

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

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

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency, files this complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action brought against defendant New-Indy Catawba, LLC (“New Indy”), d/b/a New-Indy Containerboard, concerning emissions of hydrogen sulfide (H₂S) from its facility located in Catawba, York County, South Carolina (the “Facility”). New Indy manufactures cardboard and related products at the Facility, and the process results in emissions of H₂S to the air that are presenting an imminent and substantial endangerment to public health or welfare or the environment. Exposure to H₂S can cause various adverse health effects, such as headache, nausea, difficulty breathing among people with asthma, and irritation of the eyes, nose, and throat. Since approximately February of 2021, the Facility has been emitting elevated levels of H₂S. EPA has recorded high levels of H₂S concentrations in the air at various locations on and off the Facility.

2. EPA and the South Carolina Department of Health and Environmental Control (“DHEC”) have received over 22,000 complaints from residents living near the Facility—and even from residents living as far away as Charlotte, North Carolina—about noxious odors, nausea, eye, nose and throat irritation, migraines, and other symptoms.

3. On May 13, 2021, EPA issued a Clean Air Act Emergency Order (“EPA Order,” Exhibit 1 hereto, adopted by reference under Fed. R. Civ. P. 10(c)) to New Indy under Section 303 of the Clean Air Act (“CAA”), 42 U.S.C. § 7603. Section 303 requires EPA to file a civil action if the Order needs to stay in effect for more than 60 days. 42 U.S.C. § 7603. The United States thus files this action seeking injunctive relief under Section 303 requiring continuing compliance with the EPA Order, and otherwise restraining New Indy from emitting excessive H₂S and/or requiring it to take immediate steps to significantly reduce air pollution that is presenting an imminent and substantial endangerment to the public health or welfare or the environment.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to CAA Section 303, 42 U.S.C. § 7603 (Emergency powers) and 28 U.S.C. §§ 1331 (Federal question) and 1345 (United States as plaintiff).

5. Venue is proper in this District pursuant to CAA Section 303, 42 U.S.C. § 7603 (Emergency powers) and 28 U.S.C. § 1391(b) and (c), because New Indy conducts business in this District, the releases of H₂S occurred in this District, and the emissions continue to threaten residents of this District.

NOTICE

6. Pursuant to CAA Section 303, 42 U.S.C. § 7603, prior to issuing the EPA Order, EPA consulted with representatives of DHEC, York County, South Carolina, and Mecklenburg

County, North Carolina. EPA also consulted with New Indy. The United States has also provided notice of the commencement of this civil action to DHEC and New Indy.

PARTIES

7. Authority to bring this action is vested in the Attorney General of the United States by Section 305 of the CAA, 42 U.S.C. § 7605 (Representation in litigation); and pursuant to 28 U.S.C. §§ 516 and 519.

8. New Indy is a Limited Liability Company under the laws of Delaware.

GENERAL ALLEGATIONS

The Facility

9. New Indy operates a pulp and paper mill located at 5300 Cureton Ferry Road in Catawba, South Carolina (the "Facility").

10. New Indy shut down the Facility manufacturing operations between September of 2020 and November of 2020, to convert from producing white paper (bleached paper) to producing containerboard grade paper (unbleached cardboard or brown paper). As of February of 2021, the Facility was operating again, and began emitting high levels of H₂S.

11. Approximately 1.7 million people live within a 30-mile radius of the facility, in York, Lancaster, and Chester Counties in South Carolina, and Union and Mecklenburg Counties in North Carolina. The facility is located approximately 10 miles south and southwest of Indian Land, South Carolina and Waxhaw, North Carolina, respectively. The Catawba Indian Nation Reservation is located less than 4 miles north of the facility.

Hydrogen Sulfide and its Potential Impacts

12. Hydrogen sulfide is a flammable, colorless gas that smells like rotten eggs. People usually can smell H₂S in ambient air at concentrations ranging as low as 0.5 parts per billion (ppb).

Elevated concentrations of H₂S can cause various adverse health effects, such as headache, nausea, difficulty breathing among people with asthma, and irritation of the eyes, nose, and throat. In 2010, the National Research Council of the National Academies published acute exposure guidance levels (“AEGL”) for H₂S, including a 30-minute average concentration of 600 ppb.

Citizen Complaints to DHEC and EPA

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

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

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

16. EPA also maintains a database to keep track of complaints submitted by residents who live near the facility. During March and April of 2021, EPA logged hundreds of complaints. Some complaints reported odors and a subset included information on health impacts. The most frequently cited symptoms included in the EPA database were headache, burning eyes, nausea, and throat irritation.

DHEC Investigations and Order

17. By April 9, 2021, DHEC was investigating the source of the reported odors. DHEC personnel reported experiencing off-site odors on Highway 5, as it crosses the Catawba River near the facility, and in neighborhoods several miles away, in Rock Hill, Lancaster, and Indian Land, South Carolina. In April of 2021, DHEC conducted a trajectory analysis, which is an assessment of the location of an emitting source using odor complaints and wind direction. DHEC identified the Facility as the main, if not only, source of H₂S causing the symptoms that residents had reported in the surrounding communities. On May 7, 2021, DHEC issued New Indy a Determination of Undesirable Levels and an Order to Correct Undesirable Level of Air Contaminants.

EPA Investigations and Order

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

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

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

21. The EPA personnel who conducted the GMAP sampling reported experiencing a distinct and strong odor while at the facility and while conducting sampling in offsite areas, including Catawba Indian Nation Reservation, Indian Land, Riverchase Estates, and other surrounding communities. The EPA employees reported noticing odors at the same time as when the GMAP measured airborne H₂S. The two employees also reported experiencing headaches, itchy eyes, and nausea while the odor was present, and when H₂S was being detected.

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

23. On May 13, 2021, EPA exercised its authority under Section 303 of the Act and issued an administrative order (EPA Order) to New Indy, requiring New Indy to reduce its H₂S emissions, monitor the concentrations of the emissions, and submit a long-term plan to control H₂S emissions in the future.

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

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

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

26. Since May 13, 2021, DHEC and EPA have continued to receive citizen complaints. Between May 13, 2021 (the date of the CAA Section 303 Order) and June 24, 2021, DHEC has received an additional approximately 5,726 complaints.

27. Between May 13, 2021 (the date of the CAA Section 303 Order) and June 16, 2021, EPA has received an additional approximately 282 complaints.

28. Because New Indy has not yet found a permanent solution to control its H₂S emissions, continues to exceed average fence line concentration limits established in the EPA Order, and the local community continues to file odor and health-related complaints, New Indy's continued operations at the Facility are causing and contributing to an imminent and substantial endangerment to public health or welfare or the environment. Moreover, after the EPA Order expires, New Indy could increase its emissions.

CLAIM FOR RELIEF
(Injunctive Relief under Clean Air Act Section 303, 42 U.S.C. § 7603)

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

30. Congress enacted the Clean Air Act “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1). Section 303 of the Clean Air Act (“Emergency Powers”), states:

Notwithstanding any other provision of this chapter, the Administrator, upon receipt of evidence that a *pollution source* or combination of sources (including moving sources) is presenting an *imminent and substantial endangerment* to public health or *welfare*, or the environment, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any *person causing or contributing* to the alleged pollution to stop the emission of *air pollutants* causing or contributing to such pollution or to take such other action as may be necessary.

42 U.S.C. § 7603 (emphasis added).

31. CAA Section 302(g) defines an “air pollutant” as “any air pollution agent or combination of such agents, including any physical, chemical . . . substance or matter which is emitted into or otherwise enters the ambient air.” 42 U.S.C. § 7602(g). At all times relevant to the Complaint, H₂S has been an “air pollutant” within the meaning of 42 U.S.C. § 7602(g), because it is a chemical substance that is emitted to the air from the Facility.

32. The CAA does not define “pollution source.” The Facility is a pollution source or “combination of sources” within the meaning of 42 U.S.C. § 7603, because it is the source of H₂S into the air.

33. CAA Section 302(e) defines “person” to include individuals, corporations, partnerships and associations. 42 U.S.C. § 7602(e). New Indy is a person because it is a limited liability company.

34. At times relevant to this Complaint, New Indy has caused and/or contributed and continues to cause and/or contribute to the concentrations of H₂S in the air in and around the Facility.

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

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

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

38. EPA received evidence that the concentrations of H₂S in the air in and around the Facility present an imminent and substantial endangerment to public health or welfare or the environment. EPA determined that issuance of the EPA Order was necessary to assure prompt protection of public health or welfare or the environment because it was not practicable to wait for the commencement of a civil action in United States District Court to assure prompt protection before further air emissions of H₂S are released from the facility.

39. Under Section 303, the EPA Order expires after 60 days, which is July 12, 2021, unless the United States files a civil action under Section 303, in which case the Order remains effective for an additional 14 days.

40. The filing of this civil action automatically extends the effective period of the EPA Order by 14 days, and the Court is authorized to order any longer period as may be appropriate.

RESERVATION

The United States reserves all rights to amend this complaint or otherwise file a judicial or administrative action seeking further injunctive relief, administrative penalties, judicial penalties or other relief, including for any past or future violations of the EPA Order.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff the United States of America respectfully requests that the Court provide the following relief:

1. Order New Indy to take all measures necessary to eliminate the imminent and substantial endangerment posed by H₂S emissions from the Facility;
2. Order New Indy to continue to comply with the EPA Order for an additional period as appropriate;
3. Order New Indy to conduct such monitoring and reporting as appropriate to confirm that the H₂S emissions are reduced; and
4. Award Plaintiff such other and further relief that the Court deems just and proper.

Respectfully submitted,

Dated: July 12, 2021

RESPECTFULLY SUBMITTED

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