

Attachment 21



"I will stand for my client's rights.
I am a trial lawyer."
—Ron Motley (1944–2013)

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February 1, 2022

**VIA ELECTRONIC MAIL AND
CERTIFIED MAIL,
RETURN RECEIPT REQUESTED**

pubcomment-ees.enrd@usdoj.gov

Assistant Attorney General
U.S. DOJ—ENRD
P.O. Box 7611
Washington, DC 20044-7611

johanna.valenzuela@usdoj.gov

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Steven O'Rourke, Esquire
Environmental Enforcement Section
Environment and Natural Resources Division
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pratt.marirose@epa.gov

Marirose J. Pratt, Esquire
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303-8960



February 1, 2022
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Re: Request for Extension of Public Comment Period on the Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

Dear Counsel:

I write on behalf of the seven law firms that currently represent 1,780 clients, and as one of the four attorneys who have been appointed, pursuant to Fed. R. Civ. P. 23(g)(3), as Interim Counsel on behalf of a putative class which includes tens of thousands of individuals residing within 20 miles of the New-Indy pulp and paper mill in Catawba, South Carolina.

I write, specifically, in furtherance of the request made to Mr. O'Rourke by my co-counsel and fellow Interim Counsel, Phil Federico, during a phone call on February 1, 2022, urging the United States Department of Justice ("DOJ") to extend the public comment period on the Notice of Lodging of Proposed Consent Decree Under the Clean Air Act, *United States v. New-Indy Catawba LLC*, D.J. Ref. No. 90-5-2-1-12471 (the "Proposed Consent Decree") from 30 days to a minimum of 60 days.

Respectfully, we are not aware of any regulation or policy that prohibits the granting of this request. Indeed, 28 CFR § 50.7(b) specifies a comment period of "at least 30 days" and U.S. DEPT OF JUSTICE, JUSTICE MANUAL §5-12.620 makes clear that the purpose of a public comment period is "to allow the public to comment and to allow the Executive Branch to receive the benefit of such input, and to allow it to withdraw or modify its consent to the decree based upon such information." It is our understanding that the comment period involving the second consent decree published in the FEDERAL REGISTER on December 29, 2016, involving Volkswagen and allegations that it manufactured and sold diesel cars with systems intended to defeat emissions tests were in violation of section 203 of the Clean Air Act, was extended. For the reasons set forth below, this request should be granted.

We make this request in light of the critical impact the Proposed Consent Decree would have on the health and well-being of the communities surrounding the New-Indy pulp and paper mill. As it is currently written, the Proposed Consent Decree offers inadequate solutions for addressing the continuing, ongoing, and unabated emissions of hydrogen sulfide (H₂S), methyl mercaptan, and other toxic air pollutants from the New-Indy pulp and paper mill, posing a significant risk to public health. Just last week, State Senator Michael Johnson, who represents over 135,000 people impacted by this ongoing pollution, urged the United States Environmental Protection Agency ("EPA") to "reconsider the Consent Decree" in a 3-page letter setting forth specific suggested changes. For your convenience, a copy of this letter is enclosed as Attachment 1.

We believe that the public – which the EPA previously stated included approximately 1,000,000 residents– should have a meaningful opportunity to comment on the Proposed Consent Decree.

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Granting this requested extension will help ensure that the federal government does not impair the rights of citizens who continue to suffer daily from the toxic effects of the emissions from the New-Indy pulp and paper mill to fully understand the effect the Proposed Consent Decree would have on their lives and provide thoughtful comments.

The DOJ lodged the Proposed Consent Decree with the United States District Court for the District of South Carolina, in the matter of *United States v. New-Indy Catawba LLC*, Case No. 0:21-cv-02053-SAL, on December 29, 2021. As a practical matter, lodging the Proposed Consent Decree between two Federal holidays had the effect of minimizing public attention initially given to the Proposed Consent Decree. More importantly, however, the public lacks sufficient information to allow for a comprehensive analysis of the terms of the Proposed Consent Decree within the current 30-day comment period.

Indeed, the EPA has yet¹ to provide a complete and transparent record of the information it considered in arriving at the terms set forth in the Proposed Consent Decree. For example, the EPA has not fully responded to Freedom of Information Act requests from one of our legal consultants that were first made in June 2021. These requests seek notes and emails related to the EPA's investigation of New-Indy's operations and contain information that was certainly relied upon in developing the Proposed Consent Decree, including, but not limited to, EPA's decision to require only three fence-line H₂S monitors in Paragraph 52.f of its May 13, 2021 Emergency Order, where they were to be located, and why New-Indy was only required to measure H₂S. The EPA advised our legal consultant on January 12, 2022 that these documents will not be produced until approximately February 28, 2022. For your convenience, a copy of this letter is enclosed as Attachment 2.

On January 10, 2022, one of our legal consultants submitted a FOIA request that asked for all records relating to the parties' basis and rationale for the technical and legal requirements, including the amount of the civil penalty assessed, in the aforementioned Proposed Consent Decree. To date, no responsive records have been provided. This information is crucial, yet it appears it will not be provided prior to February 9, 2022, and the failure to disclose it to date raises additional questions as to what other information is being withheld that we are currently unaware exists.

¹ Before the proposed Consent Decree was lodged with the Court, I wrote Counsel for the EPA on December 23, 2021 and complained, *inter alia*, of EPA's failure to respond to our FOIA requests because the idea of a transparent government is central to our system of government. *See, e.g.* Federalist No. 49 ("a constitutional road to the decision of the people ought to be marked out and kept open"). Yet, the EPA's lack of transparency to my clients and the people of South Carolina was confirmed when we learned that the EPA signed the proposed Consent Decree approximately 24 hours after meeting on December 16, 2021 with the undersigned and a team of our experts in the fields of wastewater treatment, air monitoring, and air modeling. Tellingly, the EPA invited such a meeting in its Opposition to our Motion to Intervene which was filed on October 20, 2021.

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By way of illustration of what information these responses may yield, we recently learned, from a belated response to our legal consultant's June 2021 FOIA, that an employee of the EPA wrote in an internal EPA email on May 5, 2021:

These impacts may go on until they either reduce operating rate to match condensate production to stripper capacity or install additional stripper capacity. It may make sense to lead them by the nose to that conclusion. Long term, they will need additional stripper capacity especially if they want to increase throughput as their recent permit application stated.

For your convenience, a copy of this email is enclosed as Attachment 3.

Nevertheless, the Proposed Consent decree does not require reducing New-Indy's operating rate to match condensate production to stripper capacity or installing additional stripper capacity.

Furthermore, many of the oral comments made during the EPA's Public Hearing in Rock Hill on January 25, 2022 revealed that citizens continue to have questions regarding the terms of the Proposed Consent Decree and whether the measures it seeks to impose are sufficient to protect the public health. As many voiced that evening, there are many questions that the federal government has not answered to date. Therefore, it is crucial that the public have the opportunity to educate themselves about the potential ill-health effects they face before they are expected to provide informed and substantive comments.

Given the serious public health implications of the Proposed Consent Decree, we respectfully request that the comment period be extended for a period of no less than 30 additional calendar days and at least ten (10) business days following the production of all documents responsive to the aforementioned FOIA requests to afford the public a meaningful opportunity to provide thorough feedback.

With kind regards, I remain,

Sincerely yours,



T. David Hoyle

Enclosures: As Stated



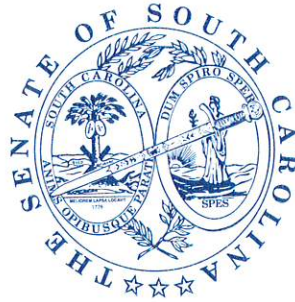
February 1, 2022
Page 5

cc: Philip C. Federico, Esquire
Chase T. Brockstedt, Esquire
Richard A. Harpootlian, Esquire

ATTACHMENT 1

MICHAEL JOHNSON
SENATOR, LANCASTER AND YORK COUNTIES
SENATORIAL DISTRICT 16

COMMITTEES:
AGRICULTURE AND NATURAL RESOURCES
CORRECTIONS AND PENOLOGY
FAMILY & VETERANS' SERVICES
JUDICIARY
RULES



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HOME ADDRESS:
1201 CAROLINA PLACE, SUITE 103
FORT MILL, SC 29708

January 26, 2022

Assistant Attorney General
United States Department of Justice - ENRD
PO Box 7611
Washington, DC 20044-7611

Dear Assistant Attorney General:

I have read with great interest the Consent Decree between the Environmental Protection Agency ("EPA") and New Indy Containerboard - Catawba ("New Indy"). While the Decree is a good first step, it fails on several points to protect the people of Indian Land, Fort Mill, Lancaster County and York County. At this time, I would urge the EPA to reconsider the Consent Decree and address the issues laid out below.

My first concern is that the Consent Decree will not bring New Indy into compliance with the Clean Air Act, or any other provision of federal, State, or local laws, regulations or permits. The Consent Decree as written falls short of providing the necessary protections to the people surrounding the plant, and will ultimately lead to New Indy disregard their responsibilities and continuing to pollute our community. In an internal EPA memo the Agency has admitted as much, stating that "These impacts may go on until they (New Indy) either reduce operating rate to match condensate production to stripper capacity or install additional stripper capacity." Despite this acknowledgment, the EPA failed to require either in the Consent Decree.

A prime example of this is that the Consent Decree fails to require any monitoring of Hydrogen Sulfide in the community. The complaints that have been filed with the EPA and the South Carolina Department of Health and Environmental Control ("DHEC") cover 300 square miles. The Consent Decree limits the "monitoring" to only 30 square miles - which ignores the vast majority of complaints. Additionally, the monitoring as prescribed in the Consent Decree fails to place monitors along the west, northwestern, and southwest fence line of New Indy.

Another shortfall of the Consent Decree is that it fails to enforce prior Orders of the EPA. On May 13, 2021, the EPA required New Indy to conduct a toxicological assessment, yet, no such assessment has been performed, and if it has been performed it has not been made public.

In addition to these issues, I am requesting that the EPA add the following provisions to strengthen the Consent Decree and protect the citizens of South Carolina:

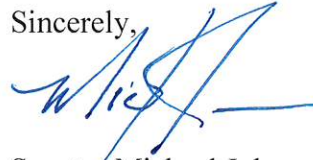
1. Add a second primary clarifier of equal size to the current primary clarifier;
2. Eliminate sludge dewatering in the equalization basin ("EQ Basin") and line the EQ Basin;
3. Add a second Aerated Stabilization Basin ("ASB") and line the existing ASB;
4. Prepare for closure of sludge lagoon number four and design, permit and construct a new lined sludge lagoon;
5. Test all holding lagoons for leakage and reline as needed;
6. Test emissions from the Wastewater Treatment Plant ("WWTP") using actual, measured emissions, controlled and uncontrolled, from the basins and lagoons, as well as from the sludge pile;
7. Apply for a retroactive Prevention of Significant Deterioration ("PSD") permit for physical changes to the operation of the plant;
8. Even if New Indy does not require a PSD permit since the steam stripper is now operational, require New Indy to do a Best Available Control Technology ("BACT") analysis as injunctive relief for having violated the PSD permit requirements;
9. If the BACT analysis requires the use of a second steam stripper, require New Indy to add a second steam stripper that has sufficient capacity to treat all of the foul condensate; and
10. Require the placement of 18 fence line monitors around the plant, and 25 monitors in the community to continuously monitor for Hydrogen Sulfide and Total Reduced Sulphur Compounds (TRS) constituents.

Without these much needed changes, the EPA will vacate this environmental space leaving the people of Lancaster and York counties in the same position it found them in, dealing with odors and toxins that cause sickness and a loss of the enjoyment of their property and life. I cannot imagine that the EPA will abandon this area, especially after it has dedicated resources to fix this ongoing problem.

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As the State Senator for over 135,000 people, all within the area affected by New Indy, I urge the EPA to adopt the changes laid out in this letter and insure that New Indy not be rewarded for their bad behavior.

Sincerely,



Senator Michael Johnson
District 16 - Lancaster and York Counties

MJ/sb

cc: The Honorable Ralph Norman
Director of DHEC
Myra Reese, DHEC

ATTACHMENT 2



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

January 12, 2022

William Truitt
118 Kings Creek Circle
Rehoboth Beach, Delaware 19971

RE: Freedom of Information Request EPA-R4-2021-005067

Dear Mr. Truitt:

This letter is an interim response to your Freedom of Information Act (FOIA) request for information pertaining to New-Indy mill in Catawba, South Carolina.

Pursuant to a call on January 11, 2022, and previous communications, with Ms. Marirose Pratt, Senior Attorney, ORC, EPA Region 4 and Ms. Andrea Hines, of my staff, you requested records related to six specific topics for your review. Enclosed are documents responsive to your request. A summary of the six topics and responsive documents is also included in this response.

We have submitted a request for another electronic search of email records between October 15, 2021 and January 8, 2022, related to the six topics. Once we have received that production, we will be able to provide you with a more accurate production date for our next release. Until the production is received by this office, we can only propose an estimated date of February 28, 2022. You will be notified of the status of your request if we determine that an additional extension is needed to fully process your request. We ask that you continue to work collaboratively with us to resolve any issues or concerns related to the response so that we can provide to you a quality response as expeditiously as possible.

Should you have questions regarding this response, please contact Andrea Hines, Government Information Specialist, at (404) 562-9698 or hines.andrea@epa.gov.

Sincerely,

LouAnn Gross, Chief
Office of FOIA, Privacy and Litigation Support

ATTACHMENT 3

From: [Kler, Denis](#)
To: [Foley, Patrick](#); [Fried, Gregory](#)
Cc: [Caballero, Kathryn](#); [Pratt, Marirose](#); [Dressler, Jason](#); [Russo, Todd](#); [Taylor, Kevin](#); [Mills, Andrew](#)
Subject: RE: New Indy steam stripper
Date: Monday, May 10, 2021 2:45:39 PM

Keeping everyone in the loop.

I got a call from Dan Mallett, New Indy, today at 1:21 pm. Dan stated that the steam stripper foul condensate flow rate averaged about 400 gallons/minute last week, and the foul condensate flow rate averaged about 197 gallons/minute to the ASB last week. I asked about the max foul condensate flow rate to the ASB and he said the max flow rate was about 300 gallons/minute to ASB. Dan stated that the max foul condensate flow rate to the AEB before the steam stripper restart was about 800-825 gallons/minute.

Dan also stated that the mill production is still struggling and the mill is still in the 180 startup period.

Dan mentioned that the even though the steam stripper has started operation, the mill and DHEC have still been receiving complaints, so we may want to be open to other potential sources of the emissions.

Denis B. Kler
U.S. EPA Region 4
Enforcement and Compliance Assurance Division
Policy, Oversight and Liaison Office
Phone: 404-562-9199

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From: Kler, Denis
Sent: Wednesday, May 5, 2021 8:54 AM
To: Foley, Patrick <Foley.Patrick@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>
Cc: Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Pratt, Marirose <Pratt.Marirose@epa.gov>; Dressler, Jason <Dressler.Jason@epa.gov>; Russo, Todd <Russo.Todd@epa.gov>; Taylor, Kevin <Taylor.Kevin@epa.gov>; Mills, Andrew <mills.andrew@epa.gov>
Subject: RE: New Indy steam stripper

Pat,

One of the items in the steam stripper re-start table the company provided was the functionality of the incineration nozzles in the combination boilers. But I can double check that the SOGs are being incinerated in the one of the combination boilers.

According to my notes from the onsite evaluation on April 15, neither combination boiler #1 nor #2 have SO2 CEMS. They only have opacity monitors. To follow up on the SO2 question is that in the permit application dated April 24, 2020 (to shutdown the steam stripper and send all the foul condensate to the ASB), the company stated that there would be reductions in SO2, NOX, VOC, CO, TRS and H2S emissions from the combination boilers since they would no longer be incinerating the SOGs in the combination boilers. Now that the steam stripper is back online then those reductions are no longer there.

Moving forward, if they increase the steam stripper capacity to handle the additional foul condensate load, which will increase the amount of SOGs produced, then we would expect to see an increase in SO2 and other pollutants from the combination boilers due the incineration of the additional SOGs.

Denis B. Kler
U.S. EPA Region 4
Enforcement and Compliance Assurance Division
Policy, Oversight and Liaison Office
Phone: 404-562-9199

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From: Foley, Patrick <Foley.Patrick@epa.gov>
Sent: Wednesday, May 5, 2021 8:13 AM
To: Kler, Denis <Kler.Denis@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>
Cc: Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Pratt, Marirose <Pratt.Marirose@epa.gov>; Dressler, Jason <Dressler.Jason@epa.gov>; Russo, Todd <Russo.Todd@epa.gov>; Taylor, Kevin <Taylor.Kevin@epa.gov>; Mills, Andrew <mills.andrew@epa.gov>
Subject: RE: New Indy steam stripper

That sounds right to me as well. So after turning the stripper back on we still have almost 4x as much condensate going to the ASB as we did before the changes. They reduced the impacts but probably have not eliminated them.

Can you verify that incineration of TRS laden stripper off-gasses (SOG) is happening as expected in the boiler and identify which boiler is receiving them and whether it has an SO2 CEMS?

I do think at some point we need to have another discussion with the company. Can we talk about whether we do that soon or wait until after the 303 Order goes out? These impacts may go on until they either reduce operating rate to match condensate production to stripper capacity or install additional stripper capacity. It may make sense to lead them by the nose to that conclusion. Long term, they will need additional stripper capacity especially if they want to increase throughput as their recent permit application stated.

From: Kler, Denis <Kler.Denis@epa.gov>

Sent: Wednesday, May 5, 2021 8:04 AM

To: Foley, Patrick <Foley.Patrick@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>

Cc: Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Pratt, Marirose <Pratt.Marirose@epa.gov>; Dressler, Jason <Dressler.Jason@epa.gov>; Russo, Todd <Russo.Todd@epa.gov>; Taylor, Kevin <Taylor.Kevin@epa.gov>; Mills, Andrew <mills.andrew@epa.gov>

Subject: RE: New Indy steam stripper

Pat I think we are on the same page here. During the opening meeting with the company on April 14, the company stated that as part of the conversion (from bleached to unbleached), the #1 evaporator train was modified to allow for higher black liquor throughput. I asked the company if they are running more black liquor through the evaporator train then are you producing more condensate, and they said yes. This seems to account for the increase in foul condensate being piped directly into the ASB (about 750-800 gallons/minute). It would also explain why the company had to install a larger diameter pipe from the foul condensate tank to the ASB (going from 90 gallons/minute to 750-800 gallons/minute). One question I have asked the company is now that the steam stripper is back in operation what is the flow rate of the foul condensate from the foul condensate tank directly to the ASB. The company responded to by saying they have to wait and see on the data. My guess is it will have to be about 370 gallons/minute (800 – 430).

Denis B. Kler
U.S. EPA Region 4
Enforcement and Compliance Assurance Division
Policy, Oversight and Liaison Office
Phone: 404-562-9199

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From: Foley, Patrick <Foley.Patrick@epa.gov>

Sent: Tuesday, May 4, 2021 3:59 PM

To: Kler, Denis <Kler.Denis@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>
Cc: Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Pratt, Marirose <Pratt.Marirose@epa.gov>;
Dressler, Jason <Dressler.Jason@epa.gov>; Russo, Todd <Russo.Todd@epa.gov>; Taylor, Kevin
<Taylor.Kevin@epa.gov>; Mills, Andrew <mills.andrew@epa.gov>
Subject: RE: New Indy steam stripper

The way I read the email from Dan Mallet is that prior to the change, they were stripping $430/(430+90) = 82.7\%$ of the foul condensate and after the change were stripping none of it. Put another way, using the current amount of foul condensate produced, they increased the amount of foul condensate hard-piped to the ASB by $800/90 = 778\%$ or are now sending almost $800/90 = 9$ times as much foul condensate to the ASB than they had previously. I think what Denis is saying they are now PRODUCING twice as much foul condensate as they previously produced.

Do you think what I wrote is right Denis? Its possible we are getting inconsistent descriptions of volumes and what is being counted as foul condensate and how it is getting to the ASB (hard-piped versus main flow to ASB).

From: Kler, Denis <Kler.Denis@epa.gov>
Sent: Tuesday, May 4, 2021 3:19 PM
To: Foley, Patrick <Foley.Patrick@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>
Cc: Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Pratt, Marirose <Pratt.Marirose@epa.gov>;
Dressler, Jason <Dressler.Jason@epa.gov>; Russo, Todd <Russo.Todd@epa.gov>; Taylor, Kevin
<Taylor.Kevin@epa.gov>; Mills, Andrew <mills.andrew@epa.gov>
Subject: FW: New Indy steam stripper

Now the mill is sending about 750-800 gallons/minute directly to the ASB (little less than double).

Denis B. Kler
U.S. EPA Region 4
Enforcement and Compliance Assurance Division
Policy, Oversight and Liaison Office
Phone: 404-562-9199

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From: Dan Mallett <Dan.Mallett@new-indycb.com>
Sent: Tuesday, May 4, 2021 2:59 PM
To: Kler, Denis <Kler.Denis@epa.gov>
Cc: Pratt, Marirose <Pratt.Marirose@epa.gov>; Russo, Todd <Russo.Todd@epa.gov>; Dressler, Jason

<Dressler.Jason@epa.gov>; Mills, Andrew <mills.andrew@epa.gov>; Taylor, Kevin <Taylor.Kevin@epa.gov>; Pete Cleveland <pete.cleveland@new-indycb.com>

Subject: RE: New Indy steam stripper

Using a 12 month average prior from May 2019-May 2020, the average flow to the stripper was 430 gpm and the flow to the ASB through the hardpipe was 90 gpm.

DANIEL MALLET

Environmental Manager

Office: (803) 981-8010

Mobile: (207) 951-6216



From: Kler, Denis [<mailto:Kler.Denis@epa.gov>]

Sent: Tuesday, May 4, 2021 11:53 AM

To: Dan Mallett <Dan.Mallett@new-indycb.com>

Cc: Pratt, Marirose <Pratt.Marirose@epa.gov>; Russo, Todd <Russo.Todd@epa.gov>; Dressler, Jason <Dressler.Jason@epa.gov>; Mills, Andrew <mills.andrew@epa.gov>; Taylor, Kevin <Taylor.Kevin@epa.gov>; Pete Cleveland <pete.cleveland@new-indycb.com>

Subject: New Indy steam stripper

External E-Mail - Caution - This email originated outside of New-Indy. .

Dan,

I hope you are having a good day. I had a follow up question about our conversation we had on Monday morning. It is my understanding and correct me if I am wrong, that prior to September 2020, all the foul condensate was collected in the steam stripper feed tank (foul condensate tank). From the steam stripper feed tank about 400 gallons/minute was sent to the steam stripper. What was the flow rate from the foul condensate tank to the aeration stabilization basin prior to September 2020?

Let me know if you have any questions.

Thanks,

Denis

Denis B. Kler

U.S. EPA Region 4

Enforcement and Compliance Assurance Division

Policy, Oversight and Liaison Office

Phone: 404-562-9199

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