

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION**

Kenny N. White, *on behalf of himself and
all others similarly situated,*)
)
)
Plaintiff,)
)
v.)
)
New-Indy Catawba LLC)
d/b/a New Indy Containerboard,)
)
Defendant.)
_____)

Case No. 0:21-cv-01480-SAL

**CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED**

Plaintiff Kenny N. White, individually and on behalf of all other persons similarly situated, through his undersigned attorney, alleges as follows:

NATURE OF THE ACTION

1. This is a private nuisance action seeking redress for Defendant New-Indy Catawba LLC, d/b/a New Indy Containerboard (“New Indy”)’s wrongful actions to increase its profits by polluting neighboring properties with noxious and harmful hydrogen sulfide emissions.

2. The paper mill located in Catawba, South Carolina (the “Mill”) has operated since 1957. The Mill manufactured paper used in magazines and catalogs. At the end of 2018, however, the Mill was purchased by New-Indy Containerboard, LLC, a joint venture between Schwarz Partners LP and The Kraft Group, LLC, New England Patriots owner Robert Kraft’s holding company. New Indy purchased the Mill to convert it from producing paper to producing virgin containerboard.

3. New Indy completed the conversion in November 2020 and began high volume production in February 2021. As a result of the conversion, the Mill ceased sending foul condensate to a steam stripper and incinerator and instead sent all foul condensate to open-air

lagoons, so that hydrogen sulfide and other dangerous air pollutants could evaporate into the air. The conversion resulted in an eight- or ninefold increase in the amount of foul condensate piped to the open-air lagoons.

4. Thus, when the Mill began high volume production, persons living and working with a 30-mile radius of the Mill immediately complained of strong, foul odors characteristic of hydrogen sulfide.

5. The South Carolina Department of Health and Environmental Control (“DHEC”), in response to what it describes as “an unprecedented number of complaints received by the agency related to odor,” immediately began investigating the odors. By May 7, 2021, DHEC received more than 17,000 complaints of noxious odors.

6. On May 7, 2021, DHEC determined “the odor is injurious to the welfare and quality of life and is interfering with use and enjoyment of property” and ordered New Indy to take actions to remedy the unlawful air pollution released from the Mill. In the order, DHEC determined the odor is injurious to the welfare and quality of life and is interfering with use and enjoyment of property in the area.

7. On May 13, 2021, the U.S. Environmental Protection Agency (“EPA”) issued an emergency order under the Clean Air Act, also ordering New Indy to take actions to remedy the unlawful air pollution released from the Mill. In the order, EPA stated that an emergency order was needed because New Indy’s actions were so harmful to public health and welfare that it was “not practicable to wait for the commencement of a civil action in the United States District Court.”

8. Prior to New Indy’s acquisition and conversion of the Mill, air quality in the area was unproblematic. In fact, in 2011, DHEC awarded the Mill the “Spare the Air” outstanding business award for implementing air quality improvements *beyond* regulatory requirements.

9. Of course, New Indy decided to convert the Mill from magazine paper to containerboard to maximize profits. New Indy likewise decided to maximize its profits by abandoning the previous Mill owner’s commitment to compliance with air pollution laws and regulations—most obviously, by changing the production process to send all pollutants to open-air lagoons instead of continuing to use specialized equipment to bring pollution levels under the applicable legal limits.

10. Plaintiff brings this proposed class action on behalf of himself and all other persons who, from February 2021 to the present (the “Class Period”), have or had any beneficial interest in any real property located within 30 miles of the Mill.

PARTIES

11. Plaintiff Kenny N. White is a citizen of North Carolina. He resides at 9932 Mitchell Glen Drive in Charlotte, North Carolina. His residence is within 30 miles of the Mill. He owns his residence and has owned his residence throughout the Class Period.

12. Defendant New-Indy Catawba LLC, d/b/a New Indy Containerboard is a limited liability company organized under the laws of Delaware with its main office in Catawba, South Carolina. New Indy’s ultimate parent is New-Indy Containerboard, LLC or New-Indy JV Corp., a joint venture between The Kraft Group, LLC, and Schwarz Partners LP. Upon information and belief, at least one member of New Indy is not a citizen of South Carolina.

JURISDICTION AND VENUE

13. The Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C. § 1332(d)(1)(B), in which a member of the Class is a citizen of a different state than Defendant, and the amount in controversy exceeds the sum or value of \$5,000,000, excluding interest and costs.

14. The Court has personal jurisdiction over Defendant because the claims asserted in this action arise from Defendant's contacts with South Carolina.

15. Venue is proper in the District of South Carolina under 28 U.S.C. § 1391 because the most substantial part of the events giving rise to the claims in this action occurred in this judicial district.

FACTUAL ALLEGATIONS

16. Plaintiff incorporates by reference each of the Findings of Fact in the Clean Air Act Emergency Order, *In re New-Indy Cataba, LLC d/b/a New-Indy Containerboard* (EPA Reg'1 Dir. May 11, 2021), issued by the EPA Regional Administrator for EPA Region 4 (attached as **Exhibit A**) as though fully set forth herein. Those Findings of Fact include certain of the below factual allegations.

17. Plaintiff also incorporates by reference each of the Findings of Fact in the Determination of Undesirable Levels and Order to Correct Undesirable Level of Air Contaminants, *In re: New-Indy Catawba, LLC* (DHEC May 7, 2021) issued by the South Carolina Department of Health and Environmental Control (attached as **Exhibit B**) as though fully set forth herein. Those Findings of Fact include certain of the below factual allegations.

18. New Indy operates the Mill in Catawba, South Carolina. New Indy purchased the Mill on December 31, 2018.

19. New Indy received a state construction permit authorizing manufacturing conversions on July 23, 2019. New Indy thereafter closed the Mill between September 2020 and November 2020 to convert manufacturing operations from communication paper products to containerboard. Ex. A ¶ 8.

20. Prior to the conversion, New Indy sent more than half of the volume of its foul condensate stream, which contained hydrogen sulfide, methyl mercaptan, methanol, and other chemicals, to a steam stripper. New Indy used the steam stripper and incinerator to control its hazardous air emissions, which also resulted in the removal of hydrogen sulfide and other chemicals from facility air emissions. New Indy piped the remainder of its foul condensate to the Aeration Stabilization Basin ("ASB") at a rate of approximately 90 gallons per minute ("gpm"). Ex. A ¶ 9.

21. When the facility resumed manufacturing operations in November 2020 and began higher production rates in February 2021, it began sending all of its foul condensate stream to the ASB in the wastewater treatment facility (at approximately 720–800 gpm), where hydrogen sulfide, methyl mercaptan, methanol and chemicals can be volatilized and emitted to the ambient air. This practice leads to passive air stripping of hydrogen sulfide into the ambient air given the high volatility of hydrogen sulfide. Ex. A ¶ 10.

22. On April 5, 2021, DHEC received a permit application from New Indy requesting the removal of a permit production limit to allow for an increase in the production rate at the facility. DHEC has not yet acted on that permit application. Ex. A ¶ 11.

23. Hydrogen sulfide is a flammable, colorless gas that smells like rotten eggs. People can smell hydrogen sulfide at low concentrations in ambient air ranging from 0.5 to 300 parts per billion ("ppb"). Ex. A ¶ 12.

24. Inhalation exposures to elevated concentrations of hydrogen sulfide cause various adverse health effects. These include, but are not limited to, headache, nausea, difficulty breathing among people with asthma, and irritation of the eyes, nose, and throat. Ex. A ¶ 13.

25. On May 7, 2021, DHEC issued a Determination of Undesirable Levels and an Order to Correct Undesirable Level of Air Contaminants. DHEC determined that it had received numerous odor complaints of noxious, foul smelling odors in South Carolina’s York and Lancaster Counties, in the vicinity of the Mill, described as rotten egg and chemical odors, from February 2021. Ex. B ¶ 4.

26. DHEC staff also observed strong, offsite, foul odors in the vicinity of the Mill and several miles away from the Mill that are characteristic of hydrogen sulfide emissions from kraft pulp and paper facilities. On February 22, 23 and 24, 2021, DHEC conducted air, wastewater and landfill inspections at the Facility, and DHEC continues to investigate odors to date. DHEC also investigated other possible sources of odor in the York and Lancaster area, including other air emissions sources, wastewater treatment plants and regulated landfills in the vicinity, ruling them out as possible sources. Ex. B ¶ 17.

27. By early March 2021, the number of odor complaints to DHEC from Lancaster, York and adjoining North Carolina counties increased dramatically. On March 12, 2021, DHEC set up a public web page to provide updates on its odor investigation and provided a form for residents to report the location of and description of observed odors. By May 7, 2021, DHEC received more than 17,000 complaints of noxious odors from persons living in York and Lancaster counties in South Carolina and in North Carolina. DHEC characterizes this as “an unprecedented number of complaints received by the agency related to odor.” Ex. B ¶ 5.

28. By April 9, 2021, DHEC was actively investigating the source of the strong odors reported in York and Lancaster Counties. DHEC personnel reported experiencing off-site odors on Highway 5, as it crosses the Catawba River near the facility, and in neighborhoods several miles away, in Rock Hill, Lancaster, and Indian Land, South Carolina. Ex. A ¶ 16.

29. DHEC has determined the complaints “indicate the odor is injurious to the welfare and quality of life and is interfering with use and enjoyment of property.” Ex. B at 6.

30. Residents in Fort Mill, Indian Land, Rockhill, and Lancaster, South Carolina, and in Charlotte, Matthews, Pineville, and Waxhaw, North Carolina (Lancaster and York Counties in South Carolina, and Union and Mecklenburg Counties in North Carolina), have complained of strong odors emanating from the facility and reported health effects to DHEC. In DHEC’s online database, created March 12, 2021, the reported health effects have included nausea (approximately 740 complaints, including those that reported exposure to a “nauseating” odor), headaches including migraines (approximately 650 complaints), nose or throat irritation (approximately 370 complaints), and eye irritation (approximately 360 complaints). Other reported symptoms include coughing, difficulty breathing, asthma “flare ups,” and dizziness. As of April 27, 2021, in the approximately five weeks since the DHEC online database was created, the database received approximately 14,000 such complaints, some from residents as far as 30 miles away from the facility. By comparison, in all of 2020, DHEC received approximately five complaints about the facility. Ex. A ¶ 14.

31. Residents have also documented on DHEC’s online database a wide range of impacts to quality of life, personal comfort, and wellbeing. This includes hundreds of instances of lost sleep, a desire to stay indoors to avoid odors, and stress and anxiety. Many residents noted: that odors are noticeable inside their homes (more than 2,000 complaints); that they were woken at night due to the odors (more than 600 complaints); and that they did not want to go outside due to the odors (more than 400 complaints). Specific quality of life impacts include: “It [the odors] is preventing our ability to enjoy our home and community,” “We basically cannot enjoy our life,” and “We are prisoners in our own smelly home.” Ex. A ¶ 15.

32. EPA Region 4 also maintains a database to keep track of complaints submitted by residents who live near the facility. During March and April 2021, EPA logged 310 complaints. Some complaints reported odors and a subset included information on health impacts. The most frequently cited symptoms included in the EPA database were headache (80 complaints), burning eyes (52 complaints), nausea (40 complaints), and throat irritation (20 complaints). These are the same four health impacts reported most frequently in the DHEC online database. Ex. A ¶ 17.

33. On April 15, 24, 25, 26, and 27, 2021, EPA inspectors detected unsafe hydrogen sulfide from on-site and nearby locations downwind of the Mill. The EPA inspectors themselves experienced headaches, itchy eyes, and nausea caused by the hydrogen sulfide. Ex. A ¶¶ 19–30.

34. The EPA took measurements at other potential hydrogen sulfide sources in the area (wastewater treatment plants) which excluded those as potential sources for the hydrogen sulfide contaminating the area. Ex. A ¶ 31.

35. On May 3, 2021, at 9:30 a.m., EPA and New Indy held a conference call to discuss restarting the steam stripper. New Indy restarted the steam stripper slowly over the night into the day of May 4, 2021. However, the maximum capacity of the steam stripper is approximately 430 gpm of foul condensate, which is inadequate to accommodate the approximately 800 gpm of foul condensate being produced at the Mill. Ex. A ¶ 34.

36. In 2010, the National Research Council of the National Academies published Acute Exposure Guideline Levels (“AEGLs”) for hydrogen sulfide. The evaluation reported three tiers of AEGLs. AEGL-1 concentrations are defined as “the airborne concentration . . . of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects.” Ex. A ¶ 33.

37. For hydrogen sulfide, the 60-minute AEGL-1 concentrations is 510 ppb. This value was derived from a study that reported headaches among adults with asthma following acute inhalation exposures to hydrogen sulfide. Ex. A ¶ 36.

38. On April 26, 2021, EPA sampled an offsite hydrogen sulfide average concentration of 669.44 ppb in a 60-minute period. The sampling occurred southeast of the Mill, near the location of the Riverchase Estates development. The DHEC online database includes 14 records of odors detected between 4:00 a.m. and 6:00 a.m. on this date, including multiple complaints submitted by residents who live near where the sample was collected. On one street in the Riverchase Estates development, a resident reported that the odor was “causing coughing” and on another street in this development, residents reported being woken up by the odors and “very intense” odor found throughout a home. Health complaints were also reported by residents who live further away. Ex. A ¶ 38.

39. In addition to the health impacts as identified above, over 40 years ago, EPA determined sulfur compound air emissions from pulp and paper mills adversely affect the welfare of the public. Kraft Paper Mills, *Standards of Performance for New Stationary Sources*, 41 Fed. Reg. 42012 (Sept. 24, 1976) (“TRS [total reduced sulfur] emissions from kraft pulp mills are extremely odorous, and there are numerous instances of poorly controlled kraft mills creating public odor problems . . . Kraft pulp mills are a major source of TRS compounds . . . TRS emissions from kraft pulp mills are composed primarily of hydrogen sulfide, methyl mercaptan, dimethyl sulfide and dimethyl disulfide . . . TRS compounds can have an adverse effect on public welfare . . . The emissions from each pulp mill surveyed in the study affect an average of 44,000 persons over an area of approximately 100 square miles . . .”). Ex. A ¶ 39.

CLASS ACTION ALLEGATIONS

40. Plaintiff brings this action as a class action under Rule 23 of the Federal Rules of Civil Procedure on behalf of the following Class:

All persons or entities who have or had any beneficial interest in any real property located within 30 miles of the facility 5300 Cureton Ferry Road, SC 29704 during the period February 1, 2021 through the present.

Excluded from the Class are current and former officers and directors of New Indy; members of the immediate families of the officers and directors of New Indy; New Indy's legal representatives, heirs, successors, assigns, any entity in which either of them has or has had a controlling interest; any federal, state, or local governmental agencies; any judges who have decided or are assigned to decide some or all issues in this case; any persons related to a judge in a manner that would disqualify the judge from hearing the case; and any chambers staff working for the assigned judge or other courthouse staff who perform tasks relating to this matter.

41. Plaintiff reserves the right to revise the Class definition based on facts learned in the course of litigating this matter.

42. This action is proper for Class treatment under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact number and identities of other Class members are unknown to Plaintiff at this time, Plaintiff is informed and believes that there are many thousands of Class members. Approximately 1,696,019 people live within 30 miles of the Mill. Thus, the Class members are so numerous that individual joinder of all Class members is impracticable.

43. Common questions of law and fact arise from Defendant's conduct described herein. Such questions are common to all Class members and predominate over any questions affecting individual Class members. These include:

- a. New Indy's production of hydrogen sulfide and other noxious air contaminants and New Indy's release of those contaminants into the atmosphere;

- b. New Indy's violation of applicable federal and state laws and regulations relating to hydrogen sulfide and other noxious air contaminants;
- c. Findings of Fact made by the EPA regarding New Indy's operation of the Mill;
- d. Determinations made by DHEC regarding New Indy's operation of the Mill;
- e. Enforcement actions by EPA and by DHEC against New Indy;
- f. Whether New Indy's actions constitute a private nuisance unreasonably interfering with the use and enjoyment of nearby real property;
- g. Whether, and to what extent, injunctive relief should be imposed on New Indy to prevent such conduct in the future;
- h. Whether the members of the Class have sustained damages as a result of New Indy's wrongful conduct; and
- i. The appropriate measure of damages or other relief.

44. Plaintiff's claims are typical of those of the Class members because Plaintiff and the other Class members sustained damages arising out of the same wrongful conduct, as detailed herein. Plaintiff and Class members sustained similar injuries arising out of New Indy's wrongful conduct. The injuries of the Class members were caused directly by New Indy's wrongful conduct. In addition, the factual underpinning of New Indy's misconduct is common to all Class members and represents a common misconduct resulting in injury to all Class members. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of Class members and are based on the same legal theories.

45. Plaintiff will fairly and adequately represent and pursue the interests of the Class. Plaintiff understands the nature of her claims herein, has no disqualifying conditions, and will vigorously represent the interests of the Class members. Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to the interests of the Class members.

46. Plaintiff has retained competent and experienced class action attorneys to represent her interests and those of the Class members. Plaintiff and Plaintiff's counsel have the necessary financial resources to litigate this class action adequately and vigorously. Plaintiff and counsel are aware of their fiduciary responsibilities to the Class members and will diligently discharge those duties by vigorously seeking the maximum possible recovery for them.

47. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual Class member are too small to make it economically feasible for an individual Class member to prosecute a separate action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein.

48. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as New Indy has acted on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

49. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

50. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings or incompatible standards of conduct for New Indy. Additionally, individual actions may be dispositive of the interest of all members of the Class, although certain Class members are not parties to such actions.

51. New Indy’s conduct is generally applicable to the Class as a whole and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, New Indy’s practices make declaratory relief with respect to the Class appropriate.

CAUSE OF ACTION

**COUNT I
PRIVATE NUISANCE**

52. Plaintiff re-alleges and incorporates by reference each of the allegations in the preceding paragraphs as though fully set forth herein.

53. Plaintiff brings these claims on behalf of himself and the other members of the Class for an injunction and damages for private nuisance under South Carolina law.

54. EPA has concluded New Indy is “causing or contributing” to the emission of air pollutants within the meaning of Sections 302(g) and 303 of the Clean Air Act, 42 U.S.C. §§ 7602(g) and 7603, by emitting hydrogen sulfide from the facility into the ambient air.

55. Based on evidence it has collected, EPA has concluded the Mill’s operations are emitting hydrogen sulfide into the ambient air, and that New Indy’s operation of the Mill, as described above, is an imminent and substantial endangerment to public health or welfare or the environment.

56. EPA has concluded it has “compelling evidence that emissions from New Indy’s facility are causing adverse public health and welfare impacts among exposed populations,” specifically, that “[b]y emitting hydrogen sulfide from the [Mill] into the ambient air in levels that result in the human health symptoms described above, and that adversely affect personal comfort and well-being, Respondent is affecting the public health and welfare within the meaning of Sections 101(b), 302(h) and . 303 of the Act, 42 U.S.C. §§ 7401(b), 7602(h) and 7603.”

57. DHEC similarly has concluded “that undesirable levels of air contaminants from operations of the [Mill] exist, such undesirable levels are injurious to human health or welfare or are unreasonably interfering with enjoyment of life or use of property.”

58. New Indy owns the Mill subject to the implied obligation that it will use in in such a way as not to prevent others from enjoying the use of their property.

59. New Indy’s unlawful pollution is an unreasonable, unwarrantable, or unlawful use by New Indy of its own real property, which substantially and unreasonably interferes with Plaintiff’s and Class members’ possession of their own real property.

60. New Indy’s are reckless, willful, and wanton, in that New Indy intentionally ceased use of pollution controlling devices at the Mill and instead sent all foul condensate to open-air lagoons. New Indy did so even though it knew or should have known a nine-fold increase in pollution in the open-air lagoons would damage public health and unreasonably interfere with the use of nearby properties. New Indy did so anyway because it was motivated by money.

61. By virtue of New Indy’s reckless, willful, and wanton acts, Plaintiff and Class members are entitled to an award of punitive damages sufficient to impress upon New Indy the seriousness of its conduct and to deter similar conduct in the future.

62. Plaintiff and Class members therefore are entitled to recover compensatory damages, consequential damages, punitive damages, attorneys’ fees and costs, an injunction enjoining New Indy’s conduct, and any other relief the Court deems appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendant and prays for relief as follows:

- a. An order that this action be maintained as a class action and appointing Plaintiff as representative of the Class and appointing the undersigned attorney as Class Counsel in this action;
- b. All recoverable compensatory and other damages sustained by Plaintiff and Class members;
- c. Compensatory damages for injuries suffered by Plaintiff and Class members in the maximum amount permitted by applicable law;
- d. Punitive damages sufficient to impress upon New Indy the seriousness of its misconduct and to deter similar misconduct in the future;
- e. A decree requiring New Indy to immediately cease its wrongful conduct as set forth in this Complaint;
- f. Statutory pre-judgment and post-judgment interest on any amounts;
- g. Payment of reasonable attorneys' fees and costs; and
- h. Such other relief as the Court may deem just and proper

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b)(b) of the Federal Rules of Civil Procedure, Plaintiff, on behalf of himself and all others similarly situated, demands a trial by jury on all questions of fact raised by this Complaint.

Respectfully submitted,

s/Phillip D. Barber

Richard A. Harpootlian (Fed. ID No. 1730)

Christopher P. Kenney (Fed. ID No. 11314)

Phillip D. Barber (Fed. ID No.12816)

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ATTORNEYS FOR PLAINTIFF KENNY N.
WHITE, ON BEHALF OF HIMSELF AND
ALL OTHERS SIMILARLY SITUATED

May 18, 2021
Columbia, South Carolina.

Exhibit A

Clean Air Act Emergency Order, *In re New-Indy Cataba, LLC d/b/a New-Indy Containerboard* (EPA Reg'l Dir. May 11, 2021)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

May 13, 2021

SENT VIA ELECTRONIC MAIL

Mr. Tony Hobson
Vice President of Manufacturing
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tony.hobson@new-indycb.com

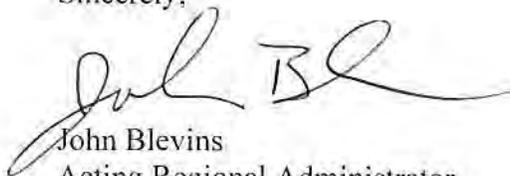
Re: Clean Air Act Section 303 Emergency Order

Dear Mr. Hobson:

Pursuant to Section 303 of the Clean Air Act, 42 U.S.C. § 7603, the U.S. Environmental Protection Agency is issuing the enclosed Emergency Order (Order), requiring New Indy Containerboard to comply with the requirements of said Order, at its facility located at 5300 Cureton Ferry Road in Catawba, York County, South Carolina.

If you have any questions regarding this matter, please contact Todd Russo, Chief, Air Enforcement Branch, at (404) 562-9194 or by email at russo.todd@epa.gov, or have your attorney contact Marirose J. Pratt, at (404) 562-9023 or by email at pratt.marirose@epa.gov.

Sincerely,


John Blevins
Acting Regional Administrator

Enclosures

cc:
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Scott Hansen, Environmental Director
Catawba Indian Nation
Scott.hansen@catawba.com

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

In the matter of)
)
New-Indy Catawba, LLC d/b/a)
New-Indy Containerboard.)
)
 5300 Cureton Ferry Road)
 Catawba, South Carolina 29704)
)
 Respondent.)
)
 Proceeding under Section 303 of)
 the Clean Air Act, 42 U.S.C. § 7603)

**CLEAN AIR ACT
EMERGENCY ORDER**

STATEMENT OF AUTHORITY

This emergency order ("Order") is issued to New-Indy Catawba, LLC ("Respondent") pursuant to the authority granted to the Administrator of the United States Environmental Protection Agency ("EPA") by Section 303 of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7603, to protect public health or welfare, or the environment. The authority to issue this Order has been delegated by the Administrator of EPA to the Regional Administrator for EPA Region 4 ("Regional Administrator") by Delegation No. 7-49. This Order is issued by the Regional Administrator.

Section 303 of the Act provides that:

[T]he Administrator, upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance

and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

PARTIES BOUND

1. This Order applies to and is binding upon Respondent, its officers, directors, employees, agents, trustees, receivers, successors, assigns, and all other persons, including but not limited to firms, corporations, limited liability companies, subsidiaries, contractors, consultants, and lessees acting under or on behalf of Respondent in connection with the implementation of this Order.

2. Respondent shall be responsible and liable for conducting the activities specified pursuant to this Order, regardless of who performs the activities. Respondent shall be liable for the conduct of employees, agents, contractors, consultants, or lessees to satisfy the requirements of this Order.

3. No change in the ownership of the facility affected by this Order or the ownership or corporate status of Respondent shall in any way alter, diminish, or otherwise affect the responsibilities of Respondent under this Order. Respondent shall provide a copy of this Order to any successor(s) during the pendency of this Order.

FINDINGS OF FACT

The Regional Administrator makes the following Findings of Fact:

4. Prior to issuing this Order, EPA consulted with representatives of the State of South Carolina's Department of Health and Environmental Control ("DHEC"), of York County, South Carolina, and of Mecklenburg County, North Carolina to confirm the accuracy of the information upon which this Order is based.

5. Respondent is a limited liability corporation registered to do business in South Carolina.

6. Respondent operates a pulp and paper mill located at 5300 Cureton Ferry Road in Catawba, South Carolina (the "facility"). A population of approximately 1,696,019 people live within a 30-mile

radius of the facility, which includes portions of York, Lancaster, and Chester Counties in South Carolina, and Union and Mecklenburg Counties in North Carolina.

7. The facility is located approximately 10-11 miles south and south west of Indian Land, South Carolina and Waxhaw, North Carolina, respectively. The Catawba Indian Nation Reservation is located less than 4 miles north of the facility.

8. After applying for and receiving on July 23, 2019, a state construction permit authorizing manufacturing conversions (Construction Permit # 2440-0005-DF), the Respondent shut the facility down between September of 2020 and November of 2020, to convert manufacturing operations from communication paper products (bleached paper) to containerboard grades (unbleached cardboard or brown paper).

9. Prior to the conversion, Respondent sent more than half of the volume of its foul condensate stream, which contained hydrogen sulfide, methyl mercaptan, methanol, and other chemicals, to the steam stripper. Respondent was using the steam stripper and incinerator to control its hazardous air emissions, which also resulted in the removal of hydrogen sulfide and other chemicals from facility air emissions. The Respondent was piping the remainder of its foul condensate to the Aeration Stabilization Basin ("ASB") at a rate of approximately 90 gallons per minute ("gpm").

10. After the conversion, when the facility resumed manufacturing operations in November 2020 (with low production rates), and began higher (but not full) production rates in February 2021, it began sending all of its foul condensate stream to the ASB in the wastewater treatment facility (at approximately 720-800 gpm), where hydrogen sulfide, methyl mercaptan, methanol and chemicals can be volatilized and emitted to the ambient air. This practice is likely to lead to passive air stripping of hydrogen sulfide into the ambient air given the high volatility of hydrogen sulfide.

11. On April 5, 2021, DHEC received a permit application from the Respondent requesting the removal of a permit production limit to allow for an increase in the production rate at the facility. DHEC has not yet acted on that permit application.

12. Hydrogen sulfide is a flammable, colorless gas that smells like rotten eggs. People usually can smell hydrogen sulfide at low concentrations in ambient air ranging from 0.0005 to 0.3 parts per million (“ppm”) (0.5 to 300 parts per billion (“ppb”).

13. Inhalation exposures to elevated concentrations of hydrogen sulfide have been shown to cause various adverse health effects. These include, but are not limited to, headache, nausea, difficulty breathing among people with asthma, and irritation of the eyes, nose, and throat. Whether effects occur and their severity depends on the magnitude of exposure, the duration of exposure, and the frequency of exposure.

14. Residents in Fort Mill, Indian Land, Rockhill, and Lancaster, South Carolina, and in Charlotte, Matthews, Pineville, and Waxhaw, North Carolina (Lancaster and York Counties in South Carolina, and Union and Mecklenburg Counties in North Carolina), have complained of strong odors emanating from the facility and reported health effects to DHEC. In DHEC’s online database, which was created on March 12, 2021, and allows specific information to be reported in a descriptor field, the reported health effects have included nausea (approximately 740 complaints, including those that reported exposure to a “nauseating” odor), headaches including migraines (approximately 650 complaints), nose or throat irritation (approximately 370 complaints), and eye irritation (approximately 360 complaints). Less frequently reported symptoms include coughing, difficulty breathing, asthma “flare ups,” and dizziness. As of April 27, 2021, in the approximately five weeks since the DHEC online database was created, the database received approximately 14,000 such complaints, some from residents as far as 30 miles away from the facility. In all of 2020, DHEC received approximately five complaints about the facility.

15. Residents have also documented on DHEC's online database a wide range of impacts to quality of life, personal comfort, and wellbeing. This includes hundreds of instances of lost sleep, a desire to stay indoors to avoid odors, and stress and anxiety. For example, many residents noted: that odors are noticeable inside their homes (more than 2,000 complaints); that they were woken at night due to the odors (more than 600 complaints); and that they did not want to go outside due to the odors (more than 400 complaints). A sampling of specific quality of life impacts include: "It [the odors] is preventing our ability to enjoy our home and community," "We basically cannot enjoy our life," and "We are prisoners in our own smelly home."

16. By April 9, 2021, DHEC was actively investigating the source of the strong odors reported in York and Lancaster Counties. DHEC personnel reported experiencing off-site odors on Highway 5, as it crosses the Catawba River near the facility, and in neighborhoods several miles away, in Rock Hill, Lancaster, and Indian Land, South Carolina.

17. EPA Region 4 also maintains a database to keep track of complaints submitted by residents who live near the facility. During March and April of 2021, EPA logged 310 complaints. Some complaints reported odors and a subset included information on health impacts. The most frequently cited symptoms included in the EPA database were headache (80 complaints), burning eyes (52 complaints), nausea (40 complaints), and throat irritation (20 complaints). These are the same four health impacts that were reported most frequently in the DHEC online database.

18. On April 14, 2021, at 10:00 a.m., EPA met with the Respondent via video conference to discuss the chronology of facility operational changes since Respondent's acquisition of the facility in December of 2018, including the period the facility was shut down between September and November of 2020, and the change from steam stripping the foul condensate stream to biological treatment when the facility restarted operations in November of 2020. EPA asked the Respondent what would be needed to restart the steam stripper, and Respondent committed to looking into this question.

19. On April 15, 2021, while at the facility, EPA discussed with Respondent its foul condensate stream, including diagrams of the point of generation of the foul condensate and the foul condensate operational path through the facility. The EPA again asked the Respondent for information on when it would be able to restart the steam stripper, and the Respondent committed to providing information to EPA by the following week.

20. During the onsite inspection on April 15, 2021, duly authorized EPA Region 4 inspectors wore 4-gas monitors for personal safety that were set to alarm at a low threshold of 10 ppm (10,000 ppb) of hydrogen sulfide. One inspector experienced the following hydrogen sulfide readings with the 4-gas monitor while onsite at the facility:

- a. At 11:07 a.m., on the top of the Post-Aeration Tank, near the guardrail overlooking the tank contents, the 4-gas monitor hydrogen sulfide alarm triggered and read 15.9 ppm (15,900 ppb).
- b. At 12:41 p.m., about 50 feet from Aerator 6, the 4-gas monitor hydrogen sulfide reading was 6.9 ppm (6,900 ppb). The 4-gas monitor also read hydrogen sulfide of 3.1 ppm (3,100 ppb) at 12:49 p.m., and 4.9 ppm (4,900 ppb) at 12:52 p.m.
- c. At approximately 4:47 p.m., a hydrogen sulfide alarm on the 4-gas monitor triggered while the employee was near the Evaporator Tank #1. The above 10 ppm reading wasn't recorded, but shortly after the employee left the area, the 4-gas monitor showed a reading of 6.9 ppm (6,900 ppb).

21. On April 24, 25, 26 and 27, 2021, EPA inspectors also detected hydrogen sulfide from on-site and nearby locations downwind of the facility using the EPA Region 5 Geospatial Measurement of Air Pollution ("GMAP") mobile laboratory described in EPA Other Test Method 33A ("OTM 33A")¹.

¹ OTM 33A is available on EPA's website here: <https://www.epa.gov/emc/emc-other-test-methods/Other%20Test%20Methods>.

22. Region 5's GMAP uses a spectroscopy analyzer to measure hydrogen sulfide concentrations. The collected data are integrated with global positioning system ("GPS") location information and meteorological parameters, when available, under a common time stamp using the specially designed Mobile Emission Monitoring ("MEM") software to quantify air pollutant concentrations and source trajectories.

23. Between April 24 and 27, 2021, EPA used the GMAP platform to perform 15 stationary measurements of airborne hydrogen sulfide, one of which was a non-detect measurement. During these events, the GMAP system was not moving and continuously sampled air for durations ranging from five (5) minutes to 129 minutes. Table 1 summarizes the stationary measurement results, except for the non-detect measurement. With one exception, all samples were collected in the morning hours, at various times between 3:30 a.m. and 9:30 a.m. As the exception, the first sample shown in Table 1 was collected in the evening hours, at 7:45 to 8:45 p.m.

Table 1. Stationary Hydrogen Sulfide Sampling Results

Date	Location	Approximate Distance From Facility ²	Sample Duration (Minutes)	Hydrogen Sulfide Concentrations (ppb)	
				Highest One-Second Average	Average Over Sample Duration
4/24/2021	Highway 5 & Catawba River	0.38 miles N	60	473.37	281.13
4/24/2021	Riverside Rd & Confab Ln	0.67 miles SE	30	14.01	3.82
4/25/2021	Riverside Rd and Confab Ln	0.63 miles SE ³	62	387.41	173.22
4/25/2021	Facility parking lot	NA	129	66.64	6.73
4/25/2021	Cobble Stone Way & Sherman Drive (Riverchase Estates)	1.61 miles NE	30	102.63	65.85
4/25/2021	Riverside Rd & Quail Point Farm Rd	0.4 miles SE of WWTP ⁴	34	12.25	2.64
4/25/2021	Cureton Ferry Rd	0.4 miles N	47	13.16	1.73

² Sample locations are estimated distances from specific unit operations at the facility, such as the holding ponds or the aeration basins.

³ The EPA Region 5 May 5, 2021 GMAP Report for New Indy Containerboard incorrectly identifies this stationary location as approximately 0.64 miles NE, rather than SE of the facility.

⁴ This stationary source sample was taken approximately 0.4 miles southeast of the Catawba Wastewater Treatment Plant.

4/26/2021	Riverside Rd and Confab Ln	0.64 miles SE	60	943.74	669.44*
4/26/2021	Riverchase Estates Entrance	1.53 miles SE	30	219.20	187.9
4/26/2021	Townsend Rd (Riverchase Estates)	1.64 miles SE	30	193.11	110.19
4/27/2021	Highway 5 & Catawba River	0.40 miles N	30	501.82	315.19
4/27/2021	Catawba Reservation, Iswa Headstart School	3.56 miles N	30	140.56	120.75
4/27/2021	NE edge of facility aeration basin	NA	38	3,592.60	842.01*
4/27/2021	NE edge of facility aeration basin	NA	5	3,155.78	975.87*

* Hydrogen sulfide concentrations greater than acute exposure guidance 1 levels (“AEGL-1”).

24. Between April 24 and 27, 2021, EPA used the GMAP platform to collect 84 mobile transect measurements of airborne hydrogen sulfide. On April 24, mobile transect samples were primarily collected during the evening hours (i.e., later than 7:00 p.m.). On the other three sampling dates, mobile transect samples were collected primarily during morning hours.

25. During each mobile transect, duly authorized EPA field personnel drove the GMAP mobile air monitoring vehicle to various locations onsite at the facility and in the surrounding communities, while continuously sampling ambient air for hydrogen sulfide. The duration of mobile transect sampling events varied, as did the distance covered during these sampling events and the speed with which the monitoring vehicle traveled.

26. Table 2 summarizes the mobile transect sampling results.

Table 2. Mobile Transect Hydrogen Sulfide Sampling Results

Monitoring Area	Number of Mobile Transect Samples with Hydrogen Sulfide Levels in the Selected Concentration Ranges (ppb)			
	>1,000	>500 and <1,000	>100 and <500	<100
Onsite locations	7	3	7	5
<1 mile offsite	0	5	14	11
1-5 miles offsite	0	0	11	7
>5 miles offsite	0	0	0	14

27. Table 2 shows that one-second average hydrogen sulfide concentrations greater than 1,000 ppb were observed in seven samples collected within the facility boundary. Hydrogen sulfide concentrations generally decreased with downwind distance from the facility.

28. A common feature among multiple mobile transects collected near the facility was that the sample duration included times with elevated hydrogen sulfide concentrations and times with hydrogen sulfide concentrations between 0 and 10 ppb. This pattern indicates that the GMAP vehicle likely drove through a hydrogen sulfide plume during the corresponding sampling events.

29. The summary in Table 2 is limited to the times when, and locations where, EPA collected the 84 mobile transect samples. Elevated hydrogen sulfide concentrations may have also occurred at times when, and locations where, EPA was not collecting measurements.

30. The same two EPA personnel conducted all four days of the GMAP sampling. The two employees reported experiencing a distinct and strong odor while at the facility and while conducting sampling in offsite areas, including Catawba Indian Nation Reservation, Indian Land, Riverchase Estates, and other surrounding communities. The EPA employees reported noticing odors at the same time as when the GMAP measured airborne hydrogen sulfide. The two employees also reported experiencing headaches, itchy eyes, and nausea while the odor was present, and when hydrogen sulfide was being detected. The employees reported the symptoms as being particularly distressing whenever they sampled at the facility and during the early morning hour-long sampling episode conducted on April 26, 2021. The EPA employees reported that these more distressing symptoms typically resolved within approximately one hour after leaving areas with significant odors.

31. EPA monitored at and around the other potential sources of hydrogen sulfide in the area, the Lancaster and Union County Wastewater Treatment Plants, and detected significantly lower hydrogen sulfide concentrations at those locations, as identified in Table 3.

Table 3. Wastewater Treatment Plant Sampling Results

Date	Location	Approximate distance from facility ⁵	Hydrogen Sulfide Concentrations (ppb)
			Highest One-Second Average
4/27/2021	Union County Wastewater Treatment Plant	10.46 miles N	10.46
4/26/2021	Lancaster Wastewater Treatment Plant	9.58 miles S	9.88

32. DHEC's April 4, 2021 back trajectory analysis, which is an assessment of the location of an air emitting source using odor complaints and wind direction, and EPA Region 5's May 5, 2021 GMAP Report for New Indy Containerboard facility identify the Respondent's facility as the main, if not only, source of hydrogen sulfide causing the symptoms residents had reported in the surrounding communities.

33. On April 19, 21, and 28, EPA and Respondent exchanged emails regarding restarting the steam stripper.

34. On May 3, 2021, at 9:30 a.m., EPA and Respondent met via conference call to discuss the Respondent's plans to restart the steam stripper. During that conference, the Respondent stated that it was awaiting approval from DHEC to restart the stripper. DHEC provided approval later that day, and Respondent restarted the steam stripper slowly over the night into the day of May 4, 2021. However, the maximum capacity of the steam stripper is approximately 430 gpm of foul condensate, which is inadequate to accommodate the approximately 800 gpm of foul condensate being produced, as reported by Respondent.

35. Epidemiological, experimental, toxicological, and other studies have investigated the relationship between inhalation exposure to hydrogen sulfide and adverse health effects. In 2010, the National Research Council of the National Academies evaluated the state-of-the-science and published AEGLs for hydrogen sulfide. The evaluation reported three tiers of AEGLs. The AEGL-1 concentrations are

⁵ Sample locations are estimated distances from specific unit operations at the facility, such as the holding ponds or the aeration basins.

defined as “the airborne concentration...of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects.” It is further noted that these effects are transient and reversible after exposures cease.

36. AEGL-1 concentrations are derived for different averaging periods. For hydrogen sulfide, the 10-minute, 30-minute, and 60-minute AEGL-1 concentrations are 750 ppb, 600 ppb, and 510 ppb, respectively. These values were all derived from a study that reported headaches among adults with asthma following acute inhalation exposures to hydrogen sulfide. Stationary sampling results from the GMAP were compared to AEGL-1 concentrations with similar or identical averaging periods, as the stationary measurements may represent exposure concentrations for workers or residents in the areas where samples were collected.

37. As identified in Paragraph 23, Table 1, three of fifteen stationary samples had hydrogen sulfide concentrations greater than AEGL-1, a concentration “above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects.”

38. The highest recorded offsite hydrogen sulfide average concentration (669.44 ppb in a 60-minute sample) among the 15 GMAP stationary sampling events occurred on April 26, 2021. This sampling event started shortly after 4:00 a.m., at which point the instantaneous hydrogen sulfide concentration was already greater than 750 ppb, indicating that elevated concentrations occurred for an unknown duration before the sampling period began. The sampling event occurred southeast of the facility, near the location of the Riverchase Estates development. The DHEC online database includes 14 records of odors detected between 4:00 a.m. and 6:00 a.m. on this date, including multiple complaints submitted by residents who live in close proximity to where the GMAP sample was collected. On one street in the Riverchase Estates development, a resident reported that the odor was “causing coughing;” and on

another street in this development, residents reported being woken up by the odors and “very intense” odor found throughout a home. Health complaints were also reported by residents who live further away.

39. In addition to the health impacts as identified above, over 40 years ago, EPA determined that sulfur compound air emissions from pulp and paper mills can adversely affect the welfare of the public. Kraft Paper Mills, Standards of Performance for New Stationary Sources, 41 Fed. Reg. 42012 (Sept. 24, 1976) (“TRS [total reduced sulfur] emissions from kraft pulp mills are extremely odorous, and there are numerous instances of poorly controlled kraft mills creating public odor problems ... Kraft pulp mills are a major source of TRS compounds ... TRS emissions from kraft pulp mills are composed primarily of hydrogen sulfide, methyl mercaptan, dimethyl sulfide and dimethyl disulfide ... TRS compounds can have an adverse effect on public welfare ... The emissions from each pulp mill surveyed in the study affect an average of 44,000 persons over an area of approximately 100 square miles ...”).

40. The DHEC online database reports demonstrate that residents near the facility experience many adverse impacts beyond the health impacts identified in this Order, including the notable odor-related quality of life impacts mentioned in Paragraph 15.

41. On May 7, 2021, DHEC issued the Respondent a Determination of Undesirable Levels and an Order to Correct Undesirable Level of Air Contaminants (“DHEC Order”). The DHEC Order requires the Respondent to: conduct a full evaluation of its current operations and processes at the facility to identify potential sources of the odor and elevated levels of hydrogen sulfide on and off facility property; conduct onsite and offsite monitoring of hydrogen sulfide at representative locations approved by DHEC; conduct stack or vent testing of its air emissions; and develop corrective action plans for its air and wastewater emissions. As of the date of the DHEC Order, DHEC had received more than 17,000 complaints about the Respondent on its online database. The DHEC order does not require actions to

immediately address an imminent and substantial endangerment to public health or welfare or the environment.

CONCLUSIONS OF LAW

EPA concludes the following:

42. Respondent is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), against whom an Emergency Order may be issued under Section 303 of the Act, 42 U.S.C. § 7603.

43. In its current state, the facility is a "pollution source" or "combination of sources" within the meaning of Section 303 of the Act, 42 U.S.C. § 7603.

44. Hydrogen sulfide is an "air pollutant" within the meaning of Sections 302(g) and 303 of the Act, 42 U.S.C. §§ 7602(g) and 7603.

45. Respondent is "causing or contributing" to the emission of air pollutants within the meaning of Sections 302(g) and 303 of the Act, 42 U.S.C. §§ 7602(g) and 7603, by emitting hydrogen sulfide from the facility into the ambient air.

46. EPA is in receipt of evidence that the facility's operations are emitting hydrogen sulfide into the ambient air, and that operating the facility, as described above, if allowed to continue, is presenting an imminent and substantial endangerment to public health or welfare or the environment.

47. EPA field sampling personnel, DHEC personnel, and the public have reported experiencing symptoms consistent with elevated hydrogen sulfide exposures. Among the EPA field sampling personnel, the health impacts occurred at times when, and locations where, the highest hydrogen sulfide concentrations were measured, and resolved soon after the workers left the areas with noticeable odors. All of this information, combined with the AEGL-1 documented exceedances, provides compelling evidence that emissions from the Respondent's facility are causing adverse public health and welfare impacts among exposed populations.

48. By emitting hydrogen sulfide from the facility into the ambient air in levels that result in the human health symptoms described above, and that adversely affect personal comfort and well-being, Respondent is affecting the public health and welfare within the meaning of Sections 101(b), 302(h) and 303 of the Act, 42 U.S.C. §§ 7401(b), 7602(h) and 7603.

49. Issuance of this Order is necessary to assure prompt protection of public health or welfare or the environment because it is not practicable to wait for the commencement of a civil action in United States District Court to assure prompt protection before further air emissions of hydrogen sulfide are released from the facility.

50. The Regional Administrator has found that the hydrogen sulfide air emissions from the facility, as described above, if allowed to continue, is presenting an imminent and substantial endangerment to public health or welfare or the environment, and is therefore appropriate for the issuance of an Order under Section 303 of the Act, 42 U.S.C. § 7603.

51. The Regional Administrator is vested with the authority of the Administrator under Section 303 of the Act, 42 U.S.C. § 7603.

ORDER

52. Based on the foregoing, and pursuant to Section 303 of the Act, 42 U.S.C. § 7603, in order to abate or prevent an imminent and substantial endangerment to public health or welfare or the environment, the Regional Administrator hereby orders Respondent, its agents, employees, successors, and assigns, to address the endangerment posed by the air emissions of hydrogen sulfide from the facility by not exceeding a facility fence-line average concentration (identified below) as follows:

- a. Within one (1) business day of receipt of this Order, Respondent shall submit to EPA in writing a statement explaining whether Respondent intends to and is able to comply with this Order.

- b. Upon receipt of this Order, Respondent must immediately begin taking steps to minimize air emissions of hydrogen sulfide to not exceed a facility fence-line average concentration of 600 ppb over a rolling 30-minute period and 70 ppb over a rolling seven (7) day period (on a daily calendar basis) as established through continuous monitoring. Any exceedance of these facility fence-line concentrations, during the pendency of this Order, shall constitute a violation of this Order.
- c. As soon as possible, but not later than 5:00 p.m. on Tuesday, May 18, Respondent shall provide a draft of the timeline and a detailed summary of the measures to be taken to comply with this Order ("Remedial Plan"). The following elements, at a minimum, shall be included and addressed in the Remedial Plan:
 - i. Proposed procedures for operating the facility to meet the hydrogen sulfide concentrations specified in Paragraph 52.b, and supporting documentation;
 - ii. Proposed Quality Assurance Project Plan for data collection and analysis to determine if Respondent is meeting the fence-line hydrogen sulfide concentrations specified in Paragraph 52.b, and supporting documentation; and
 - iii. Proposed plans for addressing safety procedures, shutdown procedures, and access restrictions while work is performed, and supporting documentation.
- d. As soon as possible, but not later than twelve noon on Monday, May 24, Respondent shall submit the final Remedial Plan, addressing any comments received from EPA on the draft Remedial Plan, to EPA for review and approval.
- e. As soon as possible, but not more than five (5) calendar days after receipt of EPA approval under paragraph 52.d., Respondent shall act in accordance with the Remedial Plan, as amended by comments received by EPA. If conditions require Respondent to modify the

final approved Remedial Plan, Respondent shall contact EPA immediately, and shall submit a proposed modification for EPA review and comment. Respondent shall not implement any modifications until receiving written EPA approval.

- f. As soon as possible, but no later than 14 calendar days after receipt of this Order, Respondent shall install, and begin operating, continuous hydrogen sulfide fence-line monitors at the three locations identified in Attachment A. The locations may be adjusted with prior written approval by EPA. The monitors shall have a minimum detection limit of 10 ppb by volume (ppbV) or lower, shall have a span range up to 1,000 ppbV or higher, and shall be operated in accordance with the manufacturer's recommendations. The monitors shall also be equipped with wind speed and wind direction monitors. If the Respondent is already operating ambient air monitors for hydrogen sulfide on or offsite, Respondent shall provide to EPA daily documentation of such monitoring until such time as the monitoring required by this Paragraph is installed and operational. Nothing in the previous sentence shall be interpreted to extend the 14-calendar-day time frame specified above.
- g. As soon as 24 hours of the fence-line monitoring data is available, Respondent shall: submit to EPA daily documentation of the previous 24 hours of monitoring data; immediately notify EPA (via email) of any exceedance of the fence-line hydrogen sulfide concentrations specified in Paragraph 52.b; and submit to EPA a summary report every seven (7) days documenting the results of the continuous monitoring required by Paragraph 52.b.
- h. If Respondent intends to continue manufacturing operations at the facility following implementation of the Remedial Plan, no more than 45 calendar days after receipt of this Order, Respondent shall, after consulting with a toxicologist, submit to EPA in writing a long-term plan that identifies: (i) how Respondent's continued operations will avoid the endangerment identified by EPA in this Order; and (ii) what operational, production or

process changes to the facility are necessary to operate in accordance with recognized and generally accepted good engineering and good air pollution control practices.

- i. Unless otherwise required by this Order, Respondent shall submit all notices, schedules, work plans, analyses, certifications and documentation (collectively, “notices”) required by this Order to EPA through the CDX electronic system. Respondent shall register for the CDX electronic system and upload such notices at https://cdx.epa.gov/epa_home.asp. Any notice that cannot be uploaded, shall be transmitted via email, and if it cannot be transmitted via email, shall be provided in writing (and if any attachment is voluminous, it shall be provided on a disk, hard drive, or other equivalent successor technology) to the addresses below:

Kevin Taylor
Environmental Engineer
Air Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
Taylor.Kevin@epa.gov

and

Marirose J. Pratt
Associate Regional Counsel
Air & EPCRA Law Office
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
Pratt.marirose@epa.gov

ACCESS

53. Respondent shall allow EPA and its authorized representatives and contractors to enter and freely move about all areas subject to this Order, using equipment to gather information, for the purposes of inspecting conditions, activities, records, and contracts related to the presence of hydrogen

sulfide at the facility and operation of the facility. Respondent shall allow EPA and its authorized representatives to enter the areas subject to this Order to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to carrying out this Order.

54. Nothing in this Order is intended to limit, affect, or otherwise constrain EPA's rights of access to property and records pursuant to applicable law.

RESERVATION OF RIGHTS

55. EPA reserves the right to take any necessary action to enforce this Order, including obtaining injunctive relief or civil or criminal penalties, in accordance with Section 113 of the CAA, 42 U.S.C. § 7413.

56. Be advised that issuance of this Order does not preclude EPA from electing to pursue any other remedies or sanctions authorized by law that are available to address these and other violations. This Order does not resolve Respondent's liability for past violations of the Act or for any violations that continue from the date of this Order up to the date of compliance. At any time after the issuance of this Order, EPA may take any or all of the following actions: issue a further order requiring compliance with the Act; issue an administrative penalty order or bring a civil or criminal action seeking an injunction and penalties for each violation of this Order. *See* Sections 113(a)-(d) of the CAA, 42 U.S.C. §§ 7413(a)-(d); 40 C.F.R. Part 19; and 85 Fed. Reg. 83818 (Dec. 23, 2020).

57. Nothing in this Order shall limit the power and authority of EPA to take, direct or order all action necessary to protect public health or welfare or the environment to prevent, abate or minimize an imminent and substantial endangerment resulting from the emissions into the ambient air of hydrogen sulfide from the facility and operation of the facility. Further, nothing in this Order shall be construed to prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, or from taking other legal or equitable action as EPA deems appropriate and necessary, pursuant to the CAA, and any

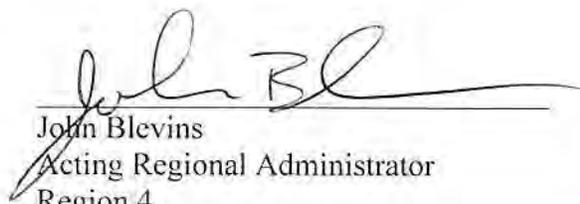
other applicable law. Nothing herein shall be construed to prevent EPA from requiring Respondent to perform further actions pursuant to the CAA or other applicable law.

58. Neither EPA nor the United States, by the issuance of this Order, assumes any liability for any acts or omissions by Respondent or Respondent's employees, agents, contractors or consultants engaged to carry out any action or activity pursuant to this Order; nor shall EPA or the United States be held as a party to any contract entered into by Respondent or Respondent's employees, agents, contractors or consultants engaged to carry out the requirements of this Order.

EFFECTIVE DATE

59. This Order is effective immediately upon issuance by EPA. Although this Order is effective immediately, Respondent may contact EPA to confer about compliance with the Order by contacting Kevin Taylor of my staff at 404-562-9134.

60. This Order shall be effective for a period of not more than 60 days unless the United States files a civil action in the appropriate United States district court pursuant to Section 303 of the Act, 42 U.S.C. § 7603.



John Blevins
Acting Regional Administrator
Region 4
United States Environmental Protection Agency
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

5-13-2021
Date



H2S Monitor Locations

Attachment A

Catawba Cr.

H2S Monitor 1

H2S Monitor

H2S Monitor

Google Earth
©2021 Google

4000 ft



¹ New Indy may request no later than May 17, 2021 approval for an alternative location representative of fence line monitoring.

Exhibit B

Determination of Undesirable Levels and Order to Correct Undesirable Level of
Air Contaminants, *In re: New-Indy Catawba, LLC* (DHEC May 7, 2021)



By USPS and Electronic Mail

Tony Hobson
Vice President of Manufacturing
New Indy Containerboard
3500 Porsche Way, Suite 150
Ontario, CA 91764

Re: New-Indy Catawba LLC - Determination of Undesirable Levels - Order to Correct Undesirable Level of Air Contaminants

Dear Mr. Hobson,

Enclosed please a Determination of Undesirable Levels - Order to Correct Undesirable Level of Air Contaminants issued to New-Indy Catawba LLC, 5300 Cureton Ferry Road, Catawba, SC and dated May 7, 2021. Please note all requirements and deadlines.

Sincerely,

A handwritten signature in black ink, appearing to read "Renee G. Shealy". The signature is written in a cursive, flowing style.

Renee G. Shealy, Chief
Bureau of Environmental Health Services

ec: Myra C. Reece, Director, Environmental Affairs

Enclosures

**THE STATE OF SOUTH CAROLINA
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

IN RE: NEW-INDY CATAWBA, LLC

YORK COUNTY

DETERMINATION OF UNDESIRABLE LEVELS

**ORDER TO CORRECT
UNDESIRABLE LEVEL OF AIR CONTAMINANTS**

PLEASE TAKE NOTICE:

New-Indy Catawba, LLC, (“New-Indy”) operates a kraft pulp and paper mill located at 5300 Cureton Ferry Rd, Catawba, SC, in York County (“Facility”). The South Carolina Department of Health and Environmental Control (“Department” or “DHEC”) has determined the Facility is a source of an undesirable level of air contaminants of such quantity, characteristics and duration as to be injurious to human health or welfare or which unreasonably interfere with enjoyment of life or use of property.

This determination is based on the following:

1. The Facility operates under Title V Operating Permit #2440-0005 that was issued on May 7, 2019, became effective on July 1, 2019, and expires on June 30, 2024. New-Indy was issued Construction Permit #2440-0005-DF on July 23, 2019, in accordance with state and federal air quality regulations and standards, to allow the Facility to modify its processes to convert from bleached paper production to brown paper production. The construction permit was revised on May 13, 2020, to allow the Facility to hard pipe its condensates to the wastewater treatment plant. 40 CFR 63, Subpart S, allows this hard piping as a compliance option. The Facility reported to DHEC that it began to make brown paper on February 1, 2021.
2. The MACT standard allows hard piping of all the condensates to wastewater treatment plant as a compliance option. New-Indy projected in its construction permit application that the Facility modifications and other operational changes could result in an increase in hydrogen sulfide emissions from the Facility. The projected increase in hydrogen sulfide emissions provided by New-Indy was below the "significant net increase" threshold as outlined in S.C. Regulation 61-62.5, Standard 7, and therefore allowed DHEC to issue a minor construction air permit for the change.

3. Hydrogen sulfide is a flammable, colorless gas. It is a component of Total Reduced Sulfur (TRS) chemical mixture associated with the pulp and paper industry and has a "rotten egg" odor. People usually can smell hydrogen sulfide at low concentrations in air ranging from 0.0005 to 0.3 parts per million (ppm). The Center for Disease Control (CDC) Information Center guidance states that exposure to low concentrations of hydrogen sulfide may cause irritation to the eyes, nose, or throat, difficulty in breathing for some asthmatics and may also cause headaches, poor memory, tiredness, and balance problems.
4. In February, after receiving odor complaints of noxious, foul smelling odors in York and Lancaster counties, in the vicinity of the Facility, described as rotten egg and chemical odors, DHEC immediately began an investigation to determine the source of the odors.
5. By early March 2021, the number of odor complaints from Lancaster, York and adjoining North Carolina counties increased dramatically. On March 12, 2021, DHEC set up a public web page to provide updates on its odor investigation and provided a form for residents to report the location of and description of observed odors. To date, DHEC has received more than 17,000 complaints of noxious odors from persons living in York and Lancaster counties in South Carolina and in North Carolina. This is an unprecedented number of complaints received by the agency related to odor.
6. Complaints indicate the odor is injurious to the welfare and quality of life and is interfering with use and enjoyment of property. There are many reports of injurious health impacts such as reports of headaches, nausea, skin and eye irritation caused by the air contaminants and noxious odors. It has also been reported that symptoms subside when either the odor subsides, or the person leaves the area where the odor is located.
7. DHEC staff have also observed strong, offsite, foul odors in the vicinity of the Facility and several miles away from the Facility that are characteristic of hydrogen sulfide emissions from kraft pulp and paper facilities. On February 22, 23 and 24, 2021, the Department conducted air, wastewater and landfill inspections at the Facility, and has continued its odor investigation to date. DHEC has also investigated other possible sources of odor in the York and Lancaster area, including other air emissions sources, wastewater treatment plants and regulated landfills in the vicinity.
8. As part of its investigation, DHEC conducted a back-trajectory analysis to determine whether the Facility or other area facilities were the source of contaminants causing the odor issues in the vicinity of York and Lancaster counties in South Carolina, and adjoining areas of North Carolina. A back-trajectory analysis is used to track the origin of air masses and establish source-receptor relationships. Using meteorological data, the study traces parcels of air from where odors are reported back to the source.
9. In DHEC's back trajectory study, the Facility was located near, directly in, or under the upstream air trajectory on 25 of the 34 back trajectories that were analyzed. Based on the

information collected during the ongoing odor investigation and back trajectory analysis, DHEC did not identify other significant sources of the reported odors and determined that the Facility was the significant source of the noxious odors reported in the York and Lancaster area.

10. In a letter to the New-Indy dated April 7, 2021, DHEC notified New-Indy as follows:

Based on the results of our investigation, it appears that New-Indy Catawba LLC located at 5300 Cureton Ferry Road, Catawba, SC 29704 is a significant contributor to the reported odors in the York and Lancaster area. At this time, we have not identified any other significant sources of the reported odors. While regulatory compliance determinations based on the inspections are still pending, we respectfully request that New-Indy Catawba LLC fully evaluate its operations and identify and take corrective actions on any potential sources that could be contributing to the odors currently being investigated in York and Lancaster counties.

The wastewater treatment plant processes should be evaluated to determine if operation and maintenance of the system is appropriate based on the current operations. The attached wastewater inspection report identifies several deficiencies that should be addressed immediately. The facility's manuals and plans should be updated to reflect current operations and updated documents submitted by April 20, 2021. This includes the odor abatement plan.

On March 26, 2021, we requested information related to current sludge management operations at the facility. You submitted October 2014 and March 2017 documents in response to this request. Please provide recent information that addresses current sludge management including but not limited to how you are facilitating the proper operations of the wastewater system and a description of how you are moving the legacy containing sludge to lagoon 4 and meeting the obligations under the Voluntary Cleanup Contract.

The recent modifications related to the shut-down of the air stripper and the hard piping of the foul condensate tank to the WWTP at the facility should be evaluated to determine if they are contributing to the odors in the community....

Additionally, the recent change in operation from making bleached paper to brown paper appears to have increased the overall TRS and

H2S emissions from the facility. Any increases in stack emissions, changes in operation of pollution control equipment, and any uncontrolled emissions should be evaluated to determine if these changes are contributing to the odors in the community.

11. On April 16, 2021, New-Indy submitted a letter to DHEC stating that it had retained a consultant to conduct an “expedited screening analysis” during the periods of March 16 through 18 and 23 through 25, 2021. This report was submitted on April 16, 2021; however, no full evaluation of the Facility’s operations was submitted to DHEC. Though requested by DHEC’s April 7 letter, New-Indy has not updated its operating manuals and plans to reflect current operations.
12. New-Indy’s failure to update its odor abatement plan when it initiated modified operations from bleached paper production to brown paper production may be in contravention of its wastewater permit. The Facility’s National Pollutant Discharge Elimination System (NPDES) Permit No. SC0001015 includes the following provision:

3. Odor Control Requirements

The permit holder shall use best management practices normally associated with the proper operation and maintenance of a sludge wastewater treatment site, any sludge storage or lagoon areas, transportation of sludges, and all other related activities to ensure that an undesirable level of odor does not exist.

- a. In accordance with R.61-9.504.50 (Odor Control Requirements were added to Regulation 61-9 on December 26, 2003), the permittee shall prepare an odor abatement plan for the industrial sludge treatment sites, any sludge storage or lagoon areas, and land application or land disposal sites. The permittee has one year from the effective date of this permit to prepare the plan.
 - (1) Operation and maintenance practices which are used to eliminate or minimize undesirable odor levels in the form of best management practices for odor control;
 - (2) Use of treatment processes for reduction of undesirable odors;
 - (3) Use of setbacks;
 - (4) Contingency plans and methods to address odor problems for the different type of disposal/application methods used.

- b. The Department may review the odor abatement plan for compliance with R.61-9.504.50. The Department may require changes to the plan as appropriate.
 - c. The permittee shall not cause, allow, or permit emission into the ambient air of any substance or of substances in quantities that an undesirable level of odor is determined to result unless preventative measures of the type set out below are taken to abate or control the emission to the satisfaction of the Department. Should an odor problem come to the attention of the Department through field surveillance or specific complaints, the Department may determine, in accordance with section 48-1-120 of the Pollution Control Act, if the odor is at an undesirable level by considering the character and degree of injury or interference to:
 - (1) The health or welfare of the people;
 - (2) Plant, animal, freshwater aquatic, or marine life;
 - (3) Property; or
 - (4) Enjoyment of life or use of affected property.
 - d. Should the Department determine that an undesirable level of odor exists, the Department may require:
 - (1) The permittee to submit a corrective action plan to address the odor problem,
 - (2) Remediation of the undesirable level of odor within a reasonable timeframe, and
 - (3) In an order, specific methods to address the problem.
 - e. If the permittee fails to control or abate the odor problems addressed in this section within the specified timeframe, the Department may revoke disposal/application activities associated with the site or the specific aspect of the sludge management program.
 - f. **The odor abatement plan shall be updated and maintained as necessary throughout the life of the permit. (emphasis added).**
13. On April 24-27, the US Environmental Protection Agency (EPA) conducted geospatial monitoring of hydrogen sulfide near the Facility to identify sources of the odor in the nearby vicinity. EPA data confirms concentrated levels of hydrogen sulfide were detected on-site and off-site downwind from the facility. This validates the determination that the Facility is a source of noxious air contaminants at undesirable levels.
14. In correspondence dated May 5, 2021, New-Indy informed DHEC of steps taken to address the issues being discussed with the Department. To ensure prompt action by New-Indy to correct the undesirable levels of air contaminants, DHEC is issuing this corrective Order.

WHEREAS, Section 48-1-10(18) of the South Carolina Pollution Control Act, defines an "Undesirable level" as the "presence in the outdoor atmosphere of one or more air contaminants or any combination thereof in sufficient quality and of such characteristics and duration as to be injurious to human health or welfare, or to damage plant, animal or marine life, to property or which unreasonably interfere with enjoyment of life or use of property."

WHEREAS, Section 48-1-120 of the South Carolina Pollution Control Act, Determination and correction of undesirable level, provides:

If the Department shall determine that an undesirable level exists, it shall take such action as necessary to control such condition.

The Department shall grant such time as is reasonable for the owner or operator of a source to correct the undesirable level, after taking all factors into consideration that are pertinent to the issue.

In making its order and determinations, the Department shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions involved including, but not limited to:

- (a) The character and degree of injury to, or interference with, the health and physical property of the people;
- (b) The social and economic value of the source of the undesirable levels;
- (c) The question of priority of location in the area involved; and
- (d) The technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from such source.

If the undesirable level is not corrected within the required time, then the Department shall issue an order to cease and desist from causing such emissions.

WHEREAS, based upon the facts set forth herein and taking into account all the considerations required by Section 48-1-120, the Department has determined that undesirable levels of air contaminants from operations of the Facility exist, such undesirable levels are injurious to human health or welfare or are unreasonably interfering with enjoyment of life or use of property, and such undesirable levels must be corrected.

IT IS THEREFORE ORDERED THAT New-Indy shall complete the following to ensure the prompt correction of undesirable air contaminants:

1. On or before May 17, 2021, develop a plan to provide expeditious public notification to the Department and surrounding communities prior to conducting any activities onsite that may increase odors offsite, even if the activities are intended to ultimately reduce odors.
2. On or before May 17, 2021, update and submit to the Department for approval the Notification of Intent to Conduct Performance Testing and Test Protocol to comply with 40 CFR 63, Subpart S, dated April 14, 2021, for the condensate collection and treatment system to reflect the restart of the steam stripper and to modify the sampling methods to include methanol, hydrogen sulfide (H₂S) and methyl mercaptan. The updated notification, test protocol and test report must be submitted to Michael Shroup at shroupmd@dhec.sc.gov. This test must be completed no later than July 31, 2021, to comply with 40 CFR 63, Subpart S.
3. On or before June 1, 2021, complete an evaluation conducted in consultation with a nationally recognized organization, such as the National Council for Air and Stream Improvement (NCASI), to fully evaluate the current operations and processes at the Facility to identify all potential sources that could be contributing to the odors and elevated levels of H₂S on and off Facility property. The evaluation must include the recent change in operation from making bleached paper to brown paper, the wastewater treatment plant operations, the recent modifications related to the steam stripper and the hard piping of the foul condensate tank to the wastewater treatment plant, any increases in stack emissions, any changes in operation of pollution control equipment, and any uncontrolled emissions to determine if these changes are contributing to the odors in the vicinity of the Facility.
4. On or before June 1, 2021, submit to the Department for approval a Quality Assurance Project Plan (QAPP) to conduct onsite and offsite H₂S monitoring. Coordinate development of the QAPP with the Department to agree on the monitoring objectives. Implement the QAPP upon Department approval. Submit the QAPP to David Graves at gravesda@dhec.sc.gov. Operate and maintain air monitoring stations and associated data collection equipment for hydrogen sulfide (H₂S) at representative locations as approved by the Department. New-Indy shall allow the Department access to the monitors to collect data and to data collected by New-Indy.
5. On or before June 1, 2021, submit to the Department for approval a site-specific test plan to conduct stack or vent testing to verify estimated increases in air emissions from making the switch from bleached paper to brown paper and restarting the steam stripper. This test plan shall detail all testing methods to be used to perform testing and evaluation of total reduced sulfur (TRS), H₂S, and sulfur dioxide (SO₂) emissions. New-Indy shall coordinate with Bureau of Air Quality (BAQ) to be onsite to observe all tests. Testing shall be commenced by June 15, 2021 and completed by June 30, 2021. Tests shall include TRS, H₂S, and SO₂ emission from the following stacks or vents to verify emission estimates:
 - Paper machine 2 and 3 vents
 - Kraft non condensable gases (NCG) system including evaporator sets

- Pulp dryer
- Steam Stripper inlet and outlet and combustion boiler outlet

Within fifteen (15) days after completion of the stack and vent testing and condensate sampling outlined above, conduct a facility-wide air dispersion modeling analysis for TRS, H₂S and SO₂ emissions. Include area source modeling for possible fugitive emission sources and wastewater pond, basins, and other wastewater systems. All test notifications, protocols and test reports shall be submitted to Michael Shroup at shroupmd@dhec.sc.gov.

6. On or before June 15, 2021, submit to the Department a report of the evaluation conducted in Step 3 above and, for review, comment, and approval; a corrective action plan (CAP) (developed and stamped by a South Carolina-registered Professional Engineer (PE)) and a schedule of implementation, which addresses operational issues identified in the above-referenced evaluation as contributing to the odor. The schedule of implementation shall include specific dates or timeframes for initiation and the completion of each action and details as to how each action addresses the odor and operational issues noted above. The schedule of implementation of specific corrective action steps proposed under the CAP will be evaluated by the Department and comments provided to New-Indy within five calendar days. New-Indy shall address all comments by the Department and submit a final approvable CAP within five calendar days of Department comment. Upon Department approval, the schedule(s) and corrective actions contained within the CAP shall be incorporated into and become an enforceable part of this Order.
7. On or before June 15, 2021, and to the extent not included in Step 6 above, submit to the Department, for review, comment and approval, a corrective action plan (CAP) (developed and stamped by a South Carolina-registered Professional Engineer (PE)) and a schedule of implementation, which addresses operational issues at the Facility wastewater treatment plant that may be causing or contributing to odor and elevated levels of H₂S. This CAP shall include, but not be limited to, a comprehensive evaluation of the wastewater treatment plant to determine if adequate and appropriate facultative waste treatment is occurring in the aerated stabilization basin (ASB) and the potential for odors resulting from the discharge of foul condensate into the wastewater treatment plant. The CAP shall address the significant fiber and sludge accumulation and foam occurring in the ASB and identify their respective source(s). Additionally, the CAP shall include a study of the microbial concentration in the ASB to determine if there is an adequate microbial population to aid in the reduction of foam on the ASB. The schedule of implementation shall include specific dates or timeframes for initiation and the completion of each action and details as to how each action addresses the odor and wastewater treatment system operational issues noted above. The schedule of implementation of specific corrective action steps proposed under the CAP will be evaluated by the Department and comments provided to New-Indy within five calendar days. New-Indy shall address all comments by the Department and submit a final approvable CAP within five calendar days of Department comment. Upon Department approval, the schedule(s) and corrective actions contained within the CAP shall be incorporated into and become an enforceable part of this Order.

- 8. On or before the close of business each Friday submit a written weekly update regarding the implementation of this Order to Renee Shealy at shealyrg@dhec.sc.gov.
- 9. Allow unrestricted access to Department personnel or contractors for oversight of all activities.
- 10. Unless otherwise noted herein, the Department's point of contact for all matters related to this Order will be:

Renee Shealy
 2600 Bull Street
 Columbia, SC 29201
 803-896-8994
 shealyrg@dhec.sc.gov

IT IS FURTHER ORDERED that failure to comply with this Order may subject New-Indy to further action by the Department pursuant to its authority under the Pollution Control Act, S.C. Code Ann. 48-1-10 *et seq.* The Department reserves all authority to take administrative, civil, emergency, or other action, including imposition of penalties, related to the operation of the Facility, including, but not limited to, matters addressed herein.

IT IS FURTHER ORDERED that the execution date of this Order is the date this Order is signed by the Director of Environmental Affairs.

AND IT IS SO ORDERED.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

By 
 Myra Reece, Director, Environmental Affairs

DATE: May 7, 2021

South Carolina Board of Health and Environmental Control

Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15th day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
 - The grounds for amending, modifying, or rescinding the staff decision;
 - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
 - the relief requested;
 - a copy of the decision for which review is requested; and
 - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
3. RFRs should be filed in person or by mail at the following address:
South Carolina Board of Health and Environmental Control
Attention: Clerk of the Board
2600 Bull Street
Columbia, South Carolina 29201
Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).
4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will

respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be public noticed at least 24 hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
 - include the place, date and time of the Conference;
 - state the presentation times allowed in the Conference;
 - state evidence may be presented at the Conference;
 - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
 - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
 - Type of decision (permit, enforcement, etc.) and description of the program.
 - Parties
 - Description of facility/site
 - Applicable statutes and regulations
 - Decision and materials relied upon in the administrative record to support the staff decision.
 - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
 - Rebuttal by Department staff [15 minutes]
 - Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council.. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.