

# **Attachment 25**



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

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March 4, 2022

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

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U.S. DOJ—ENRD  
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61 Forsyth Street, SW  
Atlanta, GA 30303-8960



March 4, 2022  
Page 2

Re: Second 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 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.

This correspondence follows a telephone call earlier today between Mr. O'Rourke and my co-counsel and fellow co-lead counsel Phil Federico in which this request was orally made.

Specifically, I write to, again, urge the United States Department of Justice ("DOJ") to further 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"). As we have previously noted, 28 CFR § 50.7(b) specifies a comment period of "at least 30 days" and we are not aware of any regulation or policy that prohibits the granting of this request.

Despite the prior 30-day extension of the initial public comment period, we continue to face many of the same obstacles preventing a meaningful opportunity for public comment as we have not been afforded a sufficient opportunity to review information responsive to our pending FOIA requests.

Indeed, the EPA has yet to produce all emails responsive to a FOIA request we submitted in June 2021. In its letter to our consultant Roger Truitt on January 12, 2022, the EPA estimated the responsive documents would be produced on February 28, 2022. *See* EPA Letter to W. Truitt, January 12, 2022. We have not received these documents to date.

Similarly, as mentioned in my letter dated February 1, 2022, we have yet to receive the full production of documents related to our request for information concerning the parties' bases and rationale for the technical and legal requirements, including the amount of the civil penalty assessed, in the aforementioned Proposed Consent Decree.

On February 11, 2022, the EPA's belated response to our January 10th FOIA request indicated that "more than 3,000 [responsive] records have been identified" and proposed "a production schedule of every 45-60 days, with the first date of production set for March 10, 2022." *See* EPA Letter to W. Truitt, February 11, 2022. Earlier today, on March 4, 2022, the EPA provided its "first interim response" to this request, enclosing 19 documents and explaining that it anticipates its next interim response will be provided "within 30-45 days of this interim release, on or before April 27, 2022." *See* EPA Letter to W. Truitt, March 4, 2022. The final date for complete production remains unclear. For your convenience, copies of both letters are enclosed as Attachments 1 and 2, respectively.

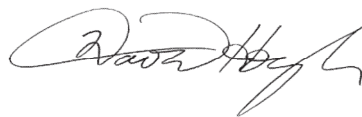
Providing the majority of the responsive documents *after* the Proposed Consent Decree was lodged, *after* the public hearing was held on the Proposed Consent Decree, and *after* the public comment period has ended is insufficient to protect the adversarial presentation as to the propriety of approving the Proposed Consent Decree. Indeed, such a scenario would be suggestive of an absence of good faith. See *United States v. Telluride Co.*, 849 F. Supp. 1400, 1404-05 (D. Colo. 1994) (“The manifested willingness of EPA to thoroughly consider all oral and written comments made with regard to the proposed decree is a key indicator of whether the decree was negotiated in good faith and is fair.”) (internal quotations and citations omitted).

The interim response provided by the EPA on March 4, 2022 is a mere fraction of the anticipated production of responsive documents, and raises further questions as to what information is contained in the remaining 2,981 documents that we are unable to consider in evaluating the Proposed Consent Decree.

Given the timing of EPA’s proposed production of relevant documents, and the serious impact the Proposed Consent Decree would have on the approximately 1,000,000 residents in the communities surrounding the pulp and paper mill, we respectfully request that the deadline for public comment be extended for a period of **no less than ten (10) business days** following the production of all documents responsive to the aforementioned FOIA requests.

With kind regards, I remain,

Sincerely yours,



T. David Hoyle

Enclosures: As Stated

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

ATTACHMENT 1



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

February 11, 2022

William Truitt  
128 Cessna Run  
Lakewood Ranch, Florida 34211

**RE: Freedom of Information Act Request EPA-R4-2022-001848**

Dear Mr. Truitt:

This letter your Freedom concerns your Freedom of Information Act (FOIA) request of January 10, 2022, for all records (including without limitation all emails, notes, correspondence), relating to the parties' basis and rationale for the technical and legal requirements, including the amount of civil penalty assessed, in the proposed Consent Decree lodged in the U.S. District Court for the District of South Carolina on December 29, 2021, captioned **United States of America v. New Indy Catawba LLC**, Civil No. 0:21-cv-02053-SAL. Specifically, you requested all communications and records internal to the U.S. Environmental Protection Agency and between the U.S. Environmental Protection Agency and the South Carolina Department of Health and Environment, as well as New Indy Catawba and/or any related New Indy entity.

Your request has been received in this office for response and we have determined that some of the records requested can be released under the Freedom of Information Act. For any records that cannot be released, you will receive a final letter describing those records, along with the corresponding exemptions and appeal procedures, should you wish to pursue an appeal. If records are available, we will forward them to you, along with an itemized invoice covering any charges for processing your request, if applicable.

Our customer service delivery standard and statutory response deadline is twenty (20) working days. However, in this instance, it is necessary for us to extend your response beyond the statutory deadline of twenty (20) working days because of unusual circumstances due to one or more of the following reasons:

[ x ] the need to search for and collect records from separate offices;

[ x ] the need to search for, collect, and examine a voluminous amount of records; and/or

[ ] the need to consult with another agency or two or more agency components.

After conducting an electronic search for records in Relativity, more than 3,000 records have been identified during the retrieval process. The complexity and/or volume of your response will require that we provide records incrementally on a production schedule. We are proposing a production schedule of every 45-60 days, with the first date of production set for March 10, 2022. We are also asking that you consider further narrowing and/or clarification of this request to reduce the processing time.

We ask that you work collaboratively with us to resolve any issues or concerns related to the response so that we can provide a quality response as expeditiously as possible. Should we find that we are unable to meet the first scheduled production date of March 10, 2022, you will be contacted regarding the status of your request and to negotiate another extension, if necessary.

Should you have questions, please contact Andrea Hines, Government Information Specialist, at (404) 562-9698.

Sincerely,

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

ATTACHMENT 2





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

March 4, 2022

William Truitt  
128 Cessna Run  
Lakewood Ranch, Florida 34211

**RE: Freedom of Information Act Request EPA-R4-2022-001848**

Dear Mr. Truitt:

This letter is the **first interim** response to your Freedom of Information Act (FOIA) request of January 10, 2022, for all records (including without limitation all emails, notes, correspondence), regarding the parties' basis and rationale for the technical and legal requirements, including the amount of civil penalty assessed, in the proposed Consent Decree lodged in the U.S. District Court for the District of South Carolina on December 29, 2021, that is captioned **United States of America** v. **New Indy Catawba** LLC, Civil Action No. 0:21-cv-02053-SAL. This request includes all communications and records internal to the U.S. Environmental Protection Agency and between the U.S. Environmental Protection Agency and the South Carolina Department of Health and Environment as well as New Indy Catawba and/or any related New Indy entity.

Enclosed are *some* documents that are responsive to your request along with an index of non-exempt documents for this interim response. However, because this is an interim response, a listing of exempt documents, applicable exemptions, and appeal procedures will be provided in the final response to this request.

We will continue our review of the remaining records for this request until the response has been completed. We anticipate providing our next interim response within 30-45 days of this interim release, on or before April 27, 2022. Please contact us if you wish to further limit the scope of or modify your request to reduce the processing time.

Should you have questions, please contact Andrea Hines, Government Information Specialist, at (404) 562-9698 or [hines.andrea@epa.gov](mailto:hines.andrea@epa.gov).

Sincerely,

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

Enclosure

## Index of Non-Exempt Documents

### EPA-R4-2022-001848 (First Interim Release)

<b>Document Number</b>	<b>Description</b>	<b>No. of Pages in Document</b>	<b>Disposition</b>	<b>Exemption and/or Reason</b>
1	9/23/21 Email New Indy Site	2		Release in Full
2	9/8/21 Email New Indy Term Sheet	2		Release in Full
3	Stripper Maintenance & Cleaning Outage: September 2021 ORP Control Strategy & Effectiveness for Foul Condensate to ASB Report	4		Release in Full
4	10/27/21 Email from Stephanie Blackman, Schwarzpartners	2		Release in Full
5	10/27/21 email SC - Support Operations Services (SOS) Affirmative Civil Enforcement (ACE)	3		Release in Full
6	11/3/21 email New Indy - term sheet/Appendix A further discussion if needed	2		Release in Full
7	9/8/21 email New Indy – Term Sheet	1		Release in Full
8	11/9/21 email New Indy EPA's 2d draft CD and first draft Appendix A	1		Release in Full
9	11/8/21 email New Indy - Revised draft CD and Appendix A/term sheet	1		Release in Full
10	EPA Region 4 Reply to New Indy's November 5, 2021 NOPVOC Response	2		Release in Full
11	11/30/21 email New Indy - discussion of NIC's proposed edits to Appendix A	2		Release in Full
12	Passive Post Aeration Basin Cover System:	4		Release in Full
13	Spill Containment	1		Release in Full

