



September 23, 2024

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Indiana Department of Environmental Management
Office of Land Quality, Hazardous Waste Permit Section
IGCN 1154, 100 North Senate Avenue
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Via Email

Re: Comments on Draft Hazardous Waste Management Operating Permit Renewal
and Class 3 Permit Modification for Tradebe Treatment & Recycling, LLC
(RCRA ID IND000646943)

Dear Ms. Bansch,

The East Chicago Calumet Coalition Community Advisory Group, joined by the Abrams Environmental Law Clinic, Environmental Advocacy Center, Conservation Law Center, Environmental Law & Policy Center, Just Transition Northwest Indiana, Highland Neighbors for Sustainability, Green EC, Gary Advocates for Responsible Development, and the Hoosier Environmental Council, respectfully submit these comments in opposition to the Draft Hazardous Waste Management Operating Permit Renewal and Class 3 Permit Modification for Tradebe Treatment & Recycling, LLC (Tradebe), RCRA ID IND000646943 (the “Draft Permit”). We appreciate the opportunity to make these comments.

The East Chicago Calumet Coalition Community Advisory Group (ECCC-CAG) was founded in 2016 to address community needs during the U.S.S. Lead Superfund remediation process and now works to address ongoing environmental issues in East Chicago and the Calumet neighborhood. The ECCC-CAG members have long been concerned about Tradebe’s activities in East Chicago due to the company’s history of environmental noncompliance at its existing East Chicago facilities. The University of Chicago Law School’s Abrams Environmental Law Clinic (AELC) works to solve some of the most pressing environmental problems throughout the Great Lakes region and beyond. Since 2016, AELC has supported the residents of East Chicago in their advocacy for a clean and healthy environment in their community. The Northwestern Pritzker School of Law Bluhm Legal Clinic’s Environmental Advocacy Center (EAC) works with communities and professional advocates to address some of the most pressing environmental and energy issues facing our region and planet. This work has included supporting the residents of East Chicago, Indiana, in various contexts and capacities since 2016, as well as representing community organizations just across the state line, on the Southeast Side of Chicago. The Conservation Law Center works to improve conservation law and policy, in part, by serving local residents who want to improve the environment of northern Lake County. Environmental Law & Policy Center (ELPC) is the Midwest’s leading



environmental legal advocacy organization that drives transformational policy changes with national impacts. Its mission is to ensure that all people have healthy clean air to breathe, safe clean water to drink, and can live in communities without toxic threats, especially in the Great Lakes region and along the Indiana lakeshore. Just Transition Northwest Indiana (JTNWI) is a grassroots environmental justice organization that serves the Northwest Indiana region. JTNWI's mission is to educate and organize Northwest Indiana communities and workers, give voice to our shared stories, and support a just transition to a regenerative economy that protects the environment, climate, and future generations. Highland Neighbors for Sustainability is a group of volunteers with a community approach working toward a sustainable and resilient future. Green EC is a grassroots group of residents and allies working for a greener future. Gary Advocates for Responsible Development (GARD) is a 501(c)(3) that promotes economic development in the City of Gary that prioritizes Environmental Justice, community health, and protection of our neighborhoods and natural resources. The Hoosier Environmental Council is the voice of the people for the environment in Indiana—the organization with the passion and the plan to tackle our environmental challenges and help make our state a healthier, better place to live and do business.

As described in detail below, the Draft Permit suffers from an array of deficiencies.

Tradebe has a long history of repeated, serious permit violations and unlawful operations, including both under the Resource Conservation and Recovery Act (RCRA) and the Clean Air Act (CAA). The existing permit conditions have demonstrably failed to ensure that Tradebe is operating safely and lawfully. The law requires—and the community demands—significant changes to the existing permit conditions, in order to make the necessary changes in Tradebe's operations to bring it into compliance with the law, and in order to build in effective monitoring and accountability mechanisms so Tradebe is closely scrutinized for compliance and any violations are swiftly detected and corrected.

The Draft Permit fails to address these long-standing problems sufficiently. While the Draft Permit may encompass, at last, some issues that regulators have overlooked for years, the changes it proposes from the status quo are far too modest.

Moreover, many of the changes the Draft Permit does contemplate or anticipate are not in the form of enforceable permit conditions, rendering them toothless. The Draft Permit must put Tradebe back on the path towards being a good neighbor, accountable to the community, following the law and minimizing its harmful environmental and public health impacts. Vague and unenforceable promises that things will be different this time—despite nearly identical permit conditions in critical areas which failed to secure Tradebe's compliance in the past—are not good enough, and do not satisfy IDEM's legal obligation to issue a permit with sufficient conditions to ensure compliance with the law.

Of even greater concern, the Draft Permit fails to include meaningful, enforceable, new permit conditions tailored to address Tradebe's history of violations. Furthermore, the Draft Permit contemplates both a continuation of Tradebe's existing permitted operations and a **significant expansion** of those operations. Tradebe has not yet demonstrated sufficiently that it



can safely and lawfully manage its existing scope of operations—IDEM should not reward the company’s past unlawful behavior with a significant permit expansion.

Beyond these concerns rooted in Tradebe’s past failures to comply with its existing permits, the Draft Permit is missing critical information necessary to evaluate whether Tradebe’s operations, and the Draft Permit’s conditions, are lawful and appropriate. One notable piece of missing information is the absence of any environmental justice or cumulative impacts analyses by IDEM, despite IDEM’s prior commitment to conduct such analyses in correspondence with officials from the United States Environmental Protection Agency (USEPA).

Finally, there are numerous technical deficiencies which IDEM must correct before the agency can issue a final RCRA permit for the facility. A number of these technical deficiencies arise at the intersection of Tradebe’s overlapping obligations under RCRA and the CAA. This underscores the need for IDEM to take a coordinated approach across its Office of Land Quality (OLQ) and Office of Air Quality (OAQ)—in terms of coordinated permit writing, in terms of coordinated inspections and enforcement, and in coordinated engagement with the public. We are not saying that there should be a single permit, but that permit offices should work with and understand the scope of each other’s roles and responsibilities. Without such a coordinated approach, aspects of Tradebe’s operations will inevitably fall through the cracks, resulting in serious failures like, for example, Tradebe’s 20-year-long operation of a drum shredder without obtaining the required CAA permit for its significant air emissions.¹ While responsibility for that multi-decade unlawful equipment operation ultimately rests with Tradebe, it suggests an uncoordinated and insufficient inspection and enforcement regime. It should not take 20 years for a drum shredder operating in broad daylight to be assessed for basic compliance with the CAA.²

For all of these reasons, described in detail below, IDEM must reject the Draft Permit and engage in significant further dialogue with Tradebe, USEPA, and the community, in order to craft significant revisions to strengthen the permit to ensure Tradebe’s safe and lawful operation of its facility going forward.

I. IDEM should continue to improve its community engagement processes, including a modified public meeting format and greater coordination between branches.

As a preliminary matter, we offer some comments on IDEM’s community engagement process in connection with this Draft Permit. In doing so, we acknowledge that IDEM has taken some proactive steps during this process to foster community input and participation—most notably, the decision to pre-emptively schedule both a public meeting and public hearing on this Draft Permit. These were positive steps which should be repeated in the future, across IDEM’s different branches, for draft permits issued in relation to facilities where there has been an existing demonstration of community interest and engagement **or** where the nature of the

¹ See Exhibit 1, USEPA Finding of Violation, June 26, 2023.

² It appears that USEPA inspectors ultimately identified this problem. *Id.*



facility and its operations significantly contributes to an existing high cumulative pollutive burden faced by the community.

Looking forward, we have some suggestions for how IDEM could continue to strengthen its community engagement process.

First, the hybrid public meeting / public hearing format should be maintained, but with a modification to the public meeting portion. While the ‘trade show’ format of one-on-one dialogue with individual IDEM officials can be useful, it is not necessarily facilitate broad public participation. This format should be supplemented with a plenary portion of the meeting where IDEM officials answer questions in a group setting. This would enhance the ability of the community to gather together *as a community* to ask questions, learning from and building on the answers to each other’s questions.³

Second, there should be better coordination between the different branches of IDEM to ensure that community engagement happens in a holistic rather than piecemeal manner. As an example, the OLQ stated that it pre-emptively scheduled a public meeting and hearing based on the application of IDEM’s Environmental Justice Policy for enhanced public participation. Inexplicably, the OAQ did not make a similar decision to pre-emptively schedule a public meeting and hearing in connection with Tradebe’s draft modified air permit, issued only a couple of weeks after the Draft Permit in this case. Moreover, despite several of the undersigned requesting that OAQ schedule such a public meeting and hearing in a letter sent on September 4, 2024,⁴ a request that was reiterated by email on September 13,⁵ as of the date of this comment, no public meeting or hearing has been scheduled, and the CAA permit comments are due in just two days. It is particularly disappointing because there were a number of questions raised at the Draft Permit public meeting on September 10 which IDEM staff from OLQ were unable to answer, and which were dismissed as “air issues.” It certainly would have been more informative and more efficient for the community to have both the OLQ and OAQ engage with the community at the same meeting.

This failure to coordinate, and inconsistent positions, taken between OLQ and OAQ regarding a public meeting or hearing mirrors the substantive coordination failures between the two branches discussed below. While Tradebe is subject to separate statutory and regulatory regimes, headed by separate branches within IDEM, as a practical matter, from both an operational perspective and a community concerns perspective, the facility operates as one entity. While we appreciate OLQ scheduling a public meeting and a public hearing, we strongly

³ In addition, we are concerned that the information about this Draft Permit was not made available to the public for a sufficient time for them to review these materials. As per VFC No. [83693072](#), the materials were received and made available to the public on August 27, 2024, which provided the public less than 30 days to examine the materials before this comment was due.

⁴ Exhibit 2, Sep. 4, 2024 Letter from AELC to IDEM OAQ RE: public meeting.

⁵ Exhibit 3, Sep. 13, 2024 Email from AELC to IDEM OAQ RE: public meeting.



recommend that IDEM conduct both its public engagement processes, and its substantive inspections and enforcement protocols, more systematically with this reality in mind.

II. IDEM should withdraw the Draft Permit until it has completed its promised environmental justice and cumulative impacts analyses of Tradebe's proposed expansion.

Tradebe is located in a community and situated adjacent to residential neighborhoods which are disproportionately inhabited by low-income people of color. The community is already overburdened by the cumulative impact of numerous nearby pollutive industries. According to USEPA, IDEM committed to USEPA in previous communications that IDEM would conduct environmental justice and cumulative impacts analyses to determine the impact of Tradebe's proposed expansion before issuing its Draft Permit. Without public explanation, IDEM appears to have reneged on that commitment. IDEM should withdraw the Draft Permit in order to conduct these promised analyses, and re-issue the Draft Permit with appropriate modifications in light of whatever conclusions those analyses reach.

A. East Chicago and the Calumet neighborhood are overburdened environmental justice communities.

Tradebe's requested expansion would bring increased environmental risk to the 58,387 residents—81% people of color and 49% low-income—who live within a three-mile radius of Tradebe's facility.⁶ This vulnerable community already faces significant and cumulative environmental harms.

The census block in which Tradebe is located is in the 90th percentile or higher compared to other U.S. census blocks in twelve categories assessed by U.S. EPA's environmental justice screening tool:

- Superfund proximity (98%)
- Risk management plan facility proximity (97%)
- Hazardous waste proximity (96%)
- Wastewater discharge (98%)
- Particulate Matter (PM) 2.5 (95%)
- Underground storage tanks (94%)
- Diesel PM (93%)
- Lead paint (94%)
- National Air Toxics Assessment (NATA) air toxics cancer risk (91%)
- Ozone (94%)

⁶ ECHO Detailed Facility Report: Tradebe Treatment and Recycling, LLC, 4343 Kennedy Ave, East Chicago, IN 46312, USEPA (last accessed Sep. 23, 2024) [hereinafter ECHO Report: Tradebe], <https://echo.epa.gov/detailed-facility-report?fid=110000397874>.



- Toxic releases to air (97%)⁷

A number of polluting facilities are located near residential areas in East Chicago. According to facility reports collected by U.S. EPA's Toxic Release Program (TRI), in 2022 alone, the top fourteen polluting facilities in East Chicago released on-site 499,600 pounds of toxic chemicals into the air and 152,600 pounds into the water.⁸ Within ZIP Code 46312, which includes the Tradebe facility, thirteen of the facilities that report to the TRI were in violation of their permits as of the end of the most recent reporting period, and twenty-four have had violations during at least some point in the past three years.⁹ Facilities in ZIP Code 46312 have faced \$15,622,016 in environmental enforcement penalties over the last five years.¹⁰

The pollutants emitted from these operations, other facilities, and the transportation sector affect the health and wellness of East Chicago community members on a daily basis. Short- and long-term exposure to air pollutants has been linked to increased risk of breast cancer in women,¹¹ emphysema,¹² asthma prevalence and severity in children,¹³ dementia,¹⁴ and more. Lake County was one of the eight counties in Indiana with the highest incidences of asthma-related health emergencies in 2019¹⁵ and has higher incidences of low-infant birthrate than less industrial counties in the state.¹⁶ Lake County has also experienced elevated rates of breast cancer compared to neighboring counties,¹⁷ more deaths from breast cancer than neighboring

⁷ *Id.*

⁸ 2022 TRI Factsheet: City—East Chicago, IN, USEPA (last accessed Sep. 23, 2024) https://enviro.epa.gov/triexplorer/tri_factsheet.factsheet?pzip=&pstate=IN&pcity=EAST%20CHICAGO&pcounty=&pyear=2022&pParent=TRI&pDataSet=TRIQ1.

⁹ ECHO Facility Search Results, USEPA (last accessed Sep. 23, 2024), <https://echo.epa.gov/facilities/facility-search/results>. The information cited above can be accessed by using the “zoom-in” tool to navigate to zip code 46312.

¹⁰ *Id.*

¹¹ See Iona Cheng et al., *Association Between Ambient Air Pollution and Breast Cancer Risk: The Multiethnic Cohort Study*, 146 INT'L J. CANCER 699-711 (2020).

¹² See Meng Wang et al., *Association Between Long-term Exposure to Ambient Air Pollution and Change in Quantitatively Assessed Emphysema and Lung Function*, 322 INT'L J. CANCER 545-56 (2019).

¹³ See *Air Pollution and Your Health*, NAT'L INST. OF ENV'T HEALTH SCIS. (last visited Sep. 23, 2024), <https://www.niehs.nih.gov/health/topics/agents/air-pollution>.

¹⁴ See generally Rachel M. Shaffer et al., *Fine Particulate Matter and Dementia Incidence in the Adult Changes in Thought Study*, 129 ENV'T HEALTH PERSPS. (2021).

¹⁵ *Stats Explorer*, IND. DEP'T OF HEALTH (last visited Apr. 10, 2023), https://gis.in.gov/apps/isdh/meta/stats_layers.htm. Only adjacent Porter County is higher than Lake County with respect to elevated rates of breast cancer.

¹⁶ *Id.*

¹⁷ *Id.*



counties,¹⁸ and higher inpatient hospitalizations due to cardiovascular disease than neighboring counties.¹⁹

As was described in public comments previously submitted by members of the ECCC-CAG, residents of this community have serious concerns with air quality in the vicinity of the Tradebe facility:

The ECCC-CAG members report that they strictly limit their time outdoors due to poor air quality and frequent noxious odors. ECCC-CAG member Lori Locklear described toxic fumes so strong that “on a beautiful spring day, I have to keep my windows shut.” Instead of opening her windows, she runs her air conditioning units almost continuously to keep her home cool and to circulate the air, resulting in an increased electric utility bill. ECCC-CAG member Akeeshea Daniels has described migraine headaches brought on by the odors in the air. Both Ms. Locklear and ECCC-CAG member Maritza Lopez suffer from asthma. Ms. Locklear has said that in East Chicago, “you can literally feel your lungs being suffocated.”

Several ECCC-CAG members who live near Tradebe have noted a persistent pungent smell emanating from Tradebe’s East Chicago facilities. Ms. Daniels said that the odor in the air changes “as soon as you enter that area.” Ms. Locklear added, “Your eyes are burning, your nose is burning, you can feel it in your lungs, and there’s no way to get around it.” Ms. Locklear noted that the smell near Tradebe is particularly strong at around 2:00 to 3:00 PM, the same time that children ride by on school buses. These concerns demonstrate residents’ dissatisfaction with Tradebe’s current operations in East Chicago and their belief that Tradebe’s existing facilities already contribute to environmental harms in the area.²⁰

Furthermore, several community resources relied upon by particularly vulnerable groups—including children, disabled people, and the elderly—are located in close proximity to Tradebe’s facility. Tradebe is located a mere 0.4 miles from Riley Park, 0.5 miles from the Martin Luther King Recreation Center, 0.6 miles from the St. Joseph’s assisted living facility, 1.1 miles from Carrie Gosch Early Learning Center, and 1.1 miles from Joseph L. Block Middle School.²¹

¹⁸ *Id.*

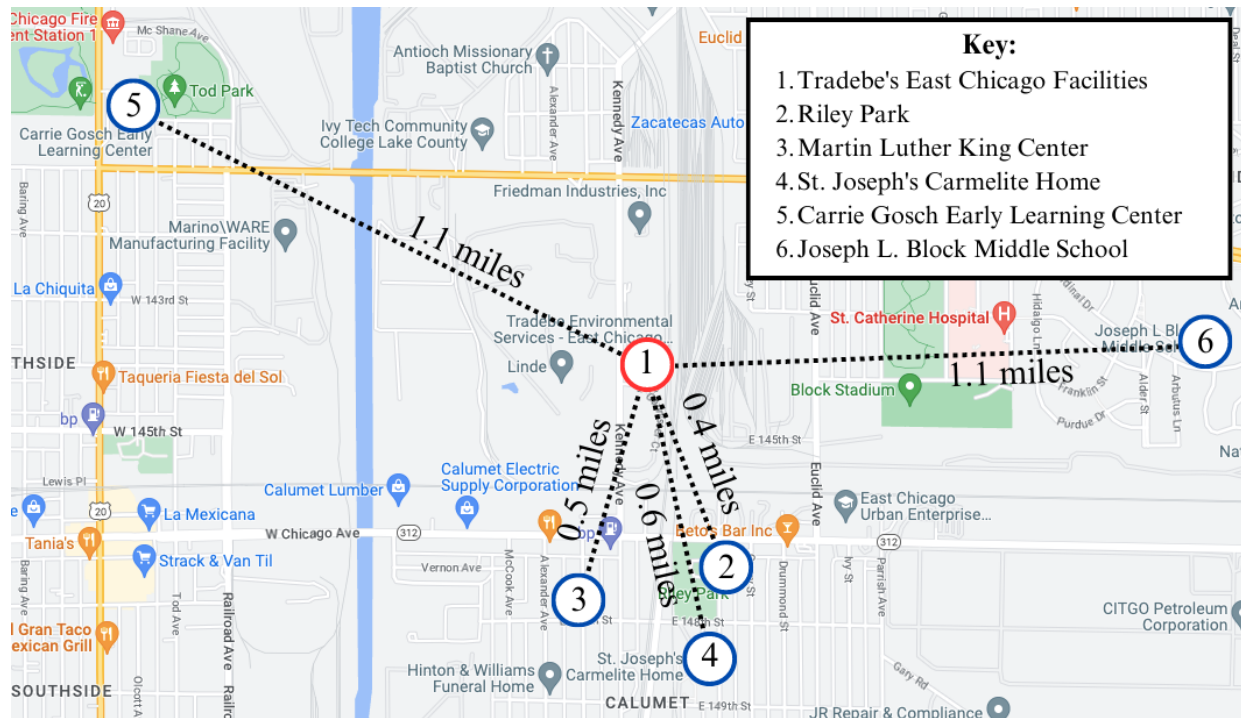
¹⁹ *Id.*

²⁰ Apr. 14, 2023 ECCC-CAG Comment on Class 3 Permit Modification Request at 4, VFC No. [83465790](#).

²¹ All distances were calculated using Google Maps’ “Measure Distance” feature.



The map below illustrates Tradebe's proximity to local community resources:



B. IDEM should complete environmental justice and cumulative impacts analyses of Tradebe's proposed expansion, as requested by USEPA and the ECCC-CAG and as previously promised by IDEM.

Given that Tradebe is located within an environmental justice community which is already overburdened by the cumulative impact of an array of sources of pollution, and the attendant disproportionate public health impacts of that pollution, IDEM should not finalize the Draft Permit without analyzing those impacts.

Some signatories to this comment have been urging USEPA and IDEM to conduct such an environmental justice analysis for the last three years. The ECCC-CAG first requested that USEPA conduct such an analysis in October 2021.²² In a response the following month, USEPA informed us that “[a]s IDEM is the permitting agency, they are the proper agency to conduct the analysis,” and that “**EPA has spoken with IDEM to confirm that it will evaluate the potential for adverse and disproportionate impacts associated with permit renewal for this facility.**”²³

²² Exhibit 4, Oct. 22, 2021 letter from ECCC-CAG to USEPA.

²³ Exhibit 5, Nov. 11, 2021 Letter from USEPA to ECCC-CAG (emphasis added).



We were pleased to hear from USEPA that IDEM had committed to conduct such analysis. Nevertheless, we continued to reiterate this request in subsequent correspondence, including in a February 2022 letter to IDEM,²⁴ in a May 12, 2022 meeting with USEPA and IDEM officials,²⁵ and again in the ECCC-CAG's April 14, 2023 public comments on a prior version of Tradebe's draft RCRA permit.²⁶

USEPA also continued to reiterate the importance of conducting environmental justice and cumulative impacts analyses in connection with Tradebe's permit renewal and proposed expansion. In a November 2022 letter to Tradebe, USEPA expressed that it "is concerned that Tradebe has not analyzed site specific data and considered the cumulative impacts its proposed expansion will have on the surrounding community in East Chicago."²⁷ Similarly, in a March 2023 letter to IDEM, USEPA emphasized that "[t]he Tradebe facility is located in an area where operation of the facility may cause or contribute to disproportionate impacts on residents," noted that "IDEM has previously committed to evaluate the potential for adverse and disproportionate impacts associated with permit renewal for this facility," and recommended that "IDEM consider potential adverse and disproportionate impacts associated with Tradebe's Class 3 permit modification request to ensure protection of the community's human health and the environment."²⁸

Conducting an environmental justice and cumulative impacts analysis would also be in alignment with IDEM's own policies. For example, according to IDEM's nondiscrimination policy, the agency aims to

provide fair treatment and meaningful involvement to all people regardless of race, color, gender, national origin, geographic location, income, or any other federally protected class with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies within the agency's jurisdiction.²⁹

As the ECCC-CAG noted in its April 14, 2023 public comments, compliance with IDEM's nondiscrimination policy in this case requires the agency to conduct environmental justice and cumulative impacts analyses related to the Draft Permit:

²⁴ Exhibit 6, Feb. 23, 2022 Letter from ECCC-CAG to IDEM.

²⁵ Apr. 14, 2023 ECCC-CAG Comment on Class 3 Permit Modification Request at 5, VFC No. [83465790](#).

²⁶ *Id.* at 5-6.

²⁷ Exhibit 7, Nov. 9, 2022 Letter from USEPA to Tradebe.

²⁸ Exhibit 8, Mar. 23, 2023 Letter from USEPA to IDEM at 3 (General Comment 1).

²⁹ IDEM Nondiscrimination Policy, A-008-AW-23-P-R6, https://www.in.gov/idem/health/files/idem_policy_a-008-aw-23-p-r6.pdf



Because the East Chicago community faces a number of cumulative environmental burdens, fair treatment of East Chicago residents necessarily entails a full accounting of preexisting vulnerabilities and harms. Without this crucial analysis, IDEM will be unable to properly assess the community impact of Tradebe's requested expansion. In accordance with its commitment to environmental stakeholder inclusion, IDEM should not grant Tradebe's request without a full and comprehensive environmental justice analysis.³⁰

For all of these reasons, most notably IDEM's previous commitment to EPA to conduct such analysis, we were surprised and disappointed to see on August 9, 2024 that IDEM issued the Draft Permit without any evidence of having conducted any form of environmental justice or cumulative impacts analysis.³¹ We raised this omission in a letter to USEPA sent on August 28, 2024, copying various IDEM officials, in which we conveyed that

in our review of the draft permit materials to date, we have been unable to locate any indication that either IDEM or Tradebe has undertaken this type of Environmental Justice analysis to consider the adverse and disproportionate impacts of Tradebe's proposed expansion on the surrounding community. We are deeply concerned by this omission, particularly since it appears that IDEM may have reneged on its commitment to EPA to conduct such an analysis in connection with this permit renewal.³²

We now understand that IDEM has officially rejected the request, repeatedly conveyed by both USEPA and the ECCC-CAG, to conduct environmental justice and cumulative impacts analyses prior to issuing a final permit, as the Assistant Commissioner of IDEM'S OLQ has stated to the media that "[n]o such assessment has been undertaken in Tradebe's case," and "the agency will issue a final decision on the permit renewal and modification without conducting one."³³

³⁰ Apr. 14, 2023 ECCC-CAG Comment on Class 3 Permit Modification Request at 5-6, VFC No. [83465790](#).

³¹ The Draft Permit documents circulated by IDEM do include an August 5, 2024 memo titled Environmental Justice - Enhanced Public Participation, which notes Tradebe's location in a "high minority/low-income area." IDEM Environmental Justice - Enhanced Public Participation Memo, Aug. 5, 2024 (VFC No. 83678627). However, this document solely relates to steps IDEM has taken to provide increased avenues for public engagement in the permitting process. *Id.* These steps, while admirable, are not a substitute for environmental justice and cumulative impacts analyses of the Draft Permit itself.

³² Exhibit 9, Aug. 28, 2024 Letter from AELC to USEPA

³³ Activists bring concerns, demands to East Chicago waste processor's permitting hearing, Sep. 11, 2024, Alex Dalton, Times of Northwest Indiana, https://www.nwitimes.com/news/local/lake/east-chicago/east-chicago-idem-tradebe-pollution/article_48c73a10-704e-11ef-9eb8-236273ff7170.html.



In light of IDEM's prior commitments to USEPA, and in light of the importance of such analyses to upholding the principles of IDEM's nondiscrimination policy and in shedding light of the true impact of the Draft Permit on the surrounding community, IDEM should reconsider this decision.

We therefore respectfully urge IDEM to:

- (a) Conduct an environmental justice analysis to assess the impact of Tradebe's proposed expansion on low-income community members and people of color.
- (b) Conduct a cumulative impacts analysis to assess the impact of Tradebe's proposed expansion on a neighborhood and community which is already overburdened by an array of pollutive and hazardous industries, and which already experiences significantly poorer health outcomes as a result of these and other environmental conditions.
- (c) Withdraw the Draft Permit until such time as these environmental justice and cumulative impacts analyses are complete.
- (d) Incorporate the findings of these environmental justice and cumulative impacts analyses into any re-issued proposed permit, including specific permit conditions designed to address the findings of these analyses.

III. In light of Tradebe's long history of permit violations and unlawful operations, IDEM should not grant Tradebe a permit to expand the facility's operations until IDEM has strengthened the Draft Permit to include meaningful and enforceable permit conditions that are sufficient to ensure Tradebe can and will comply with its permits going forward.

A. Tradebe has a long history of permit violations and unlawful operations.

Tradebe has a long history of repeated, serious permit violations and unlawful operations, including both under the Resource Conservation and Recovery Act (RCRA) and the Clean Air Act (CAA).³⁴ In our May 31, 2024 letter to IDEM concerning the pattern of Agreed Orders that IDEM has entered into with Tradebe, we included in Appendix A a table summarizing Tradebe's documented RCRA violations between March 13, 2019 and February 13, 2024.³⁵ This table does not include the Clean Air Act violations that occurred during this same period. Since this letter was sent, IDEM inspected the facility and, once again, found a number of violations of the same or similar nature as violations dating back at least five years.

³⁴ Exhibit 10, May 31, 2024 Letter from AELC to IDEM re: IDEM's Pattern of Agreed Orders with Tradebe, Appendix A.

³⁵ *Id.*



The ongoing RCRA and CAA violations at Tradebe are so consistent that it is extremely likely they will persist.

Tradebe has a pattern of violating provisions of its current RCRA Part B permit related to container storage and treatment conditions, air emissions standards, manifest and recordkeeping requirements, and incident preparedness and prevention. Tradebe continuously:

- fails to treat and maintain open and leaking containers,
- stores containers and pallets in unstable formations,
- labels containers and drums improperly,
- stores free liquids in solids-only areas,
- stores incompatible waste together,
- neglects to address failures in the secondary containment systems,
- uses a system that removes VOCs at <95% efficiency,
- stores hazardous waste in unpermitted areas for longer periods than allowed by its permit,
- fails to report to regulators accurately,
- fails to keep records accurately,
- fails to inspect its facility, and
- fails to train personnel properly.

In IDEM's recent inspection report, Tradebe had violated its RCRA Part B permit as well as State and Federal regulations by allowing containers to be kept in poor conditions (six containers), stacking containers in unstable configurations (at least thirteen containers), exceeding the 12-hour staging limit (twice), keeping containers with liquids in solids-only areas (over thirty containers and one trailer), storing containers for longer than 76 hours in unpermitted areas (fourteen containers), and maintaining an incorrect manifest.³⁶

These violations—among many others—are commonplace at Tradebe. Tables A-D below show a summary of Tradebe's RCRA violations between March, 2019, through the latest IDEM inspection report made publicly available. These tables show Tradebe's failure to properly store and maintain upkeep of containers, violations of air emissions standards, failure to accurately maintain its manifests, and failure to provide proper preparedness and prevention training and equipment at its facility.

³⁶ IDEM Compliance Evaluation Inspection Report, at 7-10 (June 4, 2024), VFC No. [83661909](#).

Table A. Summary of Tradebe's RCRA Container Storage and Treatment Conditions Violations.

Description of Violation	Violation Dates	RCRA Permit Condition or Regulation(s) Violated	Areas Implicated	Number of Violations
Liquids Stored in Solids-Only Areas	3/23/2020 – 2/13/2024	<ul style="list-style-type: none"> - Permit Condition III.C, E, & F - Permit Attachment D – D-1a 	Areas 4, 7 Area 4 – South Apron Area 7 – A1-A5, Port Dock Room, North Apron, East Apron, Northeast Apron	729
Unstable Stacking	3/13/2019 – 2/13/2024	<ul style="list-style-type: none"> - Permit Condition II.E, Permit Condition III.E - Permit Attachment D – D.1a 	Areas 3, 4, 5, 6, 7, 11 Area 4 – South Apron Area 6 – Rack Room Area 7 – A1-A4, North Apron, East Apron SDS I	311
Improper Labeling	3/13/2019 – 2/13/2024	<ul style="list-style-type: none"> - 40 C.F.R. § 262.17(a)(5)(i)(B) - Permit Attachment D – D-1a 	Areas 2, 5, 6, 7, 11 Area 2 – Tank Farm Area 6 – Rack Room Area 7 – A1-A4, A6, North Apron South Leg Locker Rooms	126
Storage for Greater than Allowable Time Limits	3/13/2019 – 2/13/2024	<ul style="list-style-type: none"> - 40 C.F.R. § 268.50(b) - 40 C.F.R. § 262.24(b) - 40 C.F.R. § 262.34(a) - Permit Condition I.Q - Permit Condition II.C, E, Q - Permit Condition III.E 	Areas 3, 6, 7, 11 Area 7 – North Apron, Port Dock Room Area 6 – Drum Storage	100



Container(s) in Poor Condition	3/13/2019 – 2/13/2024	<ul style="list-style-type: none"> - 40 C.F.R. § 264.34(a)(1)(i) - 40 C.F.R. § 273.33 - Permit Condition III.C - Permit Attachment D – D-1a 	Areas 2, 3, 4, 6, 7, 11 Area 4 – South Apron Area 6 – Rack Room, Aisle 3 Area 7 – A1, A4, A6, North Apron	67
Insufficient Aisle Space	3/23/2020 – 2/13/2024	<ul style="list-style-type: none"> - 40 C.F.R. § 262.17(a)(6) - Permit Condition II.H - Permit Condition III.E 	Areas 2, 3, 4, 7 Area 2 – Tank Farm Area 4 – South Apron Area 7 – A1, North Apron, Scale 2-3 South Leg	22
Incompatible Waste Stored Together	3/13/2019 – 2/13/2024	<ul style="list-style-type: none"> - Permit Condition III.I - Permit Condition I.3 - Permit Attachment D – D-1a 	Areas 4, 5, 6, 7 Area 4 – South Apron Area 6 – Rack Room, Drum Storage Area 7 – A2-A4	20
Open Containers of Hazardous Waste	3/13/2019 – 12/6/2020	<ul style="list-style-type: none"> - 40 C.F.R. § 262.17(a)(1)(iv)(A) - 40 C.F.R. § 262.15(a)(4) - 40 C.F.R. § 262.34(a)(1)(i) - Permit Condition III.E 	Areas 2, 4, 5, 6, 7 Area 2 – Tank Farm Area 4 – South Pad Area 7 – North Apron, East Apron	19
Damage to Secondary Containment System	3/13/2019 – 12/4/2023	<ul style="list-style-type: none"> - 40 C.F.R. §§ 264.175, 264.193 - Permit Condition II.A - Permit Condition III.F - Permit Condition IV.G 	Areas 1, 2, and 6 Tank Farm	10

The number of violations is highly likely to be an underestimate of the total number of container violations over the past five years. IDEM's February 13, 2024, inspection revealed that Tradebe reported fewer drums, containers, pallets, tanks, etc. than the actual number of drums, containers, pallets, etc., that IDEM counted on site.³⁷ For example, an inspector noted that Tradebe had reported eighty containers in Area 7, A1, but the inspector counted 300 containers in just eight rows in Area 7, A1. These are just the rows that IDEM inspected, which were not even *all* the rows in A1. Moreover, IDEM limited its inspection to Area 7; it is unclear how many containers, drums, tanks, etc. in other areas were undercounted or underreported by Tradebe.

Table B. Summary of Tradebe's RCRA Air Emission Standard Conditions Violations.

Description of Violation	Dates of Violations	RCRA Permit Condition or Regulation(s) Violated	Areas Implicated	Number of Violations
VOC Removal Efficiency <95%	7/18/2023 - 7/19/2023	- Permit Conditions V.A, C, and D	Areas 1, 2, 3, and 8 Cylinder Room	7

Table C. Summary of Tradebe's RCRA Manifest Requirement Violations.

Description of Violation	Dates of Violations	RCRA Permit Condition or Regulation(s) Violated	Areas Implicated	Number of Violations
Incorrect Manifests	3/13/2019 - 6/18/2019, 6/22/2020, 6/4/2024	- 40 C.F.R. § 264.71(a)(1) - Permit Condition II.J	-	16
Rail Cars Transported Off-site without a Manifest	9/10/2019 - 10/7/2019, 12/6/2022	- 40 C.F.R. § 262.20 - 40 C.F.R. § 262.42(a)	-	8
Trailer Log Missing Time and Date	1/15/2024, 1/18/2024	- Permit Condition II.E	-	2

³⁷ IDEM Compliance Evaluation Inspection Report, at 18 (February 13, 2024), VFC No. [83603498](#).



Table D. Summary of Tradebe’s RCRA Preparedness and Prevention Violations.

Description of Violation	Dates of Violations	RCRA Permit Condition or Regulation(s) Violated	Areas Implicated	Number of Violations
Missing Safety Equipment	3/13/2019 - 6/18/2019, 2/13/2024	- Permit Condition II.H & I - Attachments B, D	Area 7 Lab Pack Booth	6
Failure to Conduct Personnel Training	9/10/2019 - 10/7/2019, 3/30/2022, 12/4/2023	- 40 C.F.R. §§ 262.17(a)(7)(i)(A), 262.34(a) - Permit Condition II.F	-	>2

Tradebe’s history of violations reveals consistent and wide-spread issues across its facility.³⁸ The issues at Tradebe appear not to be fixable via tweaking its permit. The issuance of Agreed Order after Agreed Order indicates that these are not one-off issues that Agreed Orders can address successfully, as IDEM has already seen. Furthermore, these issues could easily spread to what would be Area 12, should IDEM approve Tradebe’s Class 3 Permit Modification request. Its history of violations shows that Tradebe’s struggle to stay in compliance with RCRA and CAA is systemic, and IDEM should not allow this facility to continue operating without serious intervention.

We therefore respectfully urge IDEM to:

- (a) Require Tradebe to produce a credible plan to address prior violations and provide enforceable assurances that no future violations will occur.
- (b) Incorporate such plan into Tradebe’s permit as an enforceable compliance schedule to bring Tradebe into compliance with its permit obligations and all relevant laws.

³⁸ There are additional reasons for concern about Tradebe’s track record of non-compliance beyond the failed inspections from IDEM and USEPA. For example, in a recent federal employment discrimination lawsuit filed against Tradebe, a former tank farm supervisor employed at Tradebe’s East Chicago facility alleges that there were “high mercury levels” and “ongoing explosions at the workplace,” that he raised concerns about “high mercury levels, explosions, and vapors” and other “hazardous conditions” at the workplace with both USEPA and the Occupational Safety and Health Administration (OSHA), and that he was terminated by Tradebe as a “result of reporting the safety concerns and violations of safety regulations.” See Exhibit 11, *Swanson v. Tradebe Environmental Services, LLC*, 2:24-cv-00265 (N.D. Ind.), Dkt. 1 (Civil Complaint) at ¶¶10-20.



Until Tradebe can produce such a plan that is integrated into its Draft Permit, IDEM should refuse to grant the Class 3 Permit Modification.

B. IDEM has the legal authority—and the legal obligation—to include enforceable permit conditions sufficient to ensure Tradebe’s ongoing compliance with all applicable environmental laws and regulations.

IDEM has the legal authority—and the legal obligation—to craft a permit which has sufficient conditions to ensure Tradebe’s compliance with RCRA and its regulations going forward. Under 40 CFR § 270.32, which is incorporated into Indiana law pursuant to 329 IAC 3.1-13-1 and -2, “[e]ach RCRA permit shall include permit conditions necessary to achieve compliance with the Act and regulations,” and each permit “shall contain terms and conditions as the . . . State Director determines necessary to protect human health and the environment.”³⁹ Furthermore, “[i]f, as the result of an assessment(s) or other information, the . . . Director determines that conditions are necessary in addition to those required [by other regulatory provisions] to ensure protection of human health and the environment, he shall include those terms and conditions in a RCRA permit for a hazardous waste combustion unit.”⁴⁰

These legal provisions speak in mandatory terms—IDEM has an obligation (“shall include”) to include in the Draft Permit conditions which are sufficient to ensure Tradebe’s compliance with the law going forward. Clearly, given Tradebe’s long track record of repeated permit and other legal violations, the existing permit conditions are not sufficient to do so. We would therefore expect that IDEM would have conducted a comprehensive analysis, and required significant additional investigatory information from Tradebe, to determine the underlying causes of Tradebe’s persistent compliance problems, and then to apply the results of that analysis to craft more robust permit conditions to bring Tradebe into compliance.

However, based on conversations with IDEM officials at the September 10 public meeting and hearing on this Draft Permit, it does not appear that IDEM has conducted any such type of comprehensive analysis of the underlying causes of Tradebe’s violations, nor any analysis of what types of permit conditions might be required to bring Tradebe into compliance going forward.

IDEM should withdraw the Draft Permit and conduct a comprehensive analysis of the permit conditions necessary to ensure Tradebe’s ongoing compliance with its legal obligations, in light of Tradebe’s lengthy history of violations.

³⁹ 40 CFR § 270.32(b)(1)-(2) (emphasis added).

⁴⁰ 40 CFR § 270.32(b)(3) (emphasis added).



We therefore respectfully urge IDEM to:

- (a) Conduct a comprehensive analysis of the factors which have caused Tradebe's lengthy history of repeat permit violations and other legal violations, including an analysis of any deficiencies in Tradebe's training, operating policies and procedures, management and supervision, staffing levels, physical plant and equipment, and volume and scope of operations, to determine what role such deficiencies have played in Tradebe's history of violations.
- (b) Withdraw the Draft Permit until such time as this comprehensive analysis is complete.
- (c) Incorporate the findings of this comprehensive analysis into any re-issued proposed permit, including specific permit conditions designed to address the findings of these analyses, consistent with IDEM's legal obligation to issue permits containing conditions necessary to achieve compliance with the law.

Some specific examples of enforceable permit conditions which IDEM should include in a revised permit are discussed in sections of our comments below.

IV. IDEM should strengthen the Draft Permit by including robust third-party audits of Tradebe's operations and physical equipment as an enforceable permit condition, as well as engaging in more comprehensive agency inspections over the life of the permit.

In view of Tradebe's repeated RCRA violations at its existing facility, IDEM should require that Tradebe conduct a thorough third-party audit of its operations. Specifically, two such independent, third-party audits should be required.

The first such audit should focus on all aspects of RCRA compliance and it should be comprehensive, covering each and every applicable regulation. This audit should also include all corrective actions including groundwater monitoring that are occurring or should be occurring at Tradebe. Based on this audit, any non-compliance issues identified should not only be addressed legally but also required to be corrected in a timely manner. A follow-up audit should confirm that all identified issues have been properly addressed.

A second, complementary audit should focus on the engineering assessment of each piece of equipment at Tradebe. Given the age of the facility and the age of some of the equipment, it is not clear that Tradebe has properly maintained its equipment in a manner that will reasonably prevent releases of wastes. This not only affects that site itself but can also pose catastrophic risks to the surrounding community. The engineering audit should also cover all of the containment systems. It should not just be observational but should include the testing and quantification of foundations, wall-thicknesses, and testing for control efficiency, as needed. Like the compliance audit noted above, all findings of deficiency in this audit should also be



required to be addressed in a timely manner, with a follow-up audit to verifiably ensure that such deficiencies have been addressed.

Any releases from Tradebe, either routine or catastrophic, have adverse impacts on the surrounding community. Therefore, the selection of the auditors noted above needs to include input from the community in order to ensure that the auditors are truly independent. The thoroughness of the audits and their determinations are crucially dependent on competence and independence. The permit should require Tradebe's full and unconditional cooperation with each of the two audits.

In addition to these third-party audits, IDEM should include as an enforceable permit condition that Tradebe submit to frequent, more robust inspections from IDEM inspectors from both OLQ and OAQ at the same time. IDEM has an obligation to "thoroughly inspect" Tradebe's facility on a regular basis to ensure compliance with Tradebe's permits and all legal obligations.⁴¹ In the opinion of a retired engineer (formerly of USEPA's stationary source compliance division) with whom we consulted in preparing our comments, based on his review of some of IDEM's inspection reports from its inspections of Tradebe's facility, while IDEM's inspections have been appropriate paperwork, container condition/labeling and storage area inspections, they do not satisfy the requirement for a Compliance Evaluation Inspection (CEI) that is supposed to meet the statutory "thoroughly inspect" requirement. For example, IDEM's inspection reports fail to describe the processes that Tradebe uses to treat the material or deal with the drums, fail to mention compliance with hazardous waste determinations and RCRA Subparts AA/BB/CC, and fail to document any checks on Tradebe's determination that any processes/units are not subject to RCRA or other applicable environmental statute or regulation.

In light of these concerns, and in the context of Tradebe's significant history of non-compliance, heightened scrutiny from IDEM is required, and the permit should include as an enforceable condition that Tradebe cooperate with more frequent, and more rigorous IDEM CEI inspections going forward. Furthermore, these inspections should be coordinated by both OLQ and OAQ to ensure comprehensive inspections of Tradebe's compliance with its permits and legal obligations under both RCRA and the CAA.

We therefore respectfully urge IDEM to:

- (a) Add as an enforceable permit condition that Tradebe undergo a comprehensive third-party regulatory audit, as described above, with a follow-up audit to confirm that all identified issues have been properly addressed.
- (b) Add as an enforceable permit condition that Tradebe undergo a comprehensive third-party engineering assessment, as described above, with a follow-up audit to confirm that all identified issues have been properly addressed.

⁴¹ 42 U.S.C. § 6297(e).



- (c) Add as an enforceable permit condition that Tradebe cooperate with more frequent and thorough process-based inspections of the Tradebe facility, conducted by both OAQ and OLQ personnel at the same time to ensure proper coverage. This inspection should particularly include equipment that is regulated under both CAA and RCRA (e.g., equipment regulated under Subparts AA, BB, and CC). If IDEM does not have the resources for this type of inspection, we respectfully urge that IDEM request assistance from EPA Region V and/or EPA or OECA's NECIs.

V. Tradebe's training, staffing, management, and operating policies and procedures should be strengthened and incorporated as enforceable permit conditions.

Tradebe has provided a Training Program in Attachment H that is insufficient to show that Tradebe's training, staffing, management, and operating policies will promote future compliance with RCRA. The Training Program in Attachment H reflects changes to Tradebe's internal structure that call for further scrutiny and modification in the types of training that employees receive. Attachment H needs further review, especially in light of Tradebe's past RCRA violations which have included failing to adequately train employees. The Training Program in Attachment H provides IDEM with the opportunity to prevent accidents and future violations of RCRA by including strong, enforceable permit conditions and requiring Tradebe to self-audit its Training Program. We urge IDEM to take this opportunity by withdrawing the Draft RCRA Part B permit and rejecting the Class 3 Permit Modification request until these inadequacies have been addressed.

To the best of our knowledge given available public information, the recent updates to Attachment H did not receive feedback in the back-and-forth between IDEM and Tradebe, and they first appeared in Tradebe's response to IDEM's fifth Notice of Deficiency regarding the permit renewal application.⁴² Because Tradebe updated Attachment H to reflect changes to its internal structure (i.e., roles have been added and responsibilities have been divided differently), Attachment H should go through a thorough review, with feedback, to address the gaps and inadequacies present in its current form. For instance, Tradebe has included in the updated Attachment H an "Environmental Compliance Manager." The Environmental Compliance Manager's job description includes "producing regulatory analysis" and "maintain[ing] a working knowledge of existing and proposed regulations that affect Tradebe."⁴³ However, the Environmental Compliance Manager only receives the 24-Hour HAZWOPER Training, even when DOT Hazardous Materials Regulation and RCRA Hazardous Waste Training is available and given to other employees, like the Corporate Training Manager.⁴⁴ Another example is the Operations Manager, who must "[e]nsure facility compliance of RCRA, DOT, and EPA

⁴² Compare Tradebe Response to IDEM NOD #5 (July 6, 2024), VFC No. [83663260](#), with Tradebe Response to IDEM NOD #4 (Updated RCRA Permit) (March 17, 2023), VFC No. [83448595](#).

⁴³ Draft Permit Attachment H, at 4-5.

⁴⁴ See *id.* at 18, 21. While the Corporate and Midwest Training Managers receive the DOT Hazardous Materials Regulation and RCRA Hazardous Waste Training, the Environmental Compliance Manager receives no such training.



regulations.” The Operations Manager, however, does not receive the available DOT Hazardous Materials Regulation and RCRA Hazardous Waste Training.⁴⁵ IDEM should carefully review the training protocols proposed in Attachment H to ensure that the training Tradebe’s employees receive will be adequate to perform their duties.

The Training Program in Attachment H also requires close review given that Tradebe has failed to train staff properly as part of its long history of RCRA violations.⁴⁶ On multiple occasions, IDEM inspectors at Tradebe found employees handling hazardous waste who had not completed training or who were not properly trained. During IDEM’s September 10, 2019 inspection, for example, IDEM discovered Tradebe had failed to train an employee whose duties included handling hazardous waste according to 40 CFR § 264.16.⁴⁷ During a March 30, 2022 inspection, IDEM discovered that staff were inadequately trained in “basic hazardous waste labeling requirements and management procedures.” This was evident by the multiple labeling violations that were found during the inspection.⁴⁸ During an inspection on December 4, 2023, IDEM found that two employees were not properly trained in how to do daily inspections based on daily inspection records. Given this pattern of inadequate training, the Training Program in Attachment H should be reviewed closely and modified to ensure Tradebe’s internal training procedures are adequate to produce properly trained employees.

Attachment H should be strengthened beyond “minimum” requirements to show that Tradebe will properly train its employees and as evidence of Tradebe’s desire to come into long-term compliance with RCRA. 40 C.F.R. §§ 270.14(b)(12) and 264.16 provide the minimum requirements for the Training Program that a facility must use and submit as part of the RCRA Part B permit application. However, these regulations set a floor not a ceiling, and do not limit what can be included in the Training Program, where IDEM determines additional conditions are necessary to ensure Tradebe’s ongoing compliance with its permit conditions.⁴⁹ Moreover, as part of these requirements, employees must be trained in a way that “ensures the facility’s compliance with the requirements of this part.”⁵⁰ Attachment H should be strengthened to provide more evidence as to how the Training Program will ensure compliance with RCRA. For example, just as there are appendices in Attachments C, D, and F that provide more detailed information as to how Tradebe will meet requirements in those Attachments, Tradebe can provide appendices of more detailed information as to how training will be

⁴⁵ *Id.* at 5, 19.

⁴⁶ See Exhibit 10, May 31, 2024 Letter from AELC to IDEM re: IDEM’s Pattern of Agreed Orders with Tradebe, Appendix A, at 15, 18, 20.

⁴⁷ May 5, 2020 IDEM Notice of Violation and Proposed Agreed Order, at 5, VFC No. [82963376](#).

⁴⁸ March 30, 2022 IDEM Compliance Evaluation Inspection, at 9-10, VFC No. [83303654](#). Note that labeling violations have been found in nearly every IDEM inspection to date, as well. See *supra* at III.A.

⁴⁹ See generally *supra* at III.B.

⁵⁰ 40 CFR § 264.16(a)(1).



completed. This could include examples of training schedules, sample written exams, or on-the-job evaluation criteria.

The Training Program is an opportunity to promote compliance before violations have occurred; it is therefore in IDEM's best interest, Tradebe's best interest, and the community's best interest to thoroughly review and strengthen the Training Program *now* before workers are harmed and the community is further harmed by Tradebe's mishandling of hazardous waste.

Additionally, IDEM should consider requiring more specific, detailed conditions in Tradebe's staffing, management, and operating policies and procedures, as necessary to ensure Tradebe is able to comply with its legal obligations going forward. Moreover, the staffing, management and operating policies and procedures which are currently referenced in the permit documents should be made enforceable permit conditions to ensure that Tradebe can be held accountable for following through on these provisions.

We therefore respectfully urge IDEM to:

- (a) Withdraw the Draft Permit until IDEM thoroughly reviews Attachment H and the Training Program and can address inadequacies through feedback to Tradebe.
- (b) Strengthen Attachment H in such a way that promotes Tradebe's long-term compliance with RCRA, either by including additional appendices with examples of the training program, training schedule samples, or some other documentation that serves as evidence of Tradebe's meaningful efforts to train its employees.
- (c) Analyze whether more specific, detailed conditions in Tradebe's staffing, management, and operating policies and procedures are required to ensure Tradebe's ongoing compliance.
- (d) Incorporate Tradebe's existing staffing, management and operating policies and procedures as enforceable permit conditions.

VI. IDEM should carefully scrutinize Tradebe's Solids Distillation Systems and impose the terms and conditions necessary to protect the environment and human health.

Tradebe operates two multi-part units called Solids Distillation Systems, which Tradebe asserts recycle hazardous waste to recover products for industrial use. Tradebe refers to the units as "SDS I," which has operated since 2004, and "SDS II," which came online in 2015.⁵¹ The central component of each of these systems is a Thermal Desorption Unit ("TDU"). According to Tradebe, the TDUs heat hazardous waste in an oxygen-free environment to drive

⁵¹ See Draft Permit, Attachment J: Corrective Action for Solid Waste Management Units, app. J-1 at 12, 13.



off volatile organic compounds, which are then recondensed for use as solvents.⁵² Together, the SDS units can process nine tons of waste per hour.⁵³

The SDS units pose a serious concern. They comprise a significant part of Tradebe's operations, yet, because Tradebe claims the units "recycle" hazardous waste, they are excluded from the hazardous waste permitting process and are subject to more lenient air emissions standards. The permitting process has failed to assure us that Tradebe's SDS units merit the "recycling" designation that would justify their exemption from many of the regulations that protect human health and the environment. In addition, Tradebe has shown that its standard practices fail to control the hazardous waste char generated as a byproduct of the so-called recycling operation.

For these reasons, as part of this permitting process, we request that IDEM require Tradebe to produce the information needed to verify its "recycling" claim, and that IDEM independently corroborate that information and provide that information to the public to the greatest extent possible. As a part of this permitting process, IDEM should disclose on what bases it has confirmed, reviewed, examined and/or inspected the SDS units and confirmed their exemption under RCRA. We also request that IDEM include permit terms and conditions necessary to ensure Tradebe's management of hazardous waste char complies with applicable state and federal laws and regulations and does not harm the environment or human health.

A. Tradebe has failed to substantiate its claim that the SDS units qualify for RCRA's recycling exemption.

Tradebe has evinced a belief that it can exclude the SDS units from its RCRA permit without providing any supporting evidence to show these units recycle hazardous waste. Tradebe relies entirely on a single letter IDEM wrote in 2002, before either SDS unit had begun operating, to support its "recycling" claim. In this letter, IDEM provided a conditional response to Tradebe's inquiry about whether SDS I would qualify as a recycling process, writing, "*Provided* that the unit is used only for the reclamation of components of hazardous waste that will be legitimately utilized either directly as ingredients in manufacturing other products you are correct in your understanding that the unit *would*" qualify.⁵⁴

The Draft Permit appears to accept Tradebe's minimal support for its "recycling" claim.⁵⁵ As a result, Tradebe would gain exemption from many of the regulations that operate to

⁵² Video Describing SDS II, *SDS: Solids Distillation System*, TRADEBE, <https://www.tradebeusa.com/product/sds-solids-distillation-system> (last visited Apr. 27, 2024).

⁵³ See IDEM, Minor Source Modification, VFC no. [83686551](#) (Aug. 23, 2024), at 8, 10.

⁵⁴ See Exhibit 12, Letter from Dave Berrey, Senior Environmental Manager, IDEM, to Tita LaGrimas, Director of Regulatory Affairs, Pollution Control Industries (Jul. 18, 2002) (emphasis added).

⁵⁵ See Draft Permit, Attachment B: Facility Description at 4-5; 40 C.F.R. § 261.6, 329 IAC 3.1-6-1 ("The recycling process itself is exempt from regulation except...[that] [o]wners or



prevent releases of hazardous waste and it would be subject to more lenient air emission standards.⁵⁶ The flare Tradebe uses to burn off-gas from the TDUs is currently permitted under 40 CFR § 61, Subpart V,⁵⁷ which requires the destruction of only 95% of hazardous emissions.⁵⁸ If, for example, 40 CFR § 63, Subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, applied, as we suggest below would likely be appropriate, Tradebe would have to achieve a Destruction Removal Efficiency (DRE) standard of 99.9999%.⁵⁹

We view IDEM's conditional 2002 letter as insufficient, and the information which Tradebe has made available about the SDS units causes us to doubt the appropriateness of Tradebe's "recycling" claim for the following reasons:

1. We have reason to believe that the TDUs combust hazardous waste.

An improperly operated TDU has the potential to function not solely to recycle hazardous wastes, but also to combust them. A properly operated TDU recycles hazardous waste by heating materials in an anaerobic chamber in which the lack of oxygen prevents combustion reactions from occurring. Any oxygen in the chamber has the potential to produce a combustion reaction. When TDUs are used to combust, rather than solely to recycle, hazardous waste, they should not receive the recycling exemption. EPA Region 6 has determined that if "materials [are] burned in incinerators or other thermal treatment devices . . . [they] are considered to be 'abandoned by being burned or incinerated' under § 261.2(a)(1)(ii),"⁶⁰ and a federal court has found that RCRA regulation applies in this scenario.⁶¹ Therefore, a properly operated, anaerobic TDU will qualify for the RCRA recycling exemption, while an improperly operated unit that incinerates materials will not qualify for the recycling exemption

operators...are subject to the requirements of subparts AA and BB of part 264, 265, or 267 of this chapter.").

⁵⁶ See *id.*

⁵⁷ IDEM, Notice of Decision: Approval of Tradebe Permit Renewal, VFC no. 82764088 at 12 (Apr. 30, 2019) (describing Tradebe's thermal desorption system and stating that, in relevant part, 40 CFR § 61, Subpart V applies to the system and the enclosed John Zink flare).

⁵⁸ See 40 CFR § 61.242-11.

⁵⁹ See 40 CFR § 63.1203; Draft Permit, Condition VII (listing F027, a chemical subject to the 99.9999% DRE standard under 40 CFR § 63.1203(c)(2), as a waste that Tradebe stores and treats). Even if Tradebe does not process F027 waste in its TDUs, other hazardous wastes incinerated in the TDUs would still be subject to a 99.99% DRE standard. 40 CFR § 63.1203(c)(1).

⁶⁰ *U.S. v. Rinco Chem. Indus., Inc.*, No. 4:07CV001189 SWW, 2009 WL 801608, at *10 (E.D. Ark. Mar. 4, 2009) (explaining EPA Region 6's position that thermal treatment that results in incineration is not covered by the recycling exemption).

⁶¹ See *id.* at *11.



As the ECCC-CAG detailed in its letter to U.S. EPA Region 5 and IDEM on June 27, 2023, the little information that Tradebe has made available about the SDS units suggests that combustion occurs within the TDUs. First, to the best of our knowledge, Tradebe has never provided evidence that it can consistently achieve an anaerobic environment in the TDUs, and it may not even have oxygen monitoring in place. Second, the SDS units produce a byproduct of char at a rate of “10-13 [20 yd³] roll-offs per week,” a quantity so dramatic as to seem unlikely to result from a process that does not involve combustion.⁶² Third, Tradebe has failed to account for the total mass of the hazardous waste inputs into the SDS units, suggesting they do not operate as closed systems and may destroy materials through combustion. Tradebe has advertised that the SDS units process 120,000 tons of material and reclaim one ton of scrap metal, but provided no information regarding what happens to the other 119,000 tons of hazardous waste that are allegedly processed for recycling.⁶³

2. We suspect Tradebe has engaged in “sham recycling.”

Legitimate recycling must (1) “involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process[.]” (2) “produce a valuable product or intermediate[.]” (3) “be managed as a valuable commodity[.]” and (4) “be comparable to a legitimate product or intermediate.”⁶⁴ Recycling that fails any of these criteria is not legitimate and qualifies as “sham recycling.”⁶⁵

We have seen no documentation to confirm that Tradebe’s SDS units meet the four requirements of “legitimate recycling,” and we have particular concerns related to the first criteria. The Draft Permit and supporting documents omit descriptions of how wastes are treated in the SDS and related units. Tradebe has not disclosed or committed to any specific parameters for what types of waste can be recycled at Tradebe.

Additionally, we suspect Tradebe may process a broader range of waste in the SDS units than could contribute to the production of solvents for industry use. Regardless of whether combustion occurs within the TDU, such a practice would constitute “sham recycling” and should not receive a regulatory exemption.⁶⁶ Tradebe has advertised that it accepts an extremely wide array of materials for processing in the SDS units. A promotional video on Tradebe’s website indicates, “Wastes suitable for SDS II processing include: solvent-soaked materials, paints, resins, sludges, gels, solids... these and more.” The video appears to additionally picture empty glass vials and treated wood as examples of recyclable materials.⁶⁷ A different

⁶² See Letter from John Howard, Hazardous Waste Section, IDEM, to Robert Vaughn, Tradebe Treatment and Recycling, LLC (Jan. 15, 2016), at 3, VFC no. [80205392](#).

⁶³ Tradebe, *Tradebe USA Solids Distillation System, SDS*, available at <https://www.tradebeusa.com/product/sds-solids-distillation-system> (last visited Apr. 27, 2024).

⁶⁴ 40 CFR § 260.43; 329 IAC 3.1-5-7.

⁶⁵ 40 CFR § 261.2(g); 329 IAC 3.1-6-1.

⁶⁶ See *id.*

⁶⁷ Video Describing SDS II, *SDS: Solids Distillation System*, TRADEBE, <https://www.tradebeusa.com/product/sds-solids-distillation-system> (last visited Apr. 27, 2024).



promotional brochure indicated, “SDS can effectively process virtually any solid organic hazardous waste.”⁶⁸ We question whether all the products described could contribute to the production of “high quality solvents that can serve industry again,” as Tradebe has claimed.⁶⁹

3. A primary output of the SDS processes is char.

According to an industry expert familiar with the topic with whom we have consulted in preparing these comments, the SDS units can only achieve about 25% reclamation of solvents for beneficial reuse from many of the containerized solid wastes that Tradebe treats in the SDS. The rest, as much as 75% of the waste volume input, is char. We question whether an SDS unit could be considered legitimate when it generates waste at a much higher volume than solvents that are beneficially reclaimed.

4. The formation of char and the flaring of waste gases provide evidence of thermal destruction.

While some recovery of waste materials may be occurring as a result recycling processes associated with the SDS units, there is also substantial evidence of thermal destruction of waste. The formation of large quantities of char provides one example of this evidence. We further note that Tradebe omits the destruction that occurs via flaring. In fact, there is no mention of the flare at all in the draft permit, or in the entirety of the October 28, 2021 renewal permit application, including Attachment B, the Facility Description.

* * *

We would welcome information that substantiates Tradebe’s entitlement to a recycling exemption, but we have seen none. The Draft Permit and associated documents suggest Tradebe has not corroborated its claim that the TDUs operate to recycle, and not to combust, hazardous waste. Instead, Tradebe has offered only one hypothetical sentence written by IDEM before either SDS unit began operating.⁷⁰

In the absence of countervailing indicators, we suspect that an appropriate permit would include the SDS units as fully regulated Hazardous Waste Management Units under RCRA. IDEM should revisit its determination to accept at face-value Tradebe’s “recycling” claim by engaging in a more thorough fleshing out of the facts.

⁶⁸ Tradebe, *Tradebe USA Solids Distillation System, SDS*, available at <https://www.tradebeusa.com/product/sds-solids-distillation-system> (last visited Apr. 27, 2024).

⁶⁹ Video Describing SDS II, *SDS: Solids Distillation System*, TRADEBE, <https://www.tradebeusa.com/product/sds-solids-distillation-system> (last visited Apr. 27, 2024).

⁷⁰ See Exhibit 12, Letter from Dave Berrey, Senior Environmental Manager, IDEM, to Tita Lagrimas, Director of Regulatory Affairs, Pollution Control Industries (Jul. 18, 2002).



We therefore respectfully urge IDEM to:

- (a) Exercise its authority under Indiana law to request information from Tradebe that demonstrates its SDS units do not combust hazardous waste.⁷¹ This information should address how Tradebe maintains and monitors the anaerobic environment within the TDU chambers, how Tradebe prevents the destruction of hazardous waste in the flare, how much char Tradebe produces relative to usable solvents, and why the TDUs produce a significant quantity of char.
- (b) Request information from Tradebe that demonstrates it meets the four criteria for legitimate recycling. This information should provide a description of the parameters for the waste Tradebe can accept for its recycling processes, and how this waste contributes to the production of usable products.
- (c) Exercise its authority under Indiana law to conduct its own inspection to assess the operation of the SDS units and verify the information that Tradebe provides.⁷²
- (d) Disclose the above information to the public, and implement as permit conditions the protocols and controls necessary to ensure Tradebe does not (1) combust hazardous waste or (2) engage in sham recycling by processing wastes that do not contribute to a usable product.

These requests apply to both SDS I and SDS II. IDEM should not rely on information about only one of the units to make a determination about both. IDEM should require Tradebe to provide information about both SDS units, and IDEM should examine, inspect and investigate both units.

⁷¹ See IC 13-15-4-10 (“The commissioner may suspend the processing of an application...if...[t]he department determines that the application is incomplete and has mailed a notice of deficiency to the applicant that specifies the parts of the application that: (A) do not contain adequate information for the department to process the application; or (B) are not consistent with applicable law.”)

⁷² See IC 13-14-2-2 (“The department may have a designated agent, upon presentation of proper credentials, enter upon private or public property to inspect for and investigate possible violations of...[e]nvironmental management laws”); 329 IAC 3.1-1-3 (“The department... shall have a right to enter upon, to, or through public or private premises, subject to this article, to investigate, take samples, copy all records related to hazardous waste, and inspect for compliance with the requirements imposed under environmental management laws as defined at IC 13-11-2-71, or this article, or to determine whether a violation or threatened violation exists... for the purpose of determining whether any person is subject to the requirements of environmental management laws as defined at IC 13-11-2-71[.]”).



B. The Draft Permit lacks conditions to protect East Chicago from releases of hazardous waste char, a byproduct of SDS processing.

In addition to our doubt about the legitimacy of Tradebe's claim to a recycling exemption, we are concerned about Tradebe's ability to manage the vast quantities of hazardous waste char generated as a byproduct of SDS processing. Tradebe has historically struggled to prevent releases of this char into the environment, and we have not found any conditions within the Draft Permit that would require Tradebe to alter its standard procedures for managing and storing it. We therefore seek to understand how Tradebe will manage this char to protect the environment and human health, and request that IDEM include conditions in the final permit to ensure the responsible and proactive management of the char.

The SDS units generate their own hazardous waste stream in the form of char, a soot-like byproduct of thermal treatment.⁷³ We lack complete information about the composition of the char, but an industry expert familiar with the systems has informed us that the char likely contains hazardous metals, and, because Tradebe processes per- and polyfluoroalkyl substances (PFAS) in the SDS units, the char likely contains PFAS as well. Inspection reports indicate that Tradebe has historically stored char in roll-off containers, which are large, open, dumpster-like containers. Tradebe stores the containers outdoors, and ostensibly prevents drift by covering them with tarps. We understand that, as of 2019, Tradebe could "generate approximately 10-13 roll-offs per week depending on operations."⁷⁴ At any given time, Tradebe estimates that it may have 72,750 gallons of hazardous waste char stored on site.⁷⁵

IDEM inspectors have found that Tradebe's haphazard method of char management and storage has already failed on several occasions, leading to releases of hazardous waste materials. In December 2018, an IDEM inspector found four roll-off containers of char uncovered. In September 2019, an IDEM inspector found that hazardous waste char had blown onto the ground and into stormwater, and that "wind was causing some of the spilled char to become airborne."⁷⁶ A follow-up inspection the following month found similar issues.⁷⁷ We commend IDEM not only for identifying these issues during inspections, but also for noting these incidents in its file review and acknowledging they had the potential to release hazardous waste or hazardous constituents.

⁷³ See Video Describing SDS II, *SDS: Solids Distillation System*, TRADEBE, <https://www.tradebeusa.com/product/sds-solids-distillation-system> (last visited Apr. 27, 2024); Letter from John Howard, Hazardous Waste Section, IDEM, to Robert Vaughn, Tradebe Treatment and Recycling, LLC (Jan. 15, 2016), at 3, VFC no. 80205392.

⁷⁴ Letter from John Howard, Hazardous Waste Section, IDEM, to Robert Vaughn, Tradebe Treatment and Recycling, LLC (Jan. 15, 2016), at 3, VFC no. 80205392.

⁷⁵ Draft Permit, Attachment G: Contingency Plan, app. G-1 at 20-21.

⁷⁶ Letter from Rick Massoels, Deputy Director, IDEM, to Timothy Denhof, Midwest EHS Manager, Tradebe Treatment & Recycling, LLC (Sept. 13, 2019), at 4, VFC no. 82838083.

⁷⁷ See Letter from Rick Massoels, Deputy Director, IDEM, to Timothy Denhof, Midwest EHS Manager, Tradebe Treatment & Recycling, LLC (Oct. 21, 2019), at 3-4, VFC no. 82856891.



Given this history, Tradebe might have used the permitting process as an opportunity to commit to improvements in its char management, but we have found no reference in the permit documents to Tradebe's plan to manage the char so as to protect the environment and human health. We understand from Tradebe's 2020 request to modify its air permit that Tradebe introduced a new method for unloading the char from the TDU in SDS II, which provides Tradebe the option to use a "bulk-o-matic container" as the receiving receptacle for the char instead of a roll-off container.⁷⁸ However, we lack sufficient information about the bulk-o-matic containers or how Tradebe uses them to understand whether they reduce the risk of releases. We further note that Tradebe has not committed to discontinuing its use of roll-off containers. Additionally, we lack information about whether Tradebe has implemented this new method for SDS I.

By storing vast quantities of hazardous waste, which has the propensity to become airborne, outdoors in large, open containers only sometimes covered with tarp, Tradebe endangers East Chicago's environment and residents. In preparing these comments we have consulted with an experienced environmental engineer who has examined IDEM's documentation of how Tradebe manages its char. He describes Tradebe's haphazard system as inappropriate for processing waste streams of this industrial scale. A system that uses a pneumatic conveyor and silo, for example, would be more appropriate and would provide greater protection for East Chicago.

Indiana regulations require each RCRA permit to "contain terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment," and to "include permit conditions necessary to achieve compliance with the Act and regulations[.]"⁷⁹ This includes the regulation that "[a] container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste," and "must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak."⁸⁰

We therefore respectfully urge IDEM to:

- (a) Require Tradebe to provide information about the hazardous constituents in the SDS char, including the presence of PFAS, to enable an informed assessment of the adequacy of the char management methods.
- (b) Require Tradebe to analyze several process runs for PFAS using EPA Method 1633. If this confirms the presence of PFAS, IDEM should ensure it is being properly managed. If Tradebe sells the char for any reason, it must inform customers of its chemical constituents.

⁷⁸ Letter from Tim Denhof, Midwest EHS Manager, to Jenny Acker, Branch Chief, IDEM (Aug. 18, 2020), at 1, VFC no. 83031544.

⁷⁹ 40 C.F.R. § 270.32; 329 IAC 3.1-13-1; IAC 3.1-13-2.

⁸⁰ 40 C.F.R. 264.173; 329 IAC 3.1-9-1.



- (c) Disclose whether and why it has determined that the Draft Permit contains the conditions necessary (1) to protect human health and the environment from releases of char, and (2) for Tradebe to achieve compliance with RCRA regulations governing its storage of containerized waste.
- (d) Integrate into the permit char management practices appropriate for a professional, industrial-scale operation located so close to a residential area.

VII. Tradebe's proposed Corrective Action Plan is legally deficient and must be strengthened before the Draft Permit is approved.

In the process of responding to Tradebe's permit renewal and modification requests, IDEM staff undertook a file review to assess Tradebe's history of releases and potential releases of hazardous waste and hazardous waste constituents.⁸¹ This file review uncovered numerous instances of releases and potential releases, including many issues that IDEM staff directly observed and documented.⁸² The numerosity of these instances, coupled with Tradebe's "significant noncompliance," raise our suspicion that these were not isolated incidents.

The file review led IDEM to include a corrective action plan in the Draft Permit,⁸³ but we doubt the sufficiency of the corrective action plan to address the risks to the environment and human health. First, Tradebe has failed to provide thorough and consistent information about the history and evidence of releases at its facility, and this deficiency necessarily impairs IDEM's ability to craft appropriate corrective action conditions. Second, the Draft Permit takes the encouraging step of requiring Tradebe to undertake groundwater monitoring at some parts of its facility, but the groundwater monitoring plan lacks detail and threatens to operate to the exclusion of other necessary measures. Third, the Draft Permit lacks clarity about what affirmative steps Tradebe must take, apart from groundwater monitoring, to address its historical releases and potential releases. Fourth, the Draft Permit largely leaves the community out of the corrective action activities and includes only sparse provisions for public notification and participation.

Because of these doubts, we request that IDEM take additional steps to ensure Tradebe submits complete and accurate information about the history and evidence of releases from all of its hazardous waste management units. We also request that IDEM modify the groundwater monitoring requirements to integrate the details of the plan into the permit terms and conditions and to avoid unduly limiting other necessary corrective action measures. Additionally, we request that IDEM require Tradebe to take specific, affirmative steps to comprehensively address the concerning pattern that IDEM identified. Finally, we request that IDEM revise the

⁸¹ See Memorandum from Don Stilz, Hazardous Waste Permit Section, to VFC (Aug. 5, 2024), at 1, VFC no. 83678518.

⁸² See *id.*

⁸³ See Draft Permit Condition VI(B)(2).



Draft Permit to reflect a commitment to providing the public with accurate information and opportunities for participation.

A. The Draft Permit and supporting documentation generate uncertainty about the history and evidence of releases at Tradebe.

We value the careful consideration that led IDEM to determine that Tradebe must take corrective actions, but we worry that gaps and contradictions in Tradebe's descriptions of the history and evidence of releases at Tradebe will impair the efficacy of any interventions. First, we object to the exclusion of the former Marport facility (the intended location of Area 12) from Attachment J of the Draft Permit. Second, we take issue with Tradebe's failure to offer a rationale for its assertions that "No Further Action" is needed for its solid waste management units. Third, we note confusion and inconsistencies between IDEM's assessment of releases and potential releases and the characterizations in Attachment J.

Since at least 2022, Tradebe has been using the former Marport facility not only as the site of "Tradebe Transportation," a hazardous waste transfer facility, but also for the unpermitted storage of hazardous waste.⁸⁴ Though IDEM and Tradebe have entered into an Agreed Order to regulate this unpermitted activity, the Agreed Order does not contain terms and conditions equivalent to the requirements for a permitted hazardous waste Treatment, Storage, or Disposal Facility, particularly surrounding secondary containment strategies.⁸⁵ Furthermore, Tradebe has repeatedly violated the terms of the Agreed Order, including by failing to maintain the required fail-safes to contain releases.⁸⁶ This trailer storage activity clearly meets the Draft Permit's definition of a "Solid Waste Management Unit."⁸⁷

Despite this ongoing use of the former Marport facility, Attachment J does not include any units on that property in its lists and descriptions of Solid Waste Management Units. Instead, the Draft Permit provides Tradebe with 120 days after the issuance of the permit to "submit updated Attachments J-1 and J-2 that include information regarding historical activities that occurred on the former Marport property" and to update Attachment J-3 to reflect the locations of those activities.⁸⁸ We see no reason to exclude these updates from the permitting process, which would presumably help IDEM to craft appropriate terms and conditions for corrective action. Furthermore, this delay prevents the public from reviewing and commenting

⁸⁴ See Letter from Peggy Dorsey, Assistant Commissioner, IDEM, to Kristen Etela, U.S. General Counsel, Tradebe Environmental Services, LLC (Sept. 27, 2022), VFC no. 83387457.

⁸⁵ Compare 40 C.F.R. § 264.175 with *id.* at ¶ 31.

⁸⁶ See Letter from Rick Massoels, Deputy Director, IDEM, to Bryce German, Tradebe Transportation, LLC – Marport (Nov. 3, 2023) at 3, VFC no. 83554105.

⁸⁷ See Draft Permit Condition VI(B)(1) ("Solid Waste Management Unit (SWMU)' means any discernable unit, permitted or unpermitted, existing or historical, at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste.").

⁸⁸ Draft Permit Condition VIII(K).



on Tradebe's submission, a consequence particularly troubling in light of Tradebe's history of unpermitted activities at this property.

In addition, we are concerned that the information Tradebe has submitted does not provide the clear and frank discussion necessary to identify and remediate releases of hazardous waste. Appendix J-1 provides a table of historical and current solid waste management units, and includes a column to indicate if there is "evidence of release" from that unit.⁸⁹ Appendix J-2 promises to "detail[] the history of each [Solid Waste Management Unit], along with a photo[.]"⁹⁰ Tradebe has failed to explain its reasoning for its conclusions in these appendices. With respect to the data sheets in Appendix J-2, Tradebe has provided no detail about the investigations that led to the determinations of "No Further Action." In most instances, the data sheets reference to a 1999 RCRA Facility Assessment. However, it is not clear how this 1999 RFA was used in support of the "No Further Action" determination.

To make matters more opaque, the appendices in Attachment J contradict each other. Appendix J-1 represents that no hazardous waste management unit at Tradebe has shown evidence of release. Appendix J-2 denies any "history or evidence of release" from all units except for Area 7⁹¹ and the Area 5 Lab Pack Building.⁹²

The Attachment J appendices not only contradict each other, but they also appear to contradict IDEM's assessment. In IDEM's file review, Mr. Stilz not only identified numerous instances of potential release, but also instances in which IDEM staff documented actual spills, leaks, and releases into the environment. For example, Mr. Stilz identified the following:

- May 12, 2015: "A 20 yd³ roll-off labeled Box 959 located in the South Apron Truck Dock. It was labeled "Hazardous Waste" and was dated 4-1-2014. It contained multicoded shredded metal drums and was leaking liquid into the containment dock. The tarp covering it was torn and the contents of the box were exposed to the elements."⁹³
- September 20, 2017: "The following containers were leaking hazardous waste during storage and stored in the indicated area.
Unit/Drum #: Area #:
D002800865 Area 7 A-4
D002798298 Area 11 20 yd³ Box 7001 South Apron"⁹⁴
- October 7, 2019: "At the time of the previous inspection, there were numerous roll-off containers of hazardous waste char dust stored in rolloff containers in the trailer leg.

⁸⁹ Draft Permit, Attachment J: Corrective Action Plan, app. J-1 at 1.

⁹⁰ Draft Permit, Attachment J: Corrective Action Plan at 2.

⁹¹ See Draft Permit, Attachment J: Corrective Action Plan, app. J-2 at 26.

⁹² See *id.* at 24.

⁹³ Memorandum from Don Stilz, Hazardous Waste Permit Section, to VFC (Aug. 5, 2024), at 2.VFC no. 83678518.

⁹⁴ *Id.* at 9-10.



Some of the roll off containers were not covered (torn tarps, tarps not covering the boxes), two (2) containers had liquids dripping from the bottom of the container, and one container had a hole in the side. Additionally, there was an accumulation of hazardous waste char dust on the concrete and on the sides of the roll-off containers.”⁹⁵

- February 27, 2024: “[Remediation Work Plan] shows TCE in [Monitoring Well] MW-8, which is perceived to be downgradient of Area 1 North East Pad, as well as PCE above R2’s Published Level in two of four quarters.”⁹⁶

With the possible exception of its discussion of Area 7, Tradebe’s documentation of releases does not reflect this information.

RCRA permits must specify the corrective action needed to “protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility[.]”⁹⁷ Furthermore, IDEM has the authority to suspend processing of a permit to give Tradebe the opportunity to provide “adequate information for the department to process the application.”⁹⁸ The deficiencies in Tradebe’s submission regarding the history and evidence of releases of hazardous waste, and the impossibility of crafting an appropriate corrective action plan based on incomplete information, require that IDEM make significant changes to strengthen the Draft Permit’s proposed Corrective Action Plan.

We therefore respectfully urge IDEM to:

- (a) Require Tradebe to update Attachment J with information about the former Marport facility before IDEM issues the final permit. These updates should include information about Tradebe’s use of the former Marport facility to store incinerator-bound waste.
- (b) Require Tradebe to provide details of the assessments that led to determinations that “No Further Action” is needed, including discussion of any sampling conducted. If applicable, Tradebe should explain how the 1999 RCRA Facility Assessment supported each determination.
- (c) Require Tradebe to address inconsistencies within its Attachment J submissions.
- (d) Require Tradebe to correct its Attachment J submissions in light of IDEM’s inspections, or to explain the reasons for its contradictory account.

⁹⁵ *Id.* at 2.

⁹⁶ *Id.* at 2.

⁹⁷ See 40 CFR § 264.101; 329 IAC 3.1-9-1.

⁹⁸ IC 13-15-4-10.



- (e) Re-assess the adequacy of the Draft Permit's terms and conditions in light of the above information from Tradebe.

B. The proposed groundwater monitoring plan is promising but insufficient to address Tradebe's pattern of releases and potential releases.

We commend IDEM for proactively including a groundwater monitoring requirement to assess groundwater quality at the existing TSDF for Areas 1-11. However, we are concerned that this plan is insufficient to address the extensive history of releases and potential releases at the facility.

First, the Draft Permit fails to include actual terms of a groundwater monitoring plan and instead directs Tradebe to submit its own plan ninety days after the permit is issued. It references a "groundwater monitoring network" without describing the network or providing any information about it.⁹⁹ This arrangement gives Tradebe the first opportunity to specify the method, frequency, and location of groundwater sampling and the contaminants of concern, despite its record of conduct that suggests a lack of regard for the environment and residents of East Chicago. Furthermore, this method excludes the public from reviewing and commenting on the groundwater monitoring plan.

Second, the permit inappropriately limits the geographic scope of the groundwater monitoring plan. Tradebe intends to begin construction on Area 12 as early as March 2025.¹⁰⁰ The groundwater monitoring network would Areas 1-11, and offers no discussion of how the groundwater monitoring network will be expanded to include Area 12.

Third, without clear justification, the Draft Permit appears to allow groundwater monitoring to supplant some or all of the usual required corrective action activities. Condition VI(D)(1) states that groundwater monitoring will function "in lieu of assessing individual SWMUs... for releases, and until the Permittee conducts total closure[.]" The corrective action program operates through a sequence of planning and analysis activities designed to move a facility from the recognition of a release of hazardous waste to its remediation. We believe the permit lacks clarity about what aspects of this process the groundwater monitoring will supplant, and whether groundwater monitoring will satisfy these obligations not only for past releases but also for future ones. Moreover, we are concerned that the permit would absolve Tradebe of crucial aspects of the corrective action process for either past or future releases, including those required under Conditions VI(D)(2) ("Interim Measures"), VI(D)(3) ("RCRA Facility Investigation"), VI(D)(5) ("Community Relations Plan"), and VI(D)(6) ("Corrective Measures Study (CMS) and Remedy Selection").

Finally, and on a closely related note, by allowing groundwater monitoring to supplant other assessments, we are concerned that Tradebe will fail to detect and respond to environmental impacts other than those evident in groundwater. IDEM's Risk-Based Closure

⁹⁹ Draft Permit Condition VI(D)(1).

¹⁰⁰ Draft Permit, Attachment B: Facility Description, app. B-3.



Guide describes sampling as “vital” to developing a comprehensive understanding of the release and potential remedy¹⁰¹ and avers that “[i]n the absence of compelling lines of evidence showing that it is not necessary to do so, IDEM will require delineation efforts to follow releases wherever they go, regardless of medium.”¹⁰² IDEM further explained that “[a]ppropriate sample media will depend on project-specific factors and the exposure scenarios under evaluation.”¹⁰³ The Draft Permit does not explain why IDEM has singled out groundwater to the exclusion of other media. For example, situations like the release of hazardous waste char identified by IDEM inspectors in their inspection of Tradebe in September 2019¹⁰⁴ may warrant surficial soil sampling as well as groundwater sampling.

RCRA requires the owner or operator of a facility seeking a permit for the treatment, storage or disposal of hazardous waste to “institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.”¹⁰⁵ Furthermore, federal and state regulations delineate that this corrective action “will be specified in the permit[.]”¹⁰⁶ In light of these requirements, significant changes to the Draft Permit are required.

We therefore respectfully urge IDEM to:

- (a) Integrate the groundwater monitoring plan into the permit conditions, so as to ensure the development of an effective plan and to meet the requirement that “[c]orrective action will be specified in the permit[.]”
- (b) Provide the public with the opportunity for notice and comment on the groundwater monitoring plan.
- (c) Specify in the permit conditions that the groundwater monitoring will not relieve Tradebe of its other obligations under part (D), unless IDEM has determined that the usual corrective action program requirements are not necessary to “protect human health and the environment.”
- (d) Specify in the permit conditions that the groundwater monitoring will not relieve Tradebe of any obligations under part (D) for future releases.

¹⁰¹ Office of Land Quality, IDEM, Risk-based Closure Guide, July 8, 2022 at 11, 18.

¹⁰² *Id.* at 57.

¹⁰³ *Id.* at 20.

¹⁰⁴ Letter from Rick Massoels, Deputy Director, IDEM, to Timothy Denhof, Midwest EHS Manager, Tradebe Treatment & Recycling, LLC 4 (Sept. 13, 2019), VFC no. 82838083.

¹⁰⁵ 40 CFR § 264.101; 329 IAC 3.1-9-1.

¹⁰⁶ *Id.*



- (e) Amend the corrective action plan to require Tradebe to develop and implement a plan for evaluating the effects of releases in any appropriate medium, not merely groundwater.

C. The Corrective Action conditions lack the clarity and specificity needed to ensure Tradebe effectively responds to past and future releases.

We wholeheartedly agree with IDEM's determination that the history of releases and potential releases at Tradebe necessitate a corrective action program, but deficiencies in the Draft Permit's terms and conditions undermine that program.

In his file review, Mr. Stilz found that "available information was sufficient to justify the potential need for corrective actions across the facility, *including the facility's 10-day transfer station to the north*, which the facility proposes to add to the TSD via the current permit renewal."¹⁰⁷ Yet the Draft Permit fails to provide Tradebe with clear directives to address its history of releases across both properties, and only specifies groundwater monitoring for Areas 1-11. The permit conditions state that "[t]he Permittee *may* undertake interim measures to prevent or minimize the further spread of contamination while long-term remedies are pursued."¹⁰⁸ They require Tradebe to conduct a RCRA Facility Investigation "to thoroughly evaluate the nature and extent of the release" only "as required by IDEM,"¹⁰⁹ and give Tradebe 90 days to submit a RCRA Facility Investigation work plan after receiving IDEM's notice.¹¹⁰ Even though IDEM has already determined that the history of releases and potential releases make a corrective action program necessary, the Draft Permit does not appear to require Tradebe to implement any of the standard corrective action steps to address that history.

Relatedly, Permit Condition VI(D)(4)(b) states that IDEM can revisit previously issued determinations that "No Further Action" is needed.¹¹¹ We are not aware of whether IDEM has ever done so, in spite of the many inspections that have noted violations. This condition offers no insight into what standard IDEM currently uses or will use to determine that "a release or likelihood of release...is likely to pose a threat to human health or the environment."¹¹²

Finally, the Draft Permit fails to specify what a RCRA Facility Investigation must involve. The permit conditions provide only that the RCRA Facility Investigation report must "describe the procedures, methods, and results of the RFI." Although IDEM must approve the RCRA Facility Investigation work plan, the Draft Permit's lack of detail threatens to stymie

¹⁰⁷ Memorandum from Don Stilz, Hazardous Waste Permit Section, to VFC (Aug. 5, 2024) at 1, VFC no. 83678518 (emphasis added).

¹⁰⁸ Draft Permit Condition VI(D)(2)(a).

¹⁰⁹ Draft Permit Condition VI(D)(3).

¹¹⁰ Draft Permit Condition VI(F).

¹¹¹ See Draft Permit Condition VI(D)(4)(b).

¹¹² Draft Permit Condition VI(D)(4)(b).



remediation efforts. In contrast, Tradebe's current RCRA permit incorporates detailed requirements of the RCRA Facility Investigation in Attachment J.¹¹³

We do not believe the Draft Permit contains the terms and conditions necessary "to protect human health and the environment[,]" and we respectfully urge IDEM to modify the permit to require Tradebe to engage in specific, affirmative steps to address its history of releases and potential releases.

We therefore respectfully urge IDEM to:

- (a) Amend the Draft Permit to require Tradebe to undertake a RCRA Facility Investigation in response to any credible evidence of releases, including past releases.
- (b) Clarify its process from determining when to revisit a "No Further Action" determination.
- (c) Amend the Draft Permit to specify the nature and scope of RCRA Facility Investigations.

D. Corrective Action Activities

In Section VI(D)(4) there should be a requirement for Tradebe to notify the community about any Corrective Action Activities, including the notification about a RCRA Facility Investigation (RFI), RFI Work Plan, and completion of the plan. This should be in addition to any Community Relations Plan.

Moreover, any Corrective Measures Study (CMS) should be accompanied by a public notification from both Tradebe and, ideally, IDEM. Actions related to the Corrective Measures Study should trigger public notice as well.

If IDEM determines that the Corrective Measures Implementation (CMI) is different from those recommended in the Corrective Measures Study, IDEM will notify Tradebe for the reasons of such decision. While there is a public comment period on the recommended corrective measures as determined by the CMS, there should be a final public notice from both Tradebe, and, ideally, IDEM about the corrective measures that will actually be undertaken.

Public engagement with Corrective Action Activities should be encouraged throughout the entire process. The permit should be strengthened by including more opportunities for public comment in the Corrective Action Activities Schedule.

The public should also be notified of any disputes by Tradebe related to the Corrective Action Activities, and, if possible, be given an opportunity to provide comments. In assessing

¹¹³ Tradebe Treatment and Recycling Final Permit, Attachment J: Corrective Action for Solid Waste Management Units at 2-40 (2017).



proposed corrective actions and disputes by Tradebe, IDEM should consider Tradebe's long history of non-compliance as a factor in determining whether the corrective action proposed will provide the public with sufficient protection from actual or potential harm.

We therefore respectfully urge IDEM to:

- (a) Amend the Draft Permit to include enhanced public notice requirements related to Corrective Action Activities, including but not limited to: (1) notifying the community about any Corrective Action Activities, (2) notifying the community about any Corrective Measures Study being undertaken, and (3) notifying the community about the actual corrective measures undertaken after IDEM has made its final determination.
- (b) Amend the Draft Permit to include opportunities for public comment in the Corrective Action Activities schedule, including opportunities to comment if Tradebe disputes a proposed corrective action.

VIII. IDEM needs to provide greater clarity, and amend the Draft permit, around the transition to Tradebe's newly-expanded facility.

The new permit authorizes Tradebe to alter and expand its hazardous waste storage operations, both within the boundaries of its current facility and at the former Marport facility. As part of these changes, Tradebe will close some storage areas, reduce and expand others, and build entirely new storage areas, including a structure at the former Marport facility with a total storage footprint of 22,746 square feet.¹¹⁴ In total, Tradebe will add over 1 million gallons of solids-only storage capacity, and over 385 thousand gallons of storage capacity approved for liquids.¹¹⁵

Even a high-performing facility would likely struggle to carry out this significant and complex reshuffling and expansion project, and Tradebe already habitually fails to operate in accordance with its permits. Yet the Draft Permit lacks the conditions necessary to ensure that this transition does not endanger human health and the environment. First, the Draft Permit fails to delineate a responsible sequence for closing existing storage areas and opening new ones. Second, the Draft Permit fails to ensure that the physical site of the new storage areas at the former Marport facility can safely sustain major construction projects.

A. Where IDEM has determined two storage areas should not operate simultaneously, the permit should require Tradebe to close the old area before opening the new one.

The Draft Permit would authorize Tradebe to undertake a massive reshuffling and expansion of its hazardous waste storage. Ultimately, Tradebe intends to open 15 new storage areas, modify the capacity of 5 existing storage areas, and close or partially close 5 storage

¹¹⁴ Draft Permit, Attachment D: Process Information at 74 (Table D-1b).

¹¹⁵ Exhibit 13, IDEM Information Sheet Distributed at Public Meeting (Sept. 10, 2024).



areas.¹¹⁶ IDEM staff explained to us at the public meeting on September 10 that this combination of opening and closing different storage areas reflects the need to ensure Tradebe's expansion does not lead to overcrowding that would create hazards, including by preventing the safe flow of truck traffic.

We are concerned that the Draft Permit does not require Tradebe to appropriately sequence its opening and closing of hazardous waste storage areas to achieve that goal. In several places, the Draft Permit contradicts itself about when storage areas may operate. Additionally, the Draft permit would allow Tradebe to continue to utilize storage areas slated for closure for months after all of the new storage areas have opened.

Contradictions in the Draft Permit paint an unclear picture of which storage areas will operate simultaneously. We have identified the following points of contradiction:

- The Closure Plan explains that if a “container storage area will no longer be operated for hazardous waste management,” that constitutes a “partial closure” of the facility, triggering a series of decontamination, soil sampling and analysis, and notification procedures.¹¹⁷ It also states that “[a]t this point in time, it is not possible to predict or anticipate any such partial closures.”¹¹⁸ Yet the Facility Description identifies six storage areas “to be closed after the construction of Area 12,” and one storage area “to be partially closed after the construction of Area 12.”¹¹⁹
- The draft Compliance Schedule sets out a timeline for beginning the closure of storage areas slated to fully or partially close, but it fails to include the Area 2 East Apron.¹²⁰ The Facility Description lists the Area 2 East Apron as a “[s]torage area to be partially closed after the construction of Area 12.”¹²¹
- The Facility Description indicates that the Area 4 West Apron and the Area 6 South Apron will “be closed after the construction of Area 12.”¹²² Yet the facility Process Information indicates that after the construction of Area 12, these two areas will have a combined storage capacity of 254,760 gallons.¹²³
- The Facility Description indicates that the new Areas 11 North Pad and 11 West Apron are “approved to accept waste at the issuance of the permit renewal.”¹²⁴

¹¹⁶ Draft Permit, Attachment B: Facility Description at 3-4.

¹¹⁷ Draft Permit, Attachment I: Closure Plan at ¶ I-1b.

¹¹⁸ *Id.*

¹¹⁹ Draft Permit, Attachment B: Facility Description at 3-4.

¹²⁰ *See* Draft Permit Condition VIII(I)-(J).

¹²¹ Draft Permit, Attachment B: Facility Description at 4.

¹²² *Id.* at 4.

¹²³ Draft Permit, Attachment D: Process Information at 74 (Table D-1b).

¹²⁴ Draft Permit, Attachment B: Facility Description at 4, 77 (picturing Area 11 North Pad and West Apron in the “Current Facility Site Plan + Storage Plant”).



However, the facility Process Information suggests these areas cannot open until Area 12 does.¹²⁵

In addition, we object to the proposed Compliance Schedule, which would allow Tradebe to continue using hazardous waste storage areas slated for closure and partial closure for months after Area 12 begins operating. These storage areas slated for closure or partial closure carry an additional capacity of around 600,000 gallons.¹²⁶ The Compliance Schedule gives Tradebe “60 days after receiving approval to begin use of Area 12” before even beginning closure of those container storage areas.¹²⁷ Furthermore, beginning closure only marks the day to receive the final shipment of waste; the Draft Permit gives Tradebe another 60 days to move all materials out of the area, 90 days to decontaminate, and 180 days to assess for and address any residual contamination.¹²⁸

Together, these issues undermine IDEM’s efforts to ensure Tradebe’s planned expansion occurs safely. Tradebe’s pattern of noncompliance with container storage conditions underscores the need for a clear and cautious plan that ensures Tradebe does not overcrowd its property or store waste in areas without IDEM’s knowledge.

We therefore respectfully urge IDEM to:

- (a) Address or explain the apparent contradictions in the permit documents, described above, and amend the permit to provide clear, consistent information about which container storage areas may remain open simultaneously.
- (b) Revise the Compliance Schedule to require Tradebe to certify its closure of the designated storage areas before accepting any new waste for storage in Area 12.

B. Tradebe should ensure the former Marport facility can safely support construction before Tradebe builds new container storage areas on that site.

Tradebe intends to construct new container storage areas, Area 12 and Area 1 North Apron, at the former Marport facility, a site with an extensive industrial history. Most recently, it has served as the site of Tradebe Transportation, a hazardous waste transfer facility. Since at least 2022, Tradebe has also used this property for unpermitted hazardous waste storage, placing incinerator-bound hazardous waste in trailers on designated areas of the property. The historical and current use of this site suggests the need for a clear and cautious plan to ensure construction projects avoid harm to both humans and the environment. Yet the Draft Permit

¹²⁵ Compare Attachment D, Table D-1a with Attachment D, Table D-1b.

¹²⁶ See Draft Permit Condition VIII(I)-(J); Exhibit 13, IDEM Information Sheet Distributed at Public Meeting (Sept. 10, 2024).

¹²⁷ Draft Permit Condition VIII(I)-(J).

¹²⁸ Draft Permit, Attachment I: Closure Plan, app. I-1 at 28.



does not require Tradebe (1) to close the incinerator-bound waste storage areas, or (2) to fulfill its corrective action obligations on this site prior to beginning construction.

The Draft Permit's silence on Tradebe's unpermitted incinerator-bound waste storage at the former Marport facility threatens to allow unnecessary hazards during construction of Area 12. According to IDEM's own overlay, the planned Area 12 footprint directly abuts the incinerator-bound waste storage at the former Marport facility.¹²⁹ We doubt Tradebe could safely begin construction on Area 12 with trailers of hazardous waste in the immediate vicinity. At the public meeting on September 10, IDEM staff members indicated their belief that the Agreed Order between Tradebe and IDEM provides for the termination of hazardous waste storage in trailers prior to the construction of Area 12. However, we have found no terms in the Agreed Order, and no terms in the Draft Permit, that set a date or timeline for the conclusion of this activity.

The Draft Permit also fails to address potential contamination at the former Marport facility. IDEM has concluded that Tradebe's history of releases and potential releases necessitates a corrective action plan at this site, but the Draft Permit fails to synchronize the corrective action with Tradebe's proposed construction project. The Draft Permit would give Tradebe 120 days after permit issuance even to provide information about Solid Waste Management Units at the former Marport facility.¹³⁰ It provides a further 90 days after receiving notice from IDEM to complaint a RCRA Facility Investigation to thoroughly investigate the presence and impact of releases.¹³¹ Yet, Tradebe anticipates beginning the construction project as soon as March 2025.¹³² This proposed order of operations threatens to undermine the goals of the corrective action plan, as construction threatens not only to create logistical barriers to thorough analysis and remediation but also to disturb soil and other media that could disperse contamination.

Indiana regulations require each RCRA permit to "contain terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment," and to "include permit conditions necessary to achieve compliance with the Act and regulations[.]"¹³³ These conditions must include "schedules of compliance" for any necessary corrective action.¹³⁴ Given these requirements, and our concern that construction at the former Marport facility without careful planning could generate unnecessary hazards, we request IDEM take action to strengthen the Draft Permit.

We therefore respectfully urge IDEM to:

¹²⁹ Memorandum from Don Stiliz, Hazardous Waste Permit Section, to VFC, at 28 (Aug. 5, 2024), VFC no. 83678518.

¹³⁰ Draft Permit Condition VIII(K).

¹³¹ Draft Permit Condition VI(F).

¹³² Draft Permit, Attachment B: Facility Description, app. B-3.

¹³³ 40 C.F.R. § 270.32; 329 IAC 3.1-13-1; IAC 3.1-13-2.

¹³⁴ 40 CFR § 264.101.



- (a) Amend the permit to require Tradebe to certify the closure of the unpermitted storage area at the former Marport facility in accordance with the Closure Plan in Attachment I before authorizing construction on Area 12. If IDEM has determined construction can safely proceed without closure of the unpermitted storage area, we request that IDEM share this reasoning.
- (b) Modify the Schedule of Compliance to require Tradebe to meet its corrective action obligations at the former Marport facility before beginning construction of any new storage areas on this site.

IX. IDEM should not allow Tradebe to build out its physical storage and processing capacity in excess of the volume of wastes it is permitted to process without robust, enforceable measures to ensure Tradebe does not unlawfully utilize this excess capacity.

The Draft Permit would authorize Tradebe to construct hazardous waste storage areas that will give the facility a physical capacity in extreme excess of amount of hazardous waste allowed on site. The Draft Permit would impose virtually no controls to ensure Tradebe does not exceed its allowed volume of hazardous waste. Tradebe's record of conduct, particularly its lack of adherence to limits on its containerized waste inventory, make us doubt that Tradebe will adhere to its allowed volume. Authorizing Tradebe to expand its facilities so far beyond its allowed volume, especially in the absence of robust external controls, invites the excessive and unpermitted accumulation of hazardous waste.

The Draft Permit differentiates between the capacity of the infrastructure authorized for hazardous waste storage and the total volume of waste that Tradebe may store at one time. It would authorize Tradebe to store 1,138,170 gallons of hazardous waste on-site at any given time.¹³⁵ However, it would also authorize Tradebe to build a total of 3,305,830 gallons of hazardous waste storage capacity, a 1,426,370-gallon increase over its current capacity, as shown in the table below.¹³⁶

	Draft Permit (Post-Expansion)	Increase Over Current Permit
Permitted Infrastructure Capacity	3,305,830 gallons	1,426,370 gallons
Total Volume Allowed in Storage	1,138,170 gallons	381,920 gallons

¹³⁵ Draft Permit, Attachment D: Process Information at 1.

¹³⁶ Exhibit 13, IDEM Information Sheet Distributed at Public Meeting (Sept. 10, 2024).



Thus, the Draft Permit envisions Tradebe will refrain from using 1,879,460 gallons of available space at its facility. The facility Process Information optimistically states that the extra space will facilitate “movement, storage, and treatment of materials within the facility,” but “total facility-wide container storage [will not] exceed the permitted capacities for total and liquid containerized waste.”¹³⁷ As the primary check on the total volume of waste, the Draft Permit would rely on Tradebe’s operating record, in which Tradebe must document “a description, location and quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage or disposal.”¹³⁸

This plan strikes us as unrealistic given Tradebe’s pattern of conduct. Tradebe has continually flouted limits on the allowable inventory of containerized wastes. As shown in the tables in Section III above, in the past five years, IDEM and USEPA have identified approximately 700 instances of Tradebe storing liquid waste in solids-only areas; over 80 instances of Tradebe storing materials in excess of applicable time limits; and over 20 instances of Tradebe crowding the aisles of container storage areas. As recently as June 2024, IDEM inspectors documented that “[a]t least 30 containers holding hazardous waste liquids were observed stored in CSA 7 North Apron,” an area permitted for solids only.¹³⁹ Furthermore, Tradebe has repeatedly failed to maintain accurate documentation of the wastes on site. As recently as February 2024, IDEM staff found that “Tradebe failed to provide an accurate count of all of the containers at the facility[,]” understating the count by at least hundreds of containers (over 15,000 gallons).¹⁴⁰

Tradebe has provided us with no reason to believe it will reverse course and respect the permit conditions that govern its allowable inventory of hazardous waste and require it to keep careful track of the waste on site. Tradebe’s disregard for these requirements could lead to excessive accumulation on site without IDEM’s knowledge. It could render Tradebe’s closure plan and cost estimate for closure inaccurate. It could impair the ability of the Emergency Coordinator to assess “the possible hazards to human health and/or the environment that may result from a release, fire, or explosion[.]”¹⁴¹

Despite the importance that Tradebe observe limits on the allowable volume of hazardous waste on site, and the history of noncompliance with these types of permit conditions, the Draft Permit relies on Tradebe’s conscientiousness and lacks any robust

¹³⁷ Draft Permit, Attachment D: Process Information at 1.

¹³⁸ *Id.* at 57.

¹³⁹ Susan Lowry, Hazardous Waste Compliance Section, Referral to Land Enforcement Section att. at 8-9 (July 3, 2024), VFC no. 83661909.

¹⁴⁰ Susan Lowry, Hazardous Waste Compliance Section, Referral to Land Enforcement Section att. at 19 (Feb. 29, 2024), VFC no. 83599454.

¹⁴¹ Draft Permit, Attachment G at ¶ G-4a.



oversight or enforcement mechanism. We note that the facility Process Information contains no provision to requiring Tradebe to conduct inspections to verify the accuracy of the operating record, but believe such a measure could not suffice, given Tradebe's pattern of violations.

We therefore respectfully urge IDEM to:

- (a) Amend the permit to require a regular, unannounced third party audit of the facility to assess the amount of hazardous waste on site.
- (b) Commit to conducting frequent inspections to review Tradebe's compliance with the permit's limits on hazardous waste volume.
- (c) Decline to permit areas for hazardous waste storage beyond Tradebe's total allowable volume if the above two measures prove infeasible.

X. Tradebe's Waste Analysis Plan is deficient and should be improved.

The Waste Analysis Plan (Attachment C) would provide Tradebe with broad discretion in its waste sampling, characterization, and acceptance procedures and would fail to address the range of hazardous materials Tradebe handles. Tradebe has even made several changes to the Waste Analysis Plan in its existing permit to broaden its discretion, changes that have no basis in law. The table below outlines two examples of these changes.

Existing Permit 2017.04.28 – Att. C - VFC No. 80470477	Draft Permit 2024.08.09 – Att. C - VFC No. 83679601
“[T]he Land Disposal Restriction Document(s) may be submitted with the Generator's first shipment. Once the profile sheet has been completed and returned, it will be 1 reviewed by qualified personnel to make a preliminary determination as to whether the material is acceptable for TRADEBE handling or if it must be managed at another approved facility.” (Page 5)	“The Land Disposal Restriction Document(s) may also be submitted with the Generator's first shipment. The TRADEBE contact person will also gather analytical data and process information from the generator if available. Once the profile sheet has been completed and returned, it will be reviewed by qualified Tradebe personnel to make a preliminary determination as to whether the material is acceptable for TRADEBE handling or if it must be managed at another approved facility.” (Page 6).
“A sample of the incoming waste will be taken in accordance with this WAP, and incoming trucks may be released prior to completion of analysis, but only after verifying the accuracy and adequacy of the manifest.” Page 2.	“A sample of the incoming waste can be taken in accordance with this WAP, and incoming trucks may be released prior to completion of analysis, but only after verifying the accuracy and adequacy of the manifest.” Page 3.



A. Incoming waste should be accompanied by generator data.

Tradebe's draft permit includes an additional qualifier clause regarding generator data requirements, which is not in the current permit: "The Land Disposal Restriction Document(s) may also be submitted with the Generator's first shipment. ***The TRADEBE contact person will also gather analytical data and process information from the generator if available.*** Once the profile sheet has been completed and returned, it will be reviewed by qualified Tradebe personnel to make a preliminary determination as to whether the material is acceptable for TRADEBE handling or if it must be managed at another approved facility."¹⁴²

Tradebe does not provide a basis for including the emphasized caveat, which gives Tradebe the option to accept incoming waste without generator data. Tradebe's Waste Analysis Plan must be modified to reflect its commitment to require generator data for all incoming waste. At a minimum, Tradebe must delete this caveat from its Waste Action Plan.

B. Incoming waste must be sampled.

Tradebe's current permit stipulates that samples of all incoming waste must be taken for analysis. "A sample of the incoming waste ***will be*** taken in accordance with this WAP, and incoming trucks may be released prior to completion of analysis, but only after verifying the accuracy and adequacy of the manifest."¹⁴³ In its draft application, Tradebe changes this language to "[a] sample of the incoming waste ***can be*** taken in accordance with this WAP, and incoming trucks may be released prior to completion of analysis, but only after verifying the accuracy and adequacy of the manifest."¹⁴⁴ Tradebe does not provide a basis for making this change, which transitions the statement from a mandate to an option.

The relevant RCRA provision for sampling incoming waste is 40 CFR 264.13, which Tradebe cites in Waste Analysis Plan.¹⁴⁵ The provision stipulates that "[b]efore an owner or operator treats, stores, or disposes of any hazardous wastes, or nonhazardous wastes if applicable under § 264.113(d), ***he must obtain a detailed chemical and physical analysis of a representative sample of the wastes.***" 40 CFR 264.13(a)(1) (emphasis added). Tradebe's Waste Analysis Plan must be modified to reflect the requirements of 40 CFR 264.13(a)(1). At a minimum, Tradebe must revert its "can be taken" language back to its "will be taken" language.

¹⁴² Attachment C - VFC No. 83679601 (2024.08.09), Page 6 (emphasis added).

¹⁴³ Attachment C - VFC No. 80470477 (2017.04.28), Page 2 (emphasis added).

¹⁴⁴ Attachment C - VFC No. 83679601 (2024.08.09), Page 3 (emphasis added).

¹⁴⁵ *Id.* at Page 2.



C. The Pre-Acceptance Test Parameters contain significant gaps.

The Waste Analysis Plan must specify “[t]he parameters for which each hazardous waste...will be analyzed.”¹⁴⁶ These parameters must provide sufficient information to facilitate, “[a]t a minimum,” compliance with both general requirements for TSDFs, and requirements for land disposal.¹⁴⁷ Tradebe’s list of parameters omits dioxins, a serious oversight considering their designation as acute hazardous wastes and the special requirements for their management, both generally¹⁴⁸ and at Tradebe.¹⁴⁹ Additionally, we urge Tradebe to update the parameters to include fluorinated compounds like PFOA/PFAS and related compounds.

D. The Waste Analysis Plan should not allow broad discretion to accept and/or recharacterize material that deviates from expectations.

The Waste Analysis Plan places responsibility on Tradebe management to determine whether incoming waste material is acceptable without any clear guidance. For instance:

Representative samples of the initial shipment are then subjected to pre-acceptance chemical analysis described in Section C-2a of the WAP based on the prescribed processing method. *If the results deviate from the expected variation of material to be received, the data will be reviewed by management to determine if the material is acceptable*, requires additional sampling and analysis, or must be rejected. If the entire shipment, or a portion thereof, is not acceptable, TRADEBE will reject the shipment, or a portion thereof, in conformance with Indiana Code 13-22-5-1, et seq, 40 CFR 264.72. *If the sample results are within the expected variation for that material, the material is deemed acceptable for this and future shipments of this waste stream.* In addition, when discrepancies are observed as a result of pre-acceptance or fingerprint testing, *in lieu of rejecting the shipment, the facility may recharacterize the material and generate a new waste profile.*¹⁵⁰

The Waste Analysis Plan does not clearly explain the extent to which “expected variation” is deemed acceptable by “management.” The vague language is subjective and may allow Tradebe to accept any and all wastes arriving at the facility, regardless of whether it is consistent with the generator’s waste profiles (which is not required to be provided, as discussed above). Further, Section C-2 states that if discrepancies are observed, Tradebe itself will recharacterize the waste instead of rejecting the waste. This is unacceptable. Collectively,

¹⁴⁶ 40 CFR 264.13.

¹⁴⁷ *Id.*

¹⁴⁸ *See, e.g.*, 40 CFR § 268.31 Waste specific prohibitions—Dioxin containing wastes.

¹⁴⁹ *See, e.g.*, Attachment C at 67 (F020, F021, F022, F023, F026, F028 not accepted in Lab Pack Depack Program); Attachment D at 26 (F020, F021, F022, F023, F026 not stored; F027 stored in permitted liquid storage area).

¹⁵⁰ Attachment C - VFC No. 83679601 (2024.08.09), Page 6 (emphasis added).



these provisions of the Waste Analysis Plan means that Tradebe is empowered to accept or reject any wastes arriving at the facility because the Waste Acceptance Plan contains these fatal loopholes.

XI. IDEM should review the hazardous waste codes that are listed in the permit to ensure this list reflects only the waste actually accepted, stored, and managed at the facility.

A. IDEM must revise incorrectly listed hazardous waste codes.

Attachment A, Appendices A-1 and A-4 list explosive hazardous waste (e.g., waste code K047, pink/red water from TNT operations) that both EPA and IDEM have previously asked Tradebe to remove if the facility does not handle such waste. In EPA's March 23, 2023 Comment on Tradebe's Class 3 Permit Modification Request, EPA pointed out:

Pursuant to 329 IAC 3.1-9-1/40 C.F.R. § 264.1201, TSDFs must comply with certain requirements when storing explosive wastes. There are several waste codes listed in Tradebe's Class 3 permit modification request... which correspond to explosive material (such as K047, pink/red water from TNT operations). Tradebe's Class 3 permit modification request does not have descriptions of how explosive waste will be managed. If these wastes will not be stored at the facility, Tradebe should revise the list of accepted waste codes to only include hazardous wastes that will be accepted and managed at the facility.¹⁵¹

IDEM echoed EPA's comment in the April 21, 2023 notice of deficiency letter:

TTR's Class 3 permit modification request does not have descriptions of how explosive hazardous waste will be managed. If these wastes will not be stored at the facility, TTR should revise the list of accepted waste codes to only include hazardous wastes that will be accepted and managed at the facility.¹⁵²

Tradebe subsequently update Attachment A, Appendices A-1 and A-4 to remove hazardous waste codes K044, K045, and K047.¹⁵³

Despite this back-and-forth between IDEM, EPA, and Tradebe, Attachment A, Appendices A-1 and A-4 in the Draft Permit list K044, K045, and K047.¹⁵⁴ Tradebe's RCRA

¹⁵¹ Exhibit 8, EPA Comment on Tradebe's Class 3 Permit Modification Request, Specific Comment 9, at 5 (March 23, 2023).

¹⁵² IDEM First Notice of Deficiency re: Tradebe's Class 3 Permit Modification Request, NOD #8, at 2 (April 21, 2023).

¹⁵³ Tradebe Response to IDEM First Notice of Deficiency re: Tradebe's Class 3 Permit Modification Request, NOD #8, at 7 (May 22, 2023).

¹⁵⁴ Draft Permit Attachment A, Appx. A-1 at 5; Draft Permit Attachment A, Appx. A-4 at 15d (August 9, 2024).



Part B permit cannot be renewed, nor can the Class 3 Permit Modification request be granted, until this is corrected so that the permit is legally sufficient.¹⁵⁵

B. The Draft Permit should reflect only hazardous waste Tradebe can and will process.

As it is written currently, Attachment A is a blank check authorizing Tradebe to handle a wide variety of hazardous waste—in fact, nearly every type of hazardous waste. Attachment A, Appendix A-3 lists estimates of the amount of each type of hazardous waste Tradebe will handle under the permit; the majority of the hazardous waste codes listed simply list “1,000 tons,” indicating that this is a placeholder value.¹⁵⁶ 40 C.F.R. § 270.13(j) requires Part A of the permit application to include an “estimate” of the quantity of each hazardous waste listed that is to be handled at the facility¹⁵⁷—a place-holder value is not an estimate. Rather, this effectively gives Tradebe the green light to accept nearly every type of hazardous waste without the assurance through detailed process descriptions that Tradebe is able to effectively process all these types of waste

Moreover, for each type of waste, Tradebe lists process codes with the same placeholder process description: “Included with above.”¹⁵⁸ On page 13 of the permit Part A application, two process codes have references to Attachment B, while the other three have no reference at all and no description as 40 C.F.R. §§ 270.13(i) and (j) require.¹⁵⁹ Attachment B does not attempt to match treatment, process, or management method to each hazardous waste listed in Attachment A. There is therefore no evidence provided in the permit as to how each type of listed hazardous waste will be processed correctly at the facility, nor any evidence as to how much of each hazardous waste will be processed to support the estimates Tradebe gave.

Similar to the long list of hazardous waste codes, Tradebe claims to be able to conduct a comprehensive and large number of treatment types including Acid Cracking, Blending, Fuel Blending, Chemical Oxidation, etc.¹⁶⁰ This broad list of treatment types should be substantiated

¹⁵⁵ See 329 IAC 3.1-9-1/40 C.F.R. §§ 264.1200 and 1201 (requiring that hazardous waste munitions and explosive storage units be designed, operated, and stored according to certain standards); see also Ex. 8, USEPA Comment on Tradebe’s Class 3 Permit Modification Request, Specific Comment 9, at 5 (March 23, 2023) at 5 (explaining that Tradebe’s permit application does not include a description of how to manage explosive wastes).

¹⁵⁶ Draft Permit Attachment A, Appx. A-3.

¹⁵⁷ 40 C.F.R. § 270.13(j) (“A specification of the hazardous wastes listed or designated under 40 CFR part 261 to be treated, stored, or disposed of at the facility, an **estimate** of the quantity of such wastes to be treated, stored, or disposed annually, and a general description of the processes to be used for such wastes.”) (emphasis added).

¹⁵⁸ Draft Permit Attachment A, Appx. A-3.

¹⁵⁹ *Id.* at 13; 40 C.F.R. § 270.13(i) (“Part A of the RCRA application shall include the following information:... A description of the processes to be used for treating, storing, and disposing of hazardous waste, and the design capacity of these items.”)

¹⁶⁰ Draft Permit Attachment B, at 12.



by Tradebe with evidence provided to IDEM. For example, Tradebe should explain which specific processes provide Acid Cracking, Blending, or Chemical Oxidation, and for which waste codes. Without this evidence, the Draft Permit again becomes a blank check that will inevitably result in compliance issues.

We respectfully urge IDEM to:

- (a) Withdraw the Draft Permit and deny the Class 3 Permit Modification request until Tradebe lists the hazardous waste codes that accurately represent the waste that is accepted, stored, and managed at the facility. This includes removing the explosive waste codes and other inaccuracies, and removing hazardous waste codes from its list for which it cannot support the estimated amount with evidence.
- (b) Require Tradebe to demonstrate 1) how, for each waste code, Tradebe's processes can effectively treat such wastes, and 2) how, for each listed process in Attachment B, Tradebe can effectively treat the relevant waste by those means.

XII. The Draft Permit impermissibly relies on exemptions to which Tradebe is not entitled in light of its Clean Air Act violations.

A. Inappropriate Exemption Claims to RCRA Subparts AA and CC

Tradebe's RCRA permit renewal should be denied because it fails to meet the requirements for its claimed exemption to RCRA's 40 CFR Part 264, Subparts AA and CC.

In Attachment D to Tradebe's Permit Application, Tradebe claims an exemption to RCRA's 40 CFR Part 264, Subpart AA (Air Emissions Standards for Process Vents) and RCRA's 40 CFR Part 264, Subpart CC (Air Emissions Standards for Tanks, Surface Impoundments, and Containers) on the basis that it meets certain CAA provisions.

First, Tradebe argues that it is exempt from complying with Subpart AA. "[S]ince the units and their emissions are also subject to the requirements of the Clean Air Act regulation 40 CFR Part 63, Subpart DD, Tradebe is electing to claim the exemption to the 264 Subpart AA rules available at 40 CFR 264.1030(e)."¹⁶¹ Tradebe provides self-certification documentation for this provision in Appendix D-16.¹⁶²

Second, Tradebe argues that it is exempt from complying with Subpart CC. "[T]he requirements of 264 Subpart CC do not apply to waste management units at the facility that the owner certifies is equipped with an operating air emission controls in accordance with the

¹⁶¹ Attachment D to the Application VFC No. 83679602 (2024.08.09), Page 59.

¹⁶² *Id.*



requirements of certain Clean Air Act regulations.”¹⁶³ Tradebe provides self-certification document for this provision in Appendix D-18.¹⁶⁴

Despite its self-certification, Tradebe continues to violate its CAA Title V Permit. Tradebe’s continued noncompliance with its existing CAA obligations should weigh strongly against the renewal of its RCRA permit. Moreover, its noncompliance statutorily means that it cannot be exempt from its RCRA Subpart AA and CC obligations.

Tradebe is also required to show compliance with the CAA’s 40 CFR Part 60 and the CAA’s 40 CFR Part 61 provisions in order to obtain an exemption from RCRA’s 40 CFR Part 264, Subpart CC requirements. Yet, Tradebe does not demonstrate its compliance with Parts 60 and 61. “Tradebe must show that these units meet the applicable CAA requirements under 40 C.F.R. Part 60, 61, 63, however, this has yet to be demonstrated.”¹⁶⁵

Tradebe has not shown compliance with the CAA’s 40 CFR Part 60 and the CAA’s 40 CFR Part 61 and should not be granted an exemption to RCRA’s 40 CFR Part 264, Subpart CC.

B. Refusal to create notification plans to IDEM for CAA Violations.

On June 3, 2024, IDEM issued a NOD informing Tradebe of specific deficiencies related to their RCRA permit renewal application. In Comment #15, IDEM identified a missing notification provision in Tradebe’s permit and Waste Analysis Plan:

*The permit and WAP should include provisions for Tradebe to notify IDEM, in writing, about any Local, State, or Federal findings of [sic] notice of alleged noncompliance with CAA requirements at the subject tanks and containers, at least 5 days after Tradebe’s receipt of such notice of noncompliance. Any written notice of noncompliance must contain the EPA identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance event, and the actions taken to correct the noncompliance event and prevent reoccurrence of the noncompliance event, 40 C.F.R. §§ 264.1089 and 264.1090.*¹⁶⁶

Tradebe responded that it was unable to identify such a requirement in 40 C.F.R. §§ 264.1089 and 264.1090 [sic] and consequently “has not incorporated this statement [of a

¹⁶³ Attachment D to Application VFC No. 83679602 (2024.08.09), Page 62.

¹⁶⁴ *Id.*

¹⁶⁵ IDEM NOD #5 VFC No. 83648133 (2024.06.03), Page 9; *see also* Tradebe Response to NOD Part 2 - VFC No. 83497904 (2023.06.30), Page 15; Tradebe response to IDEM NOD #5 VFC No. 83663260 (2024.07.06), Page 15.

¹⁶⁶ IDEM NOD #5 VFC No. 83648133 (2024.06.03) (emphasis added).



notification provision] in the modified application.”¹⁶⁷ However, 40 C.F.R. § 264.1090(a) discloses the notification requirement that Tradebe failed to heed:

Each owner or operator managing hazardous waste in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of § 264.1082(c) of this subpart ***shall report to the Regional Administrator each occurrence when hazardous waste is placed in the waste management unit in noncompliance with the conditions specified in § 264.1082 (c)(1) or (c)(2) of this subpart, as applicable.***¹⁶⁸

Tradebe did not heed the notification requirement in 40 C.F.R. § 264.1090(a) and neglected to include such a notification provision in their modified application. Thus, Tradebe has not shown compliance with 40 C.F.R. § 264.1090(a) and should not be granted renewal at least until this provision is added to a modified permit.

C. Refusal to provide RCRA Subpart BB certification.

1. Monitoring of Carbon Units

In a June 3, 2024, NOD issued by IDEM to Tradebe noting deficiencies in its permit renewal application, IDEM noted that Tradebe did not properly certify its claimed exemption to RCRA’s Subpart BB requirements regarding the monitoring of its carbon units. Tradebe was required to certify its intent to use its CAA permit to show compliance with RCRA 40 CFR 264, Subpart BB. “Subpart BB allows for an elective provision under 40 C.F.R. § 264.1064(m). [...] Tradebe must provide a certification that the facility wishes to use an elective provision if the facility is using a CAA permit to show Subpart BB documentation compliance.”¹⁶⁹

Tradebe responded that it was unable to identify such a certification requirement. “Tradebe did not locate a regulatory citation that requires a Subpart BB certification to be included. [...] Therefore, Tradebe did not provide this document.”¹⁷⁰ However, IDEM clearly noted this 40 C.F.R. § 264.1064(m) requirement in Comment #24. “Subpart BB allows for an elective provision under 40 C.F.R. § 264.1064(m).”¹⁷¹

The relevant RCRA exemption requirements state:

The owner or operator of a facility with equipment that is subject to this subpart and to regulations at 40 CFR part 60, part 61, or part 63 ***may elect to determine compliance with this subpart*** either by documentation pursuant to § 264.1064 of

¹⁶⁷ IDEM NOD #5 VFC No. 83663260 (2024.07.06), Page 15.

¹⁶⁸ 40 C.F.R. § 264.1090(a) (emphasis added).

¹⁶⁹ IDEM NOD #5 VFC No. 83648133 (2024.06.03), Page 12.

¹⁷⁰ IDEM NOD #5 VFC No. 83663260 (2024.07.06), Page 22.

¹⁷¹ IDEM NOD #5 VFC No. 83648133 (2024.06.03), Page 12.



this subpart, or *by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 [CAA permit requirements]* pursuant to the relevant provisions of the regulations at 40 CFR part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available with the facility operating record.¹⁷²

Tradebe did not identify the certification provision in 40 C.F.R. § 264.1064(m) even though this was identified in Comment #24. Tradebe has not shown compliance with 40 C.F.R. § 264.1064(m) and should not be granted renewal at least until Tradebe can show compliance and proper certification of its compliance with the CAA's permit requirements.

2. Equipment associated with SDS units

Similarly, IDEM notes that Tradebe fails to provide any documentation certifying that its SDS units comply with its CAA permit requirements. Such documentation is required for Tradebe to exempt its SDS units from RCRA Subpart BB requirements. IDEM stated that the “list of all the equipment associated with SDS I and SDS II along with all applicable Subpart BB requirements for each piece of equipment must be provided. If the equipment is documented in a CAA permit, Tradebe must provide the CAA regulations that are being followed.”¹⁷³ Tradebe similarly argued that it could not locate such a requirement and did not provide such a certification.¹⁷⁴

As shown above, 40 C.F.R. § 264.1064(m) requires that Tradebe certify its compliance with relevant portions of the CAA if it is electing to use RCRA's elective provision to show its compliance with RCRA Subpart BB. Tradebe's SDS units do not comply with 40 C.F.R. § 264.1064(m) and Tradebe should not be granted a permit renewal at least until Tradebe can show that its SDS units are compliant with either RCRA Subpart BB or the relevant CAA provisions (40 CFR Parts 60, 61, or 63).

XIII. Tradebe's Quality Assurance Plan (Appendix C-1 to Attachment C) is not in a Condition for Approval.

Appendix C-1 to Attachment C, describing Tradebe's Quality Assurance Project Plan (QAPP) Program appears to be a draft document that has not been finalized. For instance, it still includes editorial comments, such as “Add ‘(July 2024)’?” and “Also, Tradebe may add Hach analysis kit for hexavalent chromium 8023.”¹⁷⁵ Tradebe should not be granted a permit renewal at least until Appendix C-1 is finalized and all outstanding comments are addressed.

¹⁷² 40 C.F.R. § 264.1064(m) (emphasis added).

¹⁷³ IDEM NOD #5 VFC No. 83648133 (2024.06.03), Page 12.

¹⁷⁴ IDEM NOD #5 VFC No. 83663260 (2024.07.06), Page 22.

¹⁷⁵ Attachment C - VFC No. 83679601 (2024.08.09), Appendix C-1.



XIV. Tradebe's Closure Plan and Financial Requirements (Attachment I) is Deficient

Tradebe's Closure Plan is supposed to provide a plan for any future closure of its facility in accordance with 40 CFR 264.110.¹⁷⁶ Tradebe's Closure Plan is deficient in at least four ways.

First, Table I-2, which describe Tradebe's Closure Action levels, is deficient. Closure Action Levels describe pollutant levels in its facility that compel Tradebe to take remediation action after it has ceased operation. "These action levels are concentrations of the analytical parameters of concern above which TRADEBE will take further action; additional sampling and analysis, and/or remedial action."¹⁷⁷ Tradebe does not describe the basis for the Closure Action Levels. Tradebe should not be granted a permit renewal at least until it provides such bases for the parameters described in Table I-2.

Second, the Action Levels described in Table I-2 are described relative to a "Background."¹⁷⁸ To the extent that the Action Levels involve comparisons to "Background" levels, the renewal Application does not include details of how such "background" levels will be determined – especially given the long operating history by Tradebe at the site. This should be thoroughly discussed because without a proper background determination, it is entirely possible that a high background level will be determined, making closure meaningless. Tradebe should not be granted a permit renewal at least until it provides such bases for measuring a "Background," as described in Table I-2.

Third, for VOCs and semi-VOCs, the Action Levels in Table I-2 are stated to be the "Estimated Quantitation Limit."¹⁷⁹ Appendix I-7 further describe these quantitation limits.¹⁸⁰ However, the listing of such limits provided in Appendix I-7 appears to be very dated, without any dates of determination or laboratory discussions noted. Tradebe should provide an explanation for the bases of these limits and, if necessary, these limits should be updated to reflect lower, current, quantitation limits. All supporting discussions from analytical laboratories should be provided in the record.¹⁸¹

Fourth, Tradebe also provides closure costs estimates for its Closure Plan in Appendix I-2.¹⁸² Tradebe's Closure Cost Estimates are deficient. Tradebe does not provide a basis for its estimates. Tradebe does not provide any data sources or methodological descriptions at how it arrives at its numbers. Furthermore, according to an experienced environmental engineer with whom we consulted in the course of preparing these comments, the total closure costs listed for a facility the size and scale of Tradebe is simply not credible. At the very least, Tradebe's

¹⁷⁶ Attachment I - VFC No. 83679606 (2024.08.09), Page 2.

¹⁷⁷ Attachment I - VFC No. 83679606 (2024.08.09), Page 14.

¹⁷⁸ Attachment I - VFC No. 83679606 (2024.08.09), Page 14.

¹⁷⁹ Attachment I - VFC No. 83679606 (2024.08.09), Page 14.

¹⁸⁰ *Id.* at Appendix I-7.

¹⁸¹ *Id.*

¹⁸² Attachment I - VFC No. 83679606 (2024.08.09), Appendix I-2.



Closure Plan should not be approved until Tradebe provides both a description of its data sources and its methodology.

XV. Tradebe's Facility Description (Attachment B) is Outdated and Deficient

Tradebe provides a description of its facility in Attachment B,¹⁸³ but this description is deficient in at least three ways.

First, Appendix B-2 is supposed to provide topographical maps of the land on which the facility sits. Attachment I - VFC No. 83679600 (2024.08.09), Appendix B-2. These maps are blurry and incomprehensible. Tradebe's Draft Application should not be approved at least until Tradebe provides legible maps that can be scrutinized by the community for vulnerabilities that would be affected by Tradebe's continued operation.

Second, Figure B-1 provides an area wind rose that is supposed to show representative meteorological conditions surrounding the Tradebe facility. The wind rose, however, is of an airport two miles away. Tradebe claims it has met the requirement contained in 40 CFR 270.14(b)(19)(v), to include a wind rose in its map of the facility because "[g]enerally, meteorological conditions observed at the airport should be representative of the overall wind distribution at the facility (in that they are only separated by approximately two miles)."¹⁸⁴ Tradebe should provide a more representative wind rose, ideally of the site itself. Further, the current wind rose of the airport shows calm conditions 68.2% of the time.¹⁸⁵ If this measurement is correct and representative of the Tradebe facility area, this would be concerning. Dispersion is likely to be very poor and adverse impacts to the surrounding communities would be much greater as a result of this significant amount of calm conditions.

Third, Paragraph B-4 provides an improbable description of how the facility will impact traffic. It estimates that each week, 1-3 non-hazardous tank trucks, 5-15 hazardous tank trucks, and 75-100 hazardous or non-hazardous trucks and trailers will unload at Tradebe.¹⁸⁶ Because Tradebe's 2017 RCRA Permit provided identical estimates, we highly doubt the accuracy of these numbers. First, Tradebe's construction projects will undoubtedly add additional large vehicle traffic. Second, Tradebe intends to dramatically increase its total permitted storage, and will undoubtedly solicit a higher volume of business to take advantage of that increase. As described above, the residents in the neighborhood around Tradebe face among the highest rates of traffic proximity and diesel PM. Tradebe must provide the public with an accurate report of its impact on traffic, and we strongly encourage IDEM to consider traffic and diesel emissions when conducting an analysis of cumulative impacts.

¹⁸³ Attachment I - VFC No. 83679600 (2024.08.09), Page 2.

¹⁸⁴ Attachment I - VFC No. 83679600 (2024.08.09), Page 5.

¹⁸⁵ Attachment I - VFC No. 83679600 (2024.08.09), Figure B-1.

¹⁸⁶ See Attachment B – VFC No. 8367960 (2024.08.09), Page 75.



XVI. The Draft Permit should be modified to ensure that Tradebe will meet RCRA Empty requirements.

As the Draft Permit is currently written, it is insufficient to ensure that Tradebe will comply with RCRA Empty requirements. Attachment D of the Draft Permit discusses meeting RCRA Empty requirements only at the highest level.¹⁸⁷ Nowhere does the Draft Permit impose obligations on Tradebe to substantiate its claims that drums and containers meet RCRA Empty standard before being shredded or otherwise processed—no monitoring, waste analysis, or record-keeping requirements are present to ensure that the RCRA Empty determination is accurate. Given Tradebe’s history of violations, including, as IDEM knows, for *twenty years* operating one of its Drum Shredders without a permit,¹⁸⁸ IDEM should carefully scrutinize Tradebe’s process for handling RCRA Empty drums and containers that are destined for Drum Shredders. To make matters worse, Tradebe’s history of consistently mislabeling drums and containers increases uncertainty about which drums and containers are actually RCRA Empty.¹⁸⁹

Without revising the Draft Permit to include requirements that Tradebe prove its drums and containers are RCRA Empty before being shredded, there is a large gap in regulating the facility. While the Drum Shredder has been approved by IDEM in the CAA Minor Source Permit Modification, the permit modification only addresses the process of the Drum Shredder, at which point is assumed to be receiving RCRA Empty drums and containers.¹⁹⁰ If the drums and containers going into the Drum Shredder are not RCRA Empty, then Tradebe would be impermissibly treating the residual waste in the drums.¹⁹¹ At this point, neither the RCRA Part B Draft Permit nor the CAA Title V Operating Permit contains requirements for showing that drums and containers meet the RCRA Empty definition.

We respectfully urge that IDEM:

- (a) Impose requirements to ensure that the drum shredding operations are permitted, and

¹⁸⁷ Draft Permit Attachment D, at 21, 31 (“Containers that are used to perform treatment may contain residue, which will be emptied, when applicable, by pouring, pumping, aspiration or shredding” and “Compressed gas cylinders will be considered RCRA empty when the internal pressure of the cylinder is not measurably above atmospheric pressure or when there is no noticeable discharge from the cylinder when the cylinder valve is opened in a controlled environment.”).

¹⁸⁸ IDEM CAA Minor Source Permit Modification NOD, at 3.

¹⁸⁹ See summary table (currently labeled Table W) earlier in the Comment that includes the “improper labeling” count; see also Appendix A in the Clinic’s Letter to IDEM re: IDEM’s pattern of Agreed Orders with Tradebe at 14, 16-19, 21.

¹⁹⁰ IDEM CAA Minor Source Permit Modification NOD, at 3.

¹⁹¹ 40 CFR § 270.1(c) (“RCRA requires a permit for the ‘treatment,’ ‘storage,’ and ‘disposal’ of any ‘hazardous waste’ as identified or listed in 40 CFR part 261.”)



- (b) Impose requirements to ensure that the drums and containers processed in the Drum Shredder meet RCRA Empty requirements.

XVII. IDEM should make additional modifications to strengthen the Draft Permit.

A. Confidential Business Information

Some parts of the permit have information redacted because they are part of confidential business information. Many times businesses will claim that certain information is confidential when it is not actually confidential business information. The information that is not actually confidential business information should be available if needed.

B. Documents to be Maintained at Facility Site

If Section I.H of the permit conditions is intended to summarize all record-keeping requirements, RCRA Subparts AA, BB, and CC record-keeping requirements should be included as:

14. Records regarding documentation of compliance under regulations 40 CFR part 60, part 61, or part 63 to certify process vents that would otherwise be subject to RCRA Subpart AA are equipped with and operating air emission controls in accordance with the requirements for process vents under the Clean Air Act.

15. Records regarding documentation of compliance with 40 CFR part 60, part 61, or part 63 if an election is made to determine compliance with RCRA Subpart BB using such documentation, or documentation pursuant to 40 CFR § 264.1064.

16. To show compliance with RCRA Subpart CC, certification that the waste management unit is equipped with and operating air emission controls in accordance with the requirements of applicable Clean Air Act regulations codified under 40 CFR part 60, part 61, or part 63.

C. Management of Containers

To the extent that IDEM can, III.E.2.a should be revised such that Tradebe will have a shorter period than 60 days to ship rejected hazardous waste off-site to an alternate TSDF or generator. Given Tradebe's history of noncompliance, 60 days is too long of a period to allow for rejected hazardous waste to be handled at the Tradebe facility before something would go wrong.

The record retention period for documentation of the movement of containers from a permitted storage area to a staging area followed by placement into a permitted storage area is too short. Given Tradebe's long history of violations, including maintaining containers for longer than the permitted time in a staging area and most recent violation of not possessing supporting documentation pursuant to this part of the permit, Tradebe should be required to keep this documentation for longer than a 30-day period. Keeping the documentation will help



with getting a clearer picture of Tradebe's operations and will increase accountability for long-term compliance.

D. Containment and Detection of Releases

Currently Section IV.G.2.b of the Draft Permit conditions is written broadly to account for reporting that must be made under the Clean Water Act:

"...If the collected material is a hazardous waste, it must be managed in accordance with all applicable requirements. The Permittee must note that if the collected material is discharged through a point source to U.S. waters or to a POTW, it is subject to requirements of the Clean Water Act. If the collected material is released to the environment, it may be subject to reporting under 40 CFR Part 302...."

However, because this is addressing hazardous waste, this section should make clear that any discharges may be subject to land disposal requirements and that a proper determination must be made and documented before releasing any material into U.S. waters or to a POTW. Documentation of this determination should be included in the facility's operating record.

* * *

We respectfully urge that IDEM:

(a) Add to the Confidential Information section of the permit conditions that a permittee may be required to substantiate their confidential business information.

(b) Add to Section I.H the language requested above to show compliance and certification of compliance with 40 CFR part 60, part 61, and part 63 if Tradebe elects to show compliance with Subparts AA, BB, and CC in this manner.

(c) Revise, to the extent possible, the 60-day period to ship rejected hazardous waste to another TSDF or generator facility to a shorter period to minimize potential for mismanagement.

(d) Increase the documentation retention period for containers that have been staged and moved to a permitted area.

(e) Clarify in IV.G.2.b that discharges may be subject to land disposal requirements and that Tradebe must make a proper determination, the documentation from such determination to be kept in the facility's operating record, before releasing any material.

* * * * *

We thank you again for the opportunity to submit these comments, and for your careful attention to the issues and concerns we have raised. We look forward to your response.



Respectfully submitted,

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