

EXHIBIT A

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 0:21-cv-02053-SAL
)	
NEW INDY CATAWBA, LLC)	
)	
Defendant.)	
)	

COMPLAINT IN INTERVENTION

COMES NOW, Intervenor, on behalf of themselves and all others similarly situated, who, through undersigned counsel, file this complaint in intervention against New-Indy Catawba, LLC (“New Indy”), d/b/a New-Indy Containerboard, concerning emissions from its pulp and paper mill located at 5300 Cureton Ferry Road, Catawba, York County, South Carolina (the “Facility”).

PARTIES

1. Enrique Lizano, Melda Gain, Krista Cook, Jean Hovanec, Kathleen Moran, Terri Kennedy, Marsha Stewart, Ida McMullen, Cammie Barnes, Donald Honeycutt, Kenny N. White, Tracie Nickell, Amanda Swagger, and John Hollis (the “Intervenor”) reside within 15 miles from the Facility. They have all experienced, and continue to experience, pervasive rotten egg odors and other odors from the Facility that invade their properties inside and out. They have also experienced, and continue to experience, adverse health effects from the Facility’s emissions, including headaches, bloody noses, sinus issues, persistent nausea, and balance disruption and dizziness.

2. In addition to Intervenors, undersigned counsel also represent approximately 1,500 similarly situated persons living within 30 miles of the Facility and its wastewater and sludge disposal facilities, who have similarly suffered health effects and disrupted lives due to New Indy's emissions. All of these people own or lease their properties. These and other individuals are simultaneously pursuing a class action pending before this Court based on the grossly malodorous, toxic, and harmful emissions from the Facility. *See Kennedy et al. v. New Indy Catawba, LLC et al.*, Case No. 0:21-cv-01704-SAL; *see also White et al. v. New Indy Catawba, LLC et al.*, Case No. 0:21-cv-1480-SAL

3. Defendant New Indy is a Delaware limited liability corporation registered to do business in South Carolina. Defendant owns and operates the Facility which produces pulp and paper and is located at 5300 Cureton Ferry Road, Catawba, York County, South Carolina. The Facility is a major stationary source of air pollutants because it has the potential to emit 100 tons per year or more of a regulated New Source Review pollutant as defined in S.C. Code Regs. 61-62.5, Standard 7 and 40 CFR §52.21.

NATURE OF ACTION

4. This is a civil action brought against Defendant New Indy, concerning the proposal to construct, and the construction of, a major modification to an existing major stationary source of air pollutants in an attainment area without the necessary Clean Air Act Prevention of Significant Deterioration ("PSD") permit and emission of excessive amounts of total reduced sulfur ("TRS"), including hydrogen sulfide (H₂S), methyl mercaptan and other toxic air pollutants, from its Facility located in Catawba, York County, South Carolina. New Indy manufactures brown paper also known as linerboard and related products at the Facility, and the process has resulted in emissions of TRS and its toxic components in excessive amounts. It has also had and continues to have multiple

exceedances of maximum ambient concentrations of H₂S and violations of Clean Air Act standards or limitations prescribed in the Emergency Order issued by the United States Environmental Protection Agency (“EPA”) on May 13, 2021. Exposure to excessive TRS and H₂S causes various adverse health effects, such as headache, nausea, difficulty breathing among people with asthma, and irritation of the eyes, nose, and throat. Since approximately February of 2021, the Facility has been emitting excessive levels of H₂S. EPA and New Indy have recorded high levels of H₂S concentrations in the air at various locations on and off the Facility property, including in nearby residential communities.

5. EPA and the South Carolina Department of Health and Environmental Control (“DHEC”) have received over 30,000 complaints from residents living near the Facility—and even from residents living as far away as the southern suburbs of Charlotte, North Carolina—about noxious odors, nausea, eye, nose and throat irritation, migraines, and other symptoms.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to Clean Air Act, 42 U.S.C. § 7604 (Citizen Suit), 28 U.S.C. § 1331 (Federal question), and 28 U.S.C. §1345 (United States as plaintiff).

7. Venue is proper in this District pursuant to Clean Air Act, 42 U.S.C. § 7604 and 28 U.S.C. § 1391(b) and (c), because New Indy conducts business in this District, the releases of TRS and H₂S occurred in this District, and the emissions continue to threaten residents of this District.

GENERAL ALLEGATIONS

The Facility

8. New Indy owns and operates the Facility, a pulp and paper mill in Catawba, South Carolina.

9. New Indy shut down the Facility's manufacturing operations between September and November of 2020, to convert from producing white paper (bleached paper) to producing containerboard grade paper (unbleached brown paper referred to as linerboard used for making cardboard). As of February of 2021, New Indy was operating again, and began emitting high levels of TRS and H₂S.

10. Approximately 1.7 million people live within a 30-mile radius of the Facility, in York, Lancaster, and Chester Counties in South Carolina, and Union and Mecklenburg Counties in North Carolina. The Facility is located approximately 10 miles south and southwest 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.

BACKGROUND

11. In April 2020, New Indy submitted an application (the "Application") to DHEC to obtain a construction permit that would allow it to take its hazardous air pollutant steam stripper located within the Facility out of service and to build a hard pipe to transport all of its foul condensate to its outdoor wastewater treatment system ("WWTP"). This change was part of the larger conversion of the Facility to brown paper production.

12. Because New Indy is an existing major source of air pollutants in an attainment area, the Application purported to demonstrate that the physical change to the Facility would not result in a net significant increase in any of the pollutants that are regulated under the CAA New Source Review requirements. If the change did result in a net significant increase of any regulated air pollutant, a PSD permit would have been required. Such a permit imposes many obligations on the applicant, including potential modeling of the ambient impact of the increased emissions

and other adverse impacts on the population, and application of Best Available Control Technology to control the emissions resulting from the change.

13. New Indy represented to DHEC that “the total volume of mill wastewater is . . . expected to be reduced by approximately 50% following conversion to unbleached pulp production.” *See* Ex. 1, Application at 2-1. Upon information and belief, New Indy assumed this fact as true in estimating future emissions, after installation of the hard pipe and elimination of the steam stripper. Reduction in Facility wastewater would have reduced the volume of toxic components and toxic emissions volatilizing from the foul condensate.

14. Contrary to representations to DHEC, the discharge monitoring reports to DHEC show that New Indy did not reduce its wastewater flow as promised in its Application. In 2019 and 2020, before the conversion, the monthly average discharge rate was 19.7 million gallons a day (“MGD”) and 22.2 MGD, respectively. After the conversion, reported by New Indy to have been completed February 1, 2021, the monthly average discharge rate from the mill to the WWTP through June 2021 has been 19.4 MGD. *See* Ex. 2, Declaration of Kenneth L. Norcross and accompanying Expert Report at pgs. 9-10 (“Norcross Declaration and Report”). As a result, New Indy’s emission calculations relying on reduced wastewater volume were false.

15. New Indy’s application for a minor construction permit also falsely represented the level of removal of toxic air pollutants that would occur when the foul condensate was exclusively piped to its outdoor wastewater treatment system, specifically its Aerated Stabilization Basin (“ASB”). New Indy represented that it had calculated “the change in emissions from the wastewater treatment system due to the new hard pipe . . . using emission models from NCASI for H₂S.” *See* Ex. 1, Application at 3-1. New Indy claimed that “by treating the foul condensates

using hard pipe, more than 96% of the [hazardous air pollutants] and 94% of the TRS compounds are removed biologically in the wastewater treatment system.”

16. On the basis of these representations, New Indy sought and obtained findings by DHEC that the deactivation of the steam stripper and reliance on the wastewater treatment system was a “minor” change that did not require a PSD permit and was exempt from a demonstration of compliance with South Carolina toxic air pollutant regulations governing H₂S and methyl mercaptan (a component of TRS). *See* Ex. 1, Application at 4-8; S.C. Code Regs. 61-62.7.

17. Application of the NCASI model depended on a properly operating wastewater system. However, when New Indy started the Facility back up in February 2021, the WWTP, including the ASB, in such a poor state of operation that it could not treat the H₂S and TRS which were released to the ambient air and the surrounding communities. *See* Ex. 2, Norcross Declaration and Report at pgs. 2-3, 7-8. New Indy now admits that the inputs used in the NCASI model were based on the status of the wastewater treatment system in 2015, instead of the current state of dismal disrepair. New Indy knew or should have known that its wastewater treatment system was in such terrible disrepair that it barely functioned. *See* Ex. 2, Norcross Declaration and Report at pgs. 2-3, 5-11, 16-20. As a result, the removal percentages for H₂S and TRS that New Indy submitted to DHEC were false and misleading.

18. In its July 12, 2021 Corrective Action Plan (the “CAP”), New Indy admits that the ASB was filled with sludge and had only 28 of 52 aerators operating (*see* Ex. 3, CAP at 5-5), and the system’s ability to remove toxics is only possible with properly functioning aerators. As a result, New Indy could not adequately treat the TRS in the foul condensate and the toxics volatilized to the ambient air and were carried by the wind to residential communities many miles away. As New Indy now acknowledges:

After the conversion and restarting the mill . . .the thick layer of fiber formed on the basin reducing the aeration capacity of the basin. This reduced aeration capacity and sludge accumulation that has reduced mixing and disruption of the flow path through the basin have hindered the basin’s ability to perform as modeled. The two main operational issues in the Aeration Stabilization Basin that pose the potential of causing or contributing to elevated levels of hydrogen sulfide have been the formation of the floating fiber layer and the accumulation of settled solids.”

Ex. 3, CAP at 7-5.

19. When New Indy represented to DHEC that its emissions of TRS and H₂S — dangerous hazardous air pollutants—would not be “significant” and should be exempted from a toxics compliance demonstration, it did so on the basis of “modeled” emissions that failed to account for its woefully inadequate wastewater treatment system.

20. Through these misrepresentations, New Indy bypassed its inoperable steam stripper and proceeded to hard-pipe foul condensate outdoors to its virtually inoperable treatment system, with the result that it blanketed the surrounding residential areas with toxic air pollutants, specifically TRS, which included methyl mercaptan and H₂S. Despite these known failures, New Indy ran the Facility at or near full capacity. *See* Ex. 2, Norcross Declaration and Report at p. 2.

21. New Indy’s gross emissions released to the downwind communities led to the complaints to DHEC and EPA detailed below. Six months after startup of the new linerboard process, New Indy has now been required to restart its steam stripper to treat foul condensate, but it lacks the capacity to treat all the foul condensate with steam stripping inside the Facility and continues to discharge as much or more than 500,000 gallons of the foul condensate to the inadequate wastewater treatment system. The system remains in such a poor state of operation that it cannot treat the TRS which continues to be released to the ambient air and the surrounding communities. *See* Ex. 2, Norcross Declaration and Report at pgs. 2-3. In fact, on July 26, 2021, DHEC issued a notice to New Indy, citing it for violating the South Carolina Pollution Control Act, S.C. Code Ann.

§48-1-110(d) by failing to operate the WWTP in accordance with its permit, including, *inter alia*, improper operations due to excessive solids and foam and found the WWTP was not in good working order and not providing full treatment as indicated by anaerobic conditions. *See* Ex. 4, DHEC Notice of Violation dated July 26, 2021.

22. New Indy had represented to DHEC that the net emissions increase from its actions would be 6.9 tons per year of TRS and 2.2 tons per year of H₂S (Ex. 1, Application at 4-6), and thus below the regulatory threshold of 10 tons per year. In fact, New Indy should have known that the physical change of hard-piping foul condensate to its treatment system would result in substantially higher emissions of TRS and H₂S because of inadequate treatment. Upon information and belief, New Indy exceeded the 10 ton per year threshold for both TRS and H₂S and was required to obtain, but failed to obtain, a Clean Air Act PSD Permit.

23. On May 13, 2021, EPA issued a Clean Air Act Emergency Order (“EPA Order,”), to New Indy under the Clean Air Act, 42 U.S.C. § 7603 (“Clean Air Act”). D.I. 1-1. The Order included a schedule of compliance that imposed specific measures and a timetable on New Indy that were characterized by EPA as necessary to abate or prevent an imminent or substantial endangerment to the public health or welfare. D.I. 1-1 at ¶52. Among other requirements, New Indy was required to operate the Facility in such a way as not to exceed ambient concentration limits for H₂S at monitor locations outside its fence line, specifically, 70 ppb on a seven-day rolling average and 600 ppb on a 30-minute rolling average. D.I. 1-1 at ¶52. This schedule of compliance constituted a “standard or limitation” within the meaning of 42 U.S.C. § 7604(f)(1).

24. New Indy has violated the requirements of the Order numerous times, including as recently as September 1, 2021 (*see* Ex. 5, Declaration of Richard H. Osa, EQP and accompanying

Expert Report at p. 10 (“Osa Declaration and Report”)), thus endangering the health of Intervenors and persisting in the creation of noxious odors that damaged the welfare of Intervenors.

25. In addition, the Order required New Indy, *if it intended to continue manufacturing operations*, to consult with a toxicologist and submit a long-term plan within 45 days indicating how its continued operations would avoid the endangerment to the public health and welfare. D.I. 1-1 at ¶52(h). On information and belief, New Indy has not submitted to EPA a long-term plan that includes input from a toxicologist to avoid the ongoing endangerment to Intervenors. Neither EPA’s nor DHEC’s websites have posted any such endangerment assessment or plan demonstrating New Indy’s consultation with a toxicologist, nor were Intervenors provided it in response to Freedom of Information Act Requests. The continuing release of H₂S from the Facility and weekly status reports issued by New Indy and posted on DHEC’s website do not indicate that necessary operational, production, or process changes are being implemented at the Facility to comply with generally accepted good engineering and good air pollution control practices. *See* Norcross Declaration and Report at pgs. 12-14; Ex. 6, Declaration of Martin MacLeod, PhD and accompanying Expert Report at pgs. 3-4 (“MacLeod Declaration and Report”).

26. Intervenors file this action seeking injunctive relief under Clean Air Act, § 7604 requiring continuing compliance with the EPA Order, requiring New Indy to apply for and obtain a PSD permit, and restraining New Indy from emitting excessive TRS and H₂S and/or requiring New Indy to take immediate steps, including a cessation or significant reduction in the amount of foul condensate discharged to the WWTP, to eliminate the air pollution that is presenting an imminent and substantial endangerment to the public health or welfare.

Impacts of Hydrogen Sulfide and TRS

27. Hydrogen sulfide is a flammable, colorless gas that smells like rotten eggs. People usually can smell H₂S in ambient air at concentrations ranging as low as 0.5 parts per billion (ppb). Elevated concentrations of H₂S can cause various adverse health effects, such as headache, nausea, difficulty breathing among people with asthma, and irritation of the eyes, nose, and throat. The Agency for Toxic Substances and Disease Registry has established an ambient Minimum Risk Level (“MRL”) for H₂S of 70 ppb over a 24-hour averaging period.

28. Intervenors contend that the MRL for H₂S of 70 ppb over a 24-hour averaging period is inappropriate for this population because of recurrent exposures and the presence in the area of populations that are sensitive to H₂S exposure including very young children, elderly, and individuals with respiratory diseases and inhalational allergies. *See* Ex. 7, Declaration of William J. Meggs, MD and accompanying Expert Report at pgs. 2-3 (“Meggs Declaration and Report”). The 70 ppb MRL is not a “safe level.” *Id.*

29. TRS includes not only H₂S but also methyl mercaptan, methyl disulfide, and dimethyl disulfide. Methyl mercaptan is a noxious gas with a disgusting odor that adversely impacts quality of life and is an irritant gas that can irritate mucus membranes in the respiratory system, eyes, and skin. *Id.* at p.3. Methyl mercaptan is designated as toxic air pollutant by DHEC and considered 14 times more toxic than H₂S based on the levels considered acceptable at an emitter’s property line. *See* S.C. Code Regs. 61-62.5, Standard No. 8, Toxic Air Pollutants. Methyl disulfide and dimethyl disulfide have a noxious odor described as a “stench” that adversely impacts quality of life and causes serious eye irritation and respiratory irritation. *See* Ex. 7, Meggs Declaration and Report at p. 3).

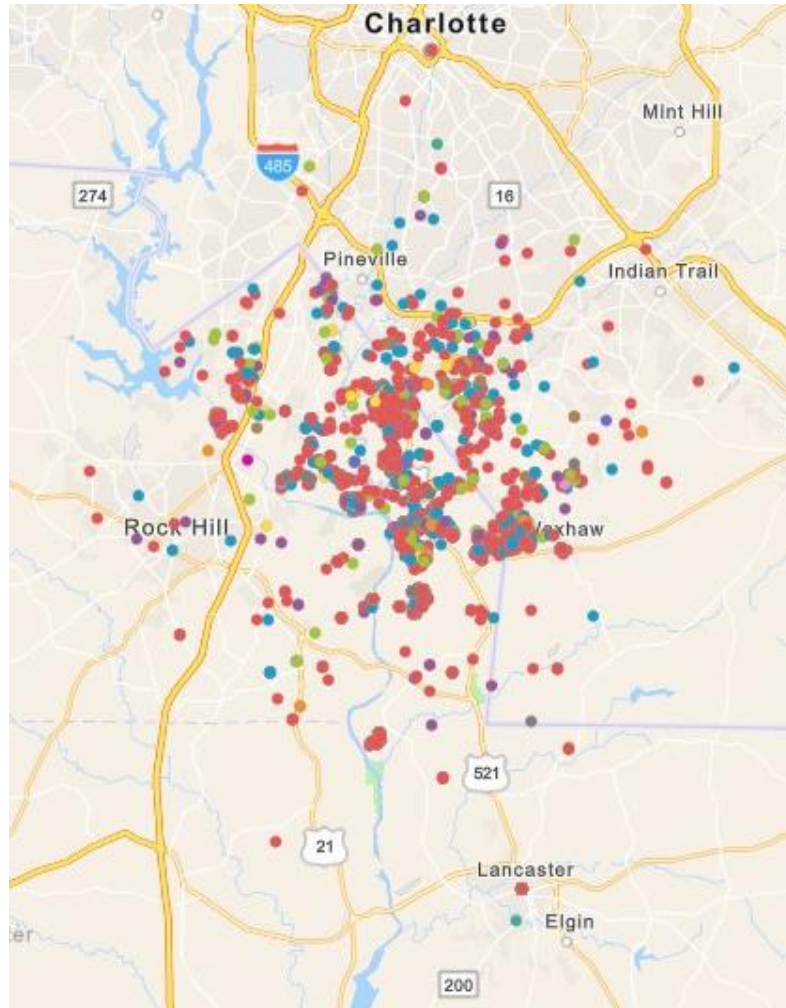
Citizen Complaints to DHEC and EPA

30. Residents in Fort Mill, Indian Land, Rock Hill, and Lancaster, South Carolina, and in Charlotte, Matthews, Pineville, and Waxhaw, North Carolina have complained of strong odors and reported health effects to DHEC. In the eight-week period from March 12, 2021 to May 7, 2021, DHEC's online reporting database received approximately 17,000 such complaints, some from residents living as far as 30 miles away from the Facility.

31. The reported health effects have included nausea, headaches including migraines, nose or throat irritation, and eye irritation. Less frequently reported symptoms include coughing, difficulty breathing, nose bleeds, asthma "flare ups," and dizziness.

32. Residents have also documented on DHEC's online database a wide range of impacts to quality of life, personal comfort, and well-being. This includes lost sleep, a desire to stay indoors to avoid odors, and stress and anxiety. For example, many residents noted that odors were noticeable inside their homes, that they were woken at night due to the odors, that they did not want to go outside due to the odors, and other symptoms.

33. EPA maintains a database to keep track of complaints submitted by residents who live near the Facility. During March and April of 2021, EPA logged hundreds of 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, burning eyes, nausea, and throat irritation. DHEC has updated its reporting of citizen complaints from 17,000 through May 2021 to 29,928 as of August 8, 2021. DHEC's website includes the graphic excerpted below showing the location of complaints in July 2021:



DHEC Investigations and Order

34. By April 9, 2021, DHEC was investigating the source of the reported odors. 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. In April of 2021, DHEC conducted a trajectory analysis, which is an assessment of the location of an emitting source using odor complaints and wind direction. DHEC identified the Facility as the main, if not only, source of H₂S causing the symptoms that residents had reported in the surrounding communities. On May 7, 2021, DHEC issued New Indy a Determination of Undesirable Levels and an Order to Correct Undesirable Level of Air Contaminants.

EPA Investigations and Order

35. On April 15, 2021, EPA inspectors visited the New Indy Facility. The inspectors wore gas monitors for personal safety. One of the monitors detected H₂S readings as high as 15,900 ppb.

36. From April 24 through 27, 2021, EPA inspectors also detected H₂S from on-site and nearby locations downwind of the Facility using a mobile laboratory called the Geospatial Measurement of Air Pollution (“GMAP”). EPA used the GMAP to perform stationary measurements of airborne H₂S at 15 locations. At several of the locations, the H₂S concentration exceeded the applicable National Research Council’s AEGL, a concentration above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort or irritation.

37. In addition, EPA used the GMAP to collect 84 mobile transect air samples while the mobile lab was moving. Seven of the samples showed that H₂S concentrations at the Facility exceeded 1,000 ppb, and that concentrations generally decreased as the mobile lab got further away from the Facility.

38. The EPA personnel who conducted the GMAP sampling 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 H₂S. The two employees also reported experiencing headaches, itchy eyes, and nausea while the odor was present, and when H₂S was being detected.

39. EPA met with and otherwise communicated with New Indy about these findings and about how to control H₂S emissions.

40. On May 13, 2021, EPA exercised its authority under Clean Air Act § 7603 and issued an administrative order (EPA Order) to New Indy, requiring New Indy to reduce its H₂S emissions, monitor and limit its emissions so as not to exceed certain ambient concentrations of H₂S outside the Facility, and submit a long-term plan to control H₂S emissions in the future.

41. Since May 13, 2021, New Indy has implemented measures to attempt to reduce its emissions of H₂S, but these measures have been either temporary, speculative, or inadequate.

42. Despite New Indy's corrective actions, New Indy has exceeded the fence-line concentration limits required by the EPA Order (70 ppb for a seven-day rolling average and 600 ppb for a 30-minute rolling average) on numerous occasions. Specifically, as of June 29, 2021, New Indy had reported the following exceedances at monitoring station 1:

Paragraph 52.b (70 ppb / 7 days)		Paragraph 52.b (600 ppb / 30 minutes)	
Date	H₂S Concentration	Date and Time	H₂S Concentration
May 26, 2021 – June 1, 2021	70.8 ppb	June 4, 2021, 7:00 - 7:30 pm	1,075 ppb
May 27, 2021 – June 2, 2021	81.2 ppb	June 4, 2021, 7:30 - 8:00 pm	1,329 ppb
May 28, 2021 – June 3, 2021	88.8 ppb	June 4, 2021, 8:00 - 8:30 pm	1,073 ppb
May 29, 2021 – June 4, 2021	110.8 ppb	June 4, 2021, 8:30 - 9:00 pm	607 ppb
May 30, 2021 – June 5, 2021	102.4 ppb	June 12, 2021, 2:30 – 3:00 pm	675.3 ppb
May 31, 2021 – June 6, 2021	71.8 ppb	June 14, 2021, 4:30 – 5:00 pm	1,330 ppb
June 7, 2021 – June 13, 2021	93.7 ppb	June 15, 2021, 2:00 – 2:30 pm	624.6 ppb
June 8, 2021 – June 14, 2021	108.4 ppb	June 15, 2021, 5:00 – 5:30 pm	676.6 ppb
June 9, 2021 – June 15, 2021	150.3 ppb	June 15, 2021, 5:30 – 6:00 pm	674.9 ppb
June 10, 2021 – June 16, 2021	177.7 ppb	June 20, 2021, 4:30 – 5:00 pm	812 ppb
June 11, 2021 – June 17, 2021	205.1 ppb	June 20, 2021, 5:00 – 5:30 pm	1,024 ppb
June 12, 2021 – June 18, 2021	207.1 ppb		
June 13, 2021– June 19, 2021	185.4 ppb		
June 14, 2021– June 20, 2021	153.5 ppb		
June 15, 2021– June 21, 2021	140.5 ppb		
June 16, 2021 – June 22, 2021	102.7 ppb		
June 17, 2021 – June 23, 2021	87.5 ppb		

43. Since May 13, 2021, DHEC and EPA have continued to receive citizen complaints. Between May 13, 2021 (the date of EPA's Clean Air Act § 7603 Order) and June 24, 2021, DHEC received an additional approximately 5,726 complaints.

44. New Indy continues to violate the fence line concentration limits established in the EPA Order and the local community continues to file numerous odor and health-related complaints. Moreover, New Indy is not even monitoring TRS ambient concentrations at or beyond its fence line, notwithstanding the toxic danger to the community presented by methyl mercaptan and other TRS components. *See* S.C. Code Regs. 61-62.5, Standard No. 8, Toxic Air Pollutants (designating methyl mercaptan as toxic air pollutant considered 14 times more toxic than H₂S).

The Monitoring Program is Deficient

45. The EPA, in paragraph 52 of its Order, requires New Indy to implement a continuous monitoring plan (the “Monitoring Plan”).

46. The Monitoring Plan is deficient in several important respects which greatly limits EPA’s ability to accurately assess and quantify the concentration of contaminants entering ambient air from the New Indy Facility. *See generally* Ex. 5, Osa Declaration and Report.

47. First, New Indy’s CAP indicates, in Table 6-1, that less than 10 percent of the TRS emissions from the Aerated Stabilization Basin are related to H₂S, meaning the other TRS compounds (methyl mercaptan, dimethyl sulfide, and dimethyl disulfide) make up the great majority of the emissions. Ex. 5, Osa Declaration and Report at pg. 3 and Ex. 3 (CAP) at p. 6-12, Table 6-1; *see also* Ex. 6, MacLeod Declaration and Report at pgs. 3-4. Yet, the Monitoring Program only requires testing for H₂S.

48. The Monitoring Program should be requiring monitoring and testing for the other TRS compounds, not just H₂S, using commercially available TRS monitors. *See* Ex. 5, Osa Declaration and Report at pgs. 3-4, 8, 10-11.

49. Second, the Monitoring Program only requires three fence-line monitors. Three monitors are woefully inadequate for a Facility with a perimeter of almost six miles in length,

resulting in huge gaps of thousands of feet in which H₂S and TRS compound ground level emissions are not being adequately monitored as they escape from the Facility and negatively impact the surrounding community. *See* Ex. 5, Osa Declaration and Report at pgs. 2-5.

50. The Monitoring Program should be expanded to require three to six times the number of fence-line monitors to adequately protect the public. *See* Ex. 5, Osa Declaration and Report at pgs. 4-5.

51. Third, the Monitoring Program’s community monitoring network is deficient because it is exclusively monitoring for H₂S and not the other TRS components. Moreover, the current community monitoring is only covering an area of about 30 square miles while the DHEC complaint data shows an affected area of at least 265 square miles and up to 498 square miles. *See* Ex. 5, Osa Declaration and Report at pgs. 6-9.

52. Fourth, the Monitoring Program has used different instruments with different measuring principles, undermining the quality of the data collected. More uniformity and consistency is needed to ensure data reliability. *See* Ex. 5, Osa Declaration and Report at pgs. 2, 10.

CLAIMS FOR RELIEF

COUNT I

Injunctive Relief under Clean Air Act, 42 U.S.C. § 7604 Violation of a Standard or Emission Limitation

53. All foregoing Paragraphs are realleged and incorporated herein by reference.

54. Congress enacted the Clean Air Act “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1).

55. Clean Air Act § 7602(g) defines an “air pollutant” as “any air pollution agent or combination of such agents, including any physical, chemical . . . substance or matter which is

emitted into or otherwise enters the ambient air.” 42 U.S.C. § 7602(g). At all times relevant to the Complaint, H₂S has been an “air pollutant” within the meaning of 42 U.S.C. § 7602(g), because it is a chemical substance that is emitted to the air from the New Indy Facility.

56. The Clean Air Act Citizen Suit provision gives citizens a claim against any person who is alleged to have repeated violations of an order issued by the Administrator of EPA issued with respect to an emission standard or limitation. 42 U.S.C § 7604(a)(1).

57. Clean Air Act §7602(e) defines “person” to include individuals, corporations, partnerships and associations. 42 U.S.C. § 7602(e). New Indy is a person because it is a limited liability company.

58. Clean Air Act § 7604(f) defines “emission standard or limitation” to include a schedule or timetable of compliance and emission limitation. Clean Air Act § 7661(3) defines a schedule of compliance as a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with an applicable emission limitation.

59. Paragraph 52 of the EPA Order establishes detailed requirements, H₂S concentration limits, and a timetable for required actions by New Indy.

60. On many occasions, New Indy has violated the ambient concentrations limits of H₂S established in the EPA Order.

61. Clean Air Act § 302(h) states that the term “welfare” includes effects on personal comfort and well-being. 42 U.S.C. § 7602(h). H₂S releases from the Facility have caused adverse effects on personal comfort and well-being of thousands of people.

62. Emissions of H₂S from the Facility continue to cause an imminent and substantial endangerment to public health or welfare or the environment.

63. New Indy is liable for an injunction to immediately reduce H₂S and TRS in the air in and around the Facility and to take such other action as may be necessary to abate the endangerment, and other relief as appropriate.

64. EPA received evidence that the concentrations of H₂S in the air in and around the Facility present an imminent and substantial endangerment to public health or welfare or the environment. EPA determined that issuance of the EPA Order was necessary to assure prompt protection of public health or welfare or the environment.

COUNT II
Injunctive Relief under 42 U.S.C. §7604(a)(3)
Constructing and Proposing to Construct a Major Modification
without a Required PSD Permit

65. All foregoing Paragraphs are realleged and incorporated herein by reference.

66. New Indy's construction of a hard pipe and deactivation of its steam stripper should have been predicted to result in a net significant increase in emissions of TRS and H₂S.

67. New Indy was required to obtain and failed to obtain a Clean Air Act PSD permit to allow construction.

68. New Indy proposed to construct and constructed a major modification to a major stationary source of pollutants in an attainment area without the permit required under part C of subchapter I (relating to significant deterioration of air quality) and is subject to injunctive relief through the citizen suit provision of the Clean Air Act, 42 U.S.C. §7604(a)(3).

PRAYER FOR RELIEF

WHEREFORE, Intervenors respectfully request that the Court provide the following relief:

1. Order New Indy to immediately take all measures necessary to eliminate the imminent and substantial endangerment posed by TRS and H₂S emissions from the Facility;
2. Order New Indy to immediately comply with the EPA Order including submission of a long-term plan (after consultation with and input from a toxicologist) to avoid endangerment to public health and welfare;
3. Enter an injunction to require New Indy to immediately reduce TRS and H₂S in the air in and around the Facility and to take such other action as may be necessary to abate the endangerment, including substantially reducing or ceasing production at the Facility.
4. Order New Indy to reduce pulp production to the extent necessary to avoid piping foul condensate to the ASB until it applies for and obtains a PSD Permit with all of its requirements relating to the impacts and control of TRS and H₂S;
5. Order New Indy to conduct such monitoring and reporting as necessary to confirm that TRS and H₂S emissions are adequately reduced at the fence-line and in the community;
6. Award Intervenors the cost of litigation, including reasonable attorneys' fees and expert witness fees.
7. Award such other and further relief that the Court deems just and proper.

Dated: September 29, 2021

ELROD POPE LAW FIRM

/s/ Ben P. Leader

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