



September 10, 2021

First Class, Electronic
& Certified Mail – 9214 8969 0099 9790 1420 2306 47

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

Re: **REVISED** - Notice of Alleged Violation/Notice of Enforcement Conference
New-Indy Catawba Wastewater Treatment Facility
NPDES Permit SC0001015
York County

Dear Mr. Mallett:

Enclosed is a Notice of Enforcement Conference issued by the S.C. Department of Health and Environmental Control for the reasons explained therein. This informal conference will provide you with the opportunity to discuss the alleged violations and to present any extenuating information that may mitigate the gravity of the violations.

Enclosed is an informational sheet entitled "An Overview of the Administrative Enforcement Process." This guide has been designed to answer the questions most often asked about the enforcement processes.

This correspondence is being sent to you by first class mail, electronic and certified mail to better ensure delivery. If you have any questions about the notice, you may call me at (803) 898-1647. I will be glad to assist you.

Sincerely,

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

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

cc: Renee Shealy, SCDHEC, Bureau Chief, Env. Health Services
Jacquelyn Dickman, SCDHEC, Office of General Counsel
Myra Reece, SCDHEC, Director, Environmental Affairs
Pete Cleveland, New-Indy Catawba LLC, 5300 Cureton Ferry Rd., Catawba SC 29704
Tony Hobson, New-Indy Catawba LLC, VP of Manufacturing, via email, tony.hobson@new-indycb.com
Corporation Service Company, 508 Meeting Street, West Columbia SC 29169
SCDHEC Main File

South Carolina Department of Health & Environmental Control
Office of Environmental Quality Control
August 2016

An Overview of the Administrative Enforcement Process

This document is provided as guidance and should not be relied upon as legal advice.

Introduction

This information sheet has been prepared to help you better understand the SC Department of Health and Environmental Control's (Department) enforcement process. Since you received a Notice of Alleged Violation/Notice of Enforcement Conference (NOAV/NOEC), we want you to adequately prepare to meet with staff to resolve this matter of regulatory concern. It is the Department's foremost goal is to assist you in maintaining full compliance. Enforcement is one tool to help ensure that obligations to safeguard the environment are met through strict adherence to regulations and environmental permit requirements, terms, and conditions are fulfilled. The following are answers to questions most frequently asked by people involved in this process.

What is a Notice of Alleged Violation/Notice of Enforcement Conference (NOAV/NOEC)?

The NOAV/NOEC is the first step in the administrative enforcement process. When it is discovered that an environmental law or regulation may have been violated, a NOAV/NOEC may be issued. The notice outlines the Office of Environmental Quality Control's (EQC) findings, identifies the law, regulation, or permit requirement EQC believes was violated, and invites the responsible party (Respondent) to attend an enforcement conference. The Respondent may accept EQC's findings and elect not to attend a conference, in which case an order is drafted, if appropriate, for the Respondent's review and signature.

Why is an enforcement action necessary?

There are different factors considered by EQC staff when deciding to initiate an enforcement action. Most fall within the following: 1) the specific type of alleged violation identified may require EQC to take a formal enforcement action, 2) the alleged violation is serious or a threat to public health or the

environment, or 3) the alleged violation has not been corrected within a reasonable period of time.

What is an enforcement conference and what can I do to prepare for it?

The enforcement conference is a voluntary, informal meeting between EQC staff and the Respondent. The NOAV/NOEC you received contains a summary of known issues of regulatory concern and provides the basis for discussion. It is important to be fully prepared to present any information that will enable staff to make a fair and sound decision concerning the allegations. You should also be prepared to report any corrective action(s) taken or planned.

Who should I bring to the conference and who from EQC will be present?

People who are most familiar with the issues and who have decision-making authority on behalf of the Respondent should plan to attend. You may have legal and/or technical representation if you choose. An enforcement project manager, regional staff, technical support, and other compliance personnel involved with the matter will represent the Department. A staff attorney representing EQC is generally not in attendance. However, if you choose to have legal counsel present, you are asked to notify the Department at least five days prior to the conference and the Department may decide to have agency legal counsel attend. Also, if the Department determines it is necessary for legal counsel to be present you will be notified at least five days prior to the conference. The enforcement conference is closed to the public and media per a DHEC Board approved policy.

What can I expect to happen at the enforcement conference and what may result?

As the Respondent, you can expect a fair evaluation of the circumstances surrounding the issues of concern. Staff will ask questions and determine a reasonable response based upon consideration of the facts. After the conference, staff will review the information gathered and decide on one of four possible outcomes: 1) the Department determines that the event is not a violation and is dismissed; 2) the Department determines the violation is properly alleged, but there is justification to resolve the matter without the issuance of an order; 3) the Department determines the violation is properly alleged, and you are given the opportunity to resolve the issue by entering into a Consent Order with the Department; or 4) the Department determines the violation is properly alleged and an Administrative (unilateral) Order is issued.

What is a consent order?

A Consent Order is a legally binding, enforceable document, with terms and conditions agreed upon by you and the Department. In signing a Consent Order, you waive your right to an administrative appeal, but the additional time and costs associated with an administrative hearing and other potential court-related costs are avoided.

What is the purpose of a civil penalty; how is the penalty amount determined; and who gets the money?

Civil penalties are issued for the violation of federal and state environmental laws. The decision to assess a penalty depends upon the type of violation alleged and other factors. Among other factors, civil penalties are intended to deter future noncompliance and eliminate any economic incentive for noncompliance. The penalty is calculated in accordance with the Department's Uniform Enforcement Policy. The amount of the civil penalty is designed to reflect the frequency, duration, and severity of the violation(s). Some other factors may be considered, such as compliance history, degree of negligence or willfulness, and economic benefit

gained through noncompliance. The money collected is either sent to the State's General Fund, or a portion to the county in which the violation occurred, or otherwise dispersed as required by state law.

If I have corrected the noted violations, why would a civil penalty still be assessed?

To promote fairness and consistency within the administrative enforcement process, civil penalties are typically assessed for certain violations. However, if you demonstrate good faith efforts to promptly correct the alleged violation, staff will favorably consider these actions when calculating any penalty. Other factors that may affect the penalty amount include measures taken to prevent recurrence and other mitigating factors.

Why should I attempt to resolve the enforcement action with a consent order?

There are often significant savings in time and money when the parties in an enforcement action can reach an agreed upon resolution. If, however, an agreement to the terms, conditions and/or any civil penalty proposed in a Consent Order cannot be reached, the Department may issue an Administrative Order (unilateral) without your consent. The Administrative Order would include findings of fact, conclusions of law, and contain specific requirements addressing the violation(s) and the civil penalty may be higher based on factors under consideration.

If an agreed upon resolution is not reached and an order is issued without my consent, what are my options?

A Respondent may seek further review as set forth in the Notice of Appeal procedure, which is on the Department's Website at:
http://www.scdhec.gov/environment/baq/docs/DepartmentDecisions/Notice_of_Appeal_Procedure.pdf
South Carolina Department of Health and Environmental Control.



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

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

NOTICE OF ALLEGED VIOLATION/NOTICE OF ENFORCEMENT CONFERENCE

New-Indy Catawba, LLC (New-Indy) is hereby notified that an enforcement conference has been scheduled for Thursday, September 30, 2021, at 1:00 P.M., via Microsoft Teams. An invitation will be sent via email with a link to the conference. Representatives of New-Indy have the opportunity to be present at the conference to discuss the violations of the Pollution Control Act and Water Pollution Control Permits as cited herein.

Representatives of New-Indy may be accompanied at the conference by legal and/or technical counsel. The possibility of a Consent Order may be discussed.

This Notice is based upon the following findings of the South Carolina Department of Health and Environmental Control:

1. New-Indy owns and is responsible for the proper operation and maintenance of a wastewater treatment facility (WWTF) located on Cureton Ferry Road in Catawba, York County, South Carolina. The WWTF serves New-Indy's market pulp and paper manufacturing operation.
2. The South Carolina Department of Health and Environmental Control (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 submittal of a timely permit renewal application and permit coverage was administratively continued. The permit renewal application is under Department review.
3. On November 8, 1999, the Department issued Construction Permit 18449- IW to a previous owner of the NPDES Permit. Construction Permit 18449-IW granted Department approval for the construction of a hardpiping condensate treatment system. The system was 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 of the NPDES Permit. Construction Permit 20098-IW granted Department approval of the project, consisting of multiple modifications described therein, and required that an Approval to Place in Operation for the project must be obtained from the Department by the expiration date of April 25, 2020. To date, the Department has not issued any Approvals to Operate associated with Construction Permit 20098-IW.
 5. On January 1, 2019, the NPDES Permit was modified to reflect permit coverage had been transferred from a previous owner to New-Indy.
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6. On September 27, 2019, a contract engineering firm, on the behalf of New-Indy, submitted to the Department a request for the Permit to be modified as part of the permit renewal process. The request indicated New-Indy intended to modify its production operations from bleached paper to unbleached paperboard, and such operational conversion would be completed during 2020. The Department did not issue approval of the modification request. The request also included Environmental Protection Agency (EPA) Form 3510-2C that indicated the concentration of total zinc in the effluent stream to be twelve hundredths milligrams per liter (0.12 mg/L).
 7. During September 2020, New-Indy initiated the operational process change, switching from manufacturing bleached paper to unbleached paperboard. The process change was completed and the WWTF resumed operation in February 2021.
 8. Department staff performed an inspection of the New-Indy WWTF on March 15, 2021 and March 19, 2021. Photographs were taken to document 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 aeration basin removing sludge and being transported to sludge basin #4 without 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 is piped directly to the aeration basin.

In addition to the above items, the Department inspector also noted on the inspection report that certain acknowledgements needed to be made to the Department before any planned dredging and dewatering activities begin.

- 9. On April 9, 2021, Department staff issued a letter to New-Indy regarding the operations of their facility that included the inspection report from the March 15 and 19, 2021 inspection.
- 10. On May 3, 4, 11, and 25, 2021, Department staff collected field samples at several points of the process stream and of the discharge at the New-Indy WWTF. Samples were collected for pH, dissolved oxygen (DO), water temperature, as well as for the WWTF's permit required parameters, and additional parameters. Analysis of the samples indicated that the treatment system was operating under anaerobic conditions and did not appear to be providing full treatment. Laboratory analysis of the samples determined the concentration of total zinc in the effluent to be sixty-seven hundredths milligrams per liter (0.67 mg/L). New-Indy's NPDES Permit requires that certain notification be made if the permittee knows, or has reason to believe, that that any activity has occurred or will occur which would result in the discharge exceeding five (5) times the maximum concentration value reported for that pollutant in the permit application.
- 11. In a letter to the Department dated April 22, 2021, New-Indy responded to the Department inspection conducted on March 15 and 19, 2021. In the response, New-Indy stated its plans and manuals were currently under revision, and it had contracted with an engineering firm to update the documents once the operation process change was fully complete, expected sometime around July 30, 2021. New-Indy also asserted that the Department was aware of the construction modifications associated with the construction permit and disagreed that it was operating such modifications without approval. New-Indy further asserted that sludge handling practices were proper and that an agreement with the Department had previously been reached for transporting thick sludge, so that adding water to the sludge prior to it being pumped into Geotubes could be avoided.
- 12. On June 17, 2021, the Department issued Letter of Approval LOA-005750 (LOA) to New-Indy granting Department approval for 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 the addition of hydrogen peroxide to the No. 1 Holding Pond to improve Dissolved Oxygen in the effluent prior to the Post-Aeration Basin. The LOA description of the hydrogen peroxide addition included, but was not limited to, "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." However, the LOA did not grant approval for hydrogen peroxide to be added directly to the ASB.

13. On August 19, 2021, Department staff conducted a visit at the New-Indy facility. It was noted that the contractors removing solids from the ASB had reportedly concluded their work, but vegetated islands of accumulated sludge remained in the ASB. Furthermore, the facility staff indicated that the vegetated islands would not be removed and that a profile was conducted of the ASB which found the average sludge depth to be eighteen (18) feet. The total depth of the ASB is twenty (20) feet. During the visit Department staff also noted that a tanker truck was depositing hydrogen peroxide directly into the ASB. To this, facility staff explained to the Department that when tankers arrive with hydrogen peroxide shipments and the permanent tanks are too full to accept the product, the tankers empty directly into the ASB.

From the above findings, the Department alleges that New-Indy Catawba, LLC violated the Pollution Control Act and Water Pollution Control Permits as follows:

New-Indy violated the Pollution Control Act, S.C. Code Ann. § 48-1-110 (d) (2008 & Supp. 2018) and Water Pollution Control Permits, S.C. Code Ann Regs. 61-9.122.41 (2011) in that it failed to operate the WWTF in accordance with a permit issued by the Department as follows:

National Pollutant Discharge Elimination System Permit Number SC0001015, Part II.E.1, the New-Indy WWTF appeared to be improperly operated due to excessive solids and foam present in the WWTF, and the New-Indy WWTF did not appear to be in good working order as indicated by anaerobic conditions revealed during Department analysis and the presence of sludge accumulation in the Aerated Stabilization Basin to an extent causing significant reduction of its volume and allowing the formation of vegetated islands.

National Pollutant Discharge Elimination System Permit Number SC0001015, Part V.D.1, New-Indy transported and stored sludge without it being properly dewatered.

National Pollutant Discharge Elimination System Permit Number SC0001015, Part II.E.3, the New-Indy Operations and Maintenance Manual was not properly maintained, in that it was not appropriately updated.

National Pollutant Discharge Elimination System Permit Number SC0001015, Part V.D.3.f, the New-Indy odor abatement plan was not updated as necessary.

National Pollutant Discharge Elimination System Permit Number SC0001015, Part V.E.5, the New-Indy Best Management Practices plan was not properly maintained, in that it was not appropriately updated.

New-Indy violated the Pollution Control Act, S.C. Code Ann. § 48-1-110 (a)(2) and (a)(3) (2008 & Supp. 2018) and Standards for Wastewater Facility Construction, S.C. Code Ann Regs. 61-67.100.E.7 (2011) in that it placed modifications to its WWTF into operation prior to obtaining an Approval to Operate from the Department, and made changes to its WWTF in a manner other than that approved by the Department.

New-Indy Catawba, LLC is further notified that failure to attend the scheduled enforcement conference may result in the issuance of an Administrative Order without its consent. Such an Order may contain the above findings and may impose monetary penalties.

This Notice is made pursuant to the Pollution Control Act, 48-1-50 (Supp. 2013), which authorizes the Department to issue Orders and the Pollution Control Act, 48-1-330 (2008), which authorizes the Department to assess monetary penalties.

September 10, 2021



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