

Attachment 8

December 23, 2021

VIA ELECTRONIC MAIL

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Re: United States of America v. New Indy Catawba, LLC, Case No. 0:21-cv-02053-SAL

Dear Counsel:

I write to follow-up on our Teams videoconference from Thursday, December 16th.

First, thank you and representatives from EPA for spending an hour with us. I hope that you found our time together beneficial, although it was hard to tell given those participants who had their cameras turned off. Second, enclosed per your request is a PDF of the PowerPoint that we used to guide the meeting. Third, I write briefly to recap and expand upon last Thursday's meeting.

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Present on behalf of EPA were:

- Carol Kemmler, Director of Enforcement and Compliance Assurance Division, EPA Region 4
- Todd Russo, Chief of the Air Enforcement Branch, EPA Region 4
- Nacosta C. Ward, Special Assistant to the Director of the Enforcement and Compliance Assurance Division
- Marirose Pratt, Senior Air Enforcement Attorney, Office of Regional Counsel, EPA Region 4
- Steve O'Rourke, Senior Attorney, Environment and Natural Resources Division, DOJ
- Johanna Valenzuela, Assistant United States Attorney

Present on behalf of the legal team which represents more than 1,700 residents and has been appointed Interim Counsel in a putative class action by Judge Lydon were:

- Phil Federico, Co-Lead Counsel;
- Chase Brockstedt, Co-Lead Counsel;
- David Hoyle, Co-Lead Counsel;
- Dick Harpootlian, Co-Lead Counsel;
- Roger Truitt, Environmental Technical / Legal Consultant;
- Deborah Jennings, Environmental Legal Consultant;
- Ken Norcross, Wastewater Engineer;
- Dr. Steven Hanna, air quality modeler; and
- Rick Osa, ambient air quality expert.

The meeting generally followed the PowerPoint.

Of note, are the Immediate, Short-Term and Longer-Term Action Items on Slides 23-25:

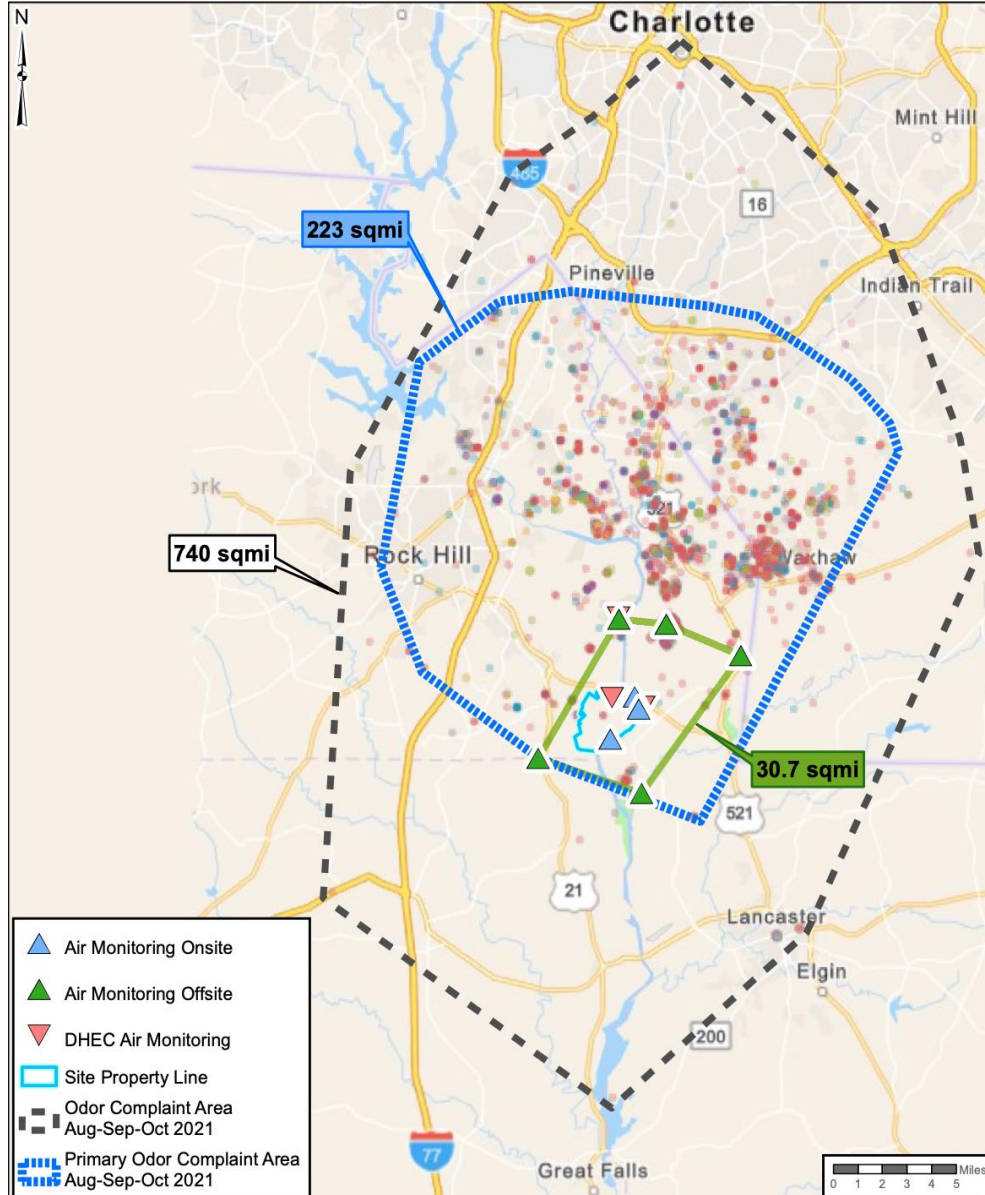
- Immediate (within 30-60 days):
 - Reduce generation of foul condensate;
 - Install continuous real-time H₂S and TRS community monitoring stations; and
 - Require New-Indy to measure actual H₂S, methyl mercaptan, and TRS emissions from the ASB and other WWTP units.
- Short-Term Action Items (within 12 months)
 - Install new steam stripper with sufficient capacity to treat all foul condensate generated in the mill;
 - Convert Temporary Wastewater Holding Lagoon (Lagoon #5) to an additional aerobic stabilization basin; and

- Remove sludge from Holding Pond #1.
- Longer-Term Action Items (1-3 years)
 - Add a second Primary Clarifier;
 - Reconfigure the Equalization Basin;
 - Reconfigure Holding Lagoon #1;
 - Add a second Post-Aeration Basin; and
 - Construct a replacement facility for Sludge Lagoon #4.

We believe that it is clear that a new steam stripper is needed to eliminate dumping foul condensate into an outdated and undersized WWTP. Quite frankly, this could and should have already been done. As you know, we previously filed the report of Dr. Martin MacLeod, who specializes in the science and technology of kraft pulping, who opined that “it is industry practice for kraft pulp mills that cannot capture, steam strip, and destroy all of their foul condensate stream to curtail or stop pulp production rather than risk releasing TRS to the ambient air.” Dkt-7-8 at p. 7, ¶ 4. In addition, Dr. MacLeod has opined that “New-Indy could install and have operational a new steam stripper with adequate capacity to remove virtually all of the TRS compounds from its foul condensation within six (6) months or less.” Dkt-7-8 at p. 7, ¶ 6.

Moreover, as our experts explained, New-Indy’s October 2021 Air Dispersion Modeling Analysis is inadequate because it fails to model methyl mercaptan, a South Carolina regulated toxic air pollutant, which has property line emission limits 14 times more stringent than H₂S. And, as Ken Norcross explained, it also misleadingly uses faulty input data based on wastewater modeling assumptions *not* applicable to New-Indy’s crippled aeration stabilization basin (ASB) and other wastewater treatment and storage units.

Indeed, the community monitoring for H₂S is only at 8 off-site locations, extending only 5.8 miles from the mill, covering approximately 30 square miles. As illustrated below, the most recent odor complaints from August-October 2021 are from an area measuring 300 square miles. In other words, odors are present in an area 10 times the area currently being monitored. Given the population density of this community, it is probable that EPA cannot identify the actual H₂S being experienced by more than 100,000 residents of North and South Carolina. And, it is undisputed that EPA cannot identify the actual methyl mercaptan and TRS levels experienced by these residents through actual monitoring.



This galling lack of monitoring is despite the data generated by EPA’s GMAP van sampling system in April. As explained by Dr. Steven Hannah, a world-renowned developer of air quality models who is on the faculty at Harvard, observations of concentrations on April 27th from GMAP combined with wind observations from the Rock Hill weather station allow him to conclude that the total emission rate of H₂S over the aeration pond is the equivalent of **3,650 tons per year**.

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Yet, EPA has not posted to its website or otherwise made available New-Indy's long-term plan and toxicological assessment, as required by paragraph 52(h) of EPA's May 13, 2021 Order, to avoid the endangerment presented by New-Indy's continuing toxic and malodorous air emissions. Our retained consultant, Roger Truitt, requested this document pursuant to the Freedom of Information Act on June 23rd. Yet, as he wrote the EPA yesterday, the EPA failed to produce this and many other requested documents in its belated response of December 15th. This long-term plan is critical to the community to determine the current risk to tens of thousands of residents, including the risk presented by methyl mercaptan and TRS, as well as what New Indy is required to do to prevent reoccurrences of the levels exceeding 1,000 ppb measured in April.

While we remain committed to assist EPA with this serious matter, including making any or all of our retained experts available for further questions, I end with a note of concern. During our Teams videoconference, EPA officials did not ask any questions and their lawyer did not permit the answering of any of our questions. We certainly hope that this is not indicative that our experts prepared for and attended a perfunctory, check the box, meeting. In addition to being a misuse of our time and resources, it would also run counter to our repeated invitations towards a continuing dialogue with EPA – much like we are working to establish with DHEC. This concern does not, however, feel misguided given what appears to be EPA's efforts to minimize the scope and scale of this problem. The illustration included above certainly suggests that the EPA is turning a blind eye to tens of thousands of residents by trying to direct attention elsewhere and telling us the rest does not count.¹ Similarly, EPA's failure to provide us, and others, New Indy's long-term plan and toxicological assessment should alarm all those who believe that government should engage in at least minimal transparency, especially the Executive as required to do so by statute.

Despite these concerns, we truly desire a continuing dialogue with EPA. To that end, please do not hesitate to contact me if there is any way that we can be helpful.

Thank you for your continued time and best wishes for the Holidays.

¹ In the words of former South Carolina Court of Appeals Chief Judge Alex Sanders:

[T]hose who disregard *dictum*, either in law or in life, do so at their peril. We are reminded of the apocryphal story of a duel which was about to take place in a saloon. One of the antagonists was an unimposing little man, thin as a rail-but a professional gunfighter. The other was a big, bellicose fellow who tipped the scales at 300 pounds. "This ain't fair," said the big man, backing off. "He's shooting at a larger target." The little man quickly moved to resolve the matter. Turning to the saloon keeper, he said, "Chalk out a man of my size on him. Anything of mine that hits outside the line don't count."

Yaeger v. Murphy, 291 S.C. 485, 490 n.2, 354 S.E.2d 393, 396 n.2 (Ct. App. 1987) (quoting Paul Trachtman, *The Gunfighters* 39 (1974)).



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With kind regards, I remain,

Sincerely yours,

A handwritten signature in black ink, appearing to read "T. David Hoyle".

T. David Hoyle

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

Enclosures: As Stated