

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION**

ALLISON CHIN; JASON DOWDY;)
MANDY POWERS NORRELL; PATTI)
DARLING-RULAND; FAYE SHROFF;)
LEAH VANPELT,)

Plaintiffs,)

vs.)

NEW-INDY CATAWBA LLC, d/b/a)
NEW-INDY CONTAINERBOARD,)
LLC and NEW-INDY)
CONTAINERBOARD, LLC,)

Defendants.)

No. 0:23-cv-00602-SAL

COMPLAINT

JURY TRIAL DEMANDED

COME NOW Plaintiffs Allison Chin, Jason Dowdy, Mandy Powers Norrell, Patti Darling-Ruland, Faye Shroff, and Leah Vanpelt (collectively, “Plaintiffs”), by and through their undersigned counsel, who file this Complaint against Defendants New-Indy Catawba LLC, d/b/a New-Indy Containerboard (“NI Catawba”) and New-Indy Containerboard, LLC’s (“NI Containerboard”) (collectively, “Defendants” or “New-Indy”) and hereby allege:

NATURE OF THE CASE

1. This is a civil suit brought against Defendants under the citizen suit enforcement provisions of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”) and the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (“Clean Water Act” or “CWA”). Plaintiffs seek declaratory and injunctive relief, civil penalties, attorneys’ fees, and such other relief the Court deems appropriate to remedy New-Indy’s violations of these laws from its pulp and paper mill situated on the west bank of the Catawba River in York County, South Carolina (“the Mill”).

2. New-Indy's Mill is located on more than 1,800 acres, approximately half of which are devoted to wastewater treatment, storage, and disposal, and the storage and disposal of manufacturing byproducts, sludge, and other solid wastes. As detailed more fully below, these practices entail treating, storing and/or disposing of wastewater, sludge and other wastes in leaking and open-air impoundments, from which dioxins and other dangerous substances enter the river. As detailed further below, the multiple lagoons, basins, and holding ponds presently leak and/or have the potential to leak pollutants to the groundwater and are subject to release to the Catawba River. Dried sludge containing dioxins and other pollutants is subject to release to the Catawba River and surrounding communities by transportation by air and water, thereby damaging and threatening the person and the property of third parties. The Mill also discharges millions of gallons of inadequately treated wastewater per day to the Catawba River, affecting potentially over one million citizens, residents, and workers in South Carolina and North Carolina.

3. New-Indy's violations of federal law include that: (1) New-Indy has contributed and is contributing to the past or present handling, storage, treatment, transportation, or disposal of solid waste that may present an imminent and substantial endangerment to health or the environment in violation of RCRA; (2) New-Indy is and has been engaged in open dumping in violation of RCRA; (3) New-Indy has been violating and continues to violate the conditions and limitations of its National Pollutant Discharge Elimination System ("NPDES") permit governing its discharges under the CWA; and (4) New-Indy is discharging other pollutants to the Catawba River without an NPDES permit, in violation of the CWA.

4. These ongoing violations harm both the water and the life it supports. They also harm the recreational, aesthetic, and/or commercial interests of citizens in the surrounding areas, including Plaintiffs, each of whom previously engaged in activities such as boating, kayaking,

paddle boarding, swimming, tubing, and/or fishing following New-Indy's takeover of the Mill, described below. Plaintiffs also have had to confront anxiety concerning health effects of substances being discharged from the Mill. They seek to address both the harm to themselves and the impact to the community and key water resources through this action.

JURISDICTION AND VENUE

5. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), RCRA, 42 U.S.C. § 6972, and the CWA, 33 U.S.C. § 1365.

6. On October 20, 2022, Plaintiffs notified Defendants pursuant to 42 U.S.C. § 6972(b) and 33 U.S.C. § 1365(b), of their intention to file suit for violations of RCRA and the CWA. The Notice outlined Plaintiffs' concerns, including the imminent and substantial endangerment posed by the conduct alleged herein, and offered to make available expert analysis prepared in connection with Plaintiffs' investigation. Plaintiffs sent that letter by mail to Mr. Tony Hobson, who holds the positions of Mill Manager and Vice President of Manufacturing for New-Indy Catawba, LLC d/b/a New-Indy Containerboard and Vice President of Manufacturing for New-Indy Containerboard, LLC. Plaintiffs also provided multiple copies of the Notice Letter to the South Carolina Department of Health and Environmental Control ("DHEC") and the federal Environmental Protection Agency ("EPA"), as well as notice to the Governor of South Carolina.

7. A true and correct copy of Plaintiffs' October 20, 2022 Notice Letter is attached hereto as Exhibit A with documentation of its receipt attached hereto as Exhibit B.

8. The violations identified in the Notice Letter are continuing at this time and are likely to continue in the future.

9. Neither EPA nor DHEC has commenced or is diligently prosecuting a court action to redress the violations described in the Notice Letter and alleged in this Complaint.

10. At all times relevant herein, Defendant NI Catawba has purposefully availed itself of the privilege of conducting business in the State of South Carolina, has transacted business in the State of South Carolina, contracted to purchase and operate the Mill in the State of South Carolina, regularly caused its Mill to be operated in the State of South Carolina, and this action arises out of business transacted in, contracts to be performed in whole or in part within South Carolina, as well as actions and/or omissions committed in whole or in part within South Carolina, and which occasioned and inflicted injuries upon Plaintiffs. Plaintiffs' claims arise out of or relate to Defendant NI Catawba's activities and contacts with the State of South Carolina, and specific personal jurisdiction over NI Catawba is therefore proper under one or more provisions of S.C. Code Ann. § 36-2-803, as well as the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

11. At all times relevant herein, Defendant NI Containerboard has purposefully availed itself of the privilege of conducting business in the State of South Carolina, has transacted business in the State of South Carolina, has contracted to purchase and operate the Mill in the State of South Carolina, lobbied local governmental officials for tax breaks, has regularly caused its Mill to be operated in the State of South Carolina, has between March 15, 2019 and the present, directly procured materials and equipment, needed for the operation of the Mill within South Carolina, under its own name; has contracted and otherwise arranged for such materials and equipment to be shipped to and delivered within South Carolina, at the Mill's location at 5300 Cureton Ferry Road, Catawba, SC 29704; and a portion of those materials and equipment needed for the Mill's operations were delivered to NI Containerboard within South Carolina, after passing through the Port of Charleston, such that NI Containerboard, through its own activities, has purposefully availed itself of the privilege of conducting activities within the State of South Carolina and

established contacts with the forum via its activities related to, *inter alia*, the Mill's operations. This action arises out of business transacted in, contracts to be performed in whole or in part within South Carolina, as well as actions and/or omissions committed in whole or in part within South Carolina, and which occasioned and inflicted injuries upon Plaintiffs. Plaintiffs' claims arise out of or relate to Defendant NI Containerboard's activities and "pervasive contacts,"¹ with the State of South Carolina, and specific personal jurisdiction over NI Containerboard is therefore proper under one or more provisions of S.C. Code Ann. § 36-2-803, as well as the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

12. The Court has personal jurisdiction over Defendants because the claims asserted in this action arise out of and relate to Defendants' respective and collective purposeful contacts with South Carolina.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial portion of the events or omissions giving rise to Plaintiffs' claims took place in this judicial district, and because the property that is the subject of this action is situated in the district. Venue is proper in this Court pursuant to 42 U.S.C. § 6972(a) because the action regards alleged violations and endangerment that occurred and may occur in this judicial district. Venue is also proper in this Court pursuant to 33 U.S.C. § 1365(c)(1) because the source of the violations is located in this district.

PARTIES

Plaintiffs

14. Plaintiffs each reside within close proximity to the Catawba River and use the Catawba River for, *inter alia*, fishing, boating, kayaking, paddle boarding, swimming, tubing,

¹ Order, *In re: New-Indy Emissions Litig.*, Case No. 0:21-cv-01480-SAL, Dkt. No. 79 at 13 & Case No. 0:21-cv-01704-SAL, Dkt. No. 73 at 13 (D.S.C. Aug. 5, 2022).

and/or other recreational pursuits. Plaintiffs have suffered, and continue to suffer, harm to their recreational, aesthetic, and/or commercial interests within the area. Plaintiffs also suffer harm to their physical and mental well-being as they suffer from anxiety related to their reasonable fear of, and potentially actual, adverse health effects resulting from their exposures to substances discharged from the Mill into the Catawba River. New-Indy's ongoing discharges from the Mill harm Plaintiffs in part because these discharges contain pollutants that are known to be harmful to health and to persist in the environment. These harms fall within the zone of interests protected by RCRA and the CWA. Plaintiffs assert actual and/or imminent, concrete, and particularized injuries that have a causal connection to the conduct complained of in this complaint, *i.e.*, injuries that are fairly traceable to the challenged actions described herein.

15. Allison Chin resides on Hatchway Road in Indian Land, South Carolina. An avid recreational user of the Catawba River, which she accessed from the area near the Pump House, Allison enjoyed swimming, tubing, and kayaking. She also enjoyed the River Walk. Because of her concerns about water quality, as well as the odor, due to New-Indy's actions, she is deterred from engaging in these activities.

16. Jason Dowdy resides on Threatt Park Lane in Lancaster, South Carolina. He is an avid recreational fisherman and kayaker who is now unable to enjoy these activities on the Catawba River because of his concerns about the contamination of the water from New-Indy and because of the smell.

17. Mandy Powers Norrell is a resident of and an attorney practicing in Lancaster, South Carolina. She enjoys kayaking on the Catawba River and also leads guided tours for other kayakers who come to the Catawba to enjoy the river and view the Rocky Shoals Spider Lily.

18. Patti Darling-Ruland resides on Chatsworth Drive in Indian Land, South Carolina.

Patty and her family were avid recreational users of the Catawba River, including the area between Highway 5 and Highway 9 and boating in the Catawba River adjacent to New-Indy. After noticing a slick texture and terrible odor in the water, along with dead fish, in 2020 they ceased these activities. From her home, she can still smell a strong odor from the area near the Mill and adjacent river and she is concerned that the pollution by New-Indy has made it unusable for the people of the surrounding communities.

19. Faye Shroff resides on Painted Turtle Court in Waxhaw, North Carolina. An avid paddle-boarder, she previously enjoyed using the Catawba River for stand-up paddle boarding and swimming. Now, because of her concerns about exposing herself and her young daughter to contaminated water, and because of the strong odors coming off the water, she has ceased her recreational use of the Catawba River.

20. Leah Vanpelt resides on Threatt Park Lane in Lancaster, South Carolina. She previously enjoyed kayaking in and walking along the Catawba River, but no longer engages in these activities because of odors from New-Indy and because of her fear of contamination of the water from New-Indy's activities.

21. To the extent they have ceased river activities they once enjoyed, Plaintiffs each desire, and intend, to resume or continue these activities in the future. Plaintiffs seek to prevent and remedy their ongoing injuries with this action. Relief from this Court addressing New-Indy's noncompliance with RCRA and the CWA would redress Plaintiffs' injuries by increasing the likelihood, if not ensuring, that New-Indy will cease its discharges of pollutants and open dumping and eliminate the endangerment to health and the environment.

Defendants

22. Defendant New-Indy Catawba LLC, d/b/a New-Indy Containerboard, is a limited

liability company organized under the laws of Delaware, with its main office in Catawba, South Carolina. It is the operator of the Mill, it is registered to do business in South Carolina, and its registered agent is Corporation Services Company, 508 Meeting Street, West Columbia, South Carolina 29169.

23. Defendant New-Indy Containerboard, LLC is a limited liability company organized under the laws of Delaware with its main office in Ontario, California. New-Indy Containerboard, LLC is the parent of New-Indy Catawba LLC. Defendant New-Indy Containerboard, LLC's registered agent is CSC Lawyers Incorporating Services, 2710 Gateway Oaks Dr., Suite 150 N, Sacramento, CA 95833.

24. Both Defendants are parties to the Asset Purchase Agreement (the "APA") with Resolute FP US Inc. ("Resolute") by which Defendants purchased the Mill. *See* Exhibit C, APA.² The parties signed the APA on or about October 2, 2018. Under the APA, NI Catawba was identified as the "Purchaser" and NI Containerboard was identified as "Parent," with both Defendants referred to collectively as the "Buyer Parties." *See* Exhibit C, APA, preamble.

25. NI Containerboard was formed in Delaware in 2012. NI Catawba was formed in Delaware on September 11, 2018, less than a month before the APA was signed, and registered to do business in South Carolina on September 27, 2018, just days before the APA was signed. NI Catawba's application to transact business in South Carolina listed its principal office as One Patriot Place, Foxborough, Massachusetts and was signed by Michael Quattromani who is the CFO of the Kraft Group. This shows that NI Catawba was a new, asset-less entity set up and funded by NI Containerboard with the sole purpose of serving as the entity to hold title to the Mill.

26. The negotiations and drafting of the APA started before NI Catawba was formed.

² Only an unsigned version is publicly available on the SEC's website.

On October 23, 2017, NI Containerboard entered into a Confidentiality Agreement with Resolute regarding NI Containerboard's interest in acquiring the Mill. *See* Exhibit C, APA, §11.5.1. Then, on March 16, 2018, NI Containerboard entered into an Escrow Agreement with Seller (and without NI Catawba) related to the Confidentiality Agreement and initial deposit for acquiring the Mill. *See* Exhibit C, APA, §10.1 (definitions). Upon information and belief, NI Containerboard conducted all negotiations with Resolute, including negotiations that occurred in South Carolina. Upon information and belief, NI Containerboard and/or its duly authorized agents performed on-site due diligence of the Mill in South Carolina, contracted with engineers and other professionals in South Carolina to perform due diligence, hired legal representation in South Carolina to assist in the negotiation and drafting of the APA, and lobbied local and state government officials. For example, in May 2018, S&ME, Inc. performed a Phase 1 evaluation of the Mill for New-Indy JV LLC, sending it to One Patriot Place, Foxborough, Massachusetts, which identified dozens of recognized environmental conditions at the Mill. All these contacts, and others to be uncovered in discovery, are examples of NI Containerboard purposefully availing itself of the privilege of conducting business in South Carolina, all of which set in motion Defendants' acquisition and then operation of the Mill.

27. The APA shows that NI Containerboard provided the money, financial backing, and authorization for Defendants to acquire the Mill. NI Containerboard paid the initial deposit, and upon information and belief, the signing deposit, under the APA. *See* Exhibit C, APA, §1.11.1. Upon information and belief, NI Containerboard provided all the funds for the purchase of the Mill. *See* Exhibit C, APA, §9.3; *Id.* §§2.3.1, 2.4.2 (NI Containerboard promising to deliver funds at closing and written instructions to an escrow agent to release deposits). In addition to providing the funding, NI Catawba also guaranteed payment and agreed to joint and several indemnity

obligations, acting a surety for NI Catawba. *See* Exhibit C, APA, §§5.16, 9.3. NI Containerboard, not NI Catawba, had final say over whether to proceed to closing. *See* Exhibit C, APA, §7.1.

28. After Defendants acquired the Mill, it was NI Containerboard, not NI Catawba, that took credit:

“New-Indy Containerboard is excited about our acquisition of the pulp and paper mill located in Catawba, South Carolina. Our intent is to convert the existing facility from the production of communication paper products to containerboard grades. We want to thank the York County Council and the South Carolina Department of Commerce for the valuable assistance they provided during the purchase process. Their support is critical to the facility’s continued growth and success, and we look forward to a close and long- lasting relationship with both of these entities,” New-Indy Containerboard COO Rick Hartman said. (dated December 13, 2019).³

29. NI Containerboard and NI Catawba are parties to a credit agreement with lender JP Morgan Chase that has a maximum principal indebtedness of \$1.5 Billion, which is secured in part by a mortgage on the Mill. *See* Exhibit C, JP Morgan Mortgage, York County Record Book-17377-336. Michael Quattromani, CFO of the Kraft Group, signed the mortgage on behalf of NI Catawba.

30. NI Containerboard exercises total control over all aspects of NI Catawba’s operation of the Mill, NI Catawba the agent of NI Containerboard. NI Containerboard owns 100% of the membership interests of NI Catawba. *See* Exhibit C, APA, §4.1.1. As described above, NI Containerboard formed NI Catawba just days before signing the APA, with NI Containerboard having done all the work to get the Mill under contract. After Defendants acquired the Mill, NI Containerboard has control and dominated NI Catawba’s operations by: a) making NI Containerboard and other Kraft/Schwarz officials the managers of NI Catawba; b) financing the conversion and operation of the Mill; c) making day-to-day decisions regarding the conversion and operation of the Mill; and d) handling the marketing and public relations of NI Catawba.

³ https://www.papereage.com/2019news/12_13_2019new_indy_converting_catawba_mill.html

31. At all relevant times, NI Catawba acted within the scope of its agency with NI Containerboard as principal and intended NI Catawba's actions serve the interests of NI Containerboard, with NI Catawba's actions directed, authorized, or known by NI Containerboard.

32. As an example of the control and direction NI Containerboard exercises over NI Catawba, throughout DHEC's investigation of the Mill's wrongful emissions, the written communications posted on DHEC website have been with Tony Hobson.⁴ According to Mr. Hobson's LinkedIn page, he described himself as the Vice President of Manufacturing at NI Containerboard, based in California. <https://www.linkedin.com/in/tony-hobson/>. His page contained no reference to any role with NI Catawba. Mr. Hobson has issued formal responses to DHEC on "New-Indy Containerboard LLC" letterhead, signing his name and identifying his role, similarly to that on his LinkedIn profile, as "Vice President of Manufacturing." Thus, NI Containerboard is controlling NI Catawba's management of this critical, bet-the-company relationship with regulators.

33. In addition to Tony Hobson, also involved in communications with the EPA were Daniel Mallet and Peter Cleveland, who at that time were identifying themselves as the Environmental Manager for NI Containerboard and the Technical Manager of NI Containerboard, respectively. Peter Cleveland's LinkedIn page identified him as the "Technical Manager" of NI Containerboard. <https://www.linkedin.com/in/petecleveland/>. Daniel Mallett in April 2021 signed correspondence to DHEC on a letterhead bearing both NI Containerboard and NI Catawba.

34. Between April and June 2021, Peter Cleveland and Daniel Mallet were speaking to of the public in South Carolina regarding the emissions from the Mill.

35. In each of Defendants' Public Notifications, issued on NI Containerboard's

⁴<https://scdhec.gov/environment/environmental-sites-projects-permits-interest/new-indy-odor-investigation/new-indy-weekly-update-reports>.

letterhead, Defendants directed inquires to “catawba.info@new-indycb.com” an email address created for the NI Containerboard webhost. Tony Hobson, Peter Cleveland, and Daniel Mallet all have “@new-indycb.com” email addresses.

36. Moreover, at a March 19, 2021 site visit at the Mill with DHEC regarding the Mill’s emissions and odors, DHEC reported that Defendants’ representatives told DHEC that the “corporate office” is managing compliance regarding consolidating contaminated sludge.

37. In addition, NI Catawba’s management team consists of officials from NI Containerboard. Scott Conant is the notice party for both NI Containerboard and NI Catawba under the APA, with a mailing address in Ontario, California which is NI Containerboard’s principal place of business (but not NI Catawba’s), and the same email address for both companies that ends with new-indycb.com. In a declaration filed in the *White* case, he claims to be the CFO for NI Catawba. *See* 0:21-cv-01480-SAL, D.I. 21-1 ¶1. However, on Mr. Conant’s LinkedIn page, he described himself as the CFO of NI Containerboard, based in Ontario, California. <https://www.linkedin.com/in/scott-conant-0848147b/>. His page stated he started that role in February 2017 which is 19 months before NI Catawba was formed. His page contains no reference to any role with NI Catawba.

38. Other NI Catawba management team members have held or continue to hold management positions with NI Containerboard, as well as with Kraft Group, LLC and Schwarz Partners LP. *See* <https://newindycontainerboard.com/senior-management-team/>. For example, Thomas E. Bennett signed a declaration in the *White* case stating that he is the Corporate Secretary of NI Containerboard (*See* 0:21-cv-01480-SAL, D.I. 21-2 ¶1), but his LinkedIn page described himself as CFO of Schwarz Partners with no mention of NI Containerboard. <https://www.linkedin.com/in/tom-bennett-b570213b/>. Plaintiffs believe discovery will uncover

more examples of many executives serving in management roles across the New-Indy, Kraft, and Schwarz enterprise.

39. NI Containerboard advertises for open positions at the Mill on its “Careers” tab of its website, advertising “[a]t New-Indy, you are part of a team committed to being the supplied of choice for recycled containerboard and dedicated to delivering the highest quality products and services to our customers. . . . which is why we have implemented robust training and development programs for our employees that follow structured career path options.” <https://newindycontainerboard.com/careers/>.

40. Upon information and belief, NI Containerboard controls the hiring of employees to work at the Mill.

41. Upon information and belief, NI Containerboard directly employs officials at the Mill. For example, the official government website for William “Bump” Roddey, the representative for District 4 on the York County, South Carolina’s County Council, notes that “Councilman Roddey is employed with New-Indy Containerboard LLC,” that “[i]n 2020 Roddey moved into a new role with the company now serving as a Chemical & Pulping Specialist,” and that “New-Indy is one of several company’s [sic] own [sic] by the Schwarz Partners, LP and the Kraft Group LLC.” <https://www.yorkcountygov.com/398/District-4>.

42. It was not until June 2021 that Defendants launched a new website specific to NI Catawba: newindycatawba.com. A review of the existence of the “newindycatawba.com” webpage demonstrates it was newly established, and first able to be captured as existing by a digital archive of the internet, “The WayBack Machine,” on June 1, 2021.

43. During the same month of June 2021, Tony Hobson, who had previously identified himself as the Vice President of Manufacturing for NI Containerboard, began identifying himself

instead as “Mill Manager” of NI Catawba.

44. Upon information and belief, NI Catawba is a mere instrumentality and alter ego of NI Containerboard and this the Court should pierce the corporate veil of NI Containerboard because: a) NI Catawba was and is grossly undercapitalized, having acquired the Mill with NI Containerboard’s money and then deficiently converted an aging facility that presents NI Catawba with huge liabilities; b) NI Catawba fails to observe corporate formalities by mixing management teams, using NI Containerboard as its mouthpiece, and being under complete control of NI Containerboard; c) being insolvent because of its huge loan obligations to JP Morgan Chase and faced with massive liabilities as a result of its wrongful conduct that is a basis for this action; d) sending all or substantially all revenue to NI Containerboard; e) having no independent executives; f) being a façade for the operations of NI Containerboard; and g) other facts that only Defendants have control or possession of and which are not publicly available, to be uncovered in discovery.

LEGAL BACKGROUND

RCRA

45. Enacted in 1976, the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 *et seq.*, “is a comprehensive environmental statute that governs the treatment, storage, and disposal of solid and hazardous waste.” *Goldfarb v. Mayor & City Council of Baltimore*, 791 F.3d 500, 504 (4th Cir. 2015) (quoting *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 483 (1996)). EPA has authority to develop the RCRA program and to delegate primary implementation responsibility to individual states. In South Carolina, DHEC is authorized by EPA to implement RCRA.

46. Congress, in enacting RCRA, was particularly concerned with “greater amounts of solid waste (in the form of sludge and other pollution treatment residues)” that had been created.

42 U.S.C. § 6901(b)(3), as well as with open dumping. Congressional findings “with respect to the environment and health” include, *inter alia*, findings that “open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies, and pollutes the air and the land.” *Id.* § 6901(b)(4). Among the statute’s objectives are “prohibiting future open dumping on the land and requiring the conversion of existing open dumps to facilities which do not pose a danger to the environment or to health.” *Id.* § 6901(a)(3). Accordingly, in South Carolina, “[o]pen dumping” of solid waste “is prohibited.” S.C. Code Ann. Regs. 61-107.19, Part I.A.8.

47. RCRA Section 1004(3) defines “disposal” as

the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste . . . into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

42 U.S.C. § 6903(3).

48. Under RCRA Section 1004(14), an “open dump” is

any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 6944 of [RCRA] and which is not a facility for disposal of hazardous waste.⁵

42 U.S.C. § 6903(14).

49. RCRA, Section 1004(27) defines “solid waste” as

any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities . . .

42 U.S.C. § 6903(3).

50. Solid waste landfills must have a permit to operate. *See* S.C. Code Ann. Regs. 61-

⁵ Hazardous waste facilities must have a permit under RCRA. *See* 42 U.S.C. § 6925(a).

107.19, Part I. A separate permit is required for each landfill even if there are multiple different types of landfills in different areas on the same site. *See id.*, Part I.A.3.

51. In addition, Class Three landfills which fail to satisfy the minimum criteria set forth in S.C. Code Ann. Regs. 61-107.19, Part V “are considered open dumps for purposes of State solid waste management planning under RCRA” and “are prohibited under section 4005 of RCRA.” S.C. Code Ann. Regs. 61-107.19, Part V, Subpart A, 258.1(d)-(e).

CWA

52. Congress enacted the CWA in 1972 “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). “Before passage of the Clean Water Act, the nation’s waters were in ‘serious trouble, thanks to years of neglect, ignorance, and public indifference.’” EPA & Department of the Army, Corps of Engineers, Final Rule, Revised Definition of “Waters of the United States,” 88 FR 3004 (Jan. 18, 2023) (effective date March 20, 2023) (quoting H.R. Rep. No. 911, 92d Cong., 2d Sess. at 66 (1972)). “Congress [] intended the 1972 Act to be a bold step forward in providing protections for the nation’s waters.” *Id.*

53. Therein, “Congress set (among other goals and policies) a ‘national goal that the discharge of pollutants into the navigable waters be eliminated.’” *Schneider v. Donaldson Funeral Home, P.A.*, 733 Fed. Appx. 641, 645 (4th Cir. 2018), *as amended* (May 9, 2018) (quoting § 1251(a)(1)). Accordingly, the Act “insist[s] that a person wishing to discharge *any* pollution into navigable waters first obtain [] permission to do so.” *Cnty. of Maui, Hawaii v. Hawaii Wildlife Fund*, 140 S. Ct. 1462, 1468 (2020). “The Act’s provisions use specific definitional language to achieve this result.” *Cnty. of Maui, Hawaii*, 140 S. Ct. at 1469.

54. Section 502(12) defines “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source” 33 U.S.C. § 1362(12); *see also* 33 U.S.C. §

1362(7) (defining “navigable waters”); 40 C.F.R. §§ 120.2 & 122.2 (defining “waters of the United States”). “[T]he statute requires a permit when there is a direct discharge from a point source into navigable waters or when there is the *functional equivalent of a direct discharge.*” *Cnty. of Maui, Hawaii*, 140 S. Ct. 1462 at 1476 (emphasis in original).⁶

55. The CWA identifies a number of materials and wastes that, if discharged into water, render them “pollutants,” including, “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste.” 33 U.S.C. § 1362(6).

56. CWA Section 502(14) defines “point source” broadly to include “any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

57. “The primary exception to the blanket liability imposed by the CWA is the NPDES permitting system.” *Piney Run Pres. Ass’n v. Cnty. Com’rs of Carroll Cnty., MD*, 268 F.3d 255, 265 (4th Cir. 2001). Under CWA Section 402, “individuals may apply for NPDES permits to discharge a limited amount of effluent.” *Id.*; *see also* 33 U.S.C. §§ 1311(a), 1342(a)-(c). “The EPA issues NPDES permits; however, the EPA suspends its issuance of permits if it approves a state

⁶ *See also* EPA & Department of the Army, Corps of Engineers, Final Rule, Revised Definition of “Waters of the United States,” 88 FR 3004 (Jan. 18, 2023) (effective date March 20, 2023) (“[D]ischarges of pollutants to groundwater that reach a jurisdictional surface water require a NPDES permit where the discharge through groundwater is the ‘functional equivalent’ of a direct discharge from the point source into navigable waters.”) (quoting *Cnty. of Maui*, 140 S. Ct. at 1468).

permitting program,” *id.*, as it has done in South Carolina, where DHEC is the entity approved to issue NPDES permits.

58. The “CWA requires that every permit contain: (1) effluent limitations that reflect the pollution reduction achievable by using technologically practicable controls and (2) any more stringent pollutant release limitations necessary for the waterway receiving the pollutant to meet ‘water quality standards.’” *Piney Run Pres. Ass’n*, 268 F.3d at 265 (internal quotation marks omitted); 33 U.S.C. § 1311(b)(1).

59. “Permit holders, no matter the issuing authority, are required to comply ‘not only with the limitations on the amount of pollutants they may discharge, but also with a variety of monitoring, testing, and reporting requirements.’” *Piney Run Pres. Ass’n*, 268 F.3d at 265 (quoting *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 151 (4th Cir. 2000)). Requirements concerning effluent limits and the obligation to comply with various monitoring, testing, reporting and other limits and conditions specified in the permit and in federal and state regulations. *See* 33 U.S.C. § 1318, S.C. Code § 48-1-87, S.C. Code § 48-1-100, S.C. Code § 48-1-110, and S.C. Code § 48-1-130.

60. “The effectiveness of the permitting process is heavily dependent on permit holder compliance with the CWA’s monitoring and reporting requirements.” *Piney Run Pres. Ass’n*, 268 F.3d at 266 (citing 33 U.S.C. § 1318).

61. Each “discharge of any pollutant” that is not authorized by a NPDES permit is a violation of the CWA, regardless of the quantity of pollutant emitted. 33 U.S.C. §§ 1311(a), 1342(a), 1365(f); *Piney Run Pres. Ass’n*, 268 F.3d at 265–66; *Ohio Valley Env’tl. Coal. v. Fola Coal Co., LLC*, 845 F.3d 133, 143 (4th Cir. 2017).

FACTUAL BACKGROUND

The Catawba River Is Much More Than a Dumping Ground for New-Indy

62. The Catawba River is both an important source of drinking water⁷ and a natural resource with great aesthetic, recreational, and economic value to the citizens of the Carolinas. It is one of the central attractions of the area Plaintiffs chose to call home and the locus of favorite recreational activities. These activities are part of the joy of living in the area.

63. The people of the State of South Carolina, through the General Assembly, have designated a thirty-mile segment of the Catawba River, including the portion flowing past the Mill and impacted by the violations of federal law alleged herein, as a scenic river under S.C. Code § 49-29-230(9). Eligibility for this designation requires that the river segment “possess[] unique or outstanding scenic, recreational, geologic, botanical, fish, wildlife, historic, or cultural values.” S.C. Code § 49-29-50(B); *id.* § 49-29-30. “It is the policy of the [South Carolina] General Assembly to provide for the protection of these selected diminishing values and to preserve the state’s natural heritage for the benefit and enjoyment of present and future generations.” S.C. Code § 49-29-30.

64. Scenic rivers, specifically, are expected to be essentially free-flowing rivers where the use of adjacent lands “does not disturb substantially the natural character of the river corridor.” S.C. Code § 49-29-40.

65. For the 30-mile segment of the Catawba, “[t]hose values judged to be of

⁷ Notably, the Mill is located within a Surface Water Protection Area (SWPA) for the Chester Metropolitan District, whose intake is approximately 9 miles downstream. The Lancaster County Catawba River Water Intake and Treatment Plant is also located directly across the river from the northern portion of New-Indy’s Mill property.

outstanding significance include the river's scenic, recreational, flora and fauna values.”⁸ It has regional significance as a water supply and area of inland fishing, as well as local significance for multiple reasons, including, but not limited to, boating, recreational fishing, and wildlife habitat.

66. Also of note is that the Catawba River is home to the largest known stand of the Rocky Shoals Spider Lily, a flower species that is currently considered rare by the South Carolina Department of Natural Resources and is among the species tracked by the agency's Heritage Trust Program because it is “critically imperiled – at very high risk of extinction.”

67. Recreational kayakers flock to the Catawba River during May and June to see the lilies via the Landsford Canal State Park, the Catawba Reservation boat launch, and various access points to the Catawba River between SC Highway 5 and SC Highway 9, all of which is designated as a South Carolina scenic river.

68. The river and its tributaries are also home to other rare aquatic species, including multiple types of rare mussels. Freshwater mussels are extremely sensitive to inorganic pollutants such as ammonia and copper, especially in the mussels' early life stages. The February 2009 application for the NPDES permit later transferred to New-Indy acknowledges the potential of discharge from the Mill to affect the Carolina Heelsplitter, an endangered species present in Waxhaw Creek, a tributary that enters the Catawba River approximately 3.5 miles below the wastewater discharge point.

69. Approximately 1.7 million people live within a 30-mile radius of the New-Indy Mill, in York, Lancaster, and Chester Counties in South Carolina, and Union and Mecklenburg Counties in North Carolina.

⁸ *Catawba River Eligibility Study* (Final Report – April 2008), <https://www.dnr.sc.gov/water/river/pdf/CatawbaEligStudyfinal.pdf>

70. A population of approximately 625,000 people live within a 20-mile radius of the Mill, which includes York, Lancaster, and Chester Counties in South Carolina, and Union, and Mecklenburg Counties in North Carolina.

71. Because opportunities for fishing, boating, wildlife viewing and other activities on the Catawba are within easy driving distance of several large population centers, recreation along the river is accessible to tens of thousands of people.

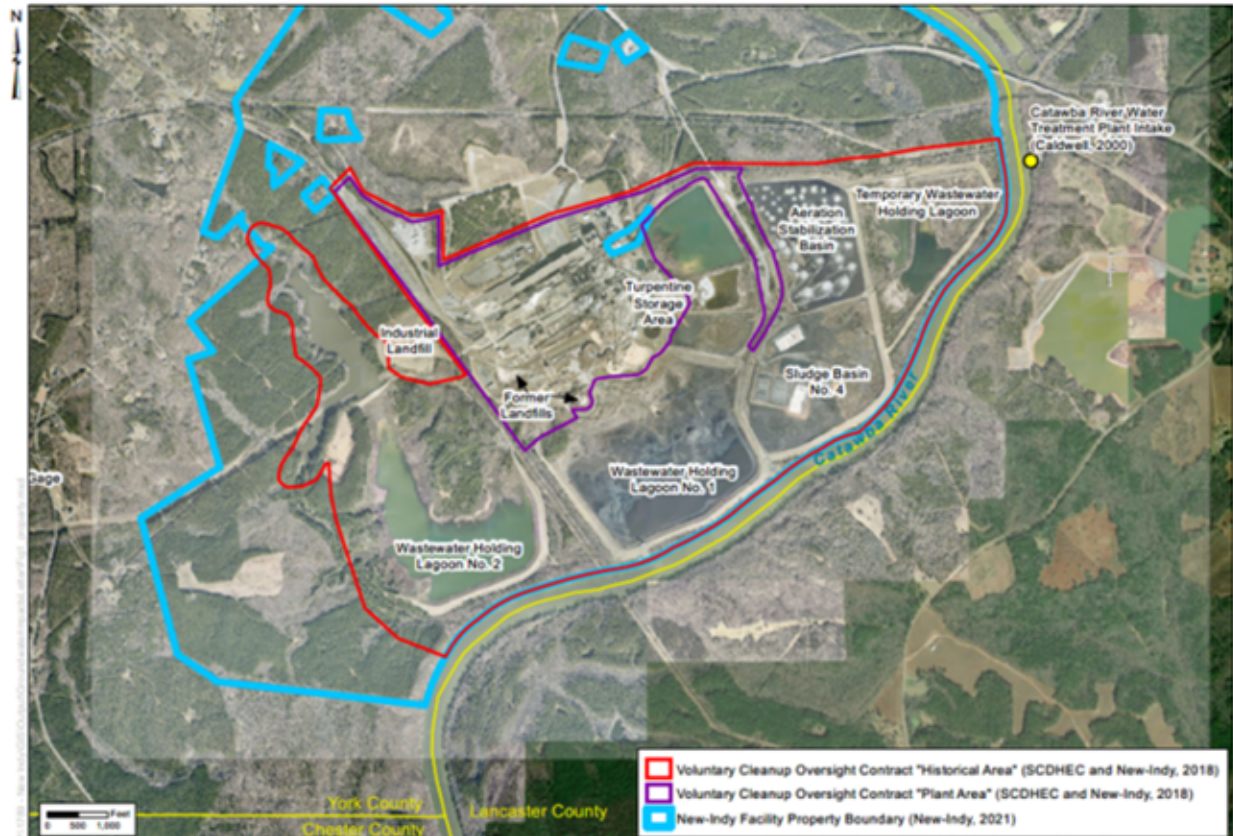
72. In Chester County, millions of dollars are being poured into a project that would create new recreational channels along the river for kayaking, along with a whitewater center and amenities intended to support local entrepreneurship and revitalize an area hard hit by the departure of textile mills.

New-Indy Takes Over the Mill and Responsibility to Remedy Environmental Conditions

73. Defendants operate the paper mill located at 5300 Cureton Ferry Road in Catawba, South Carolina. The Mill is located approximately 10 to 11 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 Mill.

74. The property boundary abuts the river for approximately 3.6 miles, from upstream of Highway 5 and the adjacent CSX railway bridge, to just upstream of the confluence with Abernathy Creek and the York County Line. As shown in the figure below, four of the Mill's impoundments (lagoons, basins, and holding ponds) for process water and/or sludge are adjacent to the river, making up approximately 2.6 miles of the river-fronting property boundary.

75. Figure 1, below, delineates the Mill's property boundary and the areas designated by New-Indy and DHEC as the "Plant Area" and "Historical Area."



76. Once known as the Resolute Forest Products paper mill, it has been in operation since 1957, and, until 2020, manufactured bleached paper used in magazines and catalogs.

77. The Mill's process water treatment system consists of a primary clarifier, an equalization basin, an aerated stabilization basin (ASB), two effluent holding ponds, one Temporary Wastewater Holding Basin, sludge lagoons, and a post-aeration basin. The Temporary Wastewater Holding Basin is located within the wastewater treatment system adjacent to the ASB and the Catawba River and is not currently active but contains solid waste and sludge from prior use. The ASB was constructed in 1968, the two (2) effluent holding ponds (also referred to as "Wastewater Holding Lagoons No. 1 and No. 2") were constructed in 1959 and 1986, and Sludge Lagoon No.4⁹ was constructed in 1978. A Closure Plan for Sludge Lagoon No. 4 was submitted

⁹ Sludge Lagoon No. 4 is also referred to as Sludge Basin No. 4 or Sludge Lagoon No. 4.

to SC DHEC in February 1997, but, at present, that unit has not been closed and remains in operation. Sludge Lagoon No. 4 is approximately 78 acres in size and is approximately 40 feet deep. Historic Sludge Lagoon Nos. 1, 2, and 3 have not been used to store and dispose of sludge for at least the past 20 years but contain legacy sludge containing dioxins.

78. The Mill also contains an operating solid waste landfill, a former landfill operated by Georgia Pacific from 1967-1971, long before RCRA and its solid waste regulations and permitting process were enacted and promulgated, as well as other solid waste storage and disposal areas.

79. In 2018, Defendants purchased the Mill with the express intent to fundamentally alter the nature of its operations by converting it from a facility producing bleached paper to producing brown paper for containerboard. NI Catawba and NI Containerboard are joint ventures created and controlled by the Kraft Group, LLC, a Delaware limited liability company with its principal place of business located at One Patriot Place, Foxborough, MA 02035, and Schwarz Partners LP, an Indiana limited partnership with its principal place of business located at 10 West Carmel Drive, Suite 300, Carmel, IN 46032.

80. As part of the purchase process, Defendants conducted a due diligence investigation. In connection with that investigation, New-Indy obtained a Due Diligence Limited Assessment Report from S&ME in 2018. This report identified 44 Recognized Environmental Conditions (“RECs”) at the Catawba Mill. RECs are defined by the American Society for Testing and Materials as “the presence or likely presence of hazardous substances or petroleum products in, on or at a property (1) due to any release to the environment, (2) under conditions indicative of a release to the environment, or (3) under conditions that pose a material threat of a future release to the environment.”

screening levels by S&ME. EPA screening levels for protection of groundwater (as per MCLs and per Risk-Based calculations) were exceeded in most sludge samples. Dioxins and/or furans were detected in 19 of the 20 soil samples collected. While none of these exceeded an industrial screening level, residential screening levels were exceeded in two samples and a groundwater protection level was exceeded in 16 samples (S&ME, 2018).

84. Figure 4 below shows soil, sludge, and seep toxic equivalent (“TEQ”) exceedances for dioxins/furans:

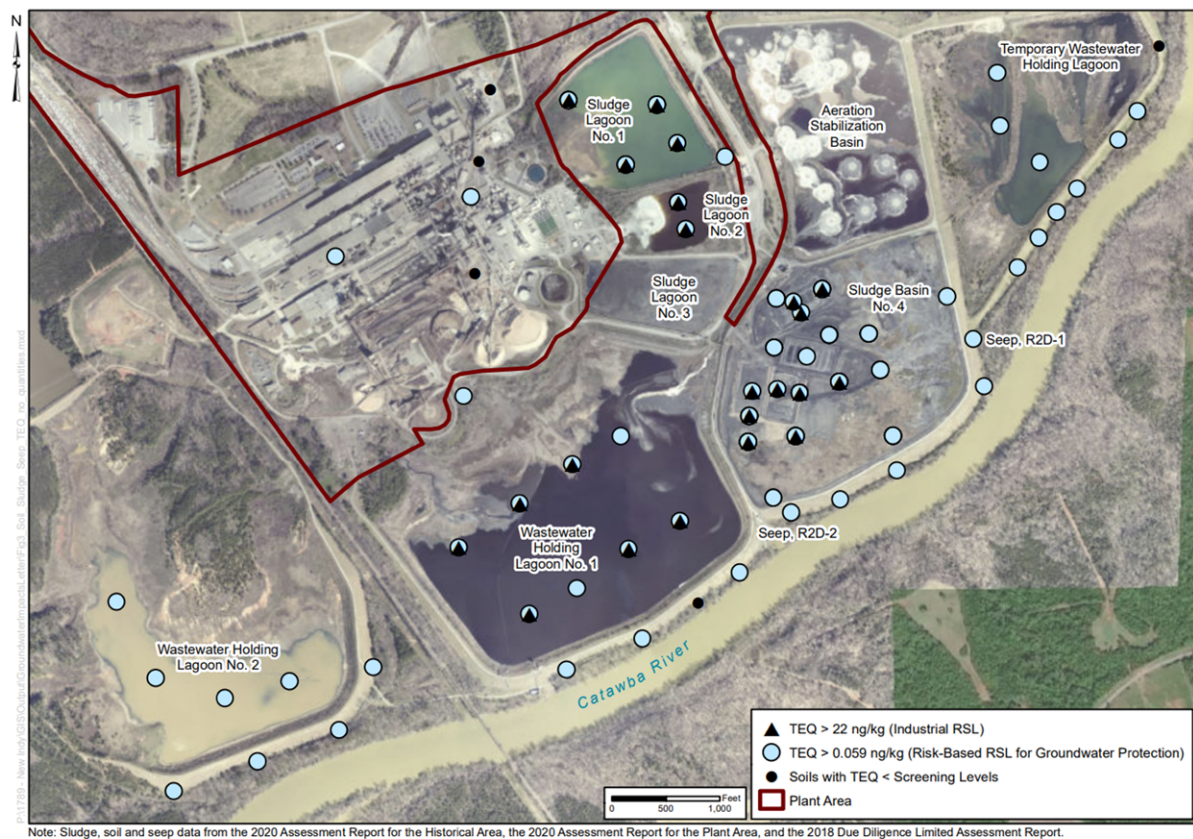
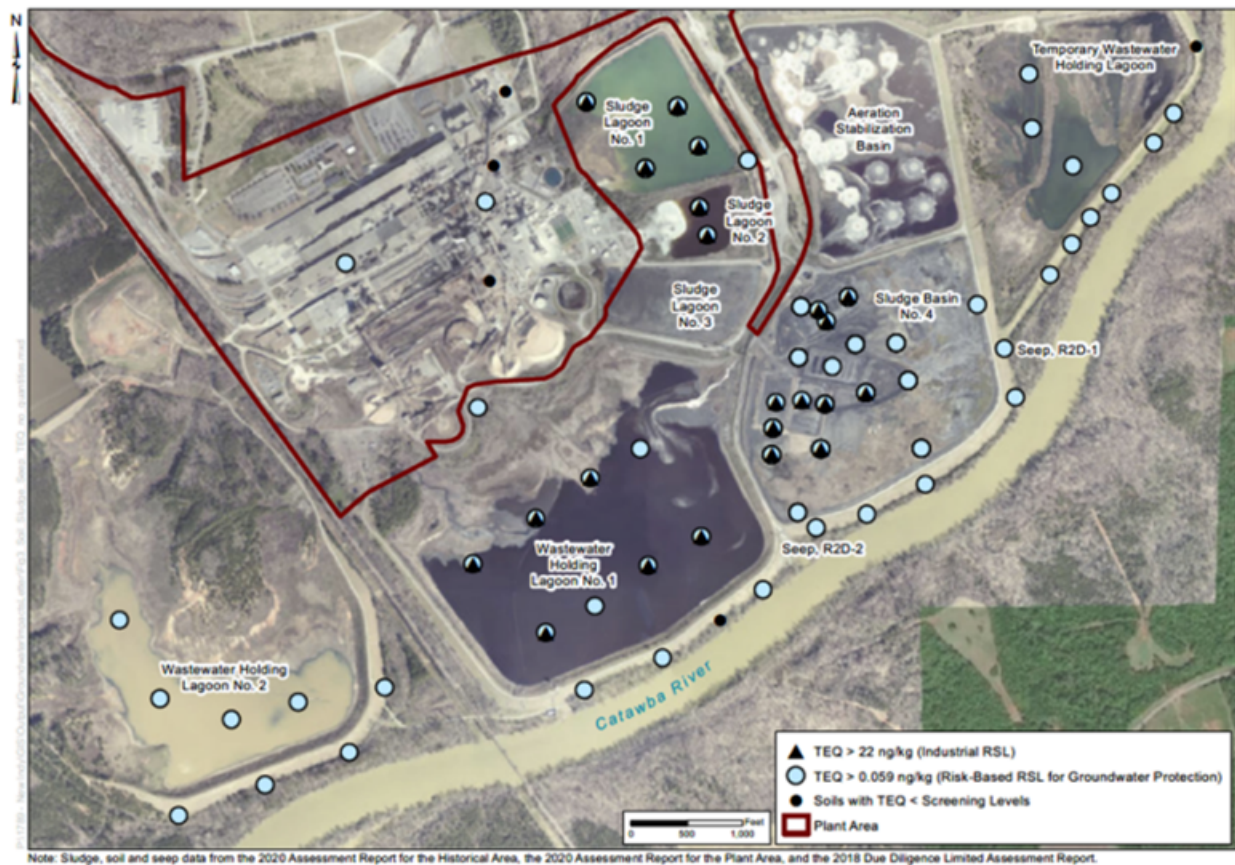


Figure 4 Soil, Sludge, and Seep Toxic Equivalent (TEQ) Exceedances for Dioxins/Furans

85. In the 2018 S&ME due diligence investigation, surface soils were collected at the location of two seeps on Sludge Basin No. 4 (samples R2D-1 and R2D-2). Dioxin compounds were found at both locations. One of these results exceeded both an EPA ecological screening level and protection of groundwater screening level. The seeps were not flowing at the time of the

investigation, so no water samples could be collected. Seeping fluids at these locations would flow directly downhill into the Catawba River. Dioxins were also reported from a wastewater discharge ditch (WWD-1) associated with Lagoon 1 (S&ME, 2019). Dioxins were a byproduct of the paper bleaching process used at the Mill by New-Indy and/or prior owners as part of the paper bleaching process. Upon information and belief, the formation of dioxins was sudden and unintentional by New-Indy and/or prior owners of the Mill.

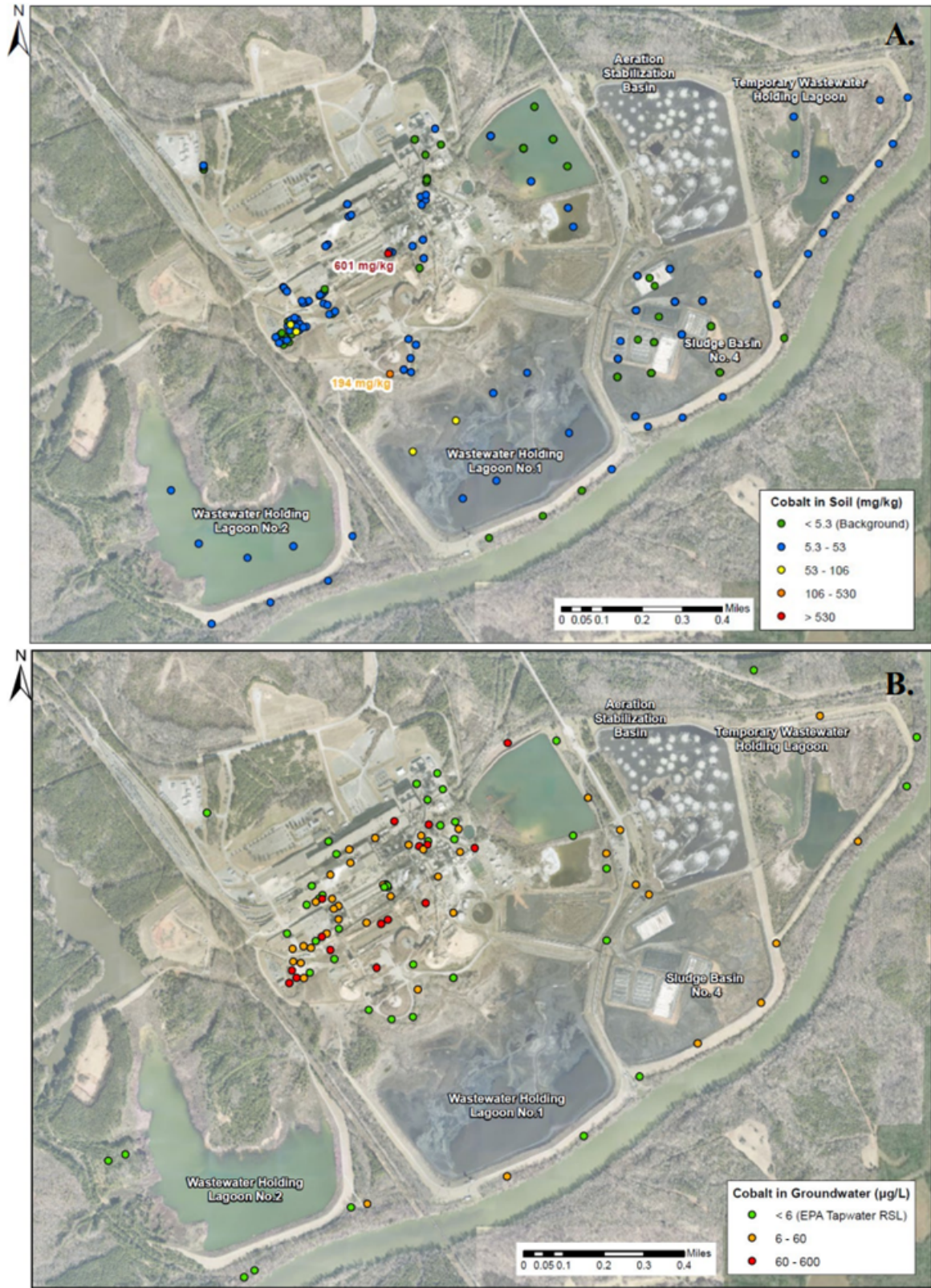
86. The figure below depicts the numerous locations on New-Indy's property, including adjacent to the bank of the Catawba River, where a TEQ value for dioxin/furans was exceeded in soils, sludges, and seeps.



87. The S&ME Report also demonstrated that cobalt concentrations above background levels and the EPA Regional Screening Level (RSL) for Protection of Groundwater were

ubiquitous in soils of the Plant Area and sludges of the Historical Area. Background levels of cobalt in soils of South Carolina range up to 5.3 mg/kg on average. On the Mill property, however, cobalt concentrations were as high as 75 mg/kg in REC 32 (Former Georgia Pacific Landfill), 194 mg/kg in the former Wood Yard Landfill, and 601 mg/kg in REC Area 25 (Fly Ash Staging Area). The 601 mg/kg detection exceeds the EPA RSL for Composite Workers of 350 mg/kg. Overall, about 45% of the soil and sludge samples from the site exceed the regional background for cobalt by a factor of at least 2. Similarly, cobalt exceeded EPA's tapwater residential screening level ("RSL") of 6 µg/L for groundwater in 47 wells, or 65% of sampled wells.

88. Figure 5 below shows these analytical results:



Note: Groundwater, soil, and sludge data from the 2020 Assessment Report for the Historical Area, the 2020 Assessment Report for the Plant Area, and the 2018 Due Diligence Limited Assessment Report.

Figure 5 Cobalt Analytical Results in (A) Soil and Sludge and (B) Groundwater Samples

89. Other metals, including copper, mercury, and lead, in soils and sludges also exceeded background conditions and EPA RSLs for Groundwater Protection (MCL-Based). Many of the high metal concentrations in sludges were in Wastewater Holding Lagoon 1, Wastewater Holding Lagoon 2, Sludge Lagoon 1, and Sludge Lagoon 2. Soils containing high levels of mercury were primarily in the former Wood Yard Landfill.

90. Thus, New-Indy purchased the Mill in December 2018 with full knowledge that there were dozens of recognized environmental conditions on the Mill's property that would require investigation and potential cleanup, including dioxin-laden sludges in wastewater sludge lagoons and holding ponds, an industrial landfill with elevated concentrations of 1,1-dichloroethane in the groundwater, another landfill that had uncovered drums and odors, and a sludge lagoon with observed seepage.

91. New-Indy entered into a contract with DHEC in December 2018 agreeing to assess and remediate these and other environmental conditions on the Mill property. On information and belief, Defendants have not remediated these recognized environmental conditions.

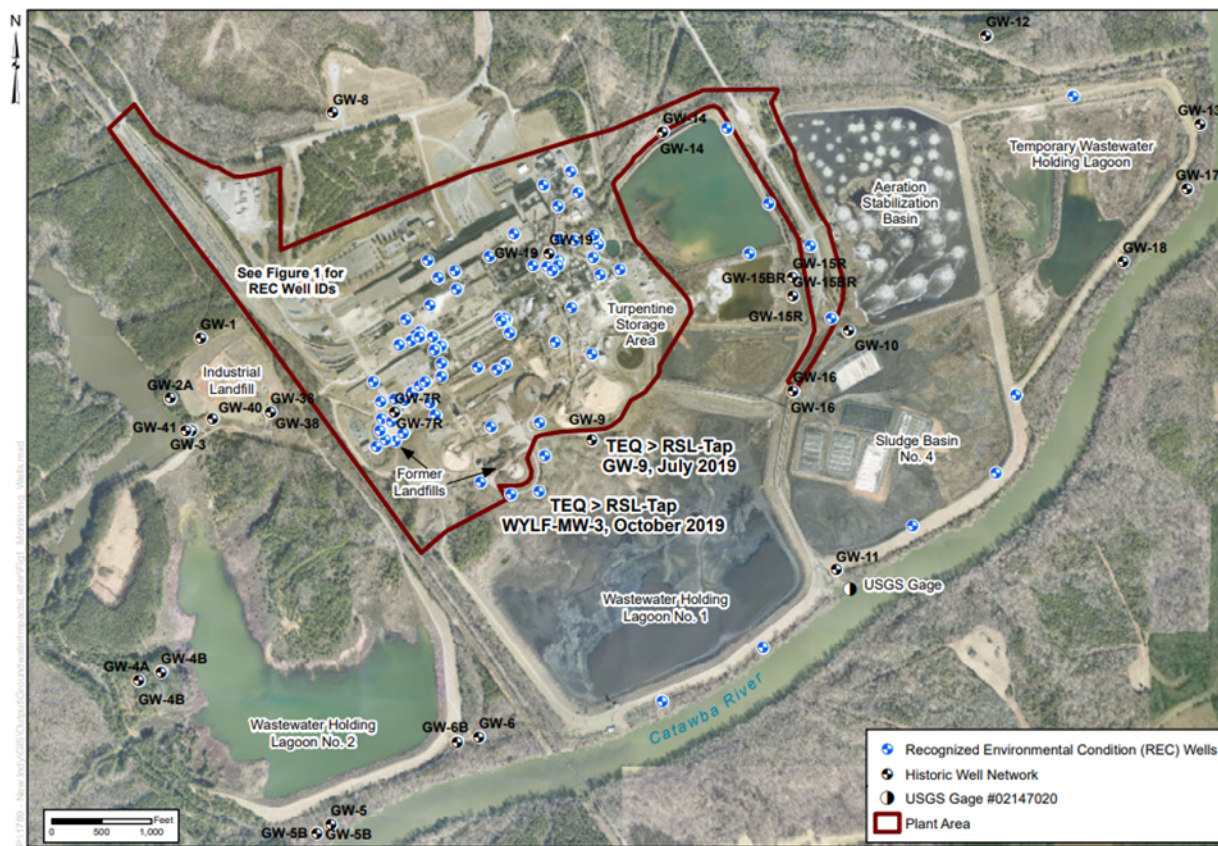
92. Indeed, after the purchase, the groundwater in, at, around, and in the vicinity of the Mill's property has been further tested by New-Indy's consultants and found to contain dioxins and numerous other hazardous substances and constituents of concern, including iron, lead, benzene, trichloroethene, chlorobenzene, 1,2-dichlorobenzene, chloroform, 1,4-dichlorobenzene, and 1,2,4-trichlorobenzene. As described below, it is estimated that up to 100 million gallons or more of groundwater containing the aforementioned constituents are being discharged from the Mill property to the Catawba River each year.

93. From October 14 through October 17, 2019, 58 monitoring wells in the Plant Area, installed following the 2018 Phase I Site Investigation, were sampled, along with 14 existing

monitoring wells (S&ME, 2020a). Two reports provided additional soil and groundwater data - the Historical Area Assessment Report (S&ME, 2019) and the Plant Area Assessment Report (S&ME, 2020a).

94. In the Historical Area Assessment Report, concentrations of chloroform, 1,4-dichlorobenzene, 1,2,4-trichlorobenzene, and trichloroethene in excess of EPA tapwater screening levels were reported in selected wells, together with naphthalene and cyanide in some samples. Groundwater results reported five dioxin/furan compounds at concentrations up to 1,100 pg/L in sample CM-DUP-GW-1 from well GW-9, exceeding the Toxic Equivalency (TEQ) screening criteria for tapwater.

95. The figure below shows Groundwater Monitoring Wells and Toxic Equivalent (TEX) Exceedances for Dioxins/Furans at these wells:



Note: TEQ Data from the 2020 Assessment Report for the Plant Area and the 2019 Assessment Report for the Historical Area

96. In the Plant Area Assessment Report, several metals and VOCs exceeded primary drinking water standards (Maximum Contaminant Levels [MCLs]). These included iron, lead, benzene, trichloroethene, chlorobenzene, and 1,2-dichlorobenzene. In addition, dioxin contamination was reported in groundwater at well WYLF-MW-3 in excess of tapwater screening levels. Benzene was detected in areas including, but not limited to, REC 5 (Turpentine and Caustic Assessment Area), and REC 6 and 7 (Former UST Areas), indicating that the presence of benzene onsite is related to historic storage tank and waste management practices.

97. Additional sludge sampling campaigns occurred in 2019 as part of the Historical Area (S&ME, 2019b) and the Plant Area Assessment Report (S&ME, 2020a). These data indicate exceedances of the industrial screening levels for TEQ in other areas of the Site, such as the wastewater holding ponds and Sludge Lagoons Nos. 1 and 2.

New-Indy Assumes the Wastewater NPDES Permit But Fails to Address Its Groundwater Discharges

98. The Mill operates under NPDES Permit No. SC0001015, a wastewater discharge permit issued by DHEC, which authorizes the discharge of treated wastewater from the wastewater treatment facility (“WWTF”) to the Catawba River via a pipeline outfall in accordance with the effluent limitations, monitoring requirements, and other conditions contained therein. *See* Consent Order, 22-042-W, *In re: New-Indy Catwaba LLC WWTF*, York County (June 2022). The permit became effective on October 1, 2009. *See id.* It expired on September 30, 2014 but the Department received a renewal application before the expiration date, and the permit was administratively continued. *See id.* On January 1, 2019, the permit was transferred from the previous Mill owner to New-Indy. *See id.*

99. Although, the permit for the wastewater discharge was modified to place it in New-Indy’s name, New-Indy, upon information and belief, took no steps to obtain an NPDES permit

for the groundwater discharges from the lagoons, holding ponds and other areas of contamination described above.

100. The NPDES permit requires New-Indy to, among other things:

- “take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of [the] permit which has a reasonable likelihood of adversely affecting human health or the environment.” Part II.D (p. 7 of 33);
- “at all times properly operate and maintain in good working order and operate as efficiently as possible all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes effective performance based on design facility removals, adequate funding, adequate operator staffing and training and also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.” Part II.E.1 (p.7-8 of 33);
- submit biennial groundwater monitoring reports to DHEC. *See* Part III.C.1 (p. 25 of 33); and
- “use best management practices normally associated with the proper operation and maintenance of a sludge wastewater treatment site, any slide storage or lagoon areas, transportation of sludges, and all other related activities to ensure that an undesirable level of odor does not exist.” Part V.D.3 (p.31 of 33).

Instead of Remediating the Environmental Conditions, New-Indy Converts the Mill, Ramps Up Production, and Relies on Improper Disposal Practices

101. After applying for and receiving on July 23, 2019 a state construction permit from DHEC authorizing manufacturing conversions (Construction Permit #2440-0005-DF), Defendants shut the Mill down between September of 2020 and November of 2020, to convert manufacturing operations from communication paper products (bleached paper) to containerboard grades (unbleached cardboard or brown paper).

102. To obtain the construction permit and authorization from DHEC to perform the work to convert the Mill, Defendants represented to DHEC that the modifications and operational

changes would not result in a net significant increase in hydrogen sulfide emissions. DHEC relied on those projections when it decided to issue a minor construction air permit, believing the increased emissions would be below a “significant net increase” threshold. DHEC has found those projections to be inaccurate and that the projected actual emissions should have been and in reality turned out to be much higher, producing “undesirable levels of air contaminants” “injurious to human health or welfare or . . . unreasonably interfering with enjoyment of life or use of property” against South Carolina law and regulations. *See* DHEC, Determination of Undesirable Levels and Order to Correct Undesirable Level of Air Contaminants, *In re: New-Indy Catawba, LLC* (“DHEC Order”) (May 7, 2021), pages 3, 6, 8.

103. Prior to the conversion, Defendants sent more than half of the volume of their foul condensate stream, which contained hydrogen sulfide, methyl mercaptan, methanol, and other pollutants, to the steam stripper. *See* Clean Air Act Emergency Order, *In re New-Indy Catawba d/b/a New-Indy Containerboard* (EPA Reg’l Dir. May 13, 2021) (“EPA Order”), ¶9. Defendants were using the steam stripper and incinerator, which are located *inside* the Mill to control hazardous air emissions, which also resulted in the reduction of hydrogen sulfide and other pollutants from the Mill’s air emissions. EPA Order, ¶9. The maximum capacity of Defendants’ steam stripper is approximately 430 gallons per minute (“gpm”) of foul condensate. EPA Order, ¶34. Defendants were piping the remainder of their foul condensate to the Aeration Stabilization Basin (“ASB”) located *outside* of the Mill, at a rate of approximately 90 gpm. EPA Order, ¶9.

104. Defendants completed the Mill conversion in November 2020 and began high volume production in February 2021. Following the conversion, the Mill stopped sending foul condensate to the steam stripper and incinerator and instead sent all foul condensate to the ASB and lagoons. This foreseeably resulted in an eight to ninefold increase in the amount of foul

condensate piped to the open-air ASB and lagoons, causing a condition where hydrogen sulfide and other dangerous air pollutants and contaminants evaporated into the air and dispersed to the surrounding communities.

105. When the Mill was converted from making white paper to brown linerboard in early 2021, the foul condensate generated during the production process bypassed the steam stripper and approximately one million gallons per day of untreated foul condensate were discharged directly to the waste water treatment plant (WWTP). However, key treatment facilities were out of order and/or filled with sludge and other manufacturing byproducts. The ASB and lagoons were in disrepair and unable to remove pollutants, resulting in the emission of tons of hydrogen sulfide, methyl mercaptan, volatile organic compounds (VOCs) and other chemical compounds to the atmosphere. This catastrophic failure of the WWTP has resulted in tens of thousands of odor and health-related complaints from citizens residing within six miles or more of the Mill.

106. As the Mill began higher (but not full) production rates in February 2021, it began sending all of its foul condensate stream to the ASB in the wastewater treatment facility at approximately 720-800 gpm, which is almost twice the maximum capacity of the steam stripper. EPA Order, ¶10. Hydrogen sulfide and other pollutants and contaminants were volatilized and emitted from the ASB to the ambient air. EPA Order, ¶10. This practice leads to the emission of tons of hydrogen sulfide and other pollutants and contaminants into the ambient air given the high volatility of hydrogen sulfide and the other pollutants and contaminants in the foul condensate. EPA Order, ¶10.

107. New-Indy's Mill generates more than 20 million gallons of wastewater every day that must be treated and discharged to the Catawba River. It also generates one million gallons or more of noxious and toxic foul condensate each day, only a portion of which is treated in its

undersized steam stripper before it is piped to the wastewater treatment plant.

108. All told, Defendants discharge up to 25 million gallons of wastewater per day in the Catawba River, which includes tens of thousands of pounds of ammonia and nitrate. The Catawba Riverkeeper has reported the presence of “chunky foam” in areas downstream of the Mill’s wastewater discharge since the fall of 2020, which was the same time that Defendants began switching from making bleached paper to brown paper.

New-Indy’s Violations of Federal Laws Are Dangerous and Damaging

Contamination from the Mill’s Unlawful Discharges and Waste Disposal Practices

109. New-Indy is continuing to use unlined wastewater treatment plant and sludge lagoons and holding ponds that, upon information and belief, are leaking massive amounts of dissolved solids, sulfate and organic and inorganic compounds to the groundwater that flows into the adjacent Catawba River.

110. Upon information, belief, including consultation with an experienced hydrogeologist, the leakage of process water and manufacturing byproducts from New-Indy’s lagoons and holding ponds has contributed to and is contributing to elevated levels of dioxin, cobalt, and other pollutants in the groundwater that enters the Catawba River, as well as to sediments in the Catawba River, and is posing an imminent and substantial endangerment to health and the environment.

111. In addition, these impoundments may fail and release millions of gallons of process wastewater, sludge, manufacturing byproducts, and sediment containing dioxin, cobalt, and other constituents of concern to the Catawba River. Moreover, wind-driven transport of these pollutants from these open impoundments and the contaminated soil at the Mill pose an imminent and substantial endangerment to the Catawba River, properties adjacent to the Catawba River, and

downwind properties.

112. Groundwater and surface waters from the Mill flow toward the Catawba River.

113. Figure 6 below confirms this flowpath to the Catawba River using potentiometric contours interpreted from groundwater measurements mapped by Arcadis (Arcadis, 2020a):

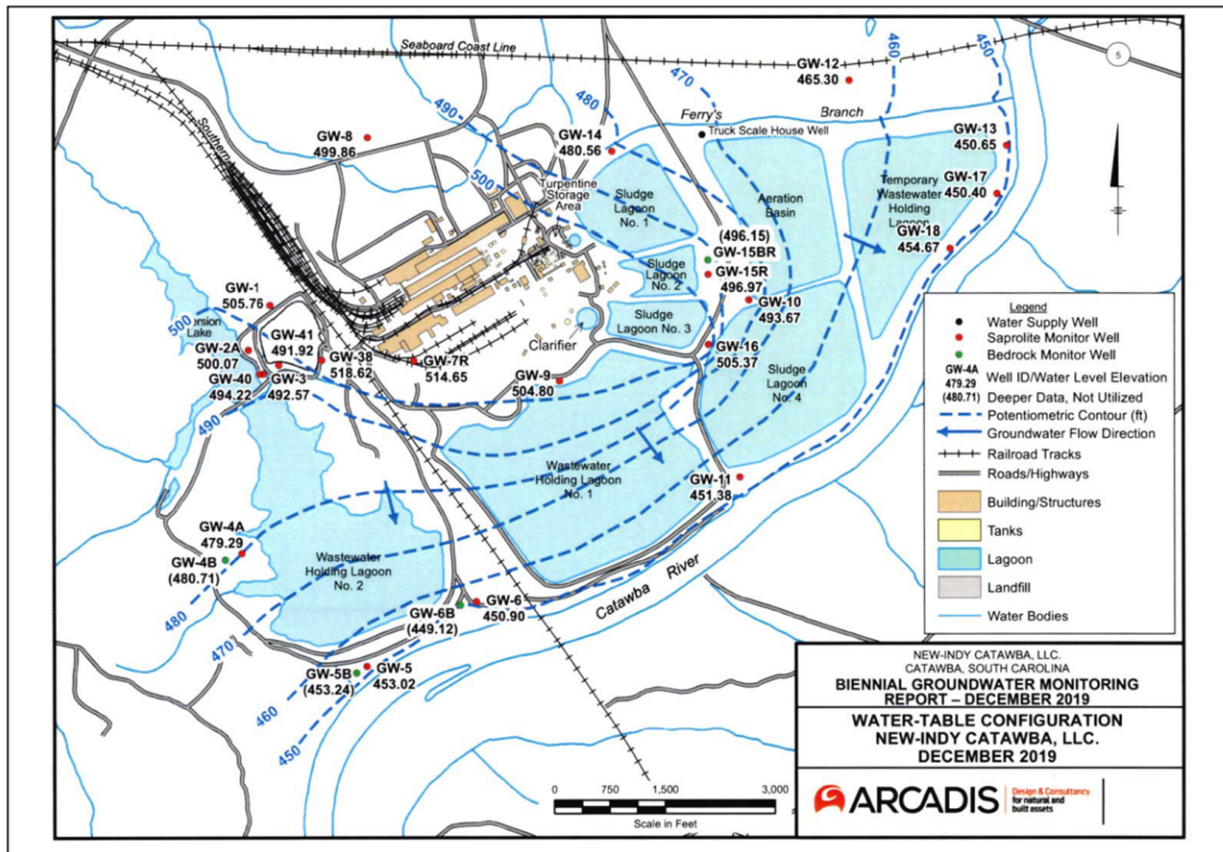


Figure 6 Potentiometric Surface at New-Indy Catawba Facility, December 2019 (from Arcadis, 2020)

114. According to experts consulted by Plaintiffs, the elevated concentrations of toxic metals, particularly cobalt in both soil and groundwater, point toward sources that have damaged the groundwater in, at, around, and in the vicinity of the Mill. They migrate further to the Catawba River, a navigable water of the United States.

115. Further, New-Indy has multiple lagoons and holding ponds located within mere feet of the Catawba River that contain millions of gallons of dioxin-containing sludge and wastewater with dikes that may fail and present an imminent and substantial endangerment to the public health

and the environment. Indeed, recent sampling by New-Indy detected dioxin in one or more leachate seep residues on the downslope of the dike from New-Indy's Sludge Lagoon No. 4.

116. Of particular concern are results of recent sampling of groundwater, surface water and sediments adjacent to New-Indy's Mill performed on behalf of the Plaintiffs by experienced water quality consultants which indicate a direct pathway of contaminant discharge from Sludge Lagoon No. 4, the Temporary Wastewater Holding Basin, Wastewater Holding Lagoon No. 1, and the underlying groundwater at the Mill to the Catawba River. Groundwater provides a direct pathway from the Mill to the Catawba River of known pollutants on the Mill's property that present an imminent and substantial endangerment to the public health and/or the environment of South Carolina.

117. Per an October 2022 report of Harvey A. Cohen, Ph.D., a South Carolina Registered Professional Geologist, recent sediment and groundwater samples were collected from the bank of the Catawba River adjacent to the Temporary Wastewater Holding Lagoon, Sludge Lagoon No. 4 and Wastewater Holding Lagoon No. 1. These data indicate that certain dioxin and furan compounds, along with cobalt, were elevated relative to upstream locations not impacted by the Mill. For example, concentrations of the dioxin 1,2,3,4,6,7,8,9-OCDD in groundwater at the riverbank increased by almost 9 times between the upstream railroad bridge adjacent to SC Highway 5 and Temporary Wastewater Holding Lagoon. Similarly, a nearly 9-fold increase in the TEQ is associated with these results. Cobalt concentrations in groundwater increased by at least 20 times between the upstream railroad bridge and the sample collected outside of Sludge Lagoon 4. For 1,2,3,4,6,7,8,9-OCDD and the furan 2,3,7,8- TCDF in riverbank sediment, similar trends are observed, with the maximum concentrations observed adjacent to the Temporary Wastewater Holding Lagoon, Wastewater Holding Lagoon 1, and Sludge Lagoon 4.

118. In addition, New-Indy's Mill property includes several solid waste and hazardous substance landfills, as well as dozens of other areas where solid wastes have been spilled, leaked, or otherwise stored. These include areas that are currently used by New-Indy and formerly used by prior owners. According to experts consulted by Plaintiffs, there is strong evidence that hazardous and solid wastes generated, stored, and/or disposed of from surface activities at the New-Indy Mill have and will continue to be present in soils and groundwater with compounds in excess of relevant environmental screening levels, therefore causing and threatening damage and injury to the person and property of third parties continuously and progressively as a result of historical operations by the Mill.

119. Additionally, a March 2021 report of a DHEC inspection related to the NPDES permit states that "issues with the sludge handling" include "the incomplete and unapproved modifications with the [equalization] EQ basin, which has resulted in a considerable amount of sludge being stored in the EQ basin without being further processed," as well as "improper sludge handling processes with the removal, transportation, and storage of sludge that has not been dewatered." In a summary, DHEC recognized that "there have been several changes or modifications to the treatment process (for example, stripper no longer in use, EQ sludge storage) that were not approved changes or modifications."

120. In its June 29, 2022 Consent Order 22-042-W, DHEC asserts that New-Indy failed to properly operate and maintain in good working order and operate its WWTP "due to excessive solids and foam, anaerobic conditions, and the presence of excessive sludge accumulation in the ASB" in violation of Part II.E.1 of the NPDES permit and failed to properly maintain the O&M manual in violation of Part II.E.3. (*See* SC DHEC Consent Order p. 7).¹⁰

¹⁰ For the avoidance of doubt, the violations asserted in this Complaint are not encompassed by the Conclusions of Law in DHEC's June 29, 2022 Consent Order 22-042-W. Namely, the violations asserted

121. Separate and apart from these specific failures and violations recognized by DHEC, New-Indy continues to discharge foul condensate to the ASB without adequate treatment to prevent noxious and toxic chemicals from being emitted to the atmosphere that have and continue to cause odor and health-related impacts to and complaints from tens of thousands of citizens. Similarly, New-Indy's Wastewater Holding Lagoon No. 1 and Sludge Lagoon No. 4 contain excess sludge that has and continues to emit noxious and toxic chemicals to the atmosphere that have and continue to cause odor and health-related impacts to and complaints from thousands of citizens.

122. As the Mill began high volume production, people living and working within a 30-mile radius of the Mill experienced and complained of strong, foul odors and physical reactions to exposure to excessive amounts of hydrogen sulfide and other pollutants and contaminants.

123. DHEC received an unprecedented number of complaints related to odor, tallying more than 17,000 complaints of noxious odors by the time of the May 7, 2021 DHEC Order, which found that "the odor is injurious to the welfare and quality of life and is interfering with use and enjoyment of property," *see infra*, and pursuant to DHEC's authority under the Clean Air Act, ordered Defendants to take actions to remedy the unlawful air pollution released from the Mill.

124. Meanwhile, on April 5, 2021, despite knowing that their operations were emitting dangerous amounts of hydrogen sulfide and other pollutants and contaminants into the community, Defendants submitted a permit application to DHEC requesting authorization to *increase* its operations. EPA Order, ¶11.

in this Complaint are not that New-Indy failed to operate the WWTP in good working order due to excessive solids and foam, anaerobic conditions, and the presence of excessive sludge accumulation in the ASB; or transporting and storing sludge without properly dewatering it; or maintaining the O&M manual; or properly updating and maintaining the Odor Abatement Plan; or updating and maintaining its Best Management Practices Plan.

125. Upon information and belief, DHEC has not acted on that permit application nor granted Defendants permission to increase production.

126. As of April 27, 2021, approximately five weeks into the existence of a database DHEC created concerning the complaints, DHEC received approximately 14,000 of such complaints, an “unprecedented” amount, as referenced above. *See* EPA Order, ¶14. By August 8, 2021, DHEC’s database captured 29,928 complaints. Some of the complaints are from residents as far as 30 miles away from the Mill. *See* EPA Order, ¶14.

127. By contrast, in all of 2020, DHEC received approximately five complaints about the Mill. *See* EPA Order, ¶14.

128. On information and belief, DHEC continues to receive hundreds of odor and health effect complaints each month and more than 50,000 of such complaints have been lodged with DHEC over the past three years.

129. On May 13, 2021, as noted above, the EPA Order issued ordering Defendants to take actions to remedy the unlawful air pollution released from the Mill.

130. Despite enforcement actions taken by EPA and DHEC in 2021 and 2022, the noxious and toxic emissions from the Mill’s WWTP continue to blanket the surrounding community. Complaints tracked in an online DHEC database have included, *inter alia* nausea, headaches including migraines, nose or throat irritation, eye irritation, coughing, difficulty breathing, asthma “flare ups,” and dizziness. Residents have also documented on DHEC’s online database a wide range of impacts to quality of life, personal comfort, and wellbeing, including lost sleep, a desire to stay indoors to avoid odors, and stress and anxiety. Even indoors, however, residents could not escape. As complaints tracked in the database put it: “We basically cannot enjoy our life,” and “We are prisoners in our own smelly home.” EPA Order, ¶15. *See also* Order

In re: New-Indy Emissions Litig., supra Note 1, at 3-5 (describing alleged complaints).

131. EPA Region 4 also maintains a database to keep track of complaints submitted by residents who live near the Mill, logging complaints of health impacts such as headaches, burning eyes, nausea, and throat irritation, the same four health impacts that were reported most frequently in the DHEC online database.

132. EPA inspectors reported experiencing a distinct and strong odor while at the Mill and while conducting sampling in nearby areas, including Catawba Indian Nation Reservation, Indian Land, Riverchase Estates, and other surrounding communities. The EPA inspectors reported noticing odors at the same time as when the Geospatial Measurement of Air Pollution mobile lab measured airborne hydrogen sulfide. They also reported experiencing headaches, itchy eyes, and nausea while the odor was present, and when hydrogen sulfide was being detected. EPA Order, ¶30.

133. The odors, as described above, deter Plaintiffs from outdoor activities they enjoy.

134. By April 9, 2021, DHEC was actively investigating the source of the strong odors reported in York and Lancaster Counties. DHEC personnel reported experiencing off-site odors on Highway 5, as it crosses the Catawba River near the Mill, and in neighborhoods several miles away, in Rock Hill, Lancaster, and Indian Land, South Carolina.

135. DHEC's analysis assessing the location of an air emitting source using odor complaints, wind direction, and EPA Region 4's May 5, 2021 report identify the Mill as the main, if not only, source of hydrogen sulfide causing the symptoms residents had reported in the surrounding communities. EPA Order, ¶32.

136. Many of the EPA recorded samples showed hydrogen sulfide concentrations greater than AEGL-I. One sampling event on April 26, 2021 southeast of the Mill near the

Riverchase Estates development measured a hydrogen sulfide concentration that was already greater than 750 ppb, indicating that elevated concentrations occurred for an unknown duration before the sampling period began. *See* EPA Order, ¶38.

137. Over 40 years ago, the EPA determined that sulfur compound air emissions from pulp and paper mills, like the Mill here, can adversely affect the welfare of the public. *See* Kraft Paper Mills, Standards of Performance for New Stationary Sources, 41 Fed. Reg. 42012 (Sept. 24, 1976) (“TRS [total reduced sulfur] emissions from kraft pulp mills are extremely odorous, and there are numerous instances of poorly controlled kraft mills creating public odor problems . . . Kraft pulp mills are a major source of TRS compounds . . . TRS emissions from kraft pulp mills are composed primarily of hydrogen sulfide, methyl mercaptan, dimethyl sulfide and dimethyl disulfide . . . TRS compounds can have an adverse effect on public welfare . . . The emissions from each pulp mill surveyed in the study affect an average of 44,000 persons over an area of approximately 100 square miles . . .”).

138. New-Indy’s reported treatment of foul condensate with hydrogen peroxide has not eliminated the VOCs and other chemical compounds found in unstripped foul condensate and/or formed by the hydrogen peroxide treatment from being emitted to the atmosphere from the WWTP, causing thousands of odor and health-related complaints to continue to pour into DHEC and EPA. Experts in pulp production state that many VOCs and other chemical compounds found in foul condensate are not adequately treated by hydrogen peroxide or other oxidizers and that unstripped foul condensate should never be discharged to the WWTP. In that regard, Plaintiffs’ Notice Letter offered to make a March 2, 2022 letter from Chris Bullock, a professional chemical engineer with 40 years of experience working in pulp mills, including environmental compliance responsibilities, available upon request.

Health Effects of Dioxins

139. Dioxins are highly toxic and can cause cancer, reproductive and developmental problems, damage to the immune system, and can interfere with hormones. Once dioxins enter the body, they remain for long periods of time because of their chemical stability and their ability to be absorbed by fat tissue, where they are then stored in the body. Their half-life in the body is estimated to be 7 to 11 years.

140. In the environment, dioxins tend to accumulate in the food chain. The higher an animal is in the food chain, the higher the concentration of dioxins. Short-term exposure of humans to high levels of dioxins may result in skin lesions, such as chloracne and patchy darkening of the skin, and altered liver function. Long-term exposure is linked to impairment of the immune system, the developing nervous system, the endocrine system, and reproductive functions. Chronic exposure of animals to dioxins has resulted in several types of cancer. The developing fetus is most sensitive to dioxin exposure. Newborns, with rapidly developing organ systems, may also be more vulnerable to certain effects.

141. Dioxins cause damage and injury to person and property upon entering the environment, continuously cause and threaten injury as a result of their presence, and continuously cause such damage and injury due to their persistence in the environment once present.

Health Effects of Cobalt

142. When too much cobalt is taken into the human body, harmful health effects can occur. Workers who breathed air containing 0.038 mg cobalt/m³ (about 100,000 times the concentration normally found in ambient air) for 6 hours had trouble breathing. Serious effects on the lungs, including asthma, pneumonia, and wheezing, have been found in people exposed to 0.005 mg cobalt/m³ while working with hard metal, a cobalt-tungsten carbide alloy. People

exposed to 0.007 mg cobalt/m³ at work have also developed allergies to cobalt that resulted in asthma and skin rashes.

143. Cancer has been shown in animals who breathed cobalt or when cobalt was placed directly into the muscle or under the skin. Based on the animal data, the International Agency for Research on Cancer (IARC) has determined that cobalt is possibly carcinogenic to humans. Much of our knowledge of cobalt toxicity is based on animal studies. Short-term exposure of rats to high levels of cobalt in the air results in death and lung damage. Longer-term exposure of rats, guinea pigs, hamsters, and pigs to lower levels of cobalt in the air results in lung damage and an increase in red blood cells. Short-term exposure of rats to high levels of cobalt in the food or drinking water results in effects on the blood, liver, kidneys, and heart. Longer-term exposure of rats, mice, and guinea pigs to lower levels of cobalt in the food or drinking water results in effects on the same tissues (heart, liver, kidneys, and blood) as well as the testes, and causes effects on behavior. Sores were seen on the skin of guinea pigs following skin contact with cobalt for 18 days.

144. Generally, cobalt compounds that dissolve easily in water are more harmful than those that are hard to dissolve in water. Elevated levels of cobalt cause damage and injury to person and property upon entering the environment and continuously cause and threaten injury as a result of their presence.

CAUSES OF ACTION

Count I: Violation of RCRA – Imminent and Substantial Endangerment

145. Plaintiffs reallege and incorporate by reference the allegations of the preceding paragraphs as if repeated and set forth herein.

146. Under RCRA Section 7002(a)(1)(B), citizens may commence a citizen suit against:
any person, . . . including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who

has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment;

42 U.S.C.A. § 6972(a)(1)(B) (emphasis added).

147. Each Defendant is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

148. New-Indy is a present generator, treater, and transporter of solid waste and the operator a treatment, storage, and disposal facility that has and is contributing to the past and present handling, storage, treatment, transportation or disposal of solid wastes.

149. New-Indy’s practice of handling, treating, storing, transporting and/or disposing of process wastewater, sludge, manufacturing byproducts and other solid wastes in leaking and open-air impoundments and at other locations on its property presents an imminent and substantial endangerment to health and/or the environment.

150. As described above, the leakage of process wastewater, sludge, and manufacturing byproducts has contributed to and is contributing to elevated levels of dioxin, cobalt, and other constituents of concern in the groundwater that enters the Catawba River, as well as to sediments in the Catawba River, and is posing an imminent and substantial endangerment to health and the environment and threatens still greater harm from potential failure of the impoundments. The wastewater, sludge and groundwater contain constituents known to be harmful to human health and the environment and to persist in the environment. Moreover, wind-driven transport of these constituents of concern from these open impoundments poses an imminent and substantial endangerment to the Catawba River, properties adjacent to the Catawba River, and downwind properties.

151. Further, Citizens have experienced and continue to experience actual and threatened harms to their health and wellbeing, forcing them to change their lifestyles, depriving them of sleep, and leaving them anxious and unable to find comfort and reprieve even in their own homes.

152. These complained of practices and conditions resulting in actual and threatened damage and injury to health and the environment have continued and progressed since prior to the enactment of RCRA and subsequent thereto.

153. Plaintiffs, other residents, and the environment are harmed and will continue to be harmed by New-Indy’s failure to abate the endangerment unless the Court grants the relief sought herein.

Count II: Violation of RCRA – Open Dumping

154. Plaintiffs reallege and incorporate by reference the allegations of the preceding paragraphs as if repeated and set forth herein.

155. Under RCRA Section 7002(a)(1)(A), citizens may commence a citizen suit against “any person . . .who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to [RCRA][.]” 42 U.S.C.A. § 6972(a)(1)(A).

156. New-Indy’s improper practices described above constitute “open dumping” in violation of RCRA.

157. RCRA prohibits “any solid waste management practice or disposal of solid waste or hazardous waste which constitutes the open dumping of solid waste or hazardous waste” 42 U.S.C. § 6945(a); *see also* S.C. Code Ann. Regs. 61-107.19, Part I.A.

158. New-Indy's ongoing storage and/or disposal of wastewater, sludge, and/or manufacturing byproducts in unlined surface impoundments that are leaking contaminants to the groundwater that reaches the Catawba River fall below the minimum criteria in 42 U.S.C. § 6945(a) as well as the minimum criteria set forth in 40 C.F.R. §257.3 and S.C. Code Ann. Regs. 61-107.19, Part V, Subpart A, 258.1.

159. In addition, New-Indy's disposal of manufacturing byproducts in various unlined lagoons and holding ponds as described above falls below the minimum criteria in S.C. Code Ann. Regs. 61-107.19 Part V, 258.27.(a)(1) and 40 C.F.R. §257.3-3(a), because they cause the discharge of pollutants into waters of the United States in violation of the CWA.

160. New-Indy has not satisfied, and its current, ongoing practices could not satisfy, the minimum criteria for such permits, which call for, among other things, basic protections like liners. *See, e.g.*, S.C. Code Ann. Regs. 61-107.19 Part V, Subpart D; *see also* S.C. Code Ann. Regs. 61-107.19, Part V, Subpart A, 258.1(d)-(e).

161. EPA has promulgated criteria under RCRA § 6907(a)(3) defining solid waste management practices that constitute open dumping. *See* 42 U.S.C. § 6944(a); 40 C.F.R. Parts 257 and 258. New-Indy's practices fall below these minimum criteria here and these improper practices are ongoing.

162. Also, on information and belief, New-Indy maintains a number of solid waste storage and/or disposal areas on its property that do not have sanitary landfill or other solid waste disposal permits. New-Indy's practices of storing and disposing of solid wastes without statutorily-required permits violates RCRA and South Carolina regulations implementing RCRA's requirements. *See, e.g.*, 42 U.S.C. § 6926(e); S.C. Code Ann. Regs. 61-107.19, Part I.

163. These complained of conditions, and resulting damage and injury, have continued and progressed since prior to the enactment of RCRA and subsequent thereto.

164. Plaintiffs and the environment are harmed and will continue to be harmed by New-Indy's open dumping unless the Court grants the relief sought herein.

165. RCRA provides for injunctive relief and civil penalties up to \$25,000 per day of noncompliance for each violation of a RCRA requirement, 42 U.S.C.A. § 6972(a)(3), adjusted for inflation pursuant to 40 C.F.R. § 19.4 for all violations occurring after November 2, 2015.

166. The Court may also award costs of litigation, including attorney and expert witness fees, to a substantially prevailing party. *See* 42 U.S.C.A. § 6972(e).

Count III: Violation of CWA – Unpermitted Point Source Discharges

167. Plaintiffs reallege and incorporate by reference the allegations of the preceding paragraphs as if repeated and set forth herein.

168. To help enforce its provisions, the CWA (Section 505) authorizes citizen suits: “[A]ny citizen may commence a civil action on his own behalf [] against any person ... who is alleged to be in violation of [] an effluent standard or limitation under this chapter.” § 1365(a)(1). *Schneider*, 733 Fed. Appx. at 645. “Such a violation includes discharging pollutants without a permit or violating the terms of a permit.” *Schneider*, 733 Fed. Appx. at 645 (quoting § 1365(f)(1)).

169. Enforcement pursuant to CWA Section 505 encompasses an action to remedy unauthorized discharges in violation of Section 301, 33 U.S.C. § 1311(a). *See* 33 U.S.C. § 1365(f).

170. New-Indy is a “person” within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5).

171. The waters of the Catawba River are waters of the United States and are thus “navigable waters” as defined by the CWA and controlling authority. 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

172. The “point sources” at the Mill include, but are not limited to, the wastewater discharge site described in the NPDES permit, leaking lagoons and holding ponds, and other waste storage and disposal areas described above. The discharges contaminate the groundwater, which is hydrologically connected to the Catawba River and which is in close proximity to the River. Discharges into the groundwater at the Mill site are the functional equivalent of direct discharges into the Catawba River.

173. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from any point source to waters of the United States, except in compliance with a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

174. To date, New-Indy has not obtained a NPDES permit for the discharges from the waste lagoons and ponds, and other storage and disposal areas described above.

175. Pollutants discharging from the leaking lagoons and holding ponds and the other storage and disposal areas described above reach the groundwater and the discharge operates as the functional equivalent of a direct discharge to the Catawba River. *See County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020). As New-Indy continues to operate as described above, it is continuing, and will continue, to improperly discharge pollutants into waters of the United States in violation of the CWA. The discharges are ongoing, and thus, New-Indy’s violation of the CWA is ongoing.

176. As operator of the Mill, New-Indy is responsible for the CWA violations alleged herein as a result of its unpermitted discharges.

177. Plaintiffs and the environment are harmed and will continue to be harmed by New-Indy's unpermitted discharges, unless the Court grants the relief sought herein.

178. Section 505 authorizes actions for injunctive relief and civil penalties. 33 U.S.C. § 1365(a).

179. Each separate violation of the CWA subjects the violator to a penalty of up to \$25,000 per day pursuant to Sections 505(a) and 309(d), 33 U.S.C. §§ 1319(d), 1365(a), and for all violations occurring after November 2, 2015, adjusted for inflation pursuant to 40 C.F.R. § 19.4.

180. Section 505(d) permits prevailing or substantially prevailing parties to recover litigation costs, including attorney fees and expert witness fees. 33 U.S.C. § 1365(d).

Count IV: Violation of CWA – NPDES Permit Violations

181. Plaintiffs reallege and incorporate by reference the allegations of the preceding paragraphs as if repeated and set forth herein.

182. Violation of an effluent standard or limitation under an NPDES permit includes a violation of any term or condition of the permit. *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 629 F.3d 387, 390-91 (4th Cir. 2011) (construing U.S.C §1365(f)(6) definition of “effluent standard or limitation”).

183. New-Indy's NPDES permit for the wastewater discharge outfall sets forth terms and conditions that New-Indy has and continues to violate—multiple permit terms and conditions.

184. New-Indy has violated and continues to violate the following requirement in its NPDES Permit, obligating it to: “at all times properly operate and maintain in good working order and operate as efficiently as possible all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the terms

and conditions of this permit. Proper operation and maintenance includes effective performance based on design facility removals, adequate funding, adequate operator staffing and training and also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.” Part II.E.1.

185. As required by Part II.D of its NPDES Permit, New-Indy has failed to take all reasonable steps to minimize or prevent its use and disposal of sludge and discharge of foul condensate, including the failure to construct and operate backup or auxiliary facilities, from adversely affecting human health and/or the environment resulting from its emission of noxious and toxic chemicals to the atmosphere that have and continue to cause odor and health-related impacts to and complaints from thousands of citizens.

186. New-Indy has failed and continues to fail to timely submit biennial groundwater monitoring reports to DHEC as required by Part III.C. of its NPDES permit.

187. New-Indy has failed and continues to fail to use best management practices with respect to its sludge storage and disposal areas, transportation of sludges and other related activities to ensure that an undesirable level of odor does not exist in violation of Part V.D.3 of its NPDES Permit.

188. New-Indy has failed to “take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of [the] permit which has a reasonable likelihood of adversely affecting human health or the environment.” Part II.D.

189. New-Indy has failed and continues to fail to take all reasonable steps to minimize or prevent the discharge, use or disposal of sludge from its lagoons and holding ponds to the

Catawba River that have a reasonable likelihood of adversely affecting human health and/or the environment.

190. New-Indy's sludge storage, transportation and other related activities have resulted in the emission of noxious and toxic chemicals that have and continue to cause extensive odor complaints from citizens, as described above.

191. Plaintiffs are harmed and will continue to be harmed by New-Indy's NPDES permit violations at the Mill, unless the Court grants the relief sought herein.

192. Section 505 authorizes actions for injunctive relief and civil penalties, and allows substantially prevailing parties to recover litigation costs, including attorney fees and expert witness fees, as described above. For avoidance of doubt, here, Plaintiffs are not seeking civil penalties for any violations addressed in the civil penalty award in the DHEC Consent Order.

JURY DEMAND

Plaintiffs demand a jury trial pursuant to Federal Rule of Civil Procedure 38 for all issues triable by jury.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

- A. Declaratory and injunctive relief pursuant to § 7002 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972, ordering New-Indy to perform and pay for such work as may be required to eliminate or remediate any solid waste handled, stored, treated, transported or disposed at the Mill that may be presenting an imminent and substantial endangerment to health and/or the environment, and restraining New-Indy from further violating RCRA;
- B. Declaratory and injunctive relief pursuant to 42 U.S.C. § 6945(a) to remedy the violations of RCRA alleged in Count II;
- C. Declaratory and injunctive relief pursuant to § 505 of the Clean Water Act, 33 U.S.C. § 1365, ordering New-Indy to cease and desist unpermitted discharges and restraining Indy from further violating the CWA in the manner alleged in Count III;

- D. The maximum amount of civil penalties allowed by law, per day per violation, for all unpermitted discharges in violation of the CWA alleged in Count III pursuant to § 505 of the Clean Water Act, 33 U.S.C. § 1365, and § 309(d) of the CWA, 33 U.S.C. § 1319(d), and the regulations governing the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4;
- E. Declaratory and injunctive relief pursuant to § 505 of the Clean Water Act, 33 U.S.C. § 1365, ordering New-Indy to cease and desist NPDES permit violations, and restraining New-Indy from further violating the CWA as alleged in Count IV;
- F. The maximum amount of civil penalties allowed by law, per day per violation, for all unpermitted discharges in violation of the CWA alleged in Count IV pursuant to § 505 of the Clean Water Act, 33 U.S.C. § 1365, and § 309(d) of the CWA, 33 U.S.C. § 1319(d), and the regulations governing the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4;
- G. An award of the costs of litigation, including reasonable attorney and expert witness fees, pursuant to § 7002 of RCRA, 42 U.S.C. § 6972, and § 505(d) of the CWA, 33 U.S.C. § 1365(d); and
- H. Such further and additional relief as the Court deems just and proper.

[signature page follows]

Respectfully submitted,

MOTLEY RICE LLC

/s/ T. David Hoyle

Joseph F. Rice (Fed. ID No. 3445)
Fred Thompson, III (Fed. ID No. 4081)
T. David Hoyle (Fed. ID No. 9928)
W. Taylor Lacy (Fed. ID No. 9929)
Lisa M. Saltzburg (Fed. ID No. 10675)
Rebecca A. Fonseca (Fed. ID No. 13297)
28 Bridgeside Blvd.
Mt. Pleasant, South Carolina 29464
(843) 216-9000

jrice@motleyrice.com

fhompson@motleyrice.com

dhoyle@motleyrice.com

wlacy@motleyrice.com

lsaltzburg@motleyrice.com

rfonseca@motleyrice.com

Philip C. Federico (*pro hac vice* forthcoming)
Brent P. Ceryes (*pro hac vice* forthcoming)
BAIRD MANDALAS BROCKSTEDT
FEDERICO & CARDEA, LLC
6225 Smith Avenue, Suite 200B
Baltimore, MD 21209
(410) 421-7777

pfederico@bmbfclaw.com

bceryes@bmbfclaw.com

Chase T. Brockstedt
(*pro hac vice* forthcoming)
BAIRD MANDALAS BROCKSTEDT
FEDERICO & CARDEA, LLC
1413 Savannah Road, Suite 1
Lewes, Delaware 19958
(302) 645-2262

chase@bmbde.com

Richard A. Harpootlian (Fed. ID No. 1730)
RICHARD A. HARPOOTLIAN P.A.
1410 Laurel Street
Post Office Box 1090
Columbia, South Carolina 29202
Phone (803) 252-4848
Facsimile (803) 252-4810

rah@harpootlianlaw.com

Thomas E Pope (Fed ID No. 4947)
Ben P. Leader (Fed ID No. 11923)
ELROD POPE LAW FIRM
P.O. Box 11091
Rock Hill, SC 29731
(803) 324-7574
tpope@elrodpope.com
bleader@elrodpope.com

Leonidas E. “Leon” Stavrinakis
(Fed ID No. 6552)
STAVRINAKIS LAW FIRM
1 Cool Blow Street, Suite 201
Charleston, SC 29403
(843) 724-1060
leon@lawleon.com

Gary V. Mauney (*pro hac vice* forthcoming)
N.C. Bar No. 22190
MAUNEY PLLC
Two SouthPark Center
6135 Park South Dr, Suite 510
Charlotte, NC 28210
704-945-7185
(888) 340-3666 (facsimile)
garymauney@mauneypllc.com

Attorneys for Plaintiffs

February 13, 2023
Mount Pleasant, South Carolina