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

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

CONSENT DECREE

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Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed a complaint in this action on July 12, 2021 alleging that emissions of hydrogen sulfide (H_2S) from Defendant's Facility were causing an imminent and substantial endangerment to public health or welfare or the environment, and that Defendant should be subject to injunctive relief to abate the endangerment under Section 303 of the Clean Air Act ("Act"), 42 U.S.C. § 7603.

The Complaint against Defendant alleges that Defendant manufactures unbleached pulp and unbleached kraft linerboard related products at its Facility located in Catawba, York County, South Carolina, and that during 2021 the Facility was emitting high levels of H_2S and thousands of citizens complained. Thus, on May 13, 2021, EPA issued a Clean Air Act Emergency Order ("EPA Order") (Exhibit 1 to the complaint). The EPA Order required Defendant to undertake various actions including ambient air monitoring for the presence of certain air contaminants, and to not emit H_2S above certain specified thresholds.

On July 13, 2021, this Court approved a judicial "Consent Order" that required Defendant to comply with requirements specified in the Consent Order through October 31, 2021. On October 29, 2021, the Court extended the October date to December 30, 2021.

Whereas Defendant has taken a number of corrective actions since EPA issued the EPA Order on May 13, 2021, and the fence line monitors have not detected any exceedances of the fence line concentration limits since late June 2021, except for a short period in early September 2021. The September exceedances were caused by a spill in the black liquor storage area, which is the basis for the secondary containment requirement in Paragraph V. of Appendix A.

There is no applicable federal ambient air quality standard for H_2S. The EPA and the Agency for Toxic Substances and Disease Registry ("ATSDR") have established screening

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levels intended to protect human health. The EPA Acute Exposure Guideline Level 1 (AEGL 1) is currently set at 600 parts per billion (ppb) based on a study of 30-minute exposure to H_2S. AEGLs are used by emergency planners and responders worldwide as guidance in dealing with rare, usually accidental, releases of chemicals into the air. AEGLs are expressed as specific concentrations of airborne chemicals at which health effects may occur. They are designed to protect the elderly and children, and other individuals who may be susceptible.

The ATSDR's minimal risk level ("MRL") for H_2S is currently set at 70 ppb based on the same study, for longer term exposures (1 day to 14 days). According to ATSDR, MRLs represent a level at or below which adverse health effects are unlikely to occur and that it should not be presumed that occasional excursions above that level will necessarily lead to a manifestation of toxicity, although the risk of experiencing adverse health effects will be expected to increase with increasing frequency and magnitude of excursions above that level. Accordingly, the MRLs are intended as a screening tool to evaluate whether the emission controls at the Facility are sufficient to adequately protect human health and welfare and the environment, and are not intended to define clean up or action levels.

Defendant has entered into this Consent Decree without agreeing to, or admitting the validity of, the MRL established by the ATSDR with respect to H_2S, and whether such MRL is accepted by the scientific community as the appropriate level at or below which adverse health effects of exposure to H_2S are unlikely to occur.

Defendant does not admit any liability to the United States or others arising out of the transactions or occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between

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the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as specifically provided in Section I below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and 42 U.S.C. § 7603, and over the Parties.

2. Venue lies in this District pursuant to 42 U.S.C. § 7603 and 28 U.S.C. §§ 1391 and 1395(a), because Defendant conducts business in this judicial district and the Facility is located in this District. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendant consents to the Court's jurisdiction over this Consent Decree and any such action and over Defendant and consents to venue in this judicial district.

3. For purposes of this Consent Decree and for no other purposes, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to 42 U.S.C. § 7603.

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Consent Decree are implemented. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall

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simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA and DOJ, in accordance with Section XIII (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree.

6. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree.

7. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

"Complaint" means the complaint filed by the United States in this action;

"Consent Decree" means this Consent Decree and any appendices attached hereto;

"Consent Order" means the judicial order entered in this civil action as docket number 6;

"Day" means a calendar day unless expressly stated to be a business day. In computing any period of time for a deadline under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period runs until the close of business of the next business day;

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"Defendant means New-Indy Catawba LLC;

"DOJ" means the United States Department of Justice and any of its successor departments or agencies;

"EPA" means the United States Environmental Protection Agency and any of its successor departments or agencies;

"EPA Order" means the May 13, 2021, EPA Clean Air Act Emergency Order;

"Effective Date" means the definition provided in Section XIV.

"Facility" means Defendant's paper mill located in Catawba, South Carolina;

"Fence line concentration limit" means the fence line concentration limits established in Paragraph II.c. of Appendix A.

"Paragraph" means a portion of this Consent Decree identified by an Arabic numeral;

"Parties" means the United States and Defendant;

"Section" means a portion of this Consent Decree identified by a Roman numeral;

"United States" means the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

9. Within 30 Days after the Effective Date, Defendant shall pay the sum of $1,100,000 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

10. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the DOJ account, in accordance with instructions provided to Defendant by the United States Attorney's Office for the District of South Carolina (USAO-SC) after the Effective Date. The payment instructions provided by the USAO-SC will include a Consolidated Debt

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Collection System ("CDCS") number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The USAO-SC will provide the payment instructions to:

Scott Conant
Chief Financial Officer
New Indy Catawba LLC
3500 Porsche Way, Suite 150
Ontario, CA 91764
Scott.conant@new-indycb.com

on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ and EPA in accordance with Section XIII (Notices).

11. At the time of payment, Defendant shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to DOJ via email or regular mail in accordance with Section XIII; and (iii) to EPA in accordance with Section XIII. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. New Indy Catawba LLC* and shall reference the civil action number, CDCS Number and DOJ case number 90-5-2-1-12471.

12. Defendant shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

13. Defendant shall comply with applicable requirements of the CAA with respect to the Facility.

14. Defendant shall comply with, fund, and perform all requirements of Appendix A.

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15. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA will in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

16. If the submission is approved pursuant to Paragraph 15(a), Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 15(b) or (c), Defendant shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to Defendant's right to dispute only the disapproved portions, under Section IX (Dispute Resolution).

17. If the submission is disapproved in whole or in part pursuant to Paragraph 15(c) or (d), Defendant shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendant shall proceed in accordance with the preceding Paragraph.

18. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendant to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself/themselves correct any deficiencies subject to Defendant's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in this Consent Decree.

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19. If Defendant elects to invoke Dispute Resolution as set forth in Paragraphs 16 or 18, Defendant shall do so by sending a Notice of Dispute in accordance with Paragraph 51 within 30 Days (or such other time as the Parties agree to in writing) after receipt of the applicable decision.

20. Any stipulated penalties applicable to the original submission, as provided in Section VII, accrue during the 45 Day period or such other time as the Parties agreed to in writing to correct all deficiencies and resubmit the plan, report, or other item, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendant's obligations under this Consent Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

21. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section VIII (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

22. In order to ensure that the provisions in Appendix A survive the termination of this Order, within 120 days of the Effective Date, Defendant shall submit to the South Carolina Department of Health and Environmental Control ("DHEC"), with a copy to EPA, a complete permit application that complies with Paragraph VI. of Appendix A for a federally enforceable

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non-Title V permit ("Permit"). Upon issuance of the Permit required in the preceding sentence, Defendant shall promptly submit to DHEC, with a copy to EPA, a complete application to incorporate the requirements of the Permit into the Title V operating permit of the Facility. Such application for a Title V permit shall expressly incorporate the requirements of the Permit and any application for any subsequent renewal or modification thereof shall specify that such provisions shall remain applicable unless superseded by future, federally approved requirements pursuant to the CAA and shall not be revised without the express written approval of EPA. Defendant may propose alternative methods to satisfy the Permit requirements, but Defendant shall not challenge the inclusion of the Permit requirements in any Title V permit unless such provisions are superseded by future, federally approved requirements pursuant to the CAA or such provision is not consistent with Appendix A. Following submission of the application to DHEC, Defendant shall submit to DHEC any additional information requested by DHEC pursuant to its permitting authority and any subsequent revised permit applications submitted to DHEC and shall submit copies of such information and/or applications to EPA within 21 days of submittal to DHEC under Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1).

VI. REPORTING REQUIREMENTS

23. Defendant shall submit the following reports to EPA and DOJ at the addresses set forth in Section XIII (Notices):

a. By July 31st and January 31st of each year after the lodging of this Consent Decree, until termination of this Consent Decree pursuant to Section XVII, Defendant shall submit via CDX a semi-annual report for the preceding six months that includes: a summary of the actions taken in accordance with Appendix A and a summary of any problems encountered or anticipated, together with implemented or proposed solutions.

The semi-annual report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation.

b. If Defendant violates, or has reason to believe that it will violate, any requirement of this Consent Decree, except for a violation of the fence line concentration limits, which shall be reported in accordance with Appendix A, Defendant shall notify EPA of such violation and its likely duration, in writing, within ten business days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section VIII (Force Majeure).

24. Whenever any violation of this Consent Decree or any other event affecting Defendant's performance under this Consent Decree may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA by telephone by calling Kevin Taylor at (404) 562-9134 or Andrew Mills at (404) 562-9030, or by email as indicated in Section XIII as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

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25. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

> I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

26. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

27. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

28. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

29. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

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30. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, the following stipulated penalties shall accrue per Day for each Day that the payment is late:

$7,500	1st through 14th Day
$10,000	15th through 30th Day
$15,000	31st Day and beyond

31. Fence Line Concentration Limits. The following stipulated penalties shall accrue per Day, and any consecutive Days thereafter, for any exceedance of the fence line concentration limits established in Paragraph II.c. of Appendix A. If both the 600 pbb and 70 ppb concentration limits are exceeded on the same Day, the greater penalty applies:

Penalty per Day with an exceedance of the 30-minute average:	Period of Noncompliance
$7,500	Days 1-2
$10,000	Day 3
$15,000	Day 4+

Penalty per Day with an exceedance of the 7-day average:	Period of Noncompliance
$7,500	Days 1-7
$10,000	Days 8-14
$15,000	Days 15+

32. Compliance Milestones: The following stipulated penalties shall accrue per violation per Day for each violation of any requirement identified in Appendix A, but not subject to Paragraphs 30 or 31 above or Paragraphs 33, 34 or 35 below:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th Day
$1,500	15th through 30th Day
$2,500	31st Day and beyond

33. Permits. The following stipulated penalties shall accrue per violation per Day for each violation of any requirement in Paragraph 22 (Permits) of this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th Day
$1,500	15th through 30th Day
$2,000	31st Day and beyond

34. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VI:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th Day
$1,500	15th through 30th Day
$2,500	31st Day and beyond

35. Transfer of Ownership. If Defendant fails to: (a) provide a copy of this Consent Decree to any proposed transferee; (b) provide written notice to the United States at least 30 Days prior to any transfer of any portion of the Facility; or (c) provide a copy of the proposed written agreement with the transferee as required by Paragraph 5, Defendant shall pay a stipulated penalty of $7,500 per occurrence.

36. Other than the violations addressed by Paragraph 30 (Late Payment of Civil Penalty), Paragraph 31 (Fence Line Concentration Limits), Paragraph 32 (Compliance Milestones), Paragraph 33 (Permits), Paragraph 34 (Reporting Requirements), and Paragraph 35 (Transfer of Ownership) following a violation and upon written demand as set forth in Paragraph 38, the stipulated penalty per violation per Day for noncompliance shall be:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th Day	$1,000
15th through 30th Day	$2,500
31st Day and beyond	$4,500

37. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue

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to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

38. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

39. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

40. Stipulated penalties shall continue to accrue as provided in Paragraph 36, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

41. Defendant shall pay stipulated penalties owing to the United States in the manner set forth in Paragraph 10 and with the confirmation notices required by Paragraph 11, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

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42. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

43. The payment of penalties and interest, if any, shall not alter in any way Defendant's obligation to complete the performance of the requirements of this Consent Decree.

44. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendant's violation of this Consent Decree or applicable law, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

VIII. FORCE MAJEURE

45. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the

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delay and any adverse effects of the delay are minimized. "Force majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

46. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice by telephone by calling Kevin Taylor at (404) 562-9134 or Andrew Mills at (404) 562-9030, or by email to as indicated in Section XIII, within 72 hours of when Defendant first knew that the event might cause a delay. Within seven Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

47. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force

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majeure event may, but will not necessarily, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

48. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

49. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 45 and 46. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

50. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Consent Decree.

51. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends DOJ and EPA a written Notice of Dispute.

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Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

52. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending DOJ and EPA a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

53. The United States will send Defendant its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position is binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

54. Judicial Dispute Resolution. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States a motion requesting judicial resolution of the dispute. The motion must be filed within 25 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data,

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analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

55. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

56. Standard of Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 52 Defendant shall have the burden of demonstrating that its interpretation should prevail under applicable principles of law or that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law. Neither party may raise new issues that were not raised, but could have been raised, during informal dispute resolution.

57. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 40. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

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X. INFORMATION COLLECTION AND RETENTION

58. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants relevant to compliance with this Consent Decree;

d. obtain documentary evidence, including photographs and similar data relevant to compliance with this Consent Decree; and

e. assess Defendant's compliance with this Consent Decree.

59. Upon request, Defendant shall provide EPA or its authorized representatives splits of any samples taken by Defendant pursuant to this Consent Decree. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

60. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or

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procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

61. At least 90 Days prior to the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States of its intent to dispose of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

62. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

63. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain

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documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

64. This Consent Decree resolves the civil claim of the United States alleged in the Complaint filed in this action through the date of lodging, and also resolves the United States' claims for a civil penalty for any violations of the EPA Order and/or the Consent Order from May 13, 2021 through the date of lodging of this Consent Decree.

65. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 64. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

66. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 64.

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67. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7601, et seq., or with any other provisions of federal, State, or local laws, regulations, or permits.

68. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

69. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party.

XII. COSTS

70. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIII. NOTICES

71. Unless otherwise specified in this Consent Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in

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writing and sent by email, mail, or through the CDX electronic system (with a preference for email as to DOJ and a preference for the CDX electronic system as to EPA), addressed as follows:

As to DOJ by email (preferred):	eescdcopy.enrd@usdoj.gov Re: DJ # 90-5-2-1-12471
As to DOJ by mail:	EES Case Management Unit Environment and Natural Resources Division U.S. Department of Justice P.O. Box 7611 Washington, D.C. 20044-7611 Re: DJ #
As to EPA by CDX (preferred):	https://cdx.epa.gov/epa_home.asp
As to EPA by email:	taylor.kevin@epa.gov and mills.andrew@epa.gov
As to EPA by mail:	Kevin Taylor, Environmental Engineer Air Enforcement Branch Enforcement and Compliance Assurance Division U.S. Environmental Protection Agency Region 4 61 Forsyth Street, S.W. Atlanta, GA 30303 And Andrew Mills, Environmental Engineer Air Enforcement Branch Enforcement and Compliance Assurance Division U.S. Environmental Protection Agency Region 4 61 Forsyth Street, S.W. Atlanta, GA 30303

As to Defendant:	Scott Conant, Chief Financial Officer New-Indy Catawba LLC 3500 Porsche Way, #150 Ontario, CA 91764 scott.conant@new-indycb.com
With copy to:	Stephanie A.H. Blackman, General Counsel New-Indy Catawba LLC 10 West Carmel Drive, Suite 300 Carmel, Indiana 46032 sblackman@schwarzpartners.com

72. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

73. Notices submitted pursuant to this Section shall be deemed submitted upon mailing or transmission by email, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

74. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. RETENTION OF JURISDICTION

75. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Consent Decree or entering orders modifying this Consent Decree, pursuant to Sections IX and XVI, or effectuating or enforcing compliance with the terms of this Consent Decree.

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XVI. MODIFICATION

76. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

77. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 56, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

78. After Defendant has completed the requirements of Section V (Compliance Requirements), has operated for at least three (3) years without exceeding the fence line concentration limits identified in Appendix A, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

79. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

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80. If the United States does not agree that the Consent Decree may be terminated, Defendant may invoke Dispute Resolution under Section IX. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until 100 Days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

81. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Decree.

XIX. SIGNATORIES/SERVICE

82. Each undersigned representative of Defendant and the Department of Justice certifies that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party they represent to this document.

83. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

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Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XX. INTEGRATION

84. This Consent Decree, including deliverables that are subsequently approved pursuant to this Consent Decree, constitutes the entire agreement among the Parties regarding the subject matter of the Consent Decree and supersedes all prior representations, agreements and understandings, whether oral or written, concerning the subject matter of the subject matter of the Consent Decree herein.

XXI. FINAL JUDGMENT

85. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

APPENDICES

86. The following Appendices are attached to and part of this Consent Decree:

"Appendix A" Compliance Requirements.

"Appendix B" Fence Line Monitor Locations

"Appendix C" Wastewater Treatment System Diagram

Dated and entered this __ day of _____, 20__

_____
UNITED STATES DISTRICT JUDGE

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FOR THE UNITED STATES OF AMERICA:

M. RHETT DEHART
ACTING UNITED STATES ATTORNEY

BY: /s/_____
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FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

_____

Lawrence E. Starfield
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

_____

Leif Palmer
Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 4

FOR NEW-INDY CATAWBA LLC:

12.15.2021
Date

John W. Schwarz
Authorized Signatory