was] dependent upon NCDEQ's approval of Colonial's work plan." Answering further, Colonial states that on April 26, 2021, Colonial submitted its response to the February 24, 2021 notice, except for the three items listed above. Colonial denies the remaining allegations in the first and second sentences of Paragraph 50.

Colonial admits the allegations in the third sentence of Paragraph 50, and states that before the April 21, 2021 letter, Colonial personnel made two verbal requests to the Department for an extension of the April 26 deadline, and that the Department agreed that an extension of the April 26 deadline was appropriate. At the Department's request, Colonial repeated the extension request in writing via the April 21, 2021 letter.

Colonial admits the allegations in the fourth sentence of Paragraph 50.

Except as expressly admitted herein, Colonial denies all allegations in Paragraph 50.

51. Regarding the first sentence of Paragraph 51, Colonial admits that the Department issued the referenced notice on May 5, 2021, detailing alleged failures to comply with the September 25, 2020 notice, but Colonial denies that it had failed to comply with the stated requirements. As the correspondence shows, Colonial was actively working to address the Department's concerns. Colonial denies the remaining allegations in the first sentence of Paragraph 51.

Regarding the second sentence of Paragraph 51, Colonial admits that Exhibit 9 is the May 5, 2021 notice. Colonial denies the remaining allegations in the second sentence of Paragraph 51.

Regarding the third sentence of Paragraph 51, Colonial admits that the May 5, 2021 notice cites an alleged failure to provide an updated estimate. Colonial denies that providing a more accurate volume estimate was or is necessary, further denies that a more accurate volume estimate could be produced through environmental modeling without shutting down recovery operations at the Site, and denies the remaining allegations in the third sentence of Paragraph 51.

Regarding the fourth and fifth sentences of Paragraph 51, Colonial admits that the May 5, 2021 notice purported to set the stated deadlines, but Colonial denies that those deadlines were practicable or reasonable. *See* N.C.A.C. 2L .0106(g) ("Reports of site assessments shall be submitted . . . ***as soon as practicable*** or in accordance with a schedule established by the Director, or his designee. In establishing a schedule the Director, or his designee shall consider ***any reasonable proposal*** by the person submitting the report.") (emphasis added).

Except as expressly admitted herein, Colonial denies all allegations in Paragraph 51.

52. Regarding the first sentence of Paragraph 52, Colonial admits that on May 12, 2021, Colonial sent a letter to the Department, enclosing Colonial's response to items 1 and 6 of the May 5, 2021 notice. Colonial denies the remaining allegations in the first sentence of Paragraph 52.

Colonial admits the allegations in the second sentence of Paragraph 52.

The third sentence of Paragraph 52 states legal conclusions to which no response is required. To the extent a response is required, Colonial denies the allegations in the third sentence of Paragraph 52.

53. Regarding the first sentence of Paragraph 53, Colonial admits that it sent the Department a letter on May 28, 2021, stating that "Colonial's efforts to provide NCDEQ with a revised volume estimate are ongoing, however, given the complexities of those efforts, Colonial will be unable to provide a revised volume estimate by the current May 28 deadline." Colonial denies the remaining allegations in the first sentence of Paragraph 53.

Colonial admits the allegations in the second sentence of Paragraph 53.

Regarding the third sentence of Paragraph 53, Colonial admits that its May 28 and May 12 letters raised several concerns with providing a revised volume estimate, including that providing a revised estimate would require additional data collection that would require Colonial to shut down its free product recovery efforts. Colonial explained that it "believe[s] it would be most protective of human health and the environment to postpone collection of the necessary data for the site-specific OIP modeling approach until sufficient recoverable free product has been removed to minimize risks associated with potential migration." Answering further regarding the third sentence of Paragraph 53, Colonial admits that it had previously provided volume estimates to PHMSA and the Department without raising concerns, but states that with the exception of the April 17, 2021 supplement to the Form PHMSA F 7000.1 report, those estimates were submitted prior to receipt of the initial OIP data indicating the presence of product below the water table. In the April 17, 2021 Form PHMSA F 7000.1 supplement, submitted shortly after receipt of the initial OIP data, Colonial stated that it had "received preliminary results of subsurface geology work which indicates areas where product is located deeper in the soil than originally modeled," and that "[a]dditional Supplemental Reports will be submitted within 30 days following Colonial's awareness of new, updated, and/or corrected information." Colonial denies the remaining allegations in the third sentence of Paragraph 53.

Except as expressly admitted herein, Colonial denies all allegations in Paragraph 53.

54. Colonial is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 54, and therefore denies them.

55. Colonial denies the allegations in the first sentence of Paragraph 55.

Regarding the second sentence of Paragraph 55, Colonial admits that a reasonable estimate of the volume of the release should take into account the amount recovered from the Site, and that more than 1.2 million gallons of gasoline has been recovered from the Site to date. Colonial denies the remaining allegations in the second sentence of Paragraph 55.

Colonial denies the allegations in the third sentence of Paragraph 55.

56. Colonial denies the allegations in Paragraph 56.

57. Regarding the first sentence of Paragraph 57, Colonial admits that a Colonial representative had a telephone conversation with the Department on August 18, 2021, and sent a follow-up email to the Department on August 20, 2021 to discuss the timing of the vertical groundwater delineation. Colonial further admits that the August 31, 2021 date was projected in its May 12, 2021 letter and attachments with the qualification that if environmental conditions were encountered precluding the completion of the delineation, Colonial would provide an updated schedule of projected completion dates. In fact, such conditions were encountered. Thus, Colonial admits that it informed the Department that in Colonial's ongoing efforts to establish vertical groundwater delineation, Colonial personnel had recently received data indicating that deeper drilling efforts were necessary to achieve vertical delineation. Colonial also admits that it informed the Department that the wells would then need to be developed, logged, constructed, sampled, surveyed, and the samples would need to be analyzed to establish vertical delineation for the Revised Comprehensive Site Assessment. Answering further,

Colonial informed the Department that Colonial would be submitting the complete soil delineation by August 31, 2021, and Colonial did submit that information by that date. Colonial informed the Department that it would submit vertical delineation for groundwater by October 30, 2021, and submitted that information on schedule. Colonial denies all remaining allegations in the first sentence of Paragraph 57.

Colonial admits the allegations in the second and third sentences of Paragraph 57.

Except as expressly admitted herein, Colonial denies all allegations in Paragraph 57.

58. Colonial admits that as of November 2, 2021, it had recovered more than 1,300,000 gallons of product from the Site, not all of which was released to the environment, and was continuing to recover free product at a rate of approximately 1,000 gallons per day. Colonial denies the remaining allegations in the first sentence of Paragraph 58. Regarding the second sentence of Paragraph 58, Colonial admits that the volume of product recovered to date has generally been reported twice a week to the Department. Colonial denies the remaining allegations in the second sentence of Paragraph 58. Colonial further denies that the pages labeled "Page 3" and "Page 10" in Exhibit 13 contain information relevant to the allegations in Paragraph 58; however, Colonial admits that the pages labeled "Page i" and "Page 1"—which are the third and tenth pages of the filed Exhibit—do contain information relevant to the allegations in Paragraph 58. With respect to the third sentence of Paragraph 58, Colonial admits that its latest estimate of the volume of the release exceeds 1.2 million gallons. Answering further, Colonial states that it provided this estimate to the Department prior to the filing of this Complaint. Colonial denies the remaining allegations in the third sentence of Paragraph 58.

59. Colonial admits that it has provided bills of lading to the Department, but denies the remaining allegations in the first sentence of Paragraph 59. As Colonial has explained to the

Department, volumes recorded on the bills of lading can be affected by errors associated with tanker truck gauging, including variabilities in the trucks and/or the gauges, and the fact that measurements are often not obtained from a level location and/or are taken without allowing sufficient time for demulsification. Regarding the second sentence of Paragraph 59, Colonial admits that the amount of free product reported on the bills of lading exceeds the amount of recovered free product reported to the Department by Colonial, which are based on specific measurements in each frac tank associated with the recovery well network, taken before and after liquids from a tank are transferred offsite. Colonial denies the remaining allegations in the second sentence of Paragraph 59. Colonial denies the allegations in the third sentence of Paragraph 59.

60. The allegations in Paragraph 60 refer to a document attached to the Complaint as Exhibit 14. Exhibit 14 speaks for itself, and no response is required. To the extent a response is required, Colonial denies the allegations in Paragraph 60.

61. The allegations in Paragraph 61 refer to a document attached to the Complaint as Exhibit 15. Exhibit 15 speaks for itself, and no response is required. To the extent a response is required, Colonial denies the allegations in Paragraph 61.

62. Regarding the first sentence of Paragraph 62, Colonial admits that on October 28, 2021, Colonial sent a letter responding to the Department's October 19, 2021 notice. Colonial denies the remaining allegations in the first sentence of Paragraph 62. Colonial admits the allegations in the second sentence of Paragraph 62.

63. Colonial admits the allegations in the first sentence of Paragraph 63, but denies that Exhibit 13 is a complete copy of the October 30, 2021 Revised Comprehensive Site Assessment.

Regarding the second sentence of Paragraph 63, Colonial admits that the October 30, 2021 Revised Comprehensive Site Assessment presents the complete delineation of the vertical extent of petroleum-related constituents at the Site as of that date. Colonial denies the remaining allegations in the second sentence of Paragraph 63.

Colonial denies the allegations in the third sentence of Paragraph 63. Answering further, Colonial states that the October 30, 2021 Revised Comprehensive Site Assessment was developed using procedures and investigative measures agreed to with the Department. Colonial discussed with the Department the general drilling areas for groundwater sampling locations for vertical delineation, and after drilling was complete, communicated the total drilled depths. Until the filing of this lawsuit, the Department did not indicate that the sampling locations, sampling depths, or the standard processes used for data collection would be considered inadequate or could not be used to obtain vertical delineation.

Except as expressly admitted herein, Colonial denies all allegations in Paragraph 63.

64. Colonial denies the allegations in the first sentence of Paragraph 64. Regarding the second sentence of Paragraph 64, Colonial admits that a conceptual site model is often required to develop a corrective action plan that helps guide cleanup and remedial action at a site. Colonial denies the remaining allegations in Paragraph 64.

65. Colonial admits that as of December 6, 2021, 117 monitoring wells have been installed at the Site by Colonial's contractors, with the initial purpose of completing the horizontal and vertical delineation of petroleum-related constituents at the Site. Colonial denies the remaining allegations in Paragraph 65.

66. Colonial admits that as of December 6, 2021, 97 product recovery wells have been placed at the Site by Colonial's contractors, and that those recovery wells currently remove

petroleum free product from the subsurface of the Site. Colonial denies the remaining allegations in Paragraph 66.

67. Regarding the first sentence of Paragraph 67, Colonial admits that as of December 6, 2021, 56 hydraulic control wells have been installed around the perimeter of the release area by Colonial's contractors. Colonial denies the remaining allegations of the first sentence of Paragraph 67. Regarding the second sentence of Paragraph 67, Colonial admits that one purpose of the hydraulic control wells at the Site is to prevent further spread of groundwater containing contaminants attributable to the release, and denies that hydraulic control wells are the only means to accomplish that purpose. Answering further, Colonial states that some of the hydraulic control wells are used for free product recovery, gauging, and/or delineation. Colonial denies the remaining allegations in Paragraph 67.

68. Regarding the first sentence of Paragraph 68, Colonial admits that as of December 6, 2021, Colonial's contractors have installed 40 wells at the Site to support the air sparge system, 22 of which are air sparge wells and 18 of which are soil vapor extraction wells. Colonial denies the remaining allegations of the first sentence of Paragraph 68. Regarding the second sentence of Paragraph 68, Colonial admits that a purpose of these wells is to reduce the presence of petroleum-related contaminants in the subsurface, and denies the remaining allegations in the second sentence of Paragraph 68.

Colonial denies the remaining allegations in Paragraph 68.

69. Colonial denies the allegations in the first sentence of Paragraph 69. Answering further, Colonial states that it is running the hydraulic control wells to the fullest extent possible under the circumstances, consistent with protection of human health and the environment and Colonial's current capacity to process the water produced by the hydraulic control wells.

Colonial has applied for a NPDES permit, which requires approval by the Department, to handle the additional water that would result from any increase in pumping by these wells. Colonial denies the allegations in the second sentence of Paragraph 69.

Groundwater

70. Colonial is without sufficient knowledge or information to form a belief as to the truth of the allegations in the first sentence of Paragraph 70, and therefore denies them. Regarding the second sentence of Paragraph 70, Colonial admits that the cited regulatory provision includes the quoted language. Except as expressly admitted herein, denied.

71. Regarding the allegations in the first sentence of Paragraph 71, Colonial admits that, at the time of the release, twenty water-supply wells were within a 1,500-foot radius of the "Release Site" as designated in Exhibit 17 to the Complaint (which is Figure 4 to the October 30, 2021 Revised Comprehensive Site Assessment), and that thirteen were within a 1,000-foot radius of that "Release Site." Colonial denies the remaining allegations in the first sentence of Paragraph 71. Colonial admits the allegations in the second sentence of Paragraph 71, but denies that the page labeled "Page 11" in Exhibit 13 contains information related to the allegations in Paragraph 71. However, Colonial admits that the page labeled "Page 2" of Exhibit 13—which is the eleventh page of the filed Exhibit—does contain information relevant to the allegations Paragraph 71.

72. Regarding the first sentence of Paragraph 72, Colonial admits that the subsurface area containing constituents attributable to the release is up to approximately 11 acres. Colonial denies the remaining allegations in the first sentence of Paragraph 72. Colonial denies the allegations in the second sentence of Paragraph 72.

73. Regarding the first sentence of Paragraph 73, Colonial admits that free product is present in the subsurface and groundwater, and that certain contaminants associated with

petroleum have been detected in the groundwater at certain monitoring wells at concentrations above the North Carolina 2L Groundwater Standards, as set forth in the October 30, 2021 Revised Comprehensive Site Assessment, but denies that the Pipeline release is the source of all such contaminants. Colonial denies the remaining allegations in the first sentence of Paragraph 73.

Regarding the second sentence of Paragraph 73, Colonial admits that the stated contaminants have been detected in certain sampling results at certain groundwater monitoring wells at the Site in concentrations in excess of the North Carolina 2L Groundwater Standards, but denies that the detection of 1,2, dichloroethane and potentially other contaminants is attributable to the Pipeline release. Colonial denies that the page labeled "Page 6" in Exhibit 13 contains information related to the allegations in Paragraph 73; however, Colonial admits that the page labeled "Page iv" of Exhibit 13—which is the sixth page of the filed Exhibit—does contain information relevant to the allegations Paragraph 73.

Except as expressly admitted herein, Colonial denies all allegations in Paragraph 73.

74. Colonial admits that it is currently sampling surface waters on a bi-weekly (*i.e.*, every other week) basis and following one inch or greater rainfall events to verify that petroleum-related contaminants in groundwater are not impacting surface waters. Colonial denies the remaining allegations in Paragraph 74.

75. The allegations in Paragraph 75 refer to a document attached to the Complaint as Exhibit 19. Exhibit 19 speaks for itself, and no response is required. To the extent a response is required, Colonial denies the allegations in Paragraph 75.

PFAS

76. Colonial admits the allegations in the first sentence of Paragraph 76. Colonial is without sufficient knowledge or information to form a belief as to the truth of the allegations in the second and third sentences of Paragraph 76, and therefore denies them.

77. Colonial admits that as part of the Pipeline release response, from August 15 to August 17, 2020, the Pelham Fire Department used a Huntersville Fire Department truck to apply F500, which is a PFAS-free encapsulant, at the Site as a suppression agent. Colonial denies the remaining allegations in Paragraph 77. Answering further, Colonial states that on August 15, 2020, it initiated conversations about F500 use with the Department and the U.S. EPA before it was applied, and that the Department approved the use of the F500. Colonial denies the remaining allegations in Paragraph 77.

78. Colonial admits that Department personnel sought information from Colonial personnel regarding F500, and asked that Colonial conduct sampling for PFAS analysis. Colonial denies the remaining allegations in Paragraph 78.

79. Colonial admits that it informed the Department that the F500 encapsulant used was considered a PFAS-free product based on available information, and that it informed the Department that Colonial had not introduced PFAS onto the Site. Colonial denies the remaining allegations in Paragraph 79.

80. Colonial admits that the Department informed Colonial that it would conduct its own PFAS sampling at the Site. Colonial is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 80, and therefore denies them. Answering further, Colonial states that it cooperated with the Department in scheduling that sampling. Except as expressly admitted herein, Colonial denies all allegations in Paragraph 80.

81. Regarding the first sentence of Paragraph 81, Colonial admits that the August 17, 2020 sampling field notes do not record one of the F500 product samples that was collected that day at the Site. The sample's nature and origin cannot be confirmed. Anecdotal observations suggest that "Product" samples collected on August 17 and 20, 2021 described as orange in color were from totes used to accept residual liquid from the Huntersville Fire Department foam truck. Colonial denies the remaining allegations in the first sentence of Paragraph 81.

Colonial admits the allegations in the second sentence of Paragraph 81.

Regarding the third sentence of Paragraph 81, Colonial admits that on August 20, 2020, Environmental Planning Specialists, Inc., on behalf of Colonial, collected split samples from the Department's sample locations for duplicate analysis by Enthalpy Laboratory. Colonial denies the remaining allegations in the third sentence of Paragraph 81.

Regarding the fourth sentence of Paragraph 81, Colonial admits that on August 20, 2020, samples were collected from a 250-gallon tote and from the nozzle of the hose of the Huntersville Fire Department truck used to apply the F500 at the Site; however, there is uncertainty regarding the nature of the samples, and therefore Colonial denies that any conclusions can be drawn from those samples. Colonial denies the remaining allegations in the fourth sentence of Paragraph 81.

Regarding the fifth sentence of Paragraph 81, Colonial admits that liquid was collected from two sampling locations within the staging and managed runoff containment areas, and denies that either location was a stormwater drainage ditch. Colonial denies the remaining allegations in the fifth sentence of Paragraph 81.

Except as expressly admitted herein, Colonial denies all allegations in Paragraph 81.

82. The allegations in Paragraph 82, 82(a), 82(b), 82(c), and 82(d) refer to a document attached as Exhibit 20. Exhibit 20 speaks for itself, and no response is required. To the extent a response is required, Colonial denies the allegations in Paragraph 82, 82(a), 82(b), 82(c), and 82(d), and incorporates by reference its response to Paragraph 81, as if fully set forth herein.

83. Regarding the first sentence of Paragraph 83, Colonial admits that Environmental Planning Specialists, Inc. collected additional samples on September 10, 2020. Answering further, Colonial admits that the samples were collected from five individual 250-gallon totes of unused F500 encapsulant and two 250-gallon totes of a mixed substance that were relocated from the Release Site and staged at the Colonial Pipeline Greensboro facility. The confirmed F500 raw product samples were consistent in description with raw product (red, viscous liquid) and do not confirm the reported PFAS detections from the August 20, 2020 samples collected during the emergency response from the totes thought to contain raw product. Colonial denies the remaining allegations in the first sentence of Paragraph 83.

Colonial is without sufficient information to form a belief as to the truth of the allegations in the second sentence of Paragraph 83, and therefore denies them.

84. Colonial admits the allegations in Paragraph 84. Answering further, Colonial states that its contractor, Environmental Planning Specialists, Inc., acting on behalf of Colonial, collected groundwater samples from 15 monitoring wells and four recovery wells at the Site for PFAS analysis. Groundwater samples from these 19 wells were split with the Department for duplicate analysis of PFAS compounds.

85. Regarding the first sentence of Paragraph 85, Colonial admits that one sample collected had a preliminary and unvalidated reported total PFAS value of 50,260 ng/L, but as the

Department indicated in Paragraph 81, the origin and nature of that August 17, 2020 sample cannot be confirmed, and therefore Colonial denies that any conclusions can be drawn from it. Due to uncertainties with the collection and analysis of the other mixed product samples, Colonial denies that conclusions can be drawn from the reported PFAS in any of the mixed product samples. Answering further regarding the first sentence of Paragraph 85, Colonial admits that PFAS were reported in certain preliminary, unvalidated sampling results for certain raw product samples, but denies that PFAS were detected when the samples collected on August 20, 2020 and labeled as raw product were reanalyzed. Colonial denies the remaining allegations in the first sentence of Paragraph 85.

Regarding the second sentence of Paragraph 85, Colonial admits that samples of liquid collected near where the F500 was used had reported total PFAS levels with the stated range, but denies that all such reported sampling results were validated results. Colonial denies the remaining allegations in the second sentence of Paragraph 85.

Except as expressly admitted herein, Colonial denies all allegations in Paragraph 85.

86. Regarding the first sentence of Paragraph 86, Colonial incorporates by reference its response to Paragraph 81 as if fully set forth herein, and admits that the stated PFAS chemicals were reported in certain samples from totes or liquid collected during the emergency response. However, Colonial denies that all such sampling results were validated, and Colonial denies it is responsible for the introduction of PFAS chemicals at the Site. Furthermore, as to groundwater sampling, Colonial denies that any individual reported, validated PFAS value greater than the practical quantitation limit was replicated in a corresponding split sample result. Colonial denies all remaining allegations in the first sentence of Paragraph 86.

Regarding the second sentence of Paragraph 86, Colonial admits that the highest reported concentration was for PFOSA at the stated concentration in a preliminary, unvalidated sampling result. However, Colonial denies that any conclusions can be drawn from that result, because it was the August 17, 2020 sample not documented in the field notes, and therefore the sample's origin and nature cannot be confirmed, as indicated in Paragraph 81. Colonial denies the remaining allegations in the second sentence of Paragraph 86.

Regarding the third sentence of Paragraph 86, Colonial admits that the total PFOS and PFOA in one sample of liquid collected near where F500 was used was reported in a preliminary, unvalidated analysis as 222 ng/L. Colonial denies the remaining allegations in the third sentence of Paragraph 86.

Colonial admits the allegations in the fourth sentence of Paragraph 86.

Colonial denies the allegations in the fifth sentence of Paragraph 86.

Except as expressly admitted herein, Colonial denies all allegations in Paragraph 86.

87. Colonial admits that PMPA was reported in certain sampling results for petroleum, petroleum contact water, and monitoring wells associated with the Site. Answering further, Colonial states that there were no reported sampling results in which PMPA exceeded the practical quantitation limit, and that not all sampling results in which PMPA was reported were validated results. Moreover, the sampling results in which PMPA was reported were not all duplicated in the reported corresponding split sample results and/or in reported reanalysis results. Colonial denies the remaining allegations in Paragraph 87.

88. Regarding the allegations in the first sentence of Paragraph 88, Colonial admits that 10 ng/L is an appropriate practical quantitation limit for PFAS compounds given the current state of analytical methods for environmental media, but denies that the practical quantitation

limit is a groundwater quality standard, is appropriate for a groundwater standard, or is appropriate for use as a comparison value for compliance. Colonial further denies that the North Carolina 2L Groundwater Standards contemplate the use of practical quantitation limits as the basis for groundwater quality standards for substances in Class GA or GSA groundwater. *See* 15A N.C.A.C. 2L .0202(d). Colonial denies the remaining allegations in the first sentence of Paragraph 88. Regarding the second sentence of Paragraph 88, Colonial admits that certain reported values for certain PFAS contaminants at certain monitoring wells at the Site have exceeded 10 ng/L in certain sampling events. Colonial denies the remaining allegations in the second sentence of Paragraph 88. Colonial denies the allegations in the third sentence of Paragraph 88.

89. Colonial denies the allegations in Paragraph 89.

90. Regarding the first sentence of Paragraph 90, Colonial admits that on October 12, 2021, it submitted to the Department a "Technical Position Paper" prepared by TRC Environmental Corporation, discussing data analysis demonstrating that the limited PFAS concentrations reported at certain sampling locations at the Site are not related to the gasoline release or the F500, and thus do not warrant additional investigation. Colonial denies the remaining allegations in the first sentence of Paragraph 90. Regarding the second sentence of Paragraph 90, Colonial admits that Exhibit 21 is a portion of the technical paper submitted on October 12, 2021, but denies that Exhibit 21 is the full document, because it does not include the attachments that Colonial submitted.

91. The allegations in the first and second sentences of Paragraph 91 refer to documents attached to the Complaint as Exhibits 15 and 19. Exhibits 15 and 19 speak for themselves, and no response is required. To the extent a response is required, Colonial denies

the allegations in the first and second sentences of Paragraph 91, and states that as of the Department's filing of the Complaint on November 2, 2021, Colonial had not yet received the October 27, 2021 notice.

Regarding the third sentence of Paragraph 91, Colonial admits that as of the filing of the Complaint on November 2, 2021, it had not submitted the PFAS sampling results requested by the Department, because the Department confirmed that such compliance was not required until later in November 2021 (for petroleum contact water) or January 2022 (for surface water). Colonial denies all remaining allegations in the third sentence of Paragraph 91.

Except as expressly admitted herein, denied.

CLAIMS FOR RELIEF

Claim I: Violations of Groundwater Standards

92. Colonial incorporates by references its responses to Paragraphs 1 through 91 as if fully set forth herein.

93. Colonial admits that concentrations of certain specifically-identified contaminants have been reported as exceeding the North Carolina 2L Groundwater Standards at certain monitoring well locations for certain sampling events, as described in the October 30, 2021 Revised Comprehensive Site Assessment, and that some of those contaminants are associated with petroleum products. Colonial denies the remaining allegations in Paragraph 93.

94. Colonial denies the allegations in Paragraph 94.

95. Paragraph 95 states a legal conclusion to which no response is required. To the extent a response is required, Colonial denies the allegations in Paragraph 95.

96. Paragraph 96 states a legal conclusion to which no response is required. To the extent a response is required, Colonial denies the allegations in Paragraph 96.

Claim II: Failure to Take Actions Required by 15A N.C.A.C. 2L .0106

97. Colonial incorporates by reference its responses to Paragraphs 1 through 96 as if fully set forth herein.

98. The first sentence of Paragraph 98 states a legal conclusion to which no response is required. To the extent a response is required, Colonial denies the allegations in the first sentence of Paragraph 98. Colonial denies the allegations in the second sentence of Paragraph 98.

99. The first sentence of Paragraph 99 states a legal conclusion to which no response is required. To the extent a response is required, Colonial denies the allegations in the first sentence of Paragraph 99. Colonial denies the allegations in the second sentence of Paragraph 99.

100. The first sentence of Paragraph 100 states a legal conclusion to which no response is required. To the extent a response is required, Colonial denies the allegations in the first sentence of Paragraph 100. Colonial denies the allegations in the second sentence of Paragraph 100.

101. Paragraph 101 states legal conclusions to which no response is required. To the extent a response is required, Colonial denies the allegations in Paragraph 101.

102. Paragraph 102 states legal conclusions to which no response is required. To the extent a response is required, Colonial denies the allegations in Paragraph 102.

PRAYER FOR RELIEF

Colonial denies that the Department is entitled to any of the relief requested in the Prayer for Relief or to any other type of relief in this action.

All allegations in the Complaint not specifically admitted are denied.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

At all relevant times, Colonial has been in compliance with all applicable provisions of North Carolina statutes and regulations concerning site assessment and remediation. Colonial has acted in accordance with all applicable regulatory requirements and according to the schedule for submission of data and information agreed to by the Department.

THIRD DEFENSE

The claims asserted and relief sought in the Complaint are barred, in whole or in part, by the doctrines of estoppel, waiver, and acquiescence. Colonial has reasonably relied upon affirmative conduct and representations by the Department and long-standing acquiescence by the Department to the interpretation by the Department's employees and Colonial of key terms and requirements of the statutes and regulations the Department alleges Colonial has violated.

FOURTH DEFENSE

The claims asserted and relief sought in the Complaint are barred, in whole or in part, because North Carolina statutes and regulations do not require estimation of the volume of product released in order to conduct site assessment, corrective action, or any necessary remedial activity.

FIFTH DEFENSE

The claims are barred, in whole or in part, because the interpretation of North Carolina statutes and regulations now espoused by the Department constitutes retroactive rulemaking in violation of the North Carolina Administrative Procedure Act and state law.

SIXTH DEFENSE

The claims are barred, in whole or in part, because the Department's attempt to retroactively change the legal status of acts conducted in full compliance with the Department's contemporaneous interpretations of North Carolina laws and regulations falls outside of the authority of the State and the Department and are *ultra vires*.

SEVENTH DEFENSE

The interpretations of the statutory and regulatory requirements now espoused by the Department are unsupported by the regulations that were in effect at the time of each alleged violation and, to be valid and enforceable, would require new regulations promulgated in full compliance with the implementing statutes and the North Carolina Administrative Procedure Act, including public notice and comment. Because the Department has not promulgated new regulations in accordance with these requirements, the interpretations asserted by the Defendant are invalid and unenforceable.

EIGHTH DEFENSE

The claims for injunctive relief are barred, in whole or in part, because Colonial has operated its pipeline in accordance with federal laws and regulations governing pipeline safety, including operations, inspection, maintenance, and repair, and is not in current violation of any applicable federal law.

NINTH DEFENSE

The claims for injunctive relief are barred, in whole or in part, because Colonial has operated its pipeline in accordance with state laws and regulations, and is not in current violation of any applicable state law.

TENTH DEFENSE

The claims for injunctive relief are barred, in whole or in part, because the equities of this matter weigh heavily against such relief.

ELEVENTH DEFENSE

The claims are barred, in whole or in part, by the Department's failure to do equity.

TWELFTH DEFENSE

Certain equitable relief sought in the Complaint, including the inspection of any portion of Colonial's pipeline beyond the Site, are not authorized by North Carolina law and are not available as relief in this matter even if the Department were to prevail on one or more of its asserted claims.

THIRTEENTH DEFENSE

The Court lacks jurisdiction over the Department's claim that Colonial must provide a new estimate of the volume of the release because the Department has identified no actionable injury. Colonial has provided an estimate of the volume of the release. In January 2021, Colonial informed the Department that it estimated that the release to be 1.2 million gallons of gasoline. As confirmed by the U.S. EPA, acceptable estimates of this sort can have a margin of error of 100%. Second, an estimate of the volume of product released is not needed for successful remediation at the Site. Such remediation activities are guided by constituent concentrations and the horizontal and vertical extent of petroleum-related constituents present as delineated through groundwater and soil sampling. *See, e.g.*, 15 N.C.A.C. 02L .0106(g). Colonial has provided that information to the Department. Third, Colonial has provided the Department with all the data the Department would need to re-run the API volume estimate model. Upon information and belief, the Department has access to the same volume estimate

model that Colonial has used. If the Department wanted an updated volume estimate, it has no less ability to re-run the model than does Colonial.

FOURTEENTH DEFENSE

Due to the unique site conditions, including the presence of gasoline beneath the surface of the water table, no environmental models known to Colonial can provide a reasonably accurate estimate of the volume of gasoline released. The only way an environmental model could reasonably calculate a more accurate volume estimate under these circumstances would be for Colonial to cease recovery and remediation activities for several months. Doing so would allow the plume to spread more rapidly and pose greater risk of exposure for human and environmental receptors. Ordering Colonial to cease remediation and recovery while collecting the data to provide an updated volume estimate would be contrary to the North Carolina Groundwater Rules and contrary to the public interest. Even then, the resulting volume estimate would have a significant margin of error.

FIFTEENTH DEFENSE

All Oil Pollution and Hazardous Substances Control Act claims regarding PFAS are barred because Colonial did not "hav[e] control over" any PFAS that may have been introduced into the Site, within the meaning of N.C.G.S. § 143-215.77. Sampling and testing show that PFAS were not present in either the release or in the F500 encapsulant used in initial response efforts.

SIXTEENTH DEFENSE

All claims under the North Carolina groundwater regulations regarding PFAS are barred because Colonial is not responsible for introducing PFAS to the Site.

SEVENTEENTH DEFENSE

To the extent that any PFAS is detected above an applicable 2L or surface water standard, Colonial is not the proximate cause of such contamination. Sampling and testing show that PFAS were not present in either the release or in the F500 encapsulant used in initial response efforts.

EIGHTEENTH DEFENSE

All Oil Pollution and Hazardous Substances Control Act claims regarding PFAS are barred because PFAS are not "hazardous substances" within the meaning of that statute.

NINETEENTH DEFENSE

All of the Department's claims regarding PFAS are barred for lack of injury. There is no exceedance of a regulatory standard, nor is there any harm or threatened harm. The North Carolina 2L Standards do not contemplate the use of practical quantitation limits as the basis for groundwater quality standards for substances in Class GA or GSA groundwater. The limited observed PFAS concentrations at the Site are well below concentrations deemed protective of potable groundwater use.

TWENTIETH DEFENSE

The Department's claim that Colonial has failed to provide the vertical extent of petroleum-related constituents present at the Site is barred because there is no actionable injury. In the October 30, 2021 Revised Comprehensive Site Assessment, Colonial provided the full horizontal and vertical delineation of petroleum-related constituents in groundwater and soil as of that date. Upon information and belief, the Department did not complete its review of the October 30, 2021 Revised Comprehensive Site Assessment prior to filing suit, and therefore no injury could have been suffered.

TWENTY-FIRST DEFENSE

The Department's claim that Colonial has failed to provide the vertical extent of petroleum-related constituents present at the Site is barred under the fair notice doctrine. Before the Department filed suit on November 2, 2021, Colonial had already provided to DEQ, in its October 30, 2021 Revised Comprehensive Site Assessment, the full horizontal and vertical delineation of petroleum-related constituents in groundwater and soil as of that date. That delineation was based on sampling from a monitoring well network developed in coordination with the Department. In developing the well network to complete the delineation, Colonial briefed the Department on the location and depth of all wells. Prior to this lawsuit, the Department never took the position that the location or depth of the monitoring wells were inadequate to provide the horizontal and vertical delineation of all groundwater and soil containing petroleum-related constituents released from the Pipeline. Similarly, the Department never took the position that the process for collecting and analyzing the data necessary for the delineation would be insufficient or inadequate.

TWENTY-SECOND DEFENSE

For the same reasons discussed with respect to the twenty-first defense, the Department's claim that Colonial has failed to provide the vertical extent of petroleum-related constituents present at the Site is also barred under the equitable estoppel doctrine.

TWENTY-THIRD DEFENSE

The Department's claim that Colonial is not operating the hydraulic control wells at the Site to the maximum feasible extent is also barred under the fair notice doctrine. As Colonial has repeatedly explained to the Department, it is currently necessary to operate the wells at less than maximum capacity because the wells cannot be run at a higher rate without having a means for

Colonial to handle, treat, and discharge the additional volume of water. These activities require the issuance of a NPDES permit from the Department, which Colonial has applied for and is working with DEQ to finalize, or some other means of handling the water. Colonial has discussed these facts with the Department, and at no point did the Department provide notice that operating wells at maximum capacity was a regulatory requirement, or that operating the wells at less than maximum capacity was a violation of some regulatory requirement.

TWENTY-FOURTH DEFENSE

The Department's claim that Colonial is not operating the hydraulic control wells at the Site to the maximum feasible extent is barred, in whole or in part, because operating those wells to the maximum feasible extent is not in the public interest. As Colonial has explained to the Department, operating the wells on an interim basis would cause further damage to the environment because it would increase the rate of migration and expansion of the constituents attributed to the release, and it would cause migration of such constituents, which would not be protective of human health or the environment.

TWENTY-FIFTH DEFENSE

The Department's requests for injunctive relief to require Colonial to "remediate all threatened release of petroleum" are barred because there has been no injury and the 2L Groundwater Rules are site-specific and do not authorize preemptive site assessment, preemptive corrective action, preemptive maintenance, or preemptive informational mandates. *See* 15A N.C.A.C. 02L .0106(b), (c). The Department has no basis to allege harm or risk of harm at all locations on the Colonial Pipeline System in North Carolina. The only remedy under the 2L Rules is a Corrective Action Plan to address violations of the 2L Standards, and the Petroleum

Release Rules establish procedures for risk-based assessment and corrective action of historical petroleum releases—not hypothetical future releases.

TWENTY-SIXTH DEFENSE

The Department's request for injunctive relief is barred, in whole or in part, because it is preempted by the exclusive authority of the federal Pipeline Safety Act ("PSA") and its implementing regulations. 49 U.S.C. § 60104(c). Pursuant to the federal Pipeline Safety Act, 49 U.S.C. § 60101 *et seq.*, the United States Department of Transportation, through PHMSA, is the federal agency with exclusive jurisdiction over and expertise in the safe operation, inspection, maintenance, integrity management, and repair of interstate petroleum pipelines.

TWENTY-SEVENTH DEFENSE

The Department's request for injunctive relief is barred, in whole or in part, because it is already being provided pursuant to the June 2021 Consent Order and Consent Agreement with PHMSA (CPF No. 2-2021-005-NOPSO).

TWENTY-EIGHTH DEFENSE

The Department's claim that Colonial must "provide a sufficient explanation . . . for the discrepancy between the amount of recovered petroleum free product reported to the Department and the amount shown on the relevant bills of lading" is barred because there is no actionable injury. First, Colonial has provided an explanation. Second, an explanation is not needed for successful remediation at the Site. Such remediation activities are guided by constituent concentrations and the horizontal and vertical extent of petroleum-related constituents present as delineated through groundwater and soil sampling. Moreover, the fact that the Department may not agree with the explanation does not mean it is insufficient, particularly where the Department has not provided any specific criticisms of the explanation.

TWENTY-NINTH DEFENSE

The Department's claim that Colonial must "provide a sufficient explanation . . . for the discrepancy between the amount of recovered petroleum free product reported to the Department and the amount shown on the relevant bills of lading" is barred by the doctrine of equitable estoppel. Colonial has provided a sufficient explanation for the discrepancy, and the fact that the Department may not agree with the explanation does not mean it is insufficient. To that end, the Department has not provided any specific criticisms of Colonial's explanation, despite ample opportunity to do so.

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Respectfully submitted this the 6th day of December, 2021.

HUNTON ANDREWS KURTH LLP

Nash E. Long (N.C. State Bar No.: 24385)
nlong@huntonak.com
Brent A. Rosser (N.C. State Bar No.: 28781)
brosser@huntonak.com
Kathleen E. Perkins (N.C. State Bar No.: 52340)
One South at The Plaza, Suite 3500
101 S. Tryon Street
Charlotte, NC 28280
Telephone: (704) 378-4700

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing **ANSWER** upon Plaintiff's counsel by depositing a copy of the same in the United States mail, postage prepaid, in an envelope addressed as follows:

T. Hill Davis, III
Assistant Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602

This 6th day of December, 2021.

Nash E. Long