



June 29, 2022

**FIRST CLASS and**  
**CERTIFIED MAIL – 9214 8969 0099 9790 1421 8285 84**

Mr. Dan Mallett  
New-Indy Catawba, LLC  
5300 Cureton Ferry Road  
Catawba, SC 29704

Re: **Consent Order 22-042-W**  
New-Indy Catawba Wastewater Treatment Facility  
NPDES Permit SC0001015  
York County

Dear Mr. Mallett:

Enclosed, please find fully executed Consent Order 22-042-W for the above referenced facility. The Order is considered executed on June 29, 2022.

If you have any questions, please contact me at (803) 898-1647 or by e-mail at [cannonah@dhec.sc.gov](mailto:cannonah@dhec.sc.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Adam Cannon", is written over a light blue horizontal line.

Adam Cannon, Enforcement Manager  
Bureau of Water - WP Control Division  
WP Compliance and Enforcement Section

CC: Randolph R. Lowell, Willoughby & Hoefler, P.A. (via email, [rllowell@willoughbyhoefler.com](mailto:rllowell@willoughbyhoefler.com))  
Pete Cleveland, New-Indy Catawba LLC, 5300 Cureton Ferry Rd., Catawba SC 29704 (via First Class mail)  
Tony Hobson, New-Indy Catawba LLC, VP of Manufacturing (via email, [tony.hobson@new-indycb.com](mailto:tony.hobson@new-indycb.com))  
Corporation Service Company, 508 Meeting Street, West Columbia, SC 29169  
Jennifer Hughes, SCDHEC, Bureau of Water Chief  
Sara Martinez, SCDHEC, Office of General Counsel  
Myra Reece, SCDHEC, Director of Environmental Affairs  
  
SCDHEC Main File

Attachment as stated

**THE STATE OF SOUTH CAROLINA  
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

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**IN RE: NEW-INDY CATAWBA LLC WWTF  
YORK COUNTY**

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**CONSENT ORDER  
22 - 042 - W**

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The South Carolina Department of Health and Environmental Control (Department) and New-Indy Catawba LLC (New-Indy) concur that in the interest of resolving this matter without delay and expense of litigation, New-Indy agrees to the entry of this Consent Order, but neither agrees with nor admits the Findings of Fact or the Conclusions of Law; and therefore, agrees that the Order shall be deemed an admission of fact and law only as necessary for enforcement of this Order by the Department or subsequent actions relating to New-Indy by the Department.

**FINDINGS OF FACT**

1. Since January 1, 2019, New-Indy has owned and been responsible for the operation and maintenance of a paper and pulp mill (the Mill) and associated wastewater treatment facility (WWTF) located on Cureton Ferry Road in Catawba, York County, South Carolina. Before 2019, a previous owner was responsible for the operation and maintenance of the Mill and WWTF.
2. The Department issued National Pollutant Discharge Elimination System (NPDES) Permit SC0001015 (Permit), authorizing the discharge of treated wastewater from the WWTF, a Group IV Biological treatment system, to the Catawba River in accordance with the effluent limitations, monitoring requirements, and other conditions contained therein. The permit became effective on October 1, 2009, and expired on September 30, 2014. The

Department received a permit renewal application on March 31, 2014, and the Permit was administratively continued.

3. On November 8, 1999, the Department issued Construction Permit 18449- IW to a previous owner granting approval for the construction of a hardpiping condensate treatment system to convey process condensate through a collection tank to an equalization/anaerobic basin (basin #3).
4. On April 25, 2017, the Department issued Construction Permit 20098-IW to a previous owner authorizing multiple actions described therein to modify the existing equalization basin and sludge dewatering system. The Department did not receive a request to place the system, as modified by Construction Permit 20098-IW, into operation, and the construction permit has expired.
5. On January 1, 2019, the NPDES Permit was modified to transfer the Permit from the previous owner to New-Indy.
6. On September 27, 2019, New-Indy notified the Department of its intent to modify its production operations from bleached paper to unbleached paperboard. New-Indy implemented the operational process change beginning September 2020 and placed the WWTF back into operation during February 2021.
7. The Department has observed that the hardpiping condensate treatment system discharge location is not in accordance with the discharge location approved by Construction Permit 18449-IW. New-Indy asserts that, after it discovered this non-conformance by a previous owner with Construction Permit 18449-IW, it informed another Bureau within the Department of the need to change the discharge location in order to achieve compliance with a permit issued by the Department's Bureau of Air Quality. However, an appropriate

request for relocating the discharge has not been received or approved by the Department's Bureau of Water.

8. The Department performed an inspection of the New-Indy WWTF on March 15, 2021 and March 19, 2021. Photographs were taken to document the Department findings during the inspection. The WWTF received an unsatisfactory rating as a result of observations that included:

- a. The facility's manuals and plans had not been updated to reflect changes in process and treatment. The Operation and Maintenance (O&M) Manual was last updated in July 2010, the Best Management Practices (BMP) Manual was last updated in July 2014, and the Odor Abatement Plan was last updated in July 2010;
- b. There was a significant blanket of foam across the aeration basin;
- c. The equalization basin (EQ basin) was nearly full with accumulated solids;
- d. Excavators were observed in the aeration basin removing sludge and transporting it to sludge basin #4 without the sludge being dewatered;
- e. Modifications to the WWTF approved under Construction Permit 20098-IW were not fully constructed. Piping to convey sludge from the clarifier basin to the EQ basin had been constructed and was in operation without Department approval; and,
- f. Foul condensate was piped directly to the aeration basin.

In addition to the above items, the Department inspector also noted on the inspection report that New-Indy needed to communicate with the Department to ensure proper approvals are in place before any dredging and dewatering activities.

9. On April 9, 2021, the Department issued a letter to New-Indy regarding the operations of the WWTF that included the inspection report from the March 15 and 19, 2021 inspection.

10. On May 3, 4, 11, and 25, 2021, the Department collected field samples at several points of the process stream and of the discharge at the New-Indy WWTF. Samples were analyzed for pH, dissolved oxygen (DO), water temperature, the Permit's required parameters, and other additional parameters. Analysis of the samples indicated the treatment system was improperly operating under anaerobic conditions. However, all discharge monitoring reports reflected compliance with Permit effluent limits during this time period.
11. On June 17, 2021, the Department issued Letter of Approval LOA-005750 (LOA 1) to New-Indy authorizing a hydrogen peroxide and supplemental oxygen addition pilot study (Pilot Study). The Pilot Study was for the addition of hydrogen peroxide and supplemental oxygen to improve biological treatment in the Aerated Stabilization Basin (ASB) and hydrogen peroxide to the No. 1 Holding Pond to improve Dissolved Oxygen in the effluent prior to the Post-Aeration Basin. The LOA 1 stated: "Hydrogen peroxide is to be added to the ASB inlet ditch at the footbridge on the north side of color removal plant and to the No. 1 Holding Pond near the outlet to the Post-Aeration Basin...The hydrogen peroxide will be fed at each location by up to two adjustable speed chemical metering pumps mounted on a single skid. The metering system is to deliver a dosage between one and four tenths (1.4) and five (5) gallons per minute (gpm) of hydrogen peroxide to each location." The LOA 1 did not grant approval for hydrogen peroxide to be added directly to the ASB, a practice later observed by the Department on August 19, 2021.
12. On July 26, 2021, the Department issued a Notice of Alleged Violation/Notice of Enforcement Conference (NOAV/NOEC) to New-Indy via electronic mail, first class, and certified mail, serving as notification of an enforcement conference scheduled for August 17, 2021. The certified mail copy of the NOAV/NOEC was delivered on July 29, 2021.

New-Indy requested the enforcement conference be rescheduled. At New-Indy's request, the enforcement conference was rescheduled for September 30, 2021.

13. On August 19, 2021, the Department conducted a site visit at the New-Indy facility and observed that vegetated growth remained in the ASB, indicating that solids were at or near the surface. During the visit, Department staff also observed a tanker truck depositing hydrogen peroxide directly into the ASB.
14. On September 17, 2021, the Department issued Letter of Approval LOA-005751 (LOA 2) to New-Indy granting Department approval for modification of the previously approved hydrogen peroxide and supplemental oxygen addition Pilot Study. The modifications to the Pilot Study involved adding additional locations within the WWTF to add hydrogen peroxide (including directly into the ASB) and extending the expiration date of the Pilot Study approval to March 31, 2022.
15. On September 24, 2021, New-Indy submitted a letter to the Department summarizing the proposal of two projects targeted at reducing the total solid loads at the WWTF. The proposed projects consisted of New-Indy sluicing ash from the combination boilers at the WWTF to sludge basin 1 and transferring green liquor dregs and slaker grits resulting from the kraft pulp process to sludge basin 4. The letter sought further discussion so that New-Indy could pursue implementation of the proposed projects with the Department's input and approval. The Department met with New-Indy on October 5, 2021. The Department sent a letter on October 15, 2021, providing written comments on the September 24, 2021, letter and requesting a full technical proposal for Department review. New-Indy provided a response on February 2, 2022, and the Department subsequently responded to the New-Indy submittal on February 25, 2022 and March 1, 2022.

16. On September 30, 2021, the Department held an enforcement conference with New-Indy to discuss the matters presented in the NOAV/NOEC. Counsel for New-Indy stated the manuals and plans (O&M, BMP, and Odor Abatement Plan) for the facility were under revision and drafts were being exchanged with the Department for review and input. The parties discussed the expired construction permits. Department staff informed New-Indy that new construction permit applications depicting any modifications to the WWTF must be submitted and new Construction Permits issued before the Department can conduct inspections and issue approvals to operate. The parties also discussed removal of sludge from the EQ basin and the ASB and the possibility of a Consent Order. New-Indy representatives stated that sludge removal from the EQ basin was under way and would likely be completed within four (4) to six (6) months, and that ASB sludge removal is limited by the use of geotubes and may take a couple of years to complete, depending on weather.
17. On April 19, 2022, the Department and representatives of New-Indy met to discuss operations at the WWTF.
18. On May 2, 2022, New-Indy submitted a letter to the Department acknowledging the meeting held on April 19, 2022. The letter also included more specific responses to the Department letter dated February 25, 2022.
19. On June 22, 2022, the Department issued a letter to New-Indy providing comments on New-Indy's updated plan regarding the WWTF.

#### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact, the Department reaches the following Conclusions of Law:

1. New-Indy violated the Pollution Control Act, S.C. Code Ann. § 48-1-10, *et seq.*, and Water

Pollution Control Permits, S.C. Code Ann Regs. 61-9.122.1, *et seq.*, in that it failed to operate the WWTF in accordance with the Permit issued by the Department as follows:

- a. New-Indy violated Part II.E.1 of the Permit by not maintaining and operating the WWTF in good working order due to excessive solids and foam, anaerobic conditions, and the presence of excessive sludge accumulation in the ASB.
  - b. New-Indy violated Part V.D.1 of the Permit by transporting and storing sludge without properly dewatering it.
  - c. New-Indy violated Part II.E.3 of the Permit by not properly maintaining the O&M Manual.
  - d. New-Indy violated Part V.D.3.f of the Permit by not properly updating and maintaining the Odor Abatement Plan.
  - e. New-Indy violated Part V.E.5 of the Permit by not properly updating and maintaining its Best Management Practices plan.
2. New-Indy violated the Pollution Control Act, S.C. Code Ann. § 48-1-110 (a)(3) and Standards for Wastewater Facility Construction, S.C. Code Ann Regs. 61-67 in that it operated a WWTF that had been modified in a manner other than approved by the Department and prior to an Approval to Operate being issued by the Department.
  3. The Pollution Control Act, S.C. Code Ann. § 48-1-330, provides for a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day of violation for any person violating the Act or any rule, regulation, permit, permit condition, final determination, or Order of the Department.

**NOW, THEREFORE, IT IS ORDERED, CONSENTED TO AND AGREED**, pursuant to the Pollution Control Act, S.C. Code Ann. § 48-1-50 and § 48-1-100, that New-Indy Catawba, LLC shall:



1. Within forty-five (45) days of the execution date of this Order, submit to the Department administratively and technically complete plans, specifications, and approvable application(s) for permit(s) to construct the items associated with Construction Permit 18449-IW, Construction Permit 20098-IW, and any additional construction made to the WWTF including but not limited to the foul condensate hardpipe to the ASB, equalization basin, and sludge dewatering system (e.g., geotubes).
2. Within sixty (60) days of the date the Department issues any permit to construct a project associated with Item number 1 above, begin construction of the permitted project.
3. By the expiration date(s) of any relevant construction permit(s) of any permitted project(s) associated with Item number 2 above, but not to exceed three (3) years from the date of issuance of such construction permit(s) unless written acceptance of a longer timeframe has been issued by the Department, complete construction of the permitted project(s) and request Approval to Place into Operation from the Department's Midlands Environmental Affairs Lancaster Office.
4. Within one hundred twenty days (120) days of the execution of this Order, submit to the Department three (3) copies of a Preliminary Engineering Report (PER), developed by a licensed professional engineer registered in the State of South Carolina and competent in the field of sewage and industrial waste treatment. The PER must describe, in detail, the appropriate components or conditions necessary for the proper long-term function and management of the WWTF. The PER must also include a schedule of implementation with specific dates or timeframes for completion of the following:
  - (a) a determination of the total volume of sludge currently present in the ASB and the average daily loading rate of sludge being added into the ASB;
  - (b) Removal, refurbishment, replacement of, or other action necessary to address the

turbidity curtains present in the water column to be established per Item 4(d) below or that interferes with establishing such water column;

- (c) removal of sludge from the ASB at a rate that accomplishes an average monthly net decrease of the total volume of sludge contained in the ASB;
- (d) Removal of sludge from the ASB to establish a water column depth of not less than six (6) feet across the ASB, including the removal of vegetative islands to a depth of not less than six (6) feet, to be completed no later than December 31, 2026;
- (e) removal of legacy sludge in the EQ basin no later than June 30, 2023;
- (f) evaluation of the addition of parallel systems for the clarifier and the ASB and a recommended course of action; and,
- (g) evaluation of options for the reduction of total solids loading in the WWTF and any applicable schedule for implementation.

5. The PER will be evaluated by the Department and comments provided to New-Indy within thirty (30) days of receipt. New-Indy shall address the Department comments and, as applicable, provide a revised PER and a schedule of implementation approvable by the Department within thirty (30) days of receipt of the Department's comments. Upon Department approval, the schedule(s) and associated actions shall be incorporated into and become an enforceable part of this Order.

Regardless of when the Department approves the PER, New Indy must submit to the Department by December 31, 2026, certification that New Indy has properly completed the removal of sludge, vegetated islands, addressed the turbidity curtain, and has established a water column of no less than six (6) feet within the ASB. Additionally, on or before June 30, 2023, New Indy must submit to the Department certification that New Indy has properly completed the removal of legacy sludge from the EQ basin by June 30, 2023.

6. On or before August 1, 2022, submit to the Department certification that New-Indy has finalized revisions and updated its O&M Manual to reflect current and appropriate guidelines for unbleached paperboard operations. The manual should be continuously updated and maintained, in accordance with accepted industry standards, to reflect the operations of the facility and, until this Order is terminated, any proposed revisions to the manual shall be submitted to the Department. Until this Order is terminated, New-Indy must also utilize a qualified person or team to perform monthly inspections of the facility to assess and ensure compliance with the O&M Manual and submit to the Department a monthly summary of the inspections and compliance status, which shall include the following:
  - (a) an executive summary of the inspection results.
  - (b) a list of deficiencies noted; and,
  - (c) photographs and drone footage, including photographs, orthophotos or video, to clearly document activities undertaken pursuant to and demonstrating compliance with the O&M Manual.
7. On or before August 1, 2022, submit to the Department certification that New-Indy has finalized revisions and updated its BMP Manual to reflect current and appropriate guidelines for unbleached paperboard operations. The manual should be continuously updated and maintained, in accordance with accepted industry standards, to reflect the operations of the facility and, until this Order is terminated, any proposed revisions to the manual and shall be submitted to the Department. Until this Order is terminated, New-Indy must also utilize a qualified person or team to perform monthly inspections of the facility to assess and ensure compliance with the BMP Manual and submit to the Department a monthly summary of the inspections and compliance status, which shall include the

following:

(a) an executive summary of the inspection results;

(b) a list of deficiencies noted; and,

(c) photographs and drone footage, including photographs, orthophotos or video, to clearly document activities undertaken pursuant to and demonstrating compliance with the BMP Manual.

8. On or before August 1, 2022, submit to the Department certification that New-Indy has finalized revisions and updated its Odor Abatement Plan to reflect current and appropriate guidelines for unbleached paperboard operations. The plan should be continuously updated and maintained, in accordance with accepted industry standards, to reflect the operations of the facility and, until this Order is terminated, any proposed revisions to the plan and shall be submitted to the Department. Until this Order is terminated, New-Indy must also utilize a qualified person or team to perform monthly inspections of the facility to assess and ensure compliance with the Odor Abatement Plan and submit to the Department a monthly summary of the inspections and compliance status, which shall include the following:

(a) an executive summary of the inspection results;

(b) a list of deficiencies noted; and,

(c) photographs and drone footage, including photographs, orthophotos or video, to clearly document activities undertaken pursuant to and demonstrating compliance with the Odor Abatement Plan.

9. This Consent Order shall terminate upon New-Indy: obtaining approval to operate all upgrades subject of Item 1 above and completing all necessary activities to fulfill conditions and timeframes subject of Items 4 and 5 above; and fulfilling all other

requirements detailed in this Consent Order (e.g., submitting appropriate items associated with O&M Manuals, BMP Manuals, and Odor Abatement Plans, payment of assessed penalties, etc.). The Department will notify New-Indy, in writing, of termination of this Order.

10. Within thirty (30) days of the execution date of this Order, pay to the Department, a civil penalty in the amount of one hundred twenty-nine thousand three hundred sixty dollars (\$129,360.00).

**PURSUANT TO THIS ORDER**, communications regarding this Order and its requirements, including civil penalty payments, shall be addressed as follows:

Adam Cannon  
SCDHEC, Bureau of Water - WP Enforcement Section  
2600 Bull Street  
Columbia, South Carolina 29201

The Order number should be included on all checks remitted as payment of the civil penalty.

**IT IS FURTHER UNDERSTOOD AND AGREED** that nothing in this Order is intended to or should be construed to interfere with the current and ongoing remediation investigation and obligations pursuant to the Voluntary Cleanup Contract entered between DHEC and New-Indy, titled Voluntary Cleanup Oversight Contract, 18-6120-VOC, in the matter of Bowater-Catawba Pulp and Paper Mill, York County and New-Indy Catawba LLC.

**IT IS FURTHER UNDERSTOOD AND AGREED** that if any event occurs which causes or may cause a delay in meeting any of the above-scheduled dates for completion of any specified activity, New-Indy shall notify the Department in writing at least thirty (30) days before the scheduled date, if practicable, as determined by the Department. New-Indy shall describe in detail the anticipated length of the delay, the precise cause or causes of delay, if ascertainable, the

measures taken or to be taken to prevent or minimize the delay, and the timetable by which New-Indy propose that those measures will be implemented.

The Department shall provide written notice to New-Indy as soon as practicable that a specific extension of time has been granted or that no extension has been granted. An extension shall be granted for any scheduled activity delayed by an event of *force majeure*, which shall mean any event arising from causes beyond the control of New-Indy that causes a delay in or prevents the performance of any of the conditions under this Order, including, but not limited to: a) acts of God, fire, war, insurrection, civil disturbance, explosion; b) adverse weather conditions that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities; c) restraint by court order or order of public authority; d) inability to obtain, after exercise of reasonable diligence and timely submittal of all applicable applications, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority; and e) delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence by New-Indy.

Events which are not *force majeure* include by example, but are not limited to, unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure by New-Indy to exercise due diligence in obtaining governmental permits or performing any other requirement of this Order or any procedure necessary to provide performance pursuant to the provisions of this Consent Order. Any extension shall be granted at the sole discretion of the Department, incorporated by reference as an enforceable part of this Order, and, thereafter, be referred to as an attachment to the Consent Order.

**IT IS FURTHER ORDERED AND AGREED** that failure to comply with any provision of this Order shall be grounds for further enforcement action pursuant to the Pollution Control Act, S.C. Code Ann. § 48-1-330 (2008), to include the assessment of additional civil penalties.

**IT IS FURTHER ORDERED AND AGREED** that this Consent Order governs only the civil liability to the Department for civil sanctions arising from the matters set forth herein and constitutes the entire agreement between the Department and New-Indy, with respect to the resolution and settlement of these civil matters. The parties are not relying upon any representations, promises, understandings or agreements except as expressly set forth within this Order.

**THE PARTIES UNDERSTAND** that the “execution date” of the Order is the date the Order is signed by the Director of Environmental Affairs.

**[Signature Page Follows]**

FOR THE SOUTH CAROLINA DEPARTMENT  
OF HEALTH AND ENVIRONMENTAL CONTROL

  
Myra C. Reece  
Director of Environmental Affairs

Date: 6-29-2022


  
Jennifer R. Hughes, Bureau Chief  
Bureau of Water

Date: 6-29-2022

  
Ann Clark, Assistant Chief  
Bureau of Water

Date: 06/29/2022


Reviewed By:

  
Attorney  
Office of General Counsel

Date: 6-29-2022

WE CONSENT:

NEW-INDY CATAWBA LLC

  
Daniel Mallett, Environmental Manager

Date: 6/24/22

  
Tony Hobson, VP of Manufacturing

Date: 6/24/22