

EXHIBIT B



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

28 Bridgeside Blvd.
Mt. Pleasant, SC 29464
o. 843.216.9000 f. 843.216.9450

T. David Hoyle
Licensed in DC, FL, GA, SC
direct: 843.216.9136
dhoyle@motleyrice.com

December 23, 2021

VIA ELECTRONIC MAIL

johanna.valenzuela@usdoj.gov

Johanna C. Valenzuela, Esquire
Assistant United States Attorney
United States Attorney's Office
District of South Carolina
1441 Main Street, Fifth Floor
Columbia, SC 29201

steve.orourke@usdoj.gov

Steven O'Rourke, Esquire
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

pratt.marirose@epa.gov

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

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.



December 23, 2021
Page 2

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



December 23, 2021

Page 3

- 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.

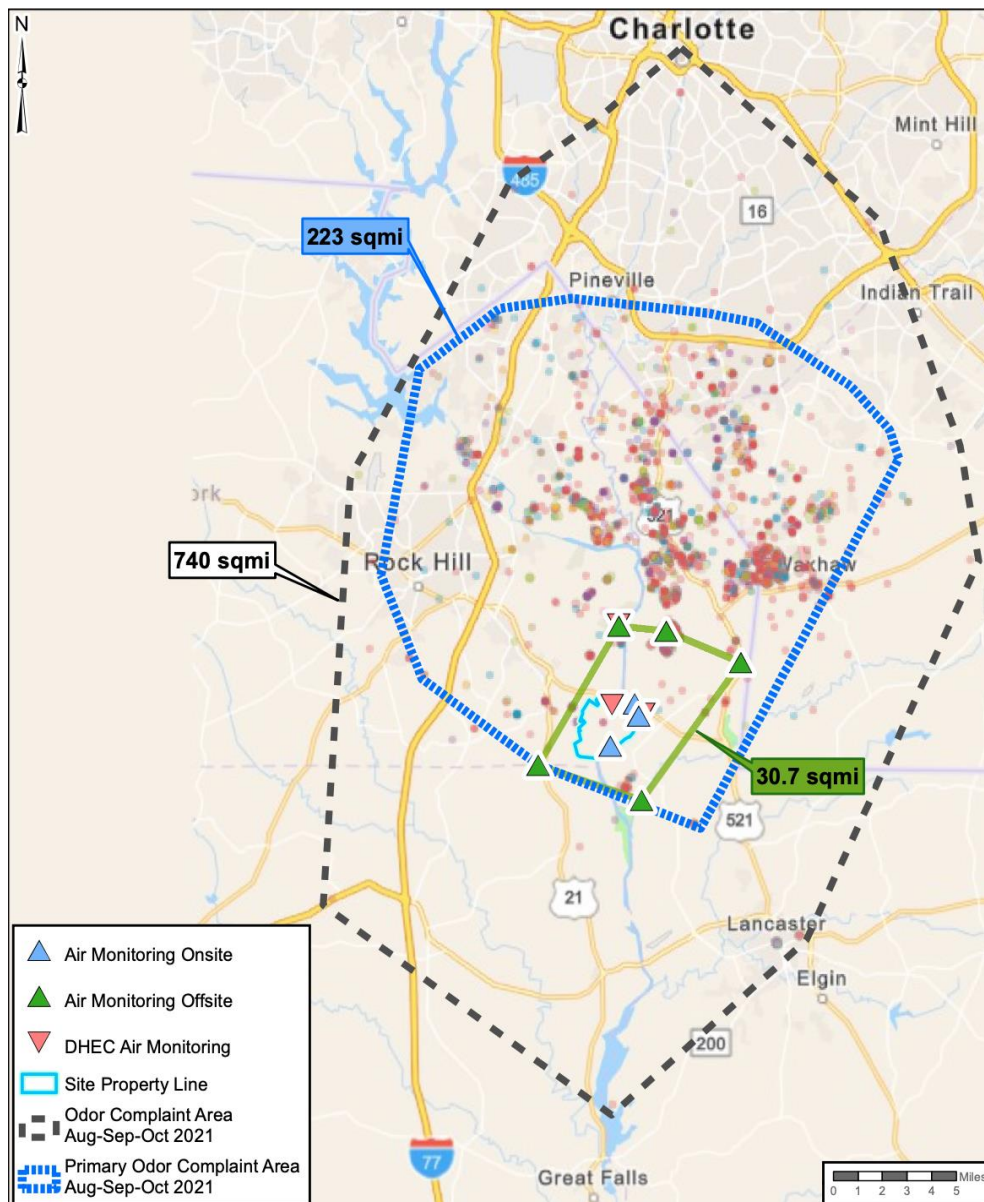
Moreover, as our experts explained, New-Indy’s October 2021 Air Dispersion Modeling Analysis is inadequate because it fails to model methyl mercaptan, a South Carolina regulated toxic air pollutant, which has property line emission limits 14 times more stringent than H₂S. And, as Ken Norcross explained, 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.



December 23, 2021

Page 4



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**.



December 23, 2021

Page 5

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:

[I]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)).



December 23, 2021
Page 6

With kind regards, I remain,

Sincerely yours,

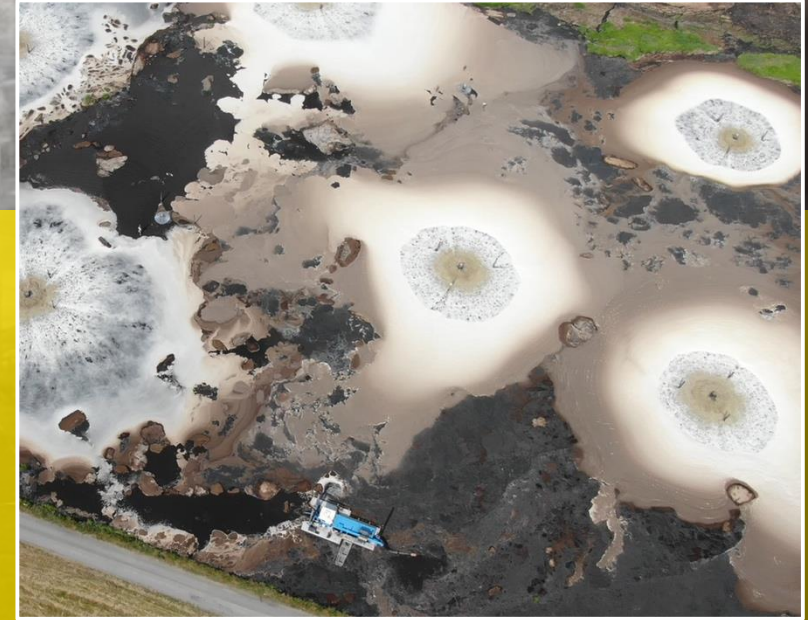
A handwritten signature in black ink, appearing to read "T. David Hoyle".

T. David Hoyle

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

Enclosures: As Stated

New-Indy Containerboard



- **Air Pollution**
- **Wastewater Contamination**
- **Corrective Action/Remediation**

Introductions

David Hoyle

Residents' Co-Lead Counsel, Motley Rice



Fixing New-Indy's Problems

Purpose of Meeting

- To create a collaborative relationship with EPA similar to our relationship to DHEC to help solve New-Indy's environmental problems.
- To share with EPA results of our 8-month investigation and the opinions of our nationally recognized air and wastewater experts.
- To correct misconceptions created by New-Indy regarding monitoring, modeling and reporting.
- To offer effective solutions, both immediate and longer term, to rectify the ongoing air, odor, wastewater, and health issues attributable to the New-Indy mill.



Fixing New-Indy's Problems

Meeting Agenda

- Inadequate and Insufficient Air Monitoring.
 - Rick Osa, QEP
- Actual April 2021 Emissions Orders of Magnitude Higher than New-Indy Predicted.
 - Steven Hanna, Ph.D
- Critical WWTP Emission Estimates Used by New-Indy in Its October 2021 Modeling Are Wrong.
 - Ken Norcross
- Corrective Action/Remediation
 - Roger Truitt
- Next Steps



Air Monitoring Concerns



Rick Osa QEP

- Ambient Air Quality Expert

- Leads ERM's ambient air quality monitoring practice, with competence in air emission source permitting and atmospheric dispersion modeling.
- 40 years of experience in air quality issues, including pulp and paper industry consulting.
- MS, Engineering Management from Northwestern University; Graduate studies, Environmental Engineering, and BS, Physics from Illinois Institute of Technology.

Air Monitoring Concerns

Inadequate Air Monitoring

- New-Indy is monitoring only for hydrogen sulfide.
- New-Indy's fence-line monitoring leaves big gaps.
- New-Indy's community monitoring stations do not cover large areas of citizen complaints.
- As a consequence, unaccounted emissions are causing odors and health effects to continue unabated.

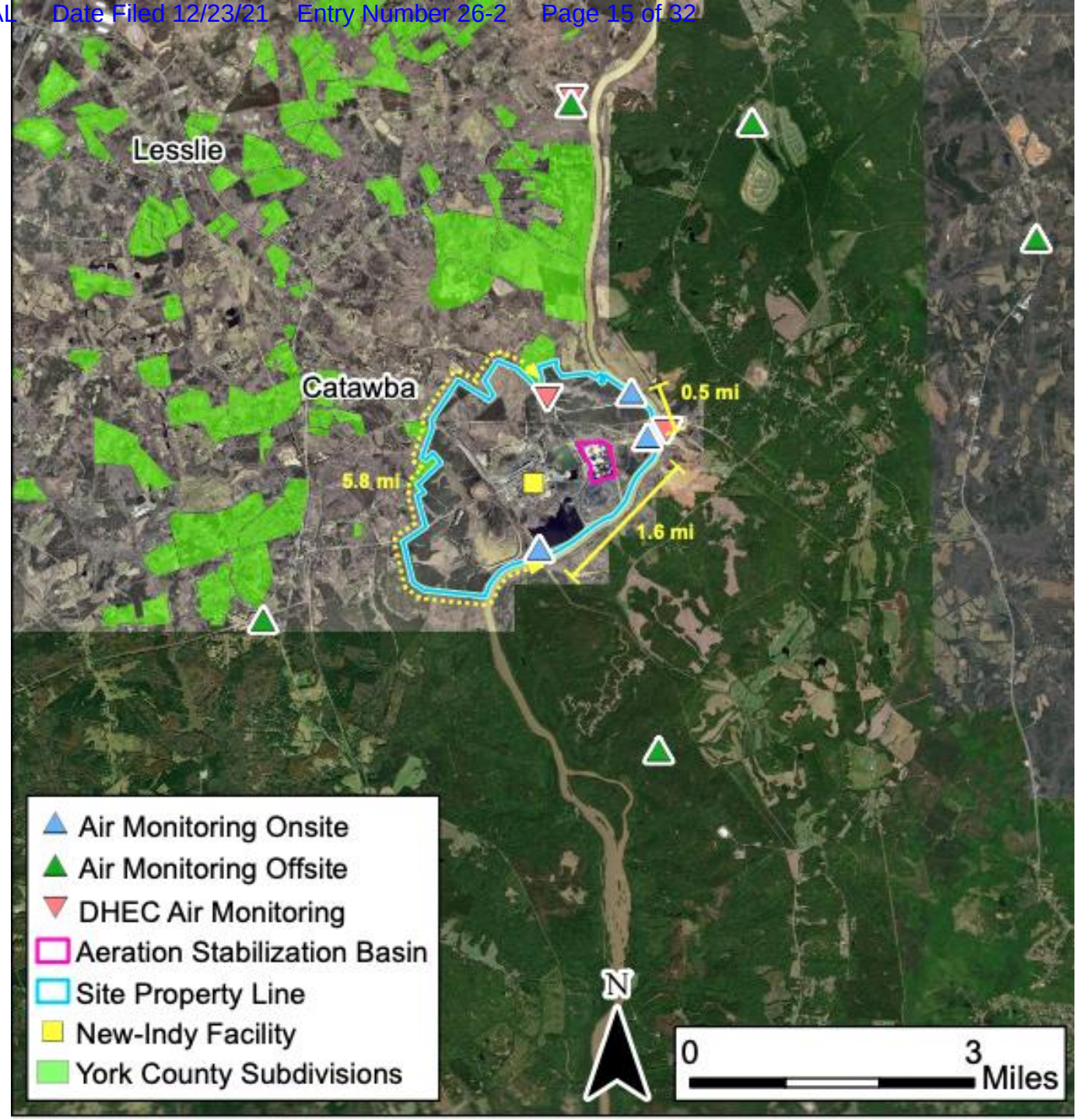


Air Monitoring Concerns

New-Indy Is Monitoring Only for H₂S

- In addition to H₂S, New Indy's foul condensate and other sources of air emissions include other malodorous and potentially toxic TRS compounds including **methyl mercaptan, dimethyl sulfide, and dimethyl disulfide.**
- Methyl mercaptan has been designated as a toxic air pollutant by DHEC, with much more stringent property line limits (10 ug/m³) than H₂S (140 ug/m³).
- New-Indy's Corrective Action Plan estimates that up to 90% of the TRS emitted from WWTP components is non-H₂S constituents.
- **Therefore, New-Indy is not monitoring for 90% of its TRS emissions.**

Air Monitoring Concerns



- ▲ Air Monitoring Onsite
- ▲ Air Monitoring Offsite
- ▼ DHEC Air Monitoring
- Aeration Stabilization Basin
- Site Property Line
- New-Indy Facility
- York County Subdivisions

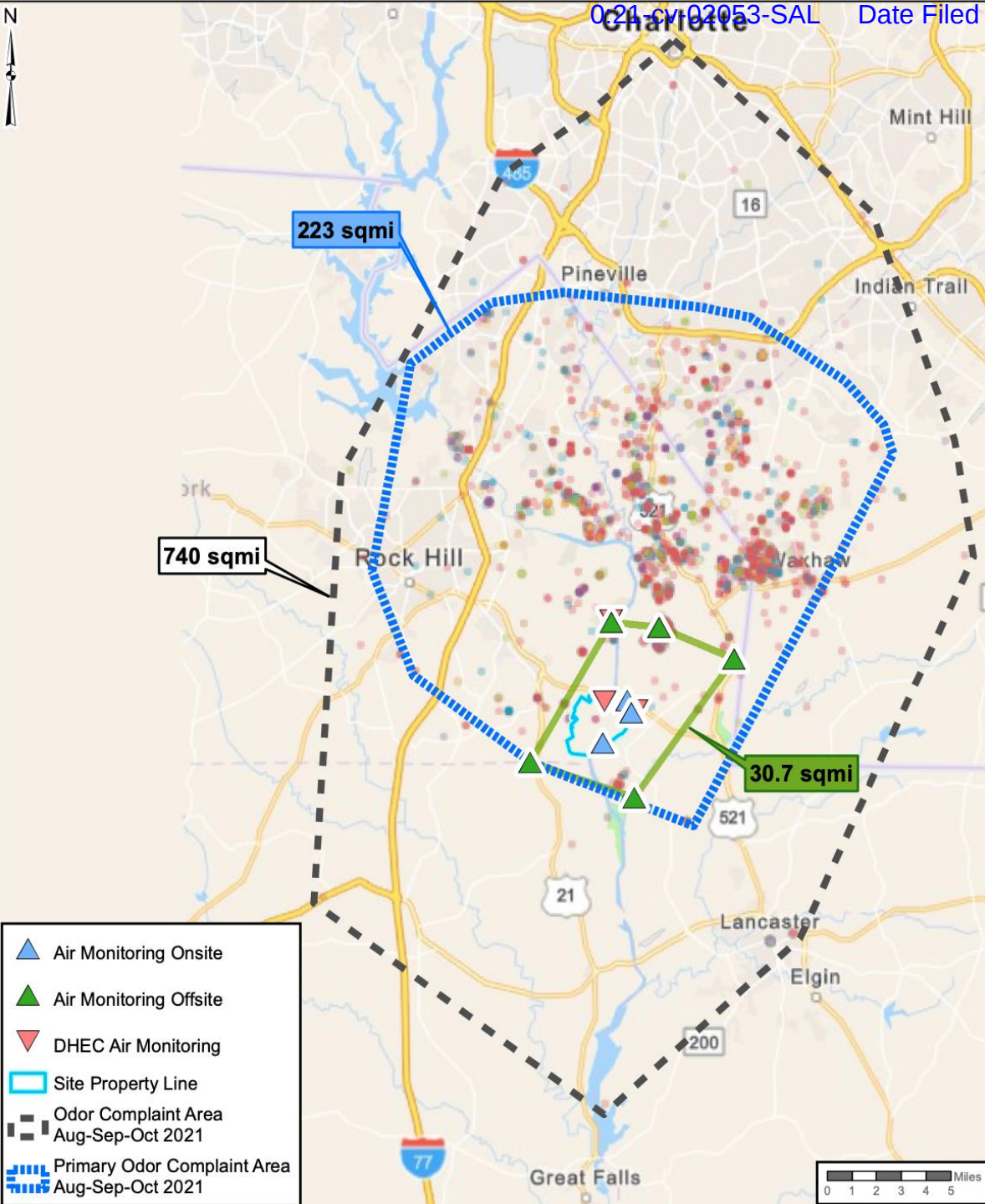
Air Monitoring Concerns

New-Indy's Fence-Line Monitoring Leaves Big Gaps

- New-Indy's fence-line around the approximate 1,100-acre mill site is six miles long.
- New-Indy has installed only three monitors to cover six miles of fence-line (see Figure).
- There are no fence-line monitors to measure H₂S levels released to residential areas W, NW, and SW of New-Indy's mill (see Figure).
- There are huge gaps of up to 5.8 miles between some of the existing three H₂S monitors required under EPA's Order.
- EPA's regulations of petroleum refinery fence-line monitoring would require at least 18 monitoring locations for a facility this large.



New-Indy's community monitoring stations do not cover large areas of citizen complaints.



- New-Indy and DHEC is monitoring H₂S at only 8 off-site locations covering approximately 30 square miles extending only 5.8 miles from the mill.
- Thousands of citizen odor complaints have consistently been lodged with DHEC from between 6-10 miles distant from the NI mill with some as far away as 25 miles covering approximately 300 square miles (10 times the area being monitored).
- *This problem is ongoing.* By way of example, the figure on the left shows complaints lodged from August-October 2021.
- NI should install, calibrate, and operate continuous real-time H₂S and TRS monitors and report daily readings on 15 minute intervals for at least 25 locations in the broader community.

Air Modeling Concerns

Catastrophic Failure and Implications

- New-Indy (NI) sought and obtained permission to disconnect stripper and change process
 - New-Indy represented that no PSD was required because H₂S was projected to increase from 9.7 to 11.9 tpy, with a net increase being 2.2 tpy compared to significant increase threshold of 10 tpy.
 - New-Indy estimated TRS emissions would increase 6.9 tpy compared to significant increase threshold of 10 tpy.
 - Prediction was based on NCASI Model for WWTP emissions.
 - New-Indy's WWTP operating conditions failed to meet the requirements of the NCASI Model, and thus gave inaccurate emissions estimates.
 - Community blanketed with emissions
 - Back-calculation and reverse modeling to show actual emissions.

Air Modeling Concerns



Steven R. Hanna, Ph.D.

- Adjunct Associate Professor; Exposure Epidemiology, and Risk Program; Harvard University, School of Public Health
- Specialist in atmospheric turbulence and dispersion, and in the development, evaluation, and application of air quality models.
- Fellow of the American Meteorological Society.
- Currently chief scientist of a DOD and DHS research study, regarding emissions estimates and downwind effects of toxic industrial chemical releases.
- He published a review of source term estimation (STE) models and evaluated the performance of several operational STE models using observations from field experiments.

Air Modeling Concerns



EPA GMAP van H₂S concentration observations on 4/27/21 while driving on road about 500 to 1000 m N of edge of pond. Begins at 0530 EDT, Max C of 408 ppb.



Air Modeling Concerns

Methodology and Conclusions

- Using observations of concentrations from EPA's GMAP van sampling system on 4/27 (winds moderate out of SSW), and wind observations from Rock Hill weather station, a basic science integral dispersion model was used to back calculate the emissions rate that would produce the observations.
- The results were checked using concentration observations at 1, 6, and 9 km.
- Observations were compared for the four days of field testing to see if there are major differences.
- This resulted in a total emission rate over the aeration pond (of dimension 430 x 630 m) of 106 g/s, equivalent to **3650 tons per year**.

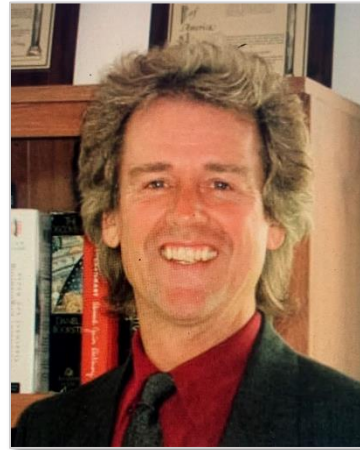
Air Modeling Concerns

Comparison of Actual Emission Rate to New-Indy Representations

- Recall New-Indy predicted a TRS increase of 2.2 tons per year as compared to the 10 tpy significance threshold.
- Actual emission rate closer to **3650 tons per year.**
- Demonstrates that NI misrepresented on the front end.
- Demonstrates that PSD requirements were violated.
- With the help of AERMOD, will demonstrate the magnitude of community exposure.



Air Modeling – Current Emissions

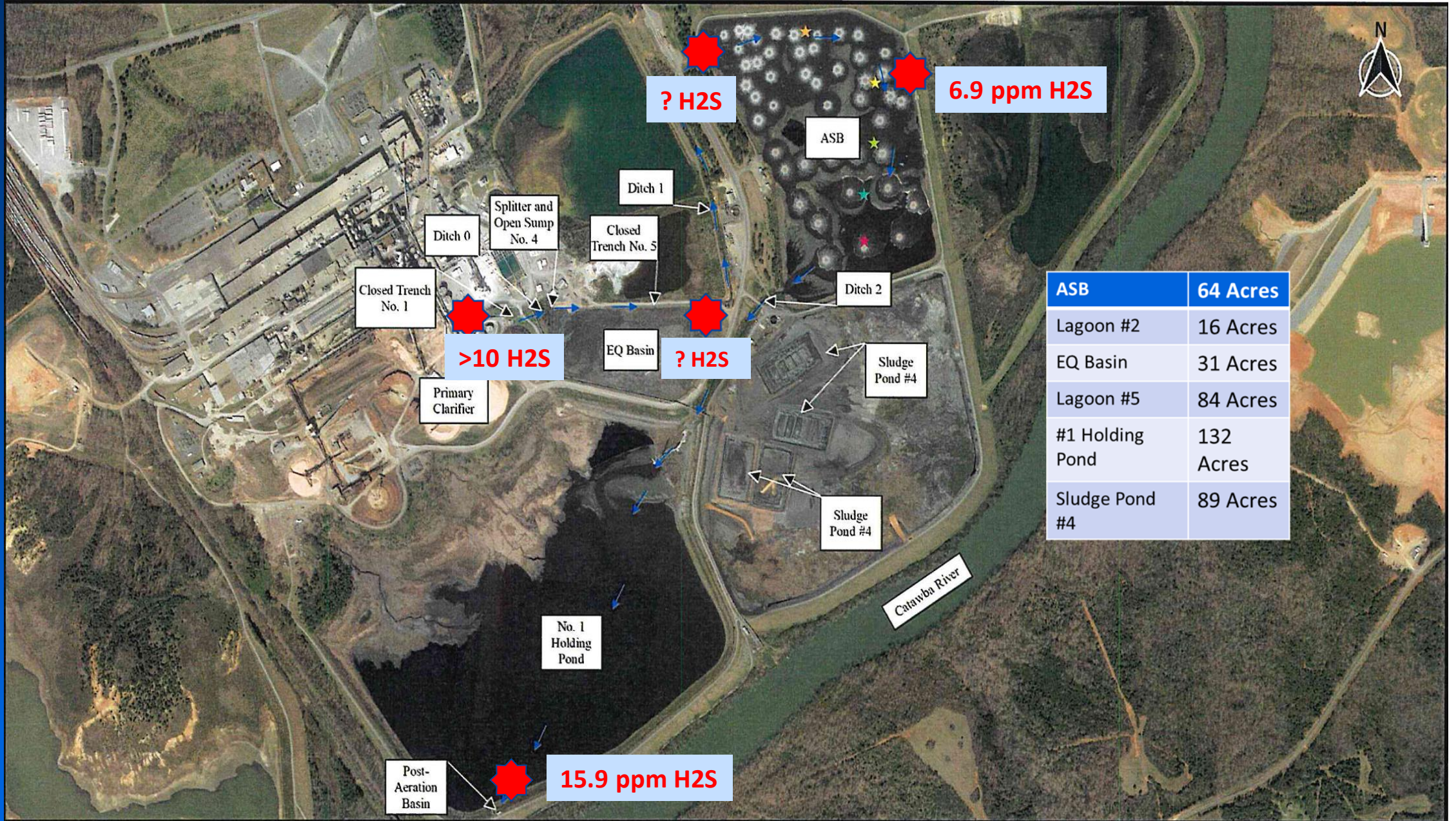


Ken Norcross

- Wastewater Engineer

- Wastewater Engineering Consultant/Expert.
- 42 years of experience designing and troubleshooting industrial wastewater plants.
- Consulted on nine (9) pulp and paper wastewater plants.
- 19 patents in wastewater and water treatment.
- Bachelor of Environmental and Water Resources Engineering and Masters of Science in Water Quality Engineering from Vanderbilt University.

Locations of H₂S Detected by EPA – 4-15-2021



Wastewater
Issues –
MODELING
VS.
MEASURING

NCASI Modeling of Wastewater is Not a Substitute for Measuring Air Emissions from Kraft Mill WWTPs


NCASI Tech Bulletin 956 describes the methods for measuring emissions from Kraft Mill WWTPs:

- NCASI model is based on actually measured emissions from well-aerated basins operated using state of the art management.
- “Aerated stabilization basins where foul condensates were directly introduced via a submerged enclosed pipe were found to be the most significant source of emissions of the three organic reduced sulfur compounds. Emission rates for the same unit often varied considerably over time, and similar units at different plants generally did not have equivalent emission rates.”

New-Indy's Oct. 2021 Air Dispersion Modeling Analysis is Misleading based on Incorrect Emissions Estimates



Model Parameter	Value Applied	Actual Value	Comment
Influent Sulfide	0.02 mg/l	0.07 - >22 mg/l	Sulfide formation ignored; Underestimate emissions
Dissolved Oxygen	0.3 – 2.0	Zero in the 20-Acre Sludge zone	Sludge-filled Lagoon ignored; Underestimate emissions
Active Biomass	300 mg/l	150 mg/l	Underestimate Emissions



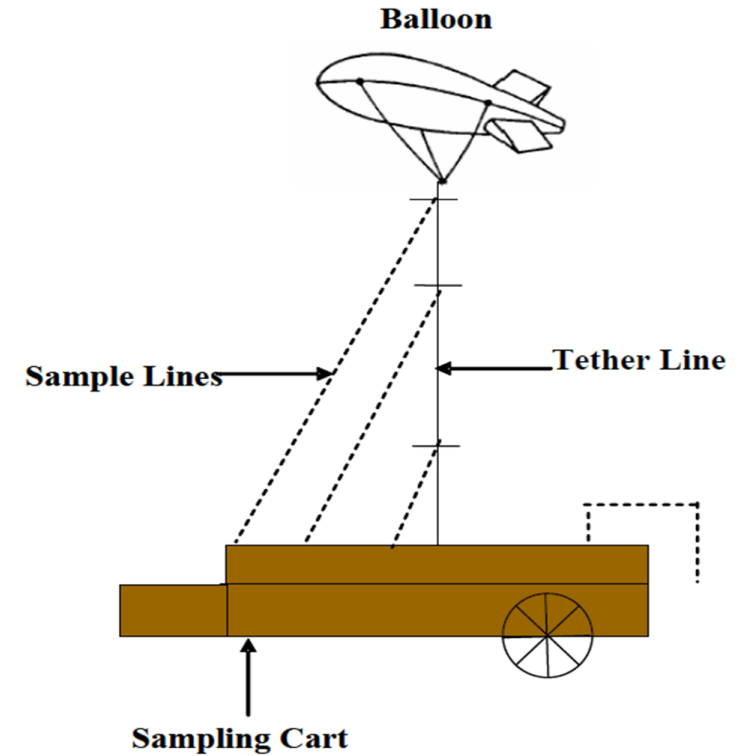
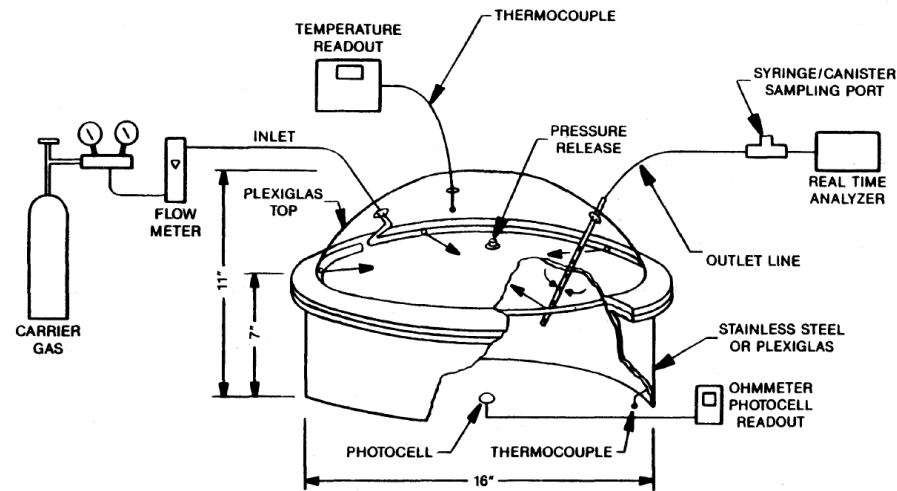
Wastewater
Issues –
MODELING
VS.
MEASURING

TRS Emissions Should be Measured Not Modeled

- There are three methods for quantifying fugitive emissions from New Indy's WWTP:
 1. Install temporary total enclosure and use traditional source testing methods - As was done for the Post Aeration Basin.
 2. Measure emissions using flux chamber or boundary layer methods.
 3. Use a suitable emissions model; requires **all** the following:
 - Accurate input data
 - Validation for the type and size of emission source
 - Must be used within the parameter limits of the validation demonstration
 - New-Indy's application of H2SSIM is deficient on all three of the above requirements
- New-Indy should be required to use Methods 1 or 2 above to measure actual emissions from the WWTP.

Flux Chamber

- Best for well-mixed, open surface impoundments
- NCASI validation



Boundary Layer Emission Monitoring

- Not constrained by degree of mixing or surface obstructions
- NCASI validation
- Can provide *speciated* TRS emission rates (i.e. H₂S, methyl mercaptan, etc.).

Remediation Plan

Immediate Action Items (within 30-60 days)

- **Reduce generation of foul condensate** to a flowrate and loading that can be fully processed by the existing steam stripper (approx. 500k to 700k gpd).
- **Install**, calibrate, and operate continuous real-time H₂S and TRS monitors approved by Residents' experts and report daily readings to Residents on 15-minute intervals for both H₂S and TRS for **at least 18 evenly-spaced H₂S and TRS monitors located along New-Indy's fence-line or perimeter.**
- **Install**, calibrate, and operate **continuous real-time H₂S and TRS community monitoring stations** approved by Residents' experts.
- **Require New-Indy to measure actual H₂S, methyl mercaptan, and TRS emissions from the ASB and other WWTP units** under typical operating conditions to use as fugitive inputs to air dispersion model.



Remediation Plan

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** by lining and installing baffles and aerators to increase treatment capacity and efficiency and add standby capacity for future unexpected high load or upset events.
- **Remove sludge from Holding Pond # 1** to prevent generation of odors and properly dispose of sludge as approved by Residents' experts.



Remediation Plan

Longer-Term Action Items (1-3 years)

- **Add a second Primary Clarifier** of at least 275-ft diameter to provide more reliable operation and capacity to handle future spills, failures, and mill upsets.
- **Reconfigure the Equalization Basin** to separate the influent wastewater flow from the thickening of clarifier sludge.
- **Reconfigure Holding Lagoon # 1** to separate the ASB effluent solids-settling function from the effluent flow equalization function. Alternatively, install two new secondary clarifiers between the ASB and Holding Lagoon # 1 to provide vastly improved process control ability and to ensure that ASB effluent solids are not settled into Holding Lagoon # 1 and cause release of H₂S and TRS to the air.
- **Add a second Post-Aeration Basin** and equip each basin with a sulfide monitoring system that controls both the aerators and chemical feed pumps to add oxygen and sulfide-destroying oxidant as necessary.
- **Construct a replacement facility for Sludge Lagoon # 4** (which is nearing the end of its service life) that meets current standards and provides capacity to properly stabilize, dewater, and dispose of all sludge generated at the site for the next 30 years.



Call to Action

Conclusion

- **New-Indy continues to dump up to 500k gallons of toxic and malodorous foul condensate every day** into a poorly functioning wastewater treatment plant resulting in more than hundreds of odor and health-related complaints still being made by residents to DHEC every month.
- New-Indy's **outdated and undersized WWTP** discharges 20 million gallons of wastewater per day to the Catawba river. **The plant needs major upgrades.**
- **Monitoring stations** at New-Indy's fence-line and in the community are **inadequate in number, location, and air pollutants** being monitored.
- **New-Indy's current Air Dispersion Model Analysis is inaccurate and misleading.** The **Corrective Action Plan is woefully inadequate** and needs to be reassessed and expanded.
- New-Indy's response to EPA's and DHEC's orders has been too slow and too meager, such that the **ongoing air pollution continues to cause odors and health problems.**
- If EPA elects to work with our team of nationally recognized environmental experts and consultants, together we can bring New-Indy into compliance and achieve a long-term solution to **protect the residents from the toxic air and water pollution emanating from the New-Indy mill.**

