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VIA ELECTRONIC MAIL

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RE: Comments on Part 70 Administrative Operating Permit for SMS Mill Services, LLC - a contractor of NLMK Indiana in Porter County Part 70 Administrative Operating Permit Renewal No.: T127-49507-00104

I. Introduction

The Environmental Law & Policy Center (“ELPC”) along with Conservation Law Center, Just Transition Northwest Indiana, Gary Advocates for Responsible Development, Abrams Environmental Law Clinic, and the Environmental Advocacy Center at Northwestern Pritzker School of Law respectfully submit the following comments on the above-referenced Draft Part 70 Operating Permit renewal (“Draft Permit”) issued by the Indiana Department of Environmental Management (“IDEM”) for SMS Mill Services, LLC to continue operation of its slag processing plant and metal cutting operations. We appreciate the opportunity to make these comments.

II. The Draft Renewal Permit fails to include sufficient monitoring requirements to ensure compliance with PM emissions limits.

The Clean Air Act (“CAA”) requires that each Title V permit “shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions.”¹ As the relevant permitting authority, IDEM must “ensure that the [T]itle v permit ‘set[s] forth’ monitoring to assure compliance with all applicable requirements.”² For a limit to be enforceable as a practical matter, a permit must clearly specify how emissions will be measured or determined for purposes of demonstrating compliance with the limit.³ This requires every emission limit to be (a) “accompanied by terms and conditions that require a source to *effectively constrain* its operations so as to not exceed the relevant emissions

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

² 42 U.S.C. § 7661c(c).

³ See, e.g., *In the Matter of Hu Honua Bioenergy Facility, Pepeekeo, HI* (Feb. 7, 2014), https://www.epa.gov/sites/default/files/2015-08/documents/hu_honua_decision2011.pdf (“Hu Honua Order”), at 10.

threshold... whether by restricting emissions directly or through restricting specific operating parameters,” and (b) supported by monitoring, recordkeeping, and reporting requirements “sufficient to enable regulators and citizens to determine whether the limit has been exceeded and, if so, to take appropriate enforcement action.”⁴ The Draft Permit does not have sufficient monitoring requirements to assure compliance with emissions limits for PM across multiple emissions units.

Emissions Unit D.1 contains screens, grizzly feeders, conveyor transfer points, scrap and ball drops, and metal cutting operations.⁵ To render the requirements of 326 IAC 2-2 (Prevention of Significant Deterioration (“PSD”)) not applicable to the facility, the Draft Permit requires that each one of these emissions sub-units not exceed specific lbs/ton limits for PM, PM2.5, and PM 10.⁶ To monitor compliance with these limits, the Draft Permit simply requires that a trained employee take “visible emission notations of the slag processing transfer points and metal cutting operations... once per day during normal daylight operations.”⁷ The employee must then “record whether emissions are normal or abnormal.”⁸

First, this compliance monitoring provision does not adequately specify how all sub-units will be monitored. Condition D.1.5(a) requires “visible notations of the slag processing transfer points and metal cutting operations” once daily. Complying with that requirement would require observation and documentation of many pieces of equipment but the Draft Permit fails to specify how that will be done. SMS’s list of equipment provided in their initial application⁹ shows up to 22 points that may need to be individually tracked. The permit should require the facility to examine each point and track results. IDEM should include a template showing that each must be examined and the results recorded.

Second, the Draft Permit fails to connect its vague “normal vs. abnormal” observation standard to the emissions that the facility is screening for. IDEM has not provided a meaningful definition of “normal” vs. “abnormal”. The Draft Permit defines normal as “those conditions prevailing, or expected to prevail, eighty percent (80%) of the time the process is in operation.”¹⁰ The concept of normal or abnormal emissions has no tie to the assumptions made by SMS and NLMK in assuming that emissions here would not trigger major source thresholds for PSD and HAPs across the major source. For example, if the emissions estimates assumed that all points were covered, then the inspection should look for holes in the cover. If the emission estimates

⁴ *In the Matter of Orange Recycling and Ethanol Production Facility, Pencor-Masada Oxynol, LLC*, (Apr. 8, 2002), https://www.epa.gov/sites/default/files/2015-08/documents/masada-2_decision2001.pdf (“Pencor-Masada Order”), at 7 (emphasis added).

⁵ Part 70 Operating Permit Renewal No. T127-49507-00104, SMS Mill Services, LLC - a contractor of NLMK Indiana, Portage, Indiana (December 24, 2025), pgs. 26-27 (“Draft Permit”).

⁶ See Draft Permit at D.1.1(c) (where, in lbs/ tons, the table notes for the Screen emissions unit a PM limit of 0.00363, a PM10 limit of 0.00196, and a PM2.5 limit of 0.00058, for the grizzly feeder emissions unit a PM limit of 0.00363, a PM10 limit of 0.00196, and a PM2.5 limit of 0.00058, for the conveyor transfer point unit a PM limit of 0.00023, a PM10 limit of 0.00012, and a PM2.5 limit of 0.00015, for the scrap and ball drop unit a PM limit of 0.01729, a PM10 limit of 0.00818, and a PM2.5 limit of 0.00257, and for the metal cutting operations unit a PM limit of 1.406, a PM10 limit of .669, and a PM2.5 limit of .669.)

⁷ Draft Permit at D.1.5(a).

⁸ *Id.*

⁹ Air Construction & Operating Permit Application for Scrap Metal Service, LLC (NLMK Indiana Facility), IDEM, OAQ, Permits Section (May 21, 2024) at pg. 17.

¹⁰ Draft Permit at D.1.5(b).

assumed water was used, they should look for water. If the emissions estimate assumed that the material would be coarse enough to produce no dust, then they should be looking for ANY dust as a sign that the conditions have changed. As the Draft Permit is written, it does not tie the compliance monitoring to the permit in any way that could assure compliance.

The monitoring technique, at minimum, must be able to demonstrate to regulators and citizens whether the limit has been exceeded.¹¹ Here, the monitoring technique is so vague that it does not even provide the underlying methodology for making “visible notations.” There is no verifiable way for IDEM or citizens to determine whether “normal” emissions constitute a concentration below the limit, especially where the permit terms fail to quantify or even qualitatively describe in a meaningfully way what “normal” constitutes. To ensure the monitoring technique is “sufficient to enable regulators and citizens to determine whether the limit has been exceeded,”¹² the source must update its monitoring technique to provide more reliable indicators of compliance. Commentors recommend the source install fence-line PM monitors and gauge actual PM concentrations to ensure the source has reliable data to demonstrate compliance with the specific lbs/ton PM emissions limits associated with each emissions sub-unit. At a minimum, IDEM should follow EPA guidance for best practices and require SMS to implement EPA Method 9 (or 22) to require specific observations of PM emissions at the required locations,¹³ and also explain how such visible emission monitoring will assume compliance with the numeric PM limits applicable to SMS to avoid PSD permitting requirements.

It is also worth noting that the source failed to perform any visible emission monitoring for 14 months between March 8, 2023 and June 23, 2024.¹⁴ This oversight also strengthens the argument that they need to have a clear appendix outlining how this monitoring requirement will be conducted and recorded to ensure proper attention is paid to this condition. Given the nature of the plant, these emissions are not just small extras but rather have a large effect on actual emissions from the facility.

III. The Draft Renewal Permit fails to include sufficient monitoring requirements to ensure compliance with opacity limits.

The Draft Permit imposes source-wide opacity limits.¹⁵ The first requirement states that “[o]pacity shall not exceed an average of forty percent (40%) in any one (1) six (6) minute averaging period...”¹⁶ The Draft Permit fails, however, to specify how the permittee should demonstrate compliance with this 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

¹¹ See *Pencor-Masada Order* at 7.

¹² *Id.*

¹³ See U.S. Env'tl. Prot. Agency, *Fugitive Dust Control Measures and Best Practices*, (Jan. 2022), at 3, available at <https://www.epa.gov/system/files/documents/2022-02/fugitive-dust-control-best-practices.pdf>.

¹⁴ IDEM, *Inspection Summary/Violation Letter, Scrap Metal Services, LLC*, Source ID No. 127-00104, Portage, Porter County (August 11, 2025) available at https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_FILE&dID=83846780&dDocName=83850823&Rendition=web&allowInterrupt=1&noSaveAs=1.

¹⁵ See Draft Permit at C.2, pg. 17.

¹⁶ *Id.* at C.2(a).

specify monitoring requirements to ensure compliance with this opacity limit that is both accurate and continuous enough to determine when the limit has been exceeded, as well as how this will be recorded and reported.

The second requirement states that “[o]pacity shall not exceed sixty percent (60%) for more than a cumulative total of fifteen (15) minutes.”¹⁷ The Draft Permit provides that the facility can establish compliance with this opacity limit through Method 9 or continuous opacity monitoring (“COMs”).¹⁸ It is unclear if the facility is always using both methods, some combination thereof, or just one of the two. This lack of clarity alone prevents Commenters from determining if the monitoring is sufficient to assure compliance with the 60% opacity limit.¹⁹ That is especially true because Method 9 observations are insufficient to ensure compliance with the limits. 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 9 readings are too infrequent to determine compliance with a standard that applies 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.

IV. The Draft Renewal Permit fails to adequately link emissions units to applicable PM emissions limits.

The Draft Permit simply sets the PM emissions limits for a generalized emissions unit called “conveyor transfer point.”²⁰ But according to the emission unit description, SMS has 14 conveyors across both the main slag plant and the portable crushing plant.²¹ While SMS contains 14 conveyors of varying nominal capacities, the permit includes only one emissions limit for PM, PM_{2.5}, and PM₁₀ for the generalized “conveyor transfer point.”²² This structure makes it unclear whether each individual slag processing transfer point is in compliance with the underlying PM limit. It is unclear whether each individual conveyor transfer point must comply with the listed PM emissions limits or if all the conveyors and conveyor transfer points combined must stay under the provided limits. This approach makes it impossible for IDEM or the public to determine whether the underlying limit is being achieved. To resolve this issue in the final permit, IDEM must rewrite the language to specify the specific PM emissions limit for each individual conveyor and conveyor transfer point.

Similarly, the Draft Permit denotes a singular PM, PM_{2.5}, and PM₁₀ emissions limit for the “grizzly feeders” and “screen,”²³ but the emissions unit description notes that there are multiple grizzly feeders and screens at SMS.²⁴ IDEM must rewrite this language to specify

¹⁷*Id* at C.2(b).

¹⁸ *See Id.*

¹⁹ 326 IAC 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.” The Draft Permit does not identify the existence of COMS. Therefore, one could reasonably assume the monitoring method is Method 9.

²⁰ Draft Permit at D.1.1(c), pg. 27.

²¹ *See Id* at D.1, pgs. 26-27.

²² *See Id* at D.1.

²³ *See Id* at D.1.1(c).

²⁴ *See Id* at D.1.

which PM emissions limit apply to which grizzly feeder and which screen to ensure compliance with the underlying limits.

V. The Fugitive Dust Plan is Insufficient to Fulfill Compliance Determination Requirements.

Section D.1.4 lays out the compliance determination requirements for all the emissions units. This section states that to comply with the PM emissions limits in Sec. D.1.1, “[t]he wet suppression system shall operate as needed to control fugitive particulate emissions... [and] [t]he Permittee shall implement the fugitive dust control plan.”²⁵ Because the fugitive dust control plan and wet suppression system are the means to comply with associated PM limits, it is crucial that it is implemented properly. Indiana regulations require the facility to provide “[a] map of the source showing aggregate pile areas, access areas around the aggregate pile, *unpaved roads, paved roads*, parking lots and location of conveyor and transfer points, etc.”²⁶ Unpaved roads are a significant source of fugitive PM emissions relative to paved roads; therefore, it is key that the map distinguish between unpaved and paved roads. The current map does not make these distinctions.²⁷ To ensure that IDEM and the public can identify these distinctions and to comply with 326 IAC 6-5-5(a)(4), IDEM must require the facility to update the map accordingly.

Furthermore, the fugitive dust control plan notes “[a]ccess within the site to the Employee Parking lot will be paved.”²⁸ This language creates unnecessary uncertainty. It is unclear whether this access will be paved in the future, or it has already been paved. The vague nature of this language makes it unenforceable since there is no date by which the paving must be completed. IDEM must clarify whether this paving has already occurred, and if not, the permit must provide a deadline to do so and a method of dust control until such paving occurs.

Lastly, the plan notes that “other roadways within the steel mill property are the responsibility of the steel mill.”²⁹ This is vague language which does not clearly designate the boundaries of SMS operations as required by 326 IAC 6-5-5(a)(4). The plan’s map should clearly designate its area of operations as distinct from NLMK to determine where SMS must implement its dust plan and SMS’s compliance with it.

VI. The Draft Permit’s quarterly summary reporting requirement is insufficient.

Condition D.1.7 purports to require quarterly reports summarizing compliance with all permit conditions. But as written, that condition asks only for “a summary of the information to document the compliance status with *Condition D.1.1.*”³⁰ That is insufficient because section D imposes other requirements beyond those in Condition D.1.1 that the facility must document compliance with, including Condition D.1.2 (process weight rate and rate of emissions limitations), D.1.5 (visible emissions notations) and D.1.6 (recordkeeping requirements). IDEM must revise Condition D.1.7 to incorporate all conditions relevant to demonstrating compliance status, including Conditions D.1.2, D.1.5, and D.1.6.

²⁵ Draft Permit at D.1.4.

²⁶ 326 IAC 6-5-5(a)(4).

²⁷ See Draft Permit at Attachment A – Fugitive Dust Control Plan, pg. 5 (“FDCP”).

²⁸ FDCP at Sec. 4, pg. 2.

²⁹ *Id* at Sec. 5.

³⁰ Draft Permit D.1.7 (emphasis added).

VII. The SMS annual compliance certification form does not adhere to the requirements for compliance certification in the Draft Permit.

The Draft Permit requires SMS to include the following in its annual compliance certification: “(1)[t]he appropriate identification of *each term or condition* of this permit that is the basis of the certification; (2) The compliance status; (3) Whether compliance was continuous or intermittent; (4) [and] [t]he methods used for determining the compliance status of the source, currently and over the reporting period consistent with 326 IAC 2-7-5(3)...”³¹ Furthermore, 40 CFR 70.6(c)(5)(iii) requires that compliance certification include“(A) [t]he identification of each term or condition of the permit that is the basis of the certification... [and] [t]he identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period.” The compliance certification form utilized by SMS to fulfill these requirements is incomplete because it only provides a table to identify permit terms that were in intermittent compliance.³² To comply with the Draft Permit language and 40 CFR 70.6(c)(5)(iii), IDEM must require SMS to update its annual compliance certification form to identify each individual term or condition that is the basis of the certification. This will ensure the facility is reviewing each permit term and condition individually to ensure compliance. This required practice will aid the facility in avoiding the type of violation identified above wherein visible emission monitoring was not conducted for a 14-month period.³³

VIII. IDEM Should Revise the Permit Title and Related Permit Terms to Clarify Its Enforceability.

IDEM’s Draft Permit is labeled a “Part 70 Administrative Operating Permit Renewal.” The Permit further states:

**SMS Mill Services, LLC - a contractor of NLMK Indiana
6500 South Boundary Road
Portage, Indiana 46368**

(herein known as the Permittee) is hereby authorized to operate subject to the conditions contained herein, the source described in Section A (Source Summary) of this permit.

The Permittee must comply with all conditions of this permit. Noncompliance with any provisions of this permit is grounds for enforcement action; permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Noncompliance with any provision of this permit, except any provision specifically designated as not federally enforceable, constitutes a violation of the Clean Air Act. It shall not be a defense for the Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

³¹ Draft Permit at Sec. B.9(c) (emphasis added).

³² SMS Scrap Metal Services, LLC, Revised RY2024 Annual Compliance Certification, Plant ID No. T127-00104, to IDEM - OAC - Compliance & Enforcement Branch (May 2, 2025), pg. 3 available at [idcplg](#) (“Compliance Certification Form”)

³³ *Supra* note 14.

While this language clearly states that all the terms of the Permit are enforceable against SMS, the use of the title “Administrative Operating Permit” and other language within the Permit could be read as contrary to this clear statement of the Permit’s enforceability. Specifically, Section A.2, which defines the “source” for this Permit, explains:³⁴

<p>A.2 Part 70 Source Definition [326 IAC 2-7-1(20)] This steel mini mill consists of a source with an on-site contractor:</p> <p>(a) NLMK Indiana, formerly known as Beta Steel Corporation, Plant ID# 127-00036, the primary operation, is located at 6500 South Boundary Road, Portage, Indiana 46368; and</p> <p>(b) SMS Mill Services, LLC - a contractor of NLMK Indiana, Plant ID# 127-00104, the supporting operation, is located at 6500 S Boundary Rd. Portage, IN 46368.</p> <p>IDEM has determined that NLMK and SMS Mill Services, LLC - a contractor of NLMK Indiana, are under the common control of NLMK. These plants will be considered one major source, as defined by 326 IAC 2-7-1(20), based on this contractual control. Therefore, the term “source” in the Part 70 documents refers to NLMK and SMS Mill Services, LLC - a contractor of NLMK Indiana, as one major source. This conclusion was initially determined under Part 70 Operating Permit Renewal T127-20488-00104 on June 20, 2005.</p> <p>Separate Part 70 Operating Permit Renewal will be issued to NLMK and SMS Mill Services, LLC solely for administrative purposes.</p>

This exact language is repeated in the “Source Definition” section of IDEM’s Technical Support Document.³⁵

Commenters agree with IDEM that NLMK and its subcontractor SMS should be considered one major source for air permitting purposes under Indiana law. We also understand, based on IDEM’s response to prior comments regarding the use of “administrative” permits, that the Department uses this term when a subcontractor “is a source that is ‘co-located’” with the facility that receives a part 70 Permit without the “Administrative” moniker,³⁶ such as the “Part 70 Operating Permit Renewal” currently proposed for NLMK.³⁷ In that prior response, IDEM explained that “separate administrative permit documents for contractors provide a clearer picture of what each source does in the steel-making process and provides a better framework to ensure that each contractor is fully apprised of their specific applicable requirements during operations.”³⁸ IDEM made clear that terms of the “administrative” Part 70 permit are applicable requirements that apply to and are enforceable against each subcontractor.

However, we remain concerned that the title “Administrative Operating Permit” and use of the language “solely for administrative purposes” within the specific terms of the Permit undermine the clarity and enforceability of this Part 70 Permit against SMS (and other

³⁴ Draft Permit at 5 (highlight added).

³⁵ TSD at 1.

³⁶ Addendum to the Technical Support Document (ATSD) for an Administrative Part 70 Operating Permit Renewal, Oil Technology Inc. contractor of Cleveland-Cliffs Burns Harbor LLC (“Oil Technology ATSD”), at 3, available at <https://permits.air.idem.in.gov/49003p.pdf>, PDF page 32.

³⁷ See Draft Part 70 Operating Permit Renewal, NLMK Indiana, <https://permits.air.idem.in.gov/49451d.pdf>.

³⁸ Oil Technology ATSD.

subcontractors generally). As EPA has explained, the enforceability of Title V permits must be “unambiguous”³⁹ and must allow IDEM, EPA, and the public to “take appropriate enforcement action” if its terms are exceeded.⁴⁰ Regardless of how IDEM has explained the use of the term “administrative” in responding to comments, both the Indiana and federal Part 70 permitting rules use the term “administrative” to define amendments to permits that authorize minor changes that do not impact operating or compliance requirements, such as typographical errors or changes in addresses and names.⁴¹ Accordingly, the use of “administrative” in the Permit title and “solely for administrative purposes” in the Permit terms creates ambiguity about the nature of the Draft Permit and how it applies to SMS. IDEM should revise its permitting nomenclature to align with its stated purpose for using these permits to define the CAA obligations for subcontractor at a single major source, such as “Part 70 Subcontractor Operating Permit Renewal.” In addition, IDEM should revise the language in Condition A.2 and the accompanying TSD explanation to delete the term “solely for administrative purposes.” IDEM should instead revise that language to clarify its use of separate Part 70 permits in a clear and enforceable manner, such as stating that “Separate Part 70 Operating Permit Renewal will be issued to NLMK and SMS Mill Services, LLC to clearly set forth the applicable requirements and other permit obligations that apply to and are enforceable against each part of this source (and relevant subcontractor) during its operations.”

IX. Commenter’s Requests

In summary, commenter’s request that IDEM modify the Draft Permit as follows:

- Impose monitoring requirements sufficient to enable regulators and citizens to determine whether PM limits have been exceeded.
 - o Include a template for daily inspections listing each relevant unit separately and the relevant inspection method.
 - o Follow EPA guidance for best practices and implement EPA Method 22 to install fenceline PM monitors and gauge actual PM concentrations.
- Impose monitoring requirements sufficient to enable regulators and citizens to determine whether opacity limits have been exceeded.
- Clarify the permit language to ensure that each individual emissions sub-unit has an associated emissions limit.
- Require the facility to update its fugitive dust control plan.
- Rewrite Section D.1.7 to require a complete quarterly summary of information to document the compliance status of all permit limits.
- Require the facility to update its annual compliance certification form.
- Revise the permit title and related permit terms to clarify its enforceability.

³⁹ *In the Matter of Tesoro Refining and Marketing Co. Martinez, California Facility* (March 15, 2005), https://www.epa.gov/sites/default/files/2015-08/documents/tesoro_decision2004.pdf, at 9.

⁴⁰ *In the Matter of Orange Recycling and Ethanol Production Facility, Pencor-Masada Oxydol, LLC*, (Apr. 8, 2002), https://www.epa.gov/sites/default/files/2015-08/documents/masada-2_decision2001.pdf, at 7.

⁴¹ 326 IAC 2-7-1140, and C.F.R. § 70.7(d)(1).

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