

I I 6 South Indiana, Bloomington, Indiana 47408 phone: 812-856-0229 | fax: 812.855.1828 admin@conservationlawcenter.org | conservationlawcenter.org

April 5, 2025

VIA ELECTRONIC MAIL

Aasim Noveer IDEM, Office of Air Quality Indiana Government Center North 100 North Senate Avenue, Room 13W Indianapolis, Indiana 46204-2251 ANoveer@idem.IN.gov

Re: Public Comments on TMS International LLC, contractor of US Steel Corporation Gary Works, Renewal of Part 70 Administrative Operating Permit No. T 089-48490-00174

To Indiana Department of Environmental Management:

The Conservation Law Center, the Environmental Law & Policy Center, and the Abrams Environmental Law Clinic, along with Gary Advocates for Responsible Development, Just Transition Northwest Indiana, and the Northern Lake County Environmental Partnership (collectively, "Commenters") respectfully submit the following comments on the abovereferenced Draft Title V "Administrative" Part 70 Operating Permit renewal ("Draft Permit" or "Permit") issued by the Indiana Department of Environmental Management ("IDEM") to TMS International, LLC ("TMS") for the scrap metal processing operations it conducts at U.S. Steel Gary Works integrated steel mill in Gary, Lake County, Indiana. We appreciate the opportunity to make these public comments.

Collectively, the Commenters are non-profit organizations that work to promote a healthier environment for all. We believe that federal and state regulations exist to ensure that businesses operate in a manner that minimizes the harm to human health and the environment and that fair enforcement of those regulations ensures that businesses stand on equal footing and do not receive a competitive advantage by polluting the environment.

The above-referenced Draft Permit authorizes emissions from one of the operations of TMS at US Steel Gary Works facility in Gary, Indiana.¹ Although not revealed in the draft permit, TMS is engaged in processing scrap metal for recycling in Gary Works' basic oxygen furnace. The Commenters support steel recycling. The operations conducted by TMS under this

¹ Under a separate "administrative" Part 70 permit, TMS operates a kish iron crushing operation, a slag processing plant, a slab scarfing plant, and an oxygen lancing metal plant. *See* Permit No. 089-43700-00132. The separate "Administrative" Part 70 permit for those operations of TMS is due for renewal in 2026.

permit reduce the need for production of virgin steel, avoid landfilling or other disposal of scrap steel, and reduce emissions in a variety of ways. In addition, internally recycling steel would seem to be of financial benefit to US Steel. These comments are not directed towards US Steel's operations at Gary Works generally nor TMS's role in scrap metal processing at Gary Works. Rather, our comments are aimed at IDEM's issuance of a Permit that fails to properly identify the emissions source and location and provides no enforceable emission limits, which are applicable requirements under the Clean Air Act ("CAA") and associated federal rules.

Comment 1: There is no such thing as an "Administrative Operating Permit"

The Permit renewal is purported to be issued in accordance with 326 IAC 2, yet the Indiana Administrative Code does not authorize IDEM to issue an "administrative operating permit." Administrative amendments to a Part 70 permit are authorized for minor changes to permit terms that do not revise operating or compliance requirements. *See* 326 IAC 2-7-11. The regulations in this section are inapplicable here where no amendments are proposed.

IDEM's Draft Permit is labeled a "Part 70 Administrative Operating Permit Renewal" and provides "General Information" about TMS in the following incomplete sentence: "The permittee owns and operates a stationary scrap metal processing [sic]." *See* Permit, A.1. The Part 70 source definition is about US Steel Gary Works as a whole. *Id.*, A.2. In the Technical Support Document ("TSD"), IDEM describes "the source," as "an integrated steel mill" that includes the primary operation, US Steel Gary Works (Source ID 089-00121) and a list of onsite contractors. IDEM notes that the source was initially determined under Part 70 No. 089-36115-00174, issued on December 02, 2015. The draft permit does not identify TMS's potential to emit separate from Gary Works. It appears that IDEM purports to issue a Part 70 permit to the entire source (T-089-46943-00121) and issues separate "administrative" Part 70 permits to each of the onsite contractors "solely for administrative purposes." *Id.* However, practically and legally, IDEM's permitting process for this source is deficient and runs afoul of CAA Title V as discussed below.

On February 26, 2025, the Commenters provided a comment regarding a similar "administrative Part 70 permit" being issued to Indiana Harbor Coke Co., a contractor of Cleveland-Cliffs Steel, No. T 089-47309-00382. *See* Attachment A. The Commenters incorporate those same comments that are also applicable here. *Id.* at 6-8, sections III.B. and III.C. The potential for having a significant impact to human health and the environment from these two emission sources – Indiana Harbor Coke Co. with its 268 coke ovens and associated equipment annually spewing hundreds of tons of CO, NOx, and SO₂, and TMS with its scrap steel recycling operation – is not adequately reflected in their respective "administrative" draft Part 70 permits. IDEM must revise the Draft Permit (and other permits associated with the various operations at the US Steel Gary Works source) to comply with Title V permitting requirements regarding the applicable requirements for TCM's scrap metal recycling operations.

Comment 2: The permit does not identify the facility, the source, or its emission sources

Formerly known as Tube City LLC, TMS is a Pittsburgh-based contractor of United States Steel operating on-site at its Gary Works facility. The draft permit relates only to the scrap metal processing that TMS operates where it cuts and bails scrap metal for melting in Gary Works' basic oxygen furnace. According to a 2023 IDEM Office of Land Quality inspection, approximately 75% of the scrap metal being processed is internal off-spec steel from US Steel Gary Works.² The remainder is scrap metal from auto shredders and other outside sources.

According to its current and draft proposed administrative Part 70 permit, TMS's scrap metal processing operations include "[o]ne (1) shear for cutting scrap metal, identified as unit No. 3, constructed in 1991, with a maximum capacity of 35 tons per hour of scrap metal." *See* Draft Permit, A.3(b). According to earlier IDEM inspections, that shear has not been used since 2001 and was removed from the site and sold in 2003.³

Neither IDEM nor the Draft Permit identify where TMS is conducting the scrap metal recycling operations addressed in the Permit. Gary Works is a massive integrated steel mill that covers over six square miles. The Permit must clearly identify the specific location of the permitted activities to ensure that the Permit includes all TMS emission units and associated requirements and to preserve enforceability of the Permit as a whole. 326 IAC 2-9-1(c)(2). The Permit and the TSD also fail to identify whether the operations occur indoors, where emissions could be captured and controlled, or whether they occur exclusively outdoors with no pollution control equipment. The permit provides opacity limits for material processing facilities "from a building enclosing all or part of the material processing equipment" without identifying whether this provision applies to TMS's operations. *See* Permit, C.5(h)(1).

From reading the Draft Permit, it is impossible to determine what TMS does and the source of and types of emissions it generates. Based on a description of its operations pieced together from past IDEM inspection reports, it appears that TMS's scrap steel recycling operations are likely exclusively conducted outdoors and that its emissions are suppressed exclusively through its Fugitive Emission (Dust) Control Plan included in the draft permit. That plan identifies the best available technology for reducing emissions from its operations as elevated workstations and periodic cleaning of burn beds. TMS's fugitive dust control plan calls for cut ferrous material to be dropped no greater than four feet from the ground to prevent significant fugitive emissions. Commenters recommend that this distance be reduced in keeping with EPA's guidance document identifying the best practice as limiting material drop distances to no more than 3 feet.⁴

See VFC # 83552918 (IDEM OLQ Complaint Inspection Report, Oct. 30, 2023).
 See, e.g., VFC # 80617273 (IDEM OAQ Inspection Report, Jan. 26, 2018); VFC # 80304164 (IDEM OAQ Inspection Report, April 14, 2016); VFC # 69782503 (IDEM OAQ Inspection Report, Dec. 5, 2013); VFC # 34807513 (IDEM OAQ Inspection Report, April 19, 2005). As discussed in Comment 4 below, the two most recent IDEM inspections report that the shear was either operating or not operating at the time of the inspection, yet the permit continues to identify the shear as being constructed in 1991.

⁴ EPA, *Fugitive Dust Control Measures and Best Practices* (Jan. 2022) (available at: https://www.epa.gov/system/files/documents/2022-02/fugitive-dust-control-best-practices.pdf).

Comment 3: The permit has no enforceable emission limits

Much of the draft permit appears to be written in generic fashion applicable to the entire source, US Steel Gary Works. The permit does, however, list the emission limit for particulate matter ("PM") from scrap metal balers, shear and scrap metal cutting stations as 0.03 grains per dry standard cubic food. *See* Permit, D.1.1. The permit is silent, however, as to how TMS is to monitor its compliance with this emission limit.⁵ Title V permits must include monitoring, recordkeeping, and reporting requirements to assure compliance with the emission limits applicable to the facility, such as the PM limit in condition D.1.1.⁶

Comment 4: IDEM provides no compliance assurance

The Commenters recognize that IDEM does not consider a permittee's history of inspections or the facility's compliance history when determining whether to renew a Part 70 permit. Yet because IDEM inspections are determining compliance with the very terms of this permit, evaluating how inspections and enforcement work in practice is helpful to understand the importance of permit terms.

IDEM's two most recent inspections, in 2022 and 2024, inexplicably suggest the continued existence of the shear that was removed from the site in 2003.⁷ In 2022, the inspector observed that the "shear for cutting scrap metal was operating at the time of the inspection. No emissions were observed coming from the shear scrap cutting process."⁸ Last year, the inspector observed that the "shear for cutting scrap metal was not operating at the time of the inspection."⁹ Neither inspection report addresses that the shear was reportedly removed in 2003 or states whether the purportedly observed shear was newly installed after removal of the old one.

The same 2024 inspection report observed "Minor, less than fifteen (15) percent (%) opacity, emissions were observed escaping from the process."¹⁰ It does not identify the specific process observed, the length of time of the observation, or whether the inspector had a then upto-date certification to conduct readings pursuant to EPA Method 9. Perhaps most concerning is the fact that some of TMS's operations have an instantaneous opacity limit of 0% and others of 10%, for which observations of less than 15% could indicate potential noncompliance. Given the lack of vigor of IDEM inspections at TMS's scrap metal operations, the Commenters recommend that the permit should provide increased monitoring, recordkeeping, and reporting to provide more transparent public assurance that the permittee's operations comply with its permit terms.

⁵ *Compare* Draft Permit at 28 (providing only "Emission Limitations and Standards" provisions for PM emissions) to *id.* at 30, D.2.4 (providing "Record Keeping Requirements" for degreasing requirements).

⁶ 42 U.S.C. § 7661c(c), and 40 C.F.R. §70.3(a)(3).

⁷ See n. 3, infra.

⁸ VFC # 83314304 (IDEM OAQ Inspection Report, May 5, 2022).

⁹ VFC # 83647066, at 3.

I0 Id.

Conclusion

The Commenters support efforts to recycle steel for both environmental and economic reasons. Furthermore, we appreciate TMS's published goal of "striving for performance that does not merely comply with regulations but reduces our environmental impacts."¹¹ However, we can only rely on IDEM to ensure that TMS, and all other Title V permit holders, have air permits with clear operational requirements to ensure protection of human health and the environment and that those requirements are regularly inspected and enforced as necessary. For the reasons explained above, IDEM's permitting and compliance assurance regarding TMS does not provide any such assurance. IDEM must make changes to the Draft Permit to provide such assurance and to comply with the Clean Air Act.

Respectfully submitted,

Michael J. Zyr

Michael J. Zoeller Senior Attorney

Enclosure: Attachment A

¹¹ See <u>https://www.tmsinternational.com/About/Environment</u>

ATTACHMENT A





February 26, 2025

VIA ELECTRONIC MAIL

Wilfredo de la Rosa IDEM, Office of Air Quality Indiana Government Center North 100 North Senate Avenue, Room 13W Indianapolis, Indiana 46204-2251 wdelaros@idem.IN.gov

Re: Comments on Cleveland-Cliffs Indiana Harbor Coke Company, L.P., contractor of Cleveland-Cliffs Steel, LLC "Administrative" Part 70 Operating Permit Renewal No. T 089-47309-00382

Dear Mr. de la Rosa,

Environmental Integrity Project ("EIP"), Environmental Law & Policy Center ("ELPC"), along with BP Whiting Watch, Conservation Law Center, Gary Advocates for Responsible Development, Just Transition Northwest Indiana, and Northern Lake County Environmental Partnership (collectively, "Commenters") respectfully submit the following comments on the above-referenced Draft Title V "Administrative" Part 70 Operating Permit renewal ("Draft Permit" or "Permit") issued by the Indiana Department of Environmental Management ("IDEM" or "the Department") for the coke ovens operated by Cleveland-Cliffs' ("CC") contractor, Indiana Harbor Coke Company, L.P. ("IHCC"). We appreciate the opportunity to make these public comments.

The Environmental Integrity Project ("EIP") is a national nonprofit organization headquartered at 1000 Vermont Avenue NW, Suite 1100, Washington, D.C. 20005, and with staff in Pittsburgh and Philadelphia. EIP is dedicated to advocating for more effective environmental laws and better enforcement. EIP has three goals: (1) to provide objective analyses of how the failure to enforce or implement environmental laws increases pollution and affects public health; (2) to hold federal and state agencies, as well as individual corporations, accountable for failing to enforce or comply with environmental laws; and (3) to help local communities obtain the protection of environmental laws.

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. As part of this work, ELPC focuses on industrial pollution along the Indiana lakeshore, seeking to make industry comply with the environmental regulations to reduce pollution and improve the landscape where people live, work, and play.

On February 6, 2025, Commenters timely requested an extension of the public comment period and a public meeting, noting the severe deficiencies of the permit and air pollution impacts of the proposed changes in the averaging time for lead emissions. Given the complexity of the permit, the impact of this facility on the health of the community, and the timeliness of our request, IDEM should have granted it. Instead, IDEM waited to the last minute and failed to approve or deny our request until the afternoon the comments were due. Even then IDEM failed to decide on whether to provide a public hearing or meeting – which will entail an extension if approved. We file these provisional comments and reserve the right to supplement them.

I. Introduction and Summary of Comments

While Commenters recognize the complexity of IDEM's task in issuing this Draft Permit, our Comments identify numerous deficiencies:

- IDEM must explain and/or rectify foundational issues with Draft Permit;
- IDEM cannot make the proposed changes to the Draft Permit as "administrative" amendments;
- IDEM must include a schedule of compliance with the Draft Permit;
- IDEM must provide a Statement of Basis for the Draft Permit;
- IDEM must remove the "emergency" affirmative defense provision from the Draft Permit;
- IDEM must clarify limits to ensure they are enforceable; and
- IDEM must revise the Draft Permit to require adequate monitoring and testing to assure compliance with multiple emission limits.

In addition, the Department should revise its approach to public participation to ensure the public has adequate notice and an opportunity to fully evaluate the adequacy of all permit terms and conditions.

The failings of this Draft Permit are pervasive, especially the foundational issue of the "administrative-only" conditions and our concerns about the federal enforceability of the applicable requirements in this Draft Permit. Commenters respectfully request that IDEM reissue this Draft Permit for public notice because it does not provide the public with an adequate chance to participate.

II. Facility Background

IHCC is a contractor of Cleveland-Cliffs Steel LLC and performs heat recovery coal carbonization. IHCC exercises control over the coke ovens and is responsible for the cokemaking

process, producing 1.22 million tons of coke to Cleveland-Cliffs Steel annually.¹ Heated gas steam from the coal carbonization is utilized by Cokenergy, LLC which operates 16 heat-recovery steam generators and downstream pollution control devices and the associated main waste gas stack. IHCC provides coke while Cokenergy provides process steam and electricity to Cleveland-Cliffs Steel LLC as part of the overall integrated iron and steel mill. Together, with a dozen other contractors, these operations are considered a single major source as defined by 326 IAC 2-7-1(22).

IHCC has an extensive history of noncompliance with 40 CFR § 63.303, which includes standards for nonrecovery coke oven batteries, particularly emissions from coke oven doors and common tunnels. And Cleveland-Cliffs Steel, as the single major source, has at least 12 straight quarters of Clean Air Act "High Priority Violation[s]."² Additionally, these facilities' location within 10 miles of Indiana Dunes National Park means these emissions likely contribute to the Indiana Dunes National Park's ranking as among the top 10 National Parks with unhealthy air and hazy skies.³

Facility Emissions Overview				
Pollutant	Pollutant Description	Emissions (Tons)		
NH3	Ammonia	0.0481		
СО	Carbon Monoxide	378.9894		
7439921	Lead	0.1547		
NOX	Nitrogen Oxides	721.7688		
PM-CON	Primary PM Condensable Only (All Less Than 1 Micron)	20.8958		
PM10-FIL	Primary PM10, Filterable Portion Only	74.6687		
PM25-FIL	Primary PM2.5, Filterable Portion Only	50.9821		
S02	Sulfur Dioxide	302.0587		
VOC	Volatile Organic Compounds	2.0531		

In 2023 alone, Indiana Harbor Coke Company reported the following emissions:⁴

¹ See SunCoke Energy, Inc. Press Statement, April 24, 2023, <u>https://www.prnewswire.com/news-releases/suncoke-energy-inc-announces-extension-of-its-indiana-harbor-cokemaking-agreement-through-september-2035-301804473.html</u>. Note SunCoke Energy is Indiana Harbor Coke Company's parent corporation.

² U.S. Env't Prot. Agency, *Cleveland-Cliffs Steel LLC*, last accessed February 25, 2025, <u>https://echo.epa.gov/detailed-facility-report?fid=110000397794</u>.

³ Daniel Orozco, et al., *Polluted Parks: How Air Pollution and Climate Change Continue to Harm America's National Parks*, National Parks Conservation Association (NPCA), https://www.npca.org/reports/air-climate-report.

⁴ Table from 2023 Air Emission Inventory Statement for Indiana Harbor Coke Company, dated June 26, 2024, p. 1, available at IDEM Virtual File Cabinet,

https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_FILE&dID=83656652&dDocName=83660695&Rendition=web&allowInterrupt=1&noSaveAs=1.

Facility Emissions Overview					
Pollutant	Pollutant Description	Emissions (Tons)			
NH3	Ammonia	13.1345			
СО	Carbon Monoxide	21609.3329			
7439921	Lead	0.0564			
NOX	Nitrogen Oxides	2408.5781			
PM-CON	Primary PM Condensable Only (All Less Than 1 Micron)	634.6738			
PM10-FIL	Primary PM10, Filterable Portion Only	1024.3670			
PM25-FIL	Primary PM2.5, Filterable Portion Only	343.5162			
S02	Sulfur Dioxide	2620.2637			
VOC	Volatile Organic Compounds	516.3562			

In the same year, Cleveland-Cliffs Steel LLC reported the following emissions:⁵

There are reasons to believe actual emissions for Cleveland-Cliffs Steel are greater than those reported. Although Cleveland-Cliffs Steel East Plant is identified as the controlling facility under the Title V permit,⁶ the reported emissions for this plant do not include the emissions for Indiana Harbor Coke Company or the other contractor-controlled facilities and emission units. In this way, the impact from each of these facilities is severely downplayed and underreported.

As shown by the table above, IHCC emits tons of harmful air pollutants across Northwest Indiana. These numbers may well be understated because the facility does not report *any* emissions data from continuous emissions monitoring systems ("CEMS"); it relies on *estimates* using either an EPA, state/local, trade group, or site-specific emission factor as well as estimates based on once every five-year stack tests and engineering judgment.⁷

For those emission sources that are reported, the Emission Factors used for calculating the annual emissions are different for seemingly similar processes, and the Technical Support Document ("TSD") does not provide any information on the emission factors IHCC must use or

⁵ Table from 2023 Air Emission Inventory Statement for Cleveland-Cliffs Steel LLC, dated July 1, 2024, p. 1, available at IDEM Virtual File Cabinet,

https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_FILE&dID=83664275&dDocName=83668318&Rendition=we b&allowInterrupt=1&noSaveAs=1.

⁶ See IDEM-Office of Air Quality, Part 70 Operating Permit Renewal for Cleveland-Cliffs, LLC, Permit No. T-089-46463-00316 (November 3, 2023) [hereinafter "2024 Draft Entire Source Permit"].

⁷ See 2023 Air Emission Inventory Statement for Indiana Harbor Coke Company, dated June 26, 2024, available at IDEM Virtual File Cabinet; 2023 Air Emission Inventory Statement for Cleveland-Cliffs Steel LLC, dated July 1, 2024.

why those specific emission factors were chosen.⁸ While the TSD does include emissions calculations, it is unclear whether there is any difference between the emissions factors in Appendix A and Appendix B.⁹ Additionally, these emission estimates may represent deviations from and violations of the facility's operating permit which neither the EPA nor IDEM have adequately addressed through enforcement.

III. Foundational issues with Draft Permit

In the TSD, IDEM describes "the source," as "an integrated steel mill" that includes the primary operation, Cleveland-Cliffs Steel LLC Indiana Harbor East (Source ID 089-00316), collocated with a secondary operation, Cleveland-Cliffs Steel LLC Indiana Harbor West (Source ID 089-00318) and a list of onsite contractors.¹⁰ IDEM notes that the source was initially determined in a Significant Source Modification, issued on November 4, 2011.¹¹ It appears that IDEM purports to issue a Part 70 permit to the entire source (T-089-46463-00316¹²) and issues separate "administrative" Part 70 permits to the Indiana Harbor West plant (T-089-46464-00318¹³) and to each of the onsite contractors "solely for administrative purposes."¹⁴ However, practically and legally, IDEM's permitting process for this source is deficient and runs afoul of Title V of the Clean Air Act ("CAA") as discussed below. While there is such a thing as an administrative amendment to a Title V permit, an "Administrative Title V permit" does not exist. Moreover, while an administrative amendment provides a procedure for making administrative changes to a permit, it does not cover the substantive changes discussed below in Section IV.

A. Neither the Draft Permit nor the TSD clearly describe IHCC's operations.

The TSD describes the source as an "integrated steel mill," in the Source Definition but also states that IHCC submitted a renewal application relating to the operation of a stationary heat recovery coal carbonization ("HRCC") facility.¹⁵ The Draft Permit in Condition A.2, Source Definition states that "[t]he source [is] an integrated steel mill," while Condition A.1 states that "[t]he Permittee owns and operates a [HRCC] facility."¹⁶ IDEM does not describe what a HRCC

⁸ De la Rosa, Wilfredo, *Technical Support Document (TSD) for a Part 70 Operating Permit Renewal*, Indiana Harbor Coke Co, LP, contractor of CCS LLC LLC (2025) [hereinafter "2025 IHCC TSD"].

⁹ *See, e.g.*, Draft Indiana Harbor Coke Company Permit No. T089-47309-00382, Technical Support Document Appendix A (pdf p. 235) and Appendix B (pdf p. 262) (January 27, 2025), available at IDEM VFC, <u>https://permits.air.idem.in.gov/47309d.pdf</u>.

¹⁰ 2025 IHCC TSD at 2

 $^{^{11}}$ *Id*.

¹² 2024 Draft Entire Source Permit.

¹³ IDEM-Office of Air Quality, Administrative Part 70 Operating Permit Renewal for Cleveland Cliffs, LLC, Permit No. T089-46464 (November 3, 2023) [hereinafter "2024 Draft Indiana Harbor West Permit"].

¹⁴ 2025 IHCC TSD at 2. It is also worth noting that one of the contractors', Cokenergy LLC, Part 70 permits, unlike the Draft Permit, is titled a "Part 70 Operating permit" without the "Administrative" descriptor that IDEM purports applies to all of the contractors. IDEM-Office of Air Quality, Part 70 Operating Permit: Cokenergy LLC, Permit No. T089-11135-00383 (June 29, 2006) [hereinafter "Cokenergy LLC Permit"].

¹⁶ IDEM-Office of Air Quality, DRAFT Administrative Part 70 Operating Permit Renewal, Indiana Harbor Coke Company, L.P., contractor of Cleveland-Cliffs Steel LLC (January 27, 2025) at 5 [hereinafter "2025 IHCC Draft Permit"].

is nor how it relates to the description of emission units listed in the TSD that are coke ovens, batteries and associated equipment.¹⁷

However, the Draft Permit also describes each emission unit and control equipment in Section A. The units with the most emission limits and applicable requirements are the 268 non recovery ovens, identified as ES201, and are distributed in four batteries whose emissions are controlled by a lime spray dryer desulfurization unit and a baghouse, where waste gas emissions are exhausted through a main stack (Stack ID 201) and occasionally through some of the sixteen vent stacks.¹⁸ The NESHAP requirements cited in the Draft Permit are also regulations pertaining to coke ovens and coke oven batteries.¹⁹

Although Commenters were able to discern the type of source IHCC operates, it required confirmatory research through cross referencing other referenced permits. Additionally, "HRCC" does not seem to accurately describe IHCC's units, which appear to be coke ovens and batteries. Commenters request that IDEM define "HRCC" and how IDEM deems IHCC's operations more appropriately defined as an HRCC than as coke ovens and coke oven batteries. Finally, at the very least, the TSD should more clearly describe that the major emission units covered by the publicly noticed Draft Permit pertain to coke ovens and coke oven batteries.

B. IDEM's "definition of the source" and practice of issuing "administrative" Part 70 permits for onsite contractors is unclear and unsupported in IDEM's permitting rules.

The confusion in the paragraphs above regarding the type of units IHCC operates directly relates to how IDEM defines the source. In the TSD, IDEM states that a "Part 70 permit has been issued to Cleveland-Cliffs Steel, LLC, Indiana Harbor East (source ID 089-00316)."²⁰ This assertion is confirmed by Permit No. T-089-46463-00316 ("Entire Source Title V Permit") which is titled "Part 70 Operating Permit Renewal."²¹ The TSD goes on to clarify that "[s]eparate administrative Part 70 permits have been issued to [CC IHCC], the secondary operation, and each of the onsite contractors, *solely for administrative purposes*. The companies may maintain separate reporting and compliance certification."²²

IDEM does not explain in the Draft Permit, TSD nor the permit cited that defines the source what an "administrative" Part 70 permit is nor how it is distinguishable from a Part 70 permit. Condition A.5 of the Draft Permit compounds this confusion by stating that IHCC is a major source that is "required to have a Part 70 permit by 326 IAC 2-7-2."²³ IDEM does not

¹⁷ 2025 IHCC TSD at 2-4.

¹⁸ 2025 IHCC Draft Permit, Condition A.3(j) at 7.

¹⁹ 2025 IHCC Draft Permit, Sections E.2, E.3 at 53-56.

²⁰ 2025 IHCC TSD at 2.

²¹ 2024 Draft Entire Source Permit.

²² 2025 IHCC TSD at 2 (emphasis added).

²³ 2025 IHCC Draft Permit at 10. The Draft Permit also states that ""[t]his permit is issued in accordance with 326 IAC 2 and 40 CFR Part 70 Appendix A and contains the conditions and provisions specified in 326 IAC 2-7 as

explain how its "administrative only" designation can coexist with the fact that the Draft Permit itself explains that IHCC is a major source required to have a Title V permit under Part 70 and Indiana Administrative Code requirements.²⁴

Moreover, Commenters are not aware of Part 70 requirements that address "administrative only" Part 70 permits. Commenters also were not able to identify in Indiana's State Implementation Plan ("SIP")²⁵ or any other Indiana regulations the authority under which IDEM may issue "administrative only" permits."

Finally, although IDEM appears to consider the Entire Source Title V Permit to be the "non-administrative" Part 70 permit, the Entire Source Title V Permit fails to include IHCC's emission units and applicable requirements. IDEM does not explain how the "administrative only" Part 70 permit issued to IHCC is federally enforceable, especially where the Entire Source Title V Permit, presumably including all applicable requirements for the entire source, also fails to include federally enforceable requirements applicable to IHCC's coke ovens, coke oven batteries and associated units.

IDEM must explain its rationale and authority for issuing "administrative only" Part 70 permits. IDEM must also explain why the Entire Source Title V Permit does not include all applicable requirements for the entire source, and IDEM must also revise that Entire Source Draft Title V Permit to include all federally enforceable requirements for the entire source. As presented, IDEM's practice of permitting separately the various contractors and the Indiana Harbor East and West plants through "administrative only" and Part 70 permits is inconsistent, unclear, and as discussed more in the section below, runs afoul of Title V requirements.

C. The Draft Permit runs afoul of the Title V requirement that a single permit contain all information needed to comply with the Clean Air Act.

The deficiencies noted above highlight major issues with IDEM's permitting practice for this CC source. Title V requires that a permit contain all applicable requirements in one place, which certainly is not the case with this Draft Permit nor the various other permits associated with this source. "In 1990, Congress added Title V to the [CAA]. Title V's purpose is to provide each source a single permit that contains and consolidates all the information it needs to comply with the Act."²⁶ Title V "provides for individual operating permits that "contain monitoring,"

required by 42 U.S.C. 7401, et. seq. (Clean Air Act as amended by the 1990 Clean Air Act Amendments), 40 CFR Part 70.6, IC 13-15 and IC 13-17." *Id.* at 1.

²⁴ Additionally, on IDEM's webpage describing the different types of Operating Permits, "administrative only" Part 70 permits are not included. IDEM, "Operating Permits," *available at*

https://www.in.gov/idem/airpermit/information-about/operating-permits/ (last visited Feb. 26, 2025). "Administrative" Part 70 permits are not included in IDEM's webpage describing air permits. IDEM, "Air Permit Programs Overview," *available at* https://www.in.gov/idem/airpermit/air-permit-programs-overview/ https://www.in.gov/idem/airpermit/air-permit-programs-overview/ (last visited Feb. 26, 2025).

²⁵ 326 IAC 2, Rule 7. *See* Clean Air Act Final Approval of Operating Permit Program Revisions; Indiana, 67 Fed. Reg. 34844 (May 16, 2002).

²⁶ See, e.g., U.S. Sugar Corp. v. EPA, 830 F.3d 579, 597 (D.C. Cir. 2016) ("Title V does no more than consolidate existing . . . requirements into a single document . . . without imposing any new substantive requirements." (quoting

record keeping, reporting, and other conditions" in one place.²⁷ "In a sense," then, a Title V permit "is a source-specific bible for Clean Air Act compliance."²⁸

For the reasons explained above, the Draft Permit fails to fulfill this core requirement and IDEM must revise the Draft Permit and other permits associated with this source to comply with Title V requirements. As noticed, the Draft Permit is severely deficient and unclear, and it appears that IDEM's entire practice for this source does not comply with Title V requirements.

IV. IDEM cannot make the proposed changes to the Draft Permit as "Administrative Amendments."

The TSD for the Draft Permit states that several changes in the Draft Permit are the result of an application submitted by IHCC on December 7, 2023.²⁹ IDEM explains that the application seeks to "include in the permit several existing exempt units, remove non-existing units, and to revert back the averaging period of the lead emission stack testing from six (6)-hour averaging that was requested by the source and approved by IDEM OAQ in permit 089-11485-00382 issued on December 16, 1999 to the original twenty-four (24)-hour averaging period as determined in permit 089-9236-00382 issued on February 26, 1998."³⁰

For the reasons explained below, IDEM cannot make these changes in the Part 70 Permit as administrative changes and reissue the Draft Permit in compliance with Indiana rules governing the Part 70 Permit Program.

A. The Permit Changes must be processed as Permit Modifications because IDEM did not process the requested changes within 60 days as required by 326 IAC 2-7-11(c)(1).

As an initial matter, IDEM cannot make these changes as administrative changes under Indiana rules for the Part 70 Permit Program. Those rules clearly state that "Administrative Part 70 permit amendment may be made by the commissioner consistent with" a number of requirements, including that "[t]he commissioner shall take no more than sixty (60) days from receipt of a request for an administrative Part 70 permit amendment to take final action on the request." The request for these changes were made in the application submitted on December 7,

Sierra Club v. Leavitt, 368 F.3d 1300, 1302 (11th Cir. 2004)) (cleaned up)); *id.* (Title V's legislative history "indicates that permits' purpose is "so that the public might better determine the requirements to which the source is subject, and whether the source is meeting those requirements" (citation omitted; cleaned up)); *Sierra Club v. Johnson*, 541 F.3d 1257, 1260 (11th Cir. 2008) ("The intent of Title V is to consolidate into a single document (the operating permit) all of the clean air requirements applicable to a particular source of air pollution." (citation omitted)); *id.* (describing the Title V amendments as adding "clarity and transparency . . . to the regulatory process" and noting that "Title V does not generally impose new substantive air quality control requirements"(citations omitted)); *Leavitt*, 368 F.3d at 1302 ("Title V imposes no new requirements on sources. Rather, it consolidates existing air pollution requirements into a single document, the Title V permit, to facilitate compliance monitoring."); *see also United States v. EME Homer City Generation*, L.P., 727 F.3d 274, 280 (3d Cir. 2013) ("Title V 'does not generally impose new substantive air quality control requirements[]'" (quoting *Johnson*, 541 F.3d at 1261)). ²⁷ *Id.* (citations omitted).

²⁸ Virginia v. Browner, 80 F.3d 869, 873 (4th Cir. 1996).

²⁹ 2025 IHCC TSD at 12.

³⁰ Id.

2023.³¹ IDEM noticed these proposed changes as part of the Part 70 permit renewal on January 27, 2025, as shown by the screenshot of the IDEM notice website below:³²

Indiana Harbor Coke Company, LP <u>Public Comm</u> Permits [PDF	ay Period of 01/27/2025 - ont for Draft Air 02/26/2025	Yes	Permit Number: T089- 47309-00382
-----------------------------------------------------------------------	-----------------------------------------------------------	-----	-------------------------------------

Because more than a year has passed since from IHCC submitted the application for these changes and no final action has yet to be taken, these changes cannot be made as administrative changes under 326 IAC 2-7-11(c)(1).

Accordingly, IDEM must issue these changes as a permit modification pursuant to 326 IAC 2-7-12. IDEM must revise the TSD – and the Draft Permit, as necessary – to reflect the changes are occurring as permit modifications, including insuring that all the requirements of the permit modification rules have been met. Thereafter, to ensure that the public has a meaningful opportunity to review and comment on the proposed permit modifications, IDEM must re-notice the Draft Permit and revised TSD for public comment so that the public can determine whether the changes comply with relevant state and federal rules.³³

B. IDEM cannot change the averaging period for lead emissions stack testing in the Draft Permit.

Even if IDEM could make these changes as administrative permit amendments, the change to the lead emissions averaging period cannot be made pursuant to those rules. IDEM argues that changing the averaging period of the lead emissions stack testing from six (6)-hour averaging to twenty-four (24)-hour averaging period is authorized under 326 IAC 2-7-11(a)(7) because it is "amended to change the descriptive information where the revision will not trigger a new applicable requirement or violate a permit term."

But, the averaging period is an integral part of monitoring provisions used to determine compliance with the lead emission limitations contained in the Part 70 Permit and thus cannot be considered "descriptive information."³⁴ Moreover, changing the averaging period would violate the terms of the existing NSR construction permit for this source, which is not allowed under 326 IAC 2-7-11(a)(7). IDEM explains that "permit 089-9236-00382" issued for this source in 1998 included a 24-hour averaging period for lead emissions stack testing, and at the source's request, "permit 089-11485-00382 issued on December 16, 1999" included a 6-hour lead emissions averaging period.³⁵ What IDEM fails to mention is that the1998 permit was a NSR construction

³¹ 2025 IHCC TSD at 12.

³² Available at https://www.in.gov/idem/public-notices/public-notices-

northwestindiana/?utm_medium=email&utm_source=govdelivery

³³ 326 IAC 2-7-17(c), 40 CFR 70.7(h).

³⁴ 326 IAC 2-7-5(1) and (3) (Part 70 permit must include relevant emissions limits and monitoring to assure compliance with them), 40 CFR 70.6(a)(1) and (3) (same).

³⁵ 2025 IHCC TSD at 12.

permit and the 1999 amendment was to that construction permit amendment, even failing to include the full permit numbers which include the "CP" construction permit designation.³⁶

Accordingly, IDEM cannot change the averaging period for lead emissions stack testing to 24-hours in the Draft Permit. The current applicable requirement from the relevant NSR permit is a 6-hour averaging period, and it must be included in the Part 70 Permit unless and until it is changed in the underlying NSR permit.³⁷

C. IDEM Must Provide the Authority for Removing Non-Existing Units.

As noted earlier, IDEM appears to be making three changes in the Draft Permit: (1) including several existing exempt units, (2) removing non-existing units, and (3) changing the lead emissions averaging period. IDEM asserts that these are administrative permit changes as follows:³⁸

Pursuant to 326 IAC 2-7-11(a)(8)(A), this change to the permit is considered an administrative amendment because the permit is amended to incorporate exempt units as described in 326 IAC 2-1.1-3 that does not otherwise constitute a modification for purposes of 326 IAC 2-7-10.5 (Source Modifications) or 326 IAC 2-7-12 (Permit Modifications).

Pursuant to 326 IAC 2-7-11(a)(7), this change to the permit is considered an administrative amendment because the permit is amended to change the descriptive information where the revision will not trigger a new applicable requirement or violate a permit term. Therefore, the averaging period of the lead emission stack testing is revised from six (6)-hour averaging to twenty-four (24)-hour averaging period in this permit renewal.

It is not clear what authority IDEM relies on to remove non-existing units from the Draft Permit. While the first paragraph appears to address the inclusion of the several existing exempt units and the second paragraph relates to changing the lead emissions averaging period, IDEM does not identify its authority for removing the non-existing units.

In addition, IDEM does not explained how, why, or when the non-existing units were removed. While IDEM discusses the removal of non-existing "units," the TSD appears to identify only one unit removed from the Draft Permit – "One (1) coke crusher, with a maximum throughput of 4,020 tons of dry coke per day."³⁹ The TSD simply states that the unit is being removed from the Draft Permit because the "source has removed" it but does not identify which

³⁷ 326 IAC 2-7-1(6)(B) (applicable requirements include "any term or condition" of a preconstruction permit), 40 CFR 70.2 (same), and 326 IAC 2-7-5(1) (A) (Part 70 permit must include applicable requirements), 40 CFR 70.6(a)(1) (same). *See also In the Matter of Wheelbrator Baltimore, L.P.*, Permit No. 24-510-01886 (April 14, 2010) at 7-8 (granting a petition where the state attempted to change the averaging period from 9 to 24 hours in a Part 70 Operating Permit because it did not reflect the underlying PSD permit and noting that the state could revise those terms in the underlying PSD permit and then incorporate them into the Part 70 permit), available at https://www.epa.gov/sites/default/files/2015-08/documents/wheelabrator_decision2009.pdf.

³⁶ **Attachment A**, A 089-11486, Amendment to CP 089-9236, Plt ID 089-00382 (Dec. 16, 1999), explaining the amendment to "CP 089-9236-00382."

³⁹ Id. at 5 (list of removed emission units).

specific unit has been removed.⁴⁰ In addition, it does not explain why or when the unit was removed. It appears the removed unit is the coke crusher at ES265,⁴¹ but Commenters cannot be sure as there are many coal crushing units at this source.

IDEM must clearly identify the unit being removed, provide more detail regarding the unit's removal from the source, and provide the specific authority for removal of the unit from the sources, and as appropriate, removal of that unit from this Draft Permit. Without such information, it is impossible for the public to determine whether there are any remaining emission limitations or standards that continue to apply to the unit such that the unit must continue to be included in the Draft Permit under state and federal permitting rules.⁴²

V. IDEM must include a Schedule of Compliance with the Draft Permit.

Part 70 permits are required to include a schedule of compliance consistent with 40 CFR § 70.5(c)(8).⁴³ Pursuant to that regulation, for those "applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements" suffices.⁴⁴ However, 40 CFR § 70.5(c)(8)(iii)(C) requires "[a] schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance." This must include "a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance."⁴⁵ Indiana statutes also require that permit applications describe the compliance status of the source along with "a narrative description of how the source will achieve compliance with the requirements."⁴⁶

IDEM itself notes that "there are pending enforcement actions for particulate limitation for Lake County (326 IAC 6.8), for door leak and tunnel positive pressure (40 CFR 63, Subpart L), and for SO2 limitation (326 IAC 2-2)."⁴⁷ This demonstrates that the facility is not in compliance with "all applicable requirements." IDEM must revise the Draft Permit to include a compliance schedule as well as a compliance plan with the following descriptions: "(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements. (B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. (C) For requirements for which the source is not in compliance at the time or permit issuance, a narrative description of how the source will achieve compliance with such requirements."⁴⁸

⁴⁰ *Id*.

⁴¹ *Id. at* 14 (strike through of crushing at ES265 in computing PTE).

⁴² 326 IAC 2-7-5(1) (A); 40 CFR 70.6(a)(1).

⁴³ 40 CFR § 70.6(c)(3). See also Indiana Admin. Code 326 2-7-6(6) and 326 2-7-4(10).

⁴⁴ 40 CFR § 70.5(c)(8)(iii)(A).

⁴⁵ 40 CFR § 70.5(c)(8)(iii)(C). See also 42 U.S.C. § 7661c(a); 326 IAC 2-7-4(c)(9)(B)(iii).

⁴⁶ 326 IAC 2-7-4(c)(9)(A)(iii).

⁴⁷ Draft Indiana Harbor Coke Company Permit No. T089-47309-00382, Technical Support Document, p. 7 (January 27, 2025), available at IDEM VFC, <u>https://permits.air.idem.in.gov/47309d.pdf</u>.

⁴⁸ 40 CFR § 70.5(c)(8).

VI. IDEM must provide a Statement of Basis for the Draft Permit.

Part 70 requires IDEM to "provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)."⁴⁹ This "statement" is a separate document from the permit that must "include a discussion of decision-making that went into the development of the Title V permit and to provide the permitting authority, the public, and the USEPA a record of the applicability and technical issues surrounding issuance of the permit."⁵⁰ In addition to discussing monitoring and operational requirements, the statement of basis must identify all applicability and exemption determinations, and "include the rationale for such a determination and reference any supporting materials relied upon in the determination."⁵¹ Finally, it should include attainment status, permitting history, and "[c]ompliance history including inspections, any violations noted, a listing of consent decrees into which the permittee has entered and corrective action(s) taken to address noncompliance."⁵²

The Draft Permit does not contain any designated "Statement of Basis." To the extent IDEM believes that the TSD can serve as a Statement of Basis, the Department is incorrect. Unlike the multitude of requirements for the statement of basis, the TSD only "sets forth the legal and factual basis for a draft Part 70 permit conditions (including references to the applicable statutory or regulatory provisions)."⁵³ The statement of basis is required to include "a discussion of decision-making that went into the development" of the permit, "a discussion of any operational flexibility...any regulatory applicability determinations, and the rationale for the monitoring methods selected."⁵⁴ Specifically, IDEM's "selection of the specific monitoring, including parametric monitoring and recordkeeping, and operational requirements must be explained in the [statement of basis]."⁵⁵ Additionally, it must include an "[e]xplanation of any conditions from previously issued permits that are not being transferred to the Title V permit."⁵⁶ This is particularly salient here because IDEM proposes to remove the requirement of the lead emission stack testing from 6 hour averaging in permit 089-11485-00382 (issued December 15, 1999) to 24 hour averaging. Neither the permit nor the TSD explains the rationale for this change. Therefore, the TSD is no substitute for a statement of basis.

⁴⁹ 40 CFR § 70.7(a)(5).

⁵⁰ Letter, from U.S. EPA Region V to Ohio EPA ("USEPA Region V Letter"), (December 20, 2001) at 1, *available at* <u>https://www.epa.gov/sites/default/files/2015-08/documents/sbguide.pdf</u> (providing guidelines on the content of an adequate statement of basis). *See also In the Matter of Midwest Generation, LCC Waukegan Generating Station*, Order on Petition Number V-2004-5 (September 22, 2005).

⁵¹ USEPA Region V Letter, at 2.

⁵² *Id.* at 3.

⁵³ 316 IAC 2-7-8(d)(1).

⁵⁴ U.S. EPA Region V Letter, at 1.

⁵⁵ *Id.* at 2.

⁵⁶ Id.

IDEM must provide a statement of basis for public review and comment before issuing the Final Permit.

VII. IDEM must revise the Draft Permit to remove the "emergency" affirmative defense provision.

The Draft Permit contains an emergency affirmative defense provision in Condition B.11(b), stating that "[a]n emergency, as defined in 326 IAC 2-7-1(12), constitutes an affirmative defense to an action brought for noncompliance with a technology-based emission limitation if the affirmative defense of an emergency is demonstrated through properly signed, contemporaneous operating logs or other relevant evidence." Effective August 21, 2023, however, the EPA removed such emergency affirmative defense provisions from title V operating permit program regulations.⁵⁷ As EPA explained in that final rule, "it will be necessary for any states that have adopted similar affirmative defense provisions in their part 70 operating permit programs to revise their part 70 programs to remove these provisions. In addition, individual operating permits that contain title V affirmative defenses based on 40 CFR 70.6(g) or similar state regulations will eventually need to be revised."58 This change dictates that IDEM must update their state operating permit program (see 326 IAC 2-7-1(12) cited by IDEM in Section B.11) to comply with the EPA rules under Part 70. Additionally, the EPA clarified that "states would be expected to remove affirmative defense provisions from individual permits by the next periodic permit renewal."⁵⁹ IDEM must do that here by removing this provision from the Draft Permit.

VIII. IDEM must clarify limits to ensure they are enforceable.

Under the CAA, a Title V Permit must include "enforceable emission limitations and standards [and] such other conditions as are necessary to assure compliance with applicable requirements."⁶⁰ A draft permit must include all applicable emission limits and standards and must also include all monitoring, reporting and recordkeeping requirements to assure compliance with those standards.⁶¹

⁵⁷ 88 Fed. Reg. 47029 (July 21, 2023). *See also NRDC v. EPA*, 749 F.3d 1055 (DC Cir. 2014) (vacating an affirmative defense provision).

⁵⁸ 88 Fed. Reg. 47029 (July 21, 2023).

 $^{^{59}}$ *Id.* The final rule provides that this should be "following either (1) the effective date of this rule (for permit terms based on 40 CFR 70.6(g) or 71.6(g)) or (2) the EPA's approval of state program revisions (for permit terms based on a state affirmative defense provision)." *Id.*

⁶⁰ 42 U.S.C § 7661c(a); 40 C.F.R. § 70.6(a)(1).

⁶¹ See CAA §§ 502(a) and 504(a), 42 U.S.C. §§7661a(a) and 7661c(a) and 57 Fed. Reg. 32,250, 32,251 (July 21, 1992) (EPA final action promulgating the part 70 rule).

A. IDEM must revise permit terms that do not specify the pollutant which they propose to limit

In multiple sections of the Draft Permit, the permit terms do not specify the pollutant to which the listed limits were applicable. In these sections, the pollutant was provided only in the heading, making the limit presumably, but not definitively, applicable to that pollutant. IDEM should make these terms explicit and readily enforceable as they did in D.1.1. Accordingly, IDEM must revise the following sections:

- D.1.3(a), (b), (c), and (d) to specify that each of these limits are for VOC
- D.1.4(a), (b), (c), and (d) to specify that these limits are for lead
- D.1.5(a)(1)-(11), and (b) to specify that these limits are for particulate matter and whether they are for PM or PM10 or both
- D.1.9 (a)(1)-(5) to specify that these limits are for sulfur dioxide (SO2)

B. IDEM must explain the NOx permit term limit for avoidance of PSD

The NOx emissions limit in Section D.1.7 which purports to avoid PSD review does not add up. As shown below, the limit is for 304.7 lbs/hr. Compliance with this limit is supposed to ensure that NO_x emissions from the main stack and 16 vent stacks stay below 40 tons/year. However, Commenters are unable to reach the same conclusions as IDEM that this limit allows IHCC to avoid PSD for NO_x emissions. IDEM needs to explain this enormous discrepancy and how this limit could possibly have been used to avoid PSD requirements under 326 IAC 2-2. Additionally, IDEM needs to provide the compliance and enforcement history of this equipment as the 2023 emissions just for the HRCC main stack (Stack ID 201) was 676 lbs (nearly 17 times the limit).⁶²

D.1.7 Prevention of Significant Deterioration (PSD) Minor Limits [326 IAC 2-2]

Pursuant to Significant Modification 089-14241-00382 issued on November 30, 2001, the combined NO_x emissions from the main stack (Stack ID 201) and 16 vent stacks shall not exceed 304.7 pounds per hour, averaged over a 24-hour period.

Compliance with this limit will ensure the NOx emissions from the main stack (Stack ID 201) and 16 vent stacks are limited such that the net emissions increase of NOx emissions from the 2001 project are less than forty (40) tons per year and render the requirements of 326 IAC 2-2 (PSD) not applicable to the 2001 modification.

IX. The Department must revise the Draft Permit to require adequate testing and monitoring sufficient to assure compliance with emission limits.

Title V permits *must* contain monitoring and related recordkeeping and reporting requirements.⁶³ A foundational element of Title V is that the permits must contain adequate

⁶² 2023 IHCC Annual Emissions Statement. Available at IDEM Virtual File Cabinet, p. 2, <u>https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_FILE&dID=83656652&dDocName=83660695&Rendition=we</u> <u>b&allowInterrupt=1&noSaveAs=1</u>.

^{63 40} C.F.R. § 70.6(a)(3).

monitoring to assure compliance with applicable requirements.⁶⁴ If a Title V permit establishes an emission limit but fails to include monitoring requirements sufficient to assure compliance with the emission limit, then the permit is deficient and due to be revised.⁶⁵

Additionally, monitoring must be reasonably related to the averaging time to determine compliance with the limits.⁶⁶ As a general matter, "the time period associated with monitoring or other compliance assurance provisions must bear a relationship to the limits with which the monitoring assures compliance."⁶⁷ Stack testing should be conducted under conditions that reflect the full range of normal operating conditions, including those that are more likely to result in higher emission levels. ⁶⁸ EPA's own guidance provides that stack tests must demonstrate that a facility is capable of complying with the applicable emission standards at all times.⁶⁹ When applicable requirements do not require periodic testing, "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit" is also required in Title V permits.⁷⁰

IDEM is obligated "to ensure that the [T]itle v permit 'set[s] forth' monitoring to assure compliance with all applicable requirements."⁷¹ IDEM's rationale for any proposed permit conditions must be clear and documented in the permit record.⁷²

The Draft Permit establishes a sitewide opacity limit and limits for numerous emissions units, as are summarized in IDEM's TSD.⁷³ However, both the Draft Permit and TSD fail to document a clear rationale for the selected monitoring requirements.⁷⁴ Because Title V permits

⁶⁷ In the Matter of United States Steel Corporation, Clairton Coke Works Permit No. 0052-OP22, Order on Petition Nos. III-2023-5 and III-2023-6 (Sept. 18, 2023) ("Clairton Order") at 9; see also 40 C.F.R. § 70.6(a)(3)(i)(B).
⁶⁸ 40 C.F.R. § 63.7822(a); See Env't. Prot. Agency, Issuance of the Clean Air Act National Stack Testing Guidance, Memorandum (April 27, 2009) at 14, 15, <u>https://www.epa.gov/sites/default/files/2013-</u>09/documents/stacktesting 1.pdf

⁷³ 2025 IHCC TSD at 27-28.

⁶⁴ 42 U.S.C. §7661(c); *In the Matter of Wheelabrator Baltimore, L.P.*, Permit No. 24-510-01886, at 10 (April 14, 2010) [hereinafter "*Wheelabrator Order*"].

⁶⁵ In the Matter of Kentucky Syngas, Order on Petition No. IV-2010-9, at 29-30 (June 22,2012); In the Matter of Luke Paper, Permit No. 24-001-00011, at 5-6 (Oct. 18, 2010).

⁶⁶ 40 C.F.R. § 70.6(a)(3)(i)(B); *Sierra Club v. EPA*, 536 F.3d 673, 676-77 (D.C. Cir. 2008). Annual stack testing alone may be insufficient to assure compliance with an hourly emission limit. *In the Matter of Northeast Maryland Waste Disposal Authority*, Order on Petition No. III-2019-2 at 9 (December 11, 2020) [hereinafter "*MCRRF Order*"].

⁶⁹ Env't. Prot. Agency, *Issuance of the Clean Air Act National Stack Testing Guidance, Memorandum* (April 27, 2009) at 14, <u>https://www.epa.gov/sites/default/files/2013-09/documents/stacktesting_1.pdf</u>

⁷⁰ 40 C.F.R. § 70.6(a)(3)(i)(B).

⁷¹ In the Matter of Sandy Creek Services, LLC, Sandy Creek Energy Station, McLennan County, TX, Order on Petition No. III-2018-1 (June 30, 2021) ("Sandy Creek Order") at 12 (quoting 42 U.S.C. § 7661c(c)) ⁷² 40 C.F.R. § 70.7(a)(5).

⁷⁴ 40 C.F.R. § 70.7(a)(5); *In the Matter of United States Steel, Granite City Works* ("Granite City I Order"), Order on Petition No. V-2009-03 at 7-8 (Jan. 31, 2011). EPA has reinforced and supported this decision in multiple orders it has issued in response to Title V petitions. *See In the Matter of: Wheelabrator Baltimore, L.P., Baltimore Maryland*, Order Responding to Petitioners' Request that Administrator Object to the Issuance of a Title V Operating Permit, Permit No. 24-510-01886 (Apr. 14, 2010); *In the Matter of: Tennessee Valley Authority, Bull*

must contain adequate monitoring to assure compliance with applicable requirements, IDEM must address the deficiencies as shown in **Attachment B** and discussed in the subsections below.

A. Sitewide Opacity Limits

The Draft Permit contains conditions establishing an entire source opacity limit.⁷⁵ Specifically, at the site level, opacity shall not exceed an average of 20% in any one six minute average period or 60% for more than a cumulative total of fifteen minutes in a six hour period.⁷⁶

However, the Draft Permit fails to specify how the permittee should demonstrate compliance with the 20% limit. This is a serious failure. Opacity provides immediate and obvious visible evidence that pollutants, including fine particulates, are being released from emission units. Opacity has long been recognized as a useful surrogate for emissions of specific pollutants that are difficult to monitor on a continuous basis. Accordingly, the Final Permit must include monitoring requirements to assure compliance with the 20%/six minute opacity limit that is both accurate and continuous enough to determine when the limit has been exceeded.

The Draft Permit allows IHCC to establish compliance with the 60% opacity limit through Method 9 or continuous opacity monitoring ("COMS"). It is unclear if IHCC is using both methods at all times, some combination thereof, or just one of the two. IDEM also fails to explain if the COMS installed on the HRCC stack (included in a contractor's permit⁷⁷ but absent in the Draft Permit) in some way demonstrates compliance with the sitewide opacity limit. This lack of clarity alone prevents Commenters from determining if the monitoring is sufficient to assure compliance with the 60% opacity limit.⁷⁸ That is especially true because Method 9 observations are insufficient to assure compliance with the limits.⁷⁹ Method 9 relies on visual observations that can only be made under certain conditions, e.g., it is difficult or impossible to take measurements at night, during dark or cloudy days, when it is raining, etc. Further, Method

Run, Clinton, Tennessee, Order Responding to Petitioners' Request that the Administrator Object to the Issuance of a Title V Operating Permit, Petition No. IV-2015-14 (Nov. 11, 2016); *In the Matter of: Kinder Morgan Crude & Condensate LLC, Galena Park, Harrison County, Texas*, Order Responding to Petition Requesting Objection to the Issuance of Title V Operating Permit, Petition No. VI-2017-15 (Dec. 16, 2021) (where EPA granted petitioners' objection that monitoring associated with emissions limits on two heaters failed to assure compliance with emissions limits for VOCs because there was no indication in the permit that there were monitoring requirements associated with VOCs).

⁷⁵ Condition C.1 I, HCC Draft Permit at 22.

⁷⁶ "(sixty (60) readings as measured according to 40 CFR 60, Appendix A, Method 9 or fifteen (15) one (1) minute nonoverlapping integrated averages for a continuous opacity monitor) in a six (6) hour period." *Id.* ⁷⁷ Cokenergy LLC Permit, Condition D.1.8 at 28.

⁷⁸ 326 Indiana Admin. Code 5-1-4(a)(2) allows for COMs when "a source or facility in compliance with the requirements of 326 Indiana Admin. Code 3-5, determination of compliance with visible emission limitations established in this rule may also be made in accordance with a source's or facility's continuous monitoring equipment if determined appropriate by the department or the U.S. EPA." IHCC does not fall into any of the categories in 326 Indiana Admin. Code 3-5-1. Therefore, one could reasonably assume the monitoring method is Method 9.

⁷⁹ Condition C.1(b) provides Method 9 as an option for assuring compliance with the 60% for more than a cumulative total of fifteen minutes in a six hour period limit. Draft Permit, Condition C.1 at 22.

9 readings are too infrequent to determine compliance with a standard at all times. Conducting visible observations for no more than once a week at the site-level would miss potential opacity exceedances at all other times.

Accordingly, IDEM should revise the Draft Permit to include adequate monitoring to assure compliance with both sitewide opacity limits in Condition C.1.(a) and (b). Additionally, Commenters request that IDEM answer the following questions:

- 1. Do the two opacity limits apply at all times, including at night, or on dark, cloudy or rainy days?
- 2. Can Method 9 opacity measurements be conducted at night (about half of the hours in a year) or on dark, cloudy or rainy days?
- 3. If the answer is to Question 2 above is no, how will IDEM assure compliance with the opacity limit if Method 9 cannot be used more than half of the time the opacity limit is in effect? Can periodic Method 9 readings assure compliance with the opacity limit during the hours in between these tests?
- 4. Has IDEM considered including a "digital opacity device⁸⁰" for compliance monitoring? If so, how often would a digital opacity device be deployed, and in what way can it be used to assure compliance at all times the opacity limit is in effect (e.g. at night or on dark or cloudy days)?
- 5. Why has IDEM not required COMS to be installed on all units with stacks?⁸¹
- 6. Has IDEM considered 24/7 video surveillance of opacity in areas where high opacity levels from fugitive sources are anticipated?

B. Specific emission units' opacity limits lack adequate monitoring to assure compliance with the limits.

The Draft Permit contains opacity limits in the Condition D.1.6 for certain units/operations:

Condition D.1.6(a)(4)⁸² requires that visible emissions escaping the charging/pushing mobile hood or escaping the push shed (Stack ID 204) are limited to 20% in a three minute opacity standard. The Monitoring requirements to assure compliance with this limit are included in Conditions D.1.13(f) and D.1.17⁸³, which require Method 9 observations during normal daylight hours once per week.

⁸⁰ EPA has also approved Method Alt-082 as an alternative to Method 9, which allows the use of a digital camera to determine the opacity of visible emissions. Recent Postings of Broadly Applicable Alternative Test Methods, 77 Fed. Reg. 8865, 8866 (February 15, 2012), Tbl. 1 (Approved use the American Society for Testing and Materials (ASTM) D 7520– with specified limitations in lieu of Method 9).

⁸¹ Commenters note that the Part 70 permit for another contractor, Cokenergy LLC, requires in Condition D.1.8 COMS for stack 201. Cokenergy LLC Permit at 28.

⁸² 2025 IHCC Draft Permit at 37.

⁸³ *Id.* at 41-42.

- Condition D.1.6(b) allows *no visible emissions* from waste gas common ducts or its associated piping.⁸⁴ Condition D.1.17(f)(3)⁸⁵ requires monitoring on a daily basis to ensure that ovens are operated under negative pressure.
- Condition D.1.6(c)(2)⁸⁶ limits opacity to 20% in a three minute period for the bottom of the quench tower (Stack IDs 206 and 207). Condition D.1.17(f)(4)(A) requires monitoring during normal daylight hours once per week.
- Condition D.1.6(c)(3)⁸⁷ limits opacity to 20% in a six minute averaging period and 60% opacity limit for more than a cumulative total of fifteen minutes limit for the top of the quench tower.

First, as discussed above, for the limits where Method 9 is required to demonstrate compliance with those opacity limits, Method 9 observations are insufficient to assure compliance.⁸⁸ Method 9 readings are too infrequent to determine compliance with the opacity standards outlined above. Conducting visible observations no more than once a week would miss potential opacity exceedances at all other times. IDEM has further failed to explain how requiring monitoring "during normal daylight hours" is frequent enough: the monitoring is clearly mismatched with the opacity limits.⁸⁹

Second, IDEM fails to explain its assumptions or reasoning that daily monitoring to ensure negative pressure assures compliance with the *no visible emissions* limit in Condition D.1.6(b). Both the measurement used and the time period must bear a relationship to the no visible emission limit. IDEM has not explained how measuring negative pressure relates to visible emissions nor how measuring once per day complies with the no visible emission limit.

Third, a contractor of CC, Cokenergy LLC, requires COMS for the HRCC waste stack to, in part, assure compliance with opacity limits for the baghouse and stack.⁹⁰ The Draft Permit, however, contains no conditions for maintaining and operating COMS. To the extent that COMS assures compliance with any of these opacity limits, IDEM has both failed to explain and provide conditions requiring the installation and maintenance of COMS to assure compliance with any of these opacity limits.

Finally, IDEM impermissibly fails to include any monitoring requirements to assure compliance with the opacity limits for the top of the quench tower. IDEM must include monitoring to assure compliance with this limit.

⁸⁴ *Id.* at 37 (emphasis added).

⁸⁵ Id. at 42.

⁸⁶ Id. at 38

⁸⁷ Id.

⁸⁸ Condition C.1(b) provides Method 9 as an option for assuring compliance with the 60% for more than a cumulative total of fifteen minutes in a six hour period limit. 2025 IHCC Draft Permit, Condition C.1 at 22.
⁸⁹ See Clairton Order at 9.

⁹⁰ Coke Energy LLC Permit at Condition D.1.8 at 28.

C. Emission Units with Averaging Times Not Related to Limits

The Clean Air Act requires that all permits "set forth . . . monitoring . . . requirements to assure compliance with the permit terms and conditions"⁹¹ "In all cases, the rationale for the selected monitoring requirements must be clear and documented in the permit record."⁹² The Draft Permit fails to meet the requirements of Part 70 because it fails to include adequate testing, monitoring, recordkeeping, or reporting requirements sufficient to assure continuous compliance with the hourly and long-term emission limits applicable to the HRCC and associated waste gas stack, Stack ID 201, and sixteen vent stacks as described in the list and table from IDEM TSD below:

- VOC Offset Limits: Condition D.1.3(a)⁹³ limits to 2.28 *lb/hr*, averaged over a 24-hour period. Monitoring to assure compliance with this limit is included in Condition D.1.12(e), which requires IHCC to perform VOC testing of the main gas stack (Stack ID 201) and one of the sixteen vent stacks *at least once every five years* following source sampling procedures in 326-IAC-3-6.⁹⁴
- Lead PSD Minor Limits: Condition D.1.14 limits to .19 *lb/hour* averaged over a 24-hour period.⁹⁵ Condition D.1.12(d) requires that IHCC perform lead testing of the HRCC waste gas main stack stack (Stack ID 201) and one of the sixteen vent stacks *at least once every five years* following source sampling procedures in 326-IAC-3-6.⁹⁶
- PM and PM₁₀ Offset Limits: Condition D.1.5 contains several PM limits. Subsection (a)(1) limits rail car dump PM emissions to .01 lb/hr averaged over a 24-hour period.⁹⁷ Subsection (a)(9) limits coke crusher and screening station PM emissions to 1.34 lb/hr.⁹⁸ Subsection (b) limits PM emissions from each vent stack to 22.238 lb/hr over a 24-hour period.⁹⁹ Subsection (c) limits combined PM from the sixteen vent stacks to 67.877 lb/hr averaged over a 24-hour period.¹⁰⁰ The Draft Permit includes monitoring requirements in Condition D.1.12, with subsection (a) demonstrating compliance with the limit for the sixteen vent stacks.¹⁰¹ This condition requires only that IHCC test just one of the sixteen vent stacks *at least once every fiver years* following source sampling procedures in 326-IAC-3-6.¹⁰² No other monitoring requirements are included in the Draft Permit to assure compliance with the other PM offset limits listed here.

⁹¹ 42 U.S.C. § 7661c(c); *see* 40 C.F.R. § 70.6(c)(1).

⁹² CITGO Order at 7-8.

⁹³ 2025 IHCC Draft Permit at 35 (emphasis added).

⁹⁴ Id. at 40 (emphasis added).

⁹⁵ *Id.* at 36 (emphasis added)

⁹⁶ *Id.* at 40 (emphasis added).

⁹⁷ *Id.* at 36 (emphasis added).

⁹⁸ Id. at 37 (emphasis added).

⁹⁹ *Id* (emphasis added).

¹⁰⁰ *Id* (emphasis added).

¹⁰¹ *Id*. at 39.

¹⁰² *Id.* (emphasis added).

- NO_x PSD Minor Limits: Condition D.1.7 includes a *304.7 lb/hr*, averaged over a 24-hour period for the HRCC main stack and sixteen vent stacks.¹⁰³ Condition D.1.12(b) requires that IHCC test the waste gas main stack *at least once every five years* following source sampling procedures in 326-IAC-3-6¹⁰⁴
- SO₂ Limit: Condition D.1.9 outlines pound per hour and pound per ton SO₂ limits for various operations:
 - (1) IHCC Coal Carbonization charging shall be limited to 0.0068 lb/ton each and 1.57 lb/hr total.
 - (2) IHCC Coal Carbonization pushing shall be limited to 0.0084 lb/ton and 1.96 lb/hr.
 - (3) IHCC Coal Carbonization quenching shall be limited to 0.0053 lb/ton and 1.232 lb/hr total.
 - (4) IHCC Coal Carbonization thaw shed, identified as ES209 shall be limited to 0.0006 lb/1,000 cubic feet natural gas and 0.015 pound per hour.
 - (5) IHCC Vent Stacks (16 total) in combination with Cokenergy LLC's heat recovery coke carbonization was gas stack identified as Stack ID 201 shall be limited to 1,656 lbs/hr total for a 24-hour average.

Condition D.1.10 contains a requirement that IHCC shall submit a Sampling and Analysis Protocol for coal (sulfur-bearing material) and IHCC shall follow the Sampling and Analysis Protocol, submitted to IDEM, OAQ on June 28, 2024, for its coal as specified in Attachment E to the operating permit.¹⁰⁶ Condition D.1.12(c) requires that IHCC perform SO₂ testing on four of the sixteen vent stacks *at least once every five years* following source sampling procedures in 326-IAC-3-6.¹⁰⁷

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IDEM also includes a summary table of various units' emission limits and testing/monitoring requirements in the TSD:

¹⁰³ *Id.* at 38 (emphasis added).

¹⁰⁴ *Id.* at 39 (emphasis added).

¹⁰⁵ *Id*. at 38.

¹⁰⁶ *Id.* at 39.

¹⁰⁷ Id.

Emission Unit	Stack ID	Timeframe for Testing	Pollutant	Frequency of Testing	Requirement
HRCC waste gas	One (1) of the IHCC 16 vent stacks	Within five (5) years from the date of the most recent valid compliance demonstration	PM, PM ₁₀	Once every five years	326 IAC 2-3
HRCC waste gas	IHCC Main stack ID 201	Within five (5) years from the date of the most recent valid compliance demonstration	NOx	Once every five years	326 IAC 2-2
HRCC waste gas	Four (4) of the IHCC 16 vent stacks	Within five (5) years from the date of the most recent valid compliance demonstration	SO ₂	Once every five years	326 IAC 7-4.1-8
HRCC waste gas	IHCC Main stack ID 201 and one (1) of the IHCC 16 vent stacks	Within five (5) years from the date of the most recent valid compliance demonstration	РЬ	Once every five years	326 IAC 2-2
HRCC waste gas	IHCC Main stack ID 201 and one (1) of the IHCC 16 vent stacks	Within five (5) years from the date of the most recent valid compliance demonstration	VOC	Once every five years	326 IAC 2-3

Emission Unit	Stack ID	Timeframe for Testing	Pollutant	Frequency of Testing	Requirement
HRCC waste gas	Pushing shed stack ID 204	Within five (5) years from the date of the most recent valid compliance demonstration	PM10	Not less than twice (at mid- term and renewal) during term of TV permit	326- IAC 6.8-10
HRCC waste gas	Charging unit stacks ID 202B and 203D	Within five (5) years from the date of the most recent valid compliance demonstration	PM, PM10	Once every five years	326 IAC 6.8-1 326 IAC 2-3

First, IDEM failed to include monitoring to assure compliance with the hourly and daily PM limits in Condition D.1.5 as described in more detail above. IDEM must include monitoring to assure compliance with these limits.

Second, for the HRCC waste gas stack and sixteen vents and associated pollution limits (VOC, Lead, PM, SO₂) outlined above, the monitoring that is required—once every five year tests—is not reasonably related to the averaging time—hourly and daily limits—to assure compliance with the limits.¹⁰⁸ Additionally, IDEM fails to explain how compliance would be

¹⁰⁸ 40 C.F.R. § 70.6(a)(3)(i)(B).

demonstrated between stack tests for each of these limits for the HRCC waste gas stack and sixteen vent stacks.¹⁰⁹ IDEM fails to provide clear and documented rationale for why they have chosen this and the other annual (and less frequent) stack tests. Notably, IHCC has failed to meet even these paltry standards, failing to complete its once every five year stack test by the due date on November 19, 2024.¹¹⁰

Condition D.1.18 requires parametric monitoring (including recording pressure drop across the baghouse and the fan motor amperage for each of the pushing shed baghouses), but fails to explain how the parametric monitoring requirements are related at all to the other monitoring requirements nor how the parametric monitoring requirements are intended to align with the emission limits.

Finally, Condition D.1.10 does not assure compliance with the SO₂ emission limits for several reasons. First, the condition describes that the Sampling and Analysis Protocol is specified in Attachment E to the operating permit. But no Attachment E nor the protocol is attached. Whether this is related to the aforementioned unduly confusing and likely improper practice by IDEM of issuing multiple Part 70 permits to various contractors that constitutes the source is immaterial: IDEM must incorporate the SO₂ Sampling Protocol into the Final Permit as required by 326 IAC 7-4-14(1)(E). Commenters maintain that the Draft Permit must, and in this instance, fails to include the applicable requirements to IHCC. Additionally, IDEM failed to explain how "following" the Sampling and Analysis Protocol assure compliance with the hourly SO₂ limits.¹¹¹ Finally, it appears that CEMS is required for the controls for SO₂, but those applicable requirements are not included in the Draft Permit, as addressed in the section below.

D. The Draft Permit excludes CEMS requirements.

Similar to the issues raised in sections above regarding the concept of an "administrative" Part 70 permit, various applicable requirements to IHCC are absent from the Draft Permit. Instead, these applicable requirements are included in other permits, namely the Cokenergy Part 70 permit.¹¹² Thus, the Draft Permit lacks enforceable conditions that are present in another source's Part 70 permit, which runs afoul of the purpose of Title V to provide each source a

¹⁰⁹ *Clairton Order* at 16.

¹¹⁰ IHCC Quarterly Report for Q4 2024; Title V Permit No. 089-41059-00382 (January 30, 2025), available on IDEM Virtual File Cabinet,

https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_FILE&dID=83756819&dDocName=83760862&Rendition=we b&allowInterrupt=1&noSaveAs=1. Note that while IDEM denied the request to extend the compliance testing deadline, stating that "[t]esting after November 19, 2024, constitutes a violation," IDEM still provided IHCC until May 20, 2025 to complete the testing with "no enforcement action." IDEM Letter to Indiana Harbor Coke Company, L.P., *Stack Test Extension Response Letter*, dated January 31, 2025. Available on IDEM Virtual File Cabinet,

https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_FILE&dID=83754424&dDocName=83758467&Rendition=we b&allowInterrupt=1&noSaveAs=1.

¹¹¹ Commenters note the ambiguity that requiring IHCC to "follow" the SO2 Sampling Protocol is not, on its face, the same as requiring IHCC to "implement" the protocol.

¹¹² See Cokenergy LLC Permit.

single permit that contains and consolidates all the information it needs to comply with the Act.¹¹³

As described above, at IHCC the 268 non recovery ovens are identified as ES201 and are distributed in four batteries whose emissions are controlled by a lime spray dryer desulfurization unit and a baghouse, where waste gas emissions are exhausted through a main stack (Stack ID 201) and occasionally through some of the sixteen vent stacks.¹¹⁴ The Draft Permit in Condition A.3(j) explains that "Cokenergy LLC (Permit No. 089-11135-00383) is responsible for SO₂, PM₁₀ and TSP emissions from the lime spray dryer desulfurization unit and baghouse. There is CEMS for SO₂ installed on stack 201, which is controlled by Cokenergy LLC."¹¹⁵ Sections above already address how unclear and improper it is for IDEM to issue Part 70, whether "administrative" or not, to various contractors whose operations are part of the entire source.

Moreover, because CEMS is required for the controls for the HRCC operated by IHCC, the CEMS requirements in the Cokenergy permit are applicable to IHCC. The Draft Permit merely explains in various references that the CEMS controls SO₂.¹¹⁶ However, none of the monitoring requirements in the Draft Permit require CEMS.

Therefore it is necessary to examine the Part 70 Permit for Cokenergy, which, notably is not titled as "Administrative," although it is described as "for administrative purposes only," adding even further confusion to this illogical permitting practice by IDEM.¹¹⁷ The Cokenergy Permit explicitly provides that "the CEMS [is] associated with the HRCC main stack."¹¹⁸ In the Cokenergy Permit, CEMS is required in Condition D.1.7(a) to continuously measure SO₂ concentrations and pound per hour emission rate on a 24-hour average basis.¹¹⁹

As discussed, the Draft Permit refers only to Cokenergy's Permit that contains the CEMS requirements. However, where the CEMS controls the HRCC main stack, and is used to demonstrate compliance with the 24-hour SO_2 emission limit, IDEM cannot exclude the CEMS requirement from the Draft Permit.

X. IDEM should improve its public participation process

State programs "must provide for adequate public notice of and an opportunity for public comment and a hearing on draft permits."¹²⁰ Additionally, permit proceedings, including

¹¹³ See supra Note 26.

¹¹⁴ 2025 IHCC Draft Permit at Condition A.3(j) at 7.

¹¹⁵ Id.

¹¹⁶ Id.

¹¹⁷ See Condition A.2, Part 70 Source Definition, *Id.* at 5; "Separate Administrative Part 70 permits have been issued to Cleveland-Cliffs Steel LLC Indiana Harbor West (Source ID 089-00318), the secondary operation and each of its onsite contractors [including Cokenergy LLC], *solely for administrative purposes*." 2025 IHCC TSD at 2. ¹¹⁸ Condition B.8(a), Cokenergy LLC Permit at 7.

¹¹⁹ *Id*. at 28.

¹²⁰ 40 CFR § 70.4(d)(iv).

renewals, "shall provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit."¹²¹ Specifically, the "permitting authority shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing." Finally, the notice should include "the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled)."¹²² Indiana regulations likewise require that "[n]otification including the time and place of any hearing that may be held must be given at least thirty (30) days in advance of the hearing."¹²³

First with regard to notice, IDEM serves a diverse public. The population of East Chicago, where IHCC is located, is more than 56% Hispanic/Latino¹²⁴ with a high percentage of limited English-speaking households. Despite these factors, IDEM did not release any of the permitting materials in Spanish. IDEM should provide notice in Spanish as well as English to ensure all affected citizens in East Chicago are provided the required legal notice of these permits and are given the opportunity to participate in the public comment process. Such accommodation would help with the meaningful involvement of all people in the permitting process and ensure compliance with the language access requirements of Title VI.

IDEM needs to clarify its process for holding public hearings and ensure it is consistent with the above requirements. Instead of including a public hearing with the published public notice of the comment period, IDEM's Notice of 30-Day Period for Public Comment merely reiterates the public's right to "request that IDEM hold a public hearing about this draft permit" and states that "[i]f adverse comments concerning the **air pollution impact** of this draft permit are received, with a request for a public hearing, IDEM will decide whether or not to hold a public hearing." (emphasis in original) This puts the onus on the public to request a public hearing from IDEM and then wait for several weeks to find out if IDEM will schedule a public hearing and change the end date of the public comment period.

While Commenters do not expect IDEM to hold a public hearing or meeting for every draft permit, it is certainly reasonable that they schedule hearings for major source facilities in already-overburdened communities. As mentioned above, Commenters requested an extension of the public comment period and a public meeting on Thursday, February 6, 2025, noting the severe deficiencies of the permit and air pollution impacts of the proposed changes in the averaging time for lead emissions. It took until nearly 2 pm (ET) today, February 26, 2025 – the date the public comment period closes – for Commenters to receive notice that an extension had not been granted, and even then IDEM could not answer whether a public meeting will be

^{121 40} CFR § 70.7(h).

^{122 40} CFR § 70.7(h)(2).

^{123 326} IAC 2-7-17(c)(1)(D)(iii)(BB).

¹²⁴ U.S. Census Bureau, <u>https://www.census.gov/quickfacts/fact/table/eastchicagocityindiana/SBO050222</u>.

held.¹²⁵ This is unacceptable for a government agency which should be responsive to the public they serve.

XI. Conclusion

IDEM should revise and reissue this Draft Permit for public notice and comment so the public has the opportunity to evaluate how the problems identified here have been remediated. We appreciate the opportunity to submit these comments.

Sincerely,

Haley C. Lewis

Haley Lewis Attorney Environmental Integrity Project 888 17th Street NW, Suite 810 Washington, DC 20006 (202) 263-4449 hleiws@environmentalintegrity.org

/s/Kerri Gefeke

Kerri Gefeke Associate Attorney Environmental Law & Policy Center 35 E. Wacker Drive, Suite 1600 Chicago, IL 60601 kgefeke@elpc.org (312) 795-3713

Carolyn Marsh Administrator BP Whiting Watch

¹²⁵ Commenters sent a follow-up email on February 17, 2025 and called IDEM directly on February 24 and February 26, 2025. IDEM notified Commenters at 1:50 (ET) that an extension had not been granted, and that under IC 13-15-5-1.5, the Commissioner has 10 days from the end of the public comment period to decide whether to hold a public hearing.

Patricia Walters Administrator BP Whiting Watch

Michael J. Zoller Senior Attorney Conservation Law Center

Dorreen Carey President Gary Advocates for Responsible Development (GARD)

Ashley Williams Executive Director Just Transition Northwest Indiana

Susan Thomas Legislative & Policy Director and Press Secretary Just Transition Northwest Indiana

Julie Peller, PhD Professor of Chemistry Northern Lake County Environmental Partnership