



116 South Indiana, Bloomington, Indiana 47408

phone: 812-856-0229 | fax: 812.855.1828

admin@conservationlawcenter.org | conservationlawcenter.org

August 3, 2026

BY EMAIL ONLY

Jay Hanko, Permit Manager
IDEM, Office of Water Quality
100 North Senate Ave., IGCN 1154
Indianapolis, IN 46404-2251
jhanko@idem.in.gov

Re: East Chicago Sanitary District NPDES Permit and Streamlined Mercury Variance
Renewal, Permit No. IN 0022829

Dear Mr. Hanko:

The Conservation Law Center, together with the Environmental Law & Policy Center, Green EC, Just Transition Northwest Indiana, and Gary Advocates for Responsible Development, (collectively, “Commenters”) submit the following comments regarding the draft renewal of the NPDES Permit and Streamlined Mercury Variance (“SMV”) for the East Chicago Sanitary District, Permit No. IN 0022829. We appreciate your consideration of these comments.

Commenters are non-profit and community-based organizations that share a commitment to improving local environmental quality. Our organizations include concerned residents of northern Lake County, along with other advocates who work alongside them. Commenters support vigorous enforcement of federal and state environmental laws to protect the Grand Calumet River and southern Lake Michigan for the benefit of the environment and the people who live near, use, and enjoy these waters.

Background

The East Chicago Sanitary District’s Wastewater Treatment Plant discharges into the Grand Calumet River, near the River’s junction with the Indiana Harbor Canal. The Sanitary District also operates three combined sewer overflow (“CSO”) outfalls, which discharge untreated wastewater into the Grand Calumet River and the Indiana Harbor Canal. These waters flow into Lake Michigan.

This corner of the Lake Michigan drainage basin has suffered from a disjointed approach from government and industry, which have simultaneously polluted or allowed pollution to occur while investing significant resources in remediation. The area has long been burdened by

discharges of sewage and industrial wastewater.¹ E. coli, an indicator of fecal contamination commonly associated with wastewater treatment plans and combined sewer overflows, impairs safe recreational use of the Grand Calumet River and the Indiana Harbor Canal.² Mercury impairs fishing in Lake Michigan where the Indiana Harbor Canal meets the shoreline.³

At the same time, the area is part of the Grand Calumet River Area of Concern, which was designated under the Great Lakes Water Quality Agreement of 1987, and which has been the focus of environmental remediation efforts. These efforts include the Junction Reaches project, a \$200 million public-private partnership “to remove more than 240,000 cubic yards of contaminated canal and river bottom sediment” from the Grand Calumet and Indiana Harbor Canal.⁴ Permitting for the Junction Reaches Project is currently underway.⁵

We urge IDEM’s Office of Water Quality to recognize the interconnectedness of its permitting, enforcement, and remediation functions in its approach to the Sanitary District’s permit. These comments aim to ensure the Sanitary District’s obligations are protective, clear, and enforceable. Such permit provisions will help to prevent further degradation and to ensure that remediation projects, including Junction Reaches, have a chance to achieve their water quality goals.

¹ U.S. EPA, *Grand Calumet River AOC*, <https://www.epa.gov/great-lakes-aocs/grand-calumet-river-aoc> (last updated July 8, 2026).

² IDEM Office of Water Quality, Indiana Integrated Water Monitoring and Assessment Report to the U.S. EPA (2026), Appendix H: Listing Tables Including Indiana’s Finalized 303(d) List of Impaired Waters (Category 5) (available at <https://www.in.gov/idem/nps/watershed-assessment/water-quality-assessments-and-reporting/integrated-water-monitoring-and-assessment-report/>).

³ *Id.*

⁴ Press Release, U.S. EPA Region 5, EPA and Partners Announce More than \$200 Million to Clean Up Grand Calumet River Area of Concern (Jan. 22, 2026), <https://www.epa.gov/newsreleases/epa-and-partners-announce-more-200-million-clean-grand-calumet-river-area-concern>.

⁵ IDEM Office of Water Quality, Waterways Section, Public Notice of Section 401 Water Quality Certification Application, IDEM Permit No. WQC001483 (June 19, 2026), https://www.in.gov/idem/files/notice_20260710_401_wqc001483.pdf.

Comments

I. IDEM Should Not Renew the Sanitary District's Streamlined Mercury Variance Without Improvements to the Pollutant Minimization Program Plan

IDEM may renew a Streamlined Mercury Variance (“SMV”) “if the applicant demonstrates that implementation of the PMPP [Pollutant Minimization Program Plan] has achieved progress toward the goal of reducing mercury from its discharge[.]”⁶ If the original PMPP “does not lead to demonstrable progress in minimizing the discharge of mercury,” the PMPP “must be revised[.]”⁷ Here, the SMV application falls short because it has failed to demonstrate that it has implemented the PMPP, and that this implementation has led to “demonstrable progress” in minimizing the discharge of mercury.

First, the Sanitary District has not demonstrated that it has implemented the PMPP at all, let alone that the implementation has reduced mercury from its discharge. Permittees with an SMV must submit annual reports describing “progress toward fulfilling each of the requirements of the PMPP.”⁸ Commenters requested copies of the Sanitary District's SMV annual reports from 2024 and 2025, but IDEM indicated that it had not received either report. The Sanitary District in its SMV application proposed to submit its 2025 Annual Report (which it described as a “Catch up Submittal”) in March 2026, but evidently this did not occur.⁹ The Sanitary District cannot show that “implementation of the PMPP has achieved progress” without showing that it has implemented its PMPP.

Moreover, the results from the annual reports “need to be used to make necessary revisions to the [PMPP] and the implementation activities in subsequent years to address problems discovered, and investigate new areas where the pollutant might be found.”¹⁰ Without annual SMV reports, the Sanitary District and IDEM cannot identify the revisions necessary to reduce mercury discharges.

Second, the Sanitary District's SMV renewal application does not assert, let alone demonstrate, that its mercury discharges have declined. The renewal application provides sampling data from the previous two years. That data, visualized in the chart below, shows only stagnation.

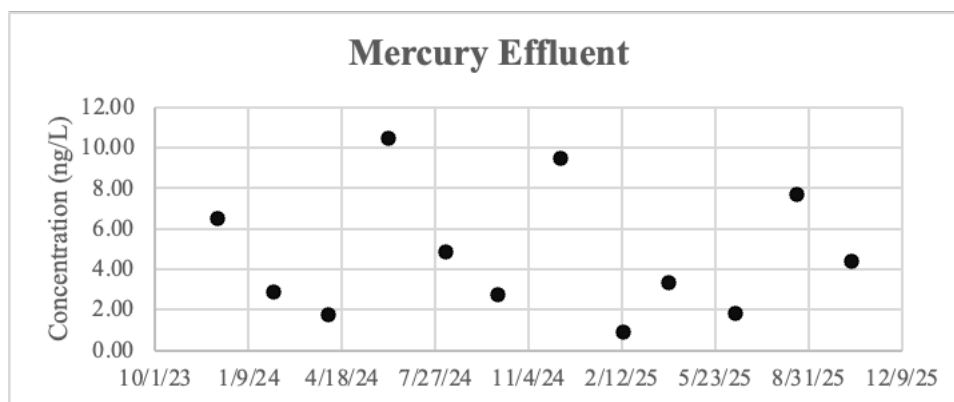
⁶ 327 IAC 5-3.5-7(b).

⁷ 327 IAC 5-3.5.7(d).

⁸ 327 IAC 5-3.5-9.

⁹ This appears to be a perennial problem. The Sanitary District received a notice from IDEM on February 23, 2024, that it had failed to submit the required annual reports for due in July 2022 and July 2023. *See* Noncompliance Letter, Gary Starks, IDEM Office of Water Quality, to Ken Myers, East Chicago Sanitary District (Feb. 23, 2024), VFC no. 8360229.

¹⁰ U.S. EPA Region 5, Mercury Pollutant Minimization Program Guidance (Nov. 2004), at 1 (available at https://www.epa.gov/system/files/documents/2021-07/pt_region5_mercury_pmp_guidance.pdf).



The above result is unsurprising, even if the PMPP has been implemented. The action steps described in the PMPP, while important, seem unlikely to generate ongoing progress in minimizing the discharge of mercury. Interventions such as staff training, review of purchasing procedures, and outreach letters likely achieve their maximum impact shortly after implementation.

A more effective PMPP would include steps to conduct more rigorous monitoring within the pretreatment program; to impose more stringent limitations on industrial users; and to invest in better mercury treatment at the wastewater treatment plant. As a threshold matter, the PMPP should require the Sanitary District to identify the actual sources of mercury in its system; currently, the Sanitary District only needs to identify *potential* sources. In August 2024, the Sanitary District found 5270 ng/L of mercury in its influent, a concentration over 50 times higher than any other sample in the two-year period under consideration.¹¹ The PMPP should include plans to identify actual sources of mercury so that it can develop effective pretreatment approaches and respond effectively to these types of spikes.

Because the Sanitary District has not made the requisite showing that its PMPP has led to “demonstrable progress in minimizing the discharge of mercury[.]” and because the data provided does not demonstrate progress, IDEM should require the Sanitary District to submit all prior annual reports and to implement the above improvements to the PMPP before granting a new SMV.

¹¹ See East Chicago Sanitary District Streamlined Mercury Variance Renewal Application (Feb. 27, 2026) at 5.

II. The Permit Should Require Compliance with the Approved Long Term Control Plan and Should Incorporate Its Terms

The U.S. EPA's Combined Sewer Overflow ("CSO") Control Policy "establishes a uniform, nationally consistent approach to developing and issuing NPDES permits to permittees with CSOs."¹² Every NPDES permit issued after December 21, 2000, for a municipal combined sewer system "shall conform" to that policy.¹³ The policy requires permittees to develop a Long-Term Control Plan ("LTCP") to reduce CSO discharges, and it outlines a two-phased approach for NPDES permitting before (Phase I) and after (Phase II) the LTCP has been approved. For a Phase II permit, "the permitting authority should include, in an appropriate enforceable mechanism, requirements for implementation of the long-term CSO control plan as soon as practicable."¹⁴

The East Chicago Sanitary District operates a combined sewer system. Consistent with U.S. EPA's CSO Policy, IDEM has required the East Chicago Sanitary District to develop a long-term control plan to address sewer overflows. However, while the Fact Sheet indicates that the Sanitary District's "long term control plan provisions were included to ensure compliance with water quality standards[.]" Commenters could not find the Sanitary District's LTCP in the terms of the permit.

A. Impose Requirements to Ensure Implementation of the Nine Minimum Controls

U.S. EPA developed "nine minimum controls" ["NMCs"] "to address CSO problems without extensive engineering studies or significant construction costs, prior to the implementation of long-term control measures."¹⁵ The NPDES permit must contain "[r]equirements to implement the technology-based controls including the nine minimum controls [NMC] determined on a BPJ [Best Professional Judgment] basis[.]"¹⁶ Once the permittee has an approved LTCP, the permit writer "should, where appropriate, develop Phase II permit language that requires the continued implementation of the NMC."¹⁷ This language "should be tailored to the permittee's specific circumstances and should incorporate site-specific implementation and recordkeeping requirements."¹⁸

¹² Combined Sewer Overflow (CSO) Control Policy, 59 Fed. Reg. 18688, 18695 (U.S. EPA April 19, 1994).

¹³ 33 U.S.C. § 1342(q).

¹⁴ Combined Sewer Overflow (CSO) Control Policy at 18696.

¹⁵ U.S. EPA Office of Water Quality, 832-B-95-003, Combined Sewer Overflows: Guidance for Nine Minimum Controls (May 1995), Introductory Memorandum (available at https://www.epa.gov/sites/default/files/2015-10/documents/owm0030_2.pdf).

¹⁶ Combined Sewer Overflow (CSO) Control Policy at 18696.

¹⁷ U.S. EPA Office of Water Quality, 832-B-95-008, Combined Sewer Overflows: Guidance for Permit Writers (Sept. 1995) at 4.4.2 (available at https://www.epa.gov/sites/default/files/2015-10/documents/csopermitwriters_full.pdf).

¹⁸ *Id.*

U.S. EPA provides examples of such implementation and recordkeeping requirements for each of the NMCs, including the examples below:¹⁹

Exhibit 4-2. Example Permit Language for Continued Implementation of the Nine Minimum Controls

I.	Effluent Limits
A.	Technology-based requirements for CSOs. The permittee shall comply with the following technology-based requirements: 1. <u>Conduct proper operations and regular maintenance programs.</u> The permittee shall implement the operation and maintenance plan for the CSS that will include the elements listed below. The permittee also shall update the plan to incorporate any changes to the system and shall operate and maintain the system according to the plan. The permittee shall keep records to document the implementation of the plan. <i>Site-Specific Language:</i> <i>Designation of a Manager for Combined Sewer System.</i> The permittee shall designate a person to be responsible for the wastewater collection system and serve as the contact person regarding the CSS. <i>Inspection and Maintenance of CSS.</i> The permittee shall inspect and maintain all CSO structures, regulators, pumping stations, and tidegates to ensure that they are in good working condition and adjusted to minimize CSOs and prevent tidal inflow. The permittee shall inspect, or cause to be inspected, each CSO outfall at an appropriate frequency to ensure no dry weather overflows are occurring. The inspection shall include, but is not limited to, entering the regulator structure if accessible, determining the extent of debris and grit buildup, and removing any debris that may constrict flow, cause blockage, or result in a dry weather overflow. The permittee shall record in a maintenance log book the results of the inspections. For CSO outfalls that are inaccessible, the permittee may perform a visual check of the overflow pipe to determine whether or not the CSO is occurring during dry weather flow conditions. <i>Provision for Trained Staff.</i> The permittee shall ensure the availability of trained staff to carry out the operation, maintenance, repair, and testing functions required to ensure compliance with the terms and conditions of this permit. Each staff member shall receive appropriate training. <i>Allocation of Funds for O&M.</i> The permittee shall allocate adequate funds specifically for operation and maintenance activities. The permittee shall submit a certification of assurance from the appropriate local government entities that the necessary funds, equipment, and personnel have been or will be committed to carry out the O&M plan. 2. <u>Maximize use of the collection system for storage.</u> The permittee shall maximize the in-line storage capacity. The permittee shall keep records to document implementation. <i>Site-Specific Language:</i> <i>The permittee shall 1) maintain all dams or diversion structures at their current heights (as of the date of permit issuance) or greater, 2) minimize discharges from the CSO outfall locations designated as [insert appropriate designation] until the specified capacity of the [named] Combined Sewer Retention Basin is used to store the overflow for later treatment at the plant, and 3) keep records of the flow entering and leaving the [named] Combined Sewer Retention Basin.</i>

The Draft Permit's Attachment A, Section IV.A bears little resemblance to U.S. EPA's examples. While the Draft Permit does require compliance with the NMCs, the NMCs

¹⁹ *Id.* at Ex. 4-2.

represented in Conditions IV.A.2, IV.A.4, IV.A.6, IV.A.7, and IV.A.9 do not indicate how the Sanitary District is to implement these controls. Additionally, Condition IV.A.1 (operation and regular maintenance programs for the sewer system and the CSOs) states the Sanitary District “shall consider” maintenance activities like regular inspections, but does not appear to require them. That language is particularly concerning in this case, where the Sanitary District has had recent dry weather discharges resulting from apparent pipe maintenance and repair problems.²⁰ While Attachment A does reference the CSO Operating Plan, its terms are not enforceable permit conditions.

Although Attachment A lists the NMCs, it does not impose “requirements to implement” them, as the CSO Control Policy requires. Attachment A should incorporate all applicable site-specific implementation and recordkeeping provisions from the LTCP to require continued compliance with the NMC. Commenters recommend that IDEM revise Permit Condition IV.A to ensure it imposes clear requirements, reflective of the strategies described in the LTCP, to achieve the NMCs.

B. Impose Requirements to Implement, Operate, and Maintain Selected CSO Controls

A Phase II permit should contain “[n]arrative requirements which insure that the selected CSO controls are implemented, operated and maintained as described in the long-term CSO control plan.”²¹ EPA further advises:

[T]he permit writer should not simply develop a generic permit condition that requires implementation of the LTCP as developed, incorporating the LTCP into the NPDES permit by reference. Rather, the permit should contain specific conditions that require implementation of the selected CSO controls, the proposed O&M [Operation & Maintenance] program requirements, and the proposed post-construction compliance monitoring program.²²

U.S. EPA provides the example below:²³

²⁰ A broken 42” forcemain led to the discharge of 102 million gallons/day of wastewater into the Grand Calumet River between June 26, 2026, and July 7, 2026. *See* City of East Chicago Sanitary Wastewater District, Notice of Completed Combined Sewer Repair (July 2026), VFC no. 83994249; East Chicago Sanitary District Bypass/Overflow Incident Report (July 8, 2026), VFC no. 83994251.

²¹ Combined Sewer Overflow (CSO) Control Policy at 18696.

²² U.S. EPA Office of Water Quality, Combined Sewer Overflows: Guidance for Permit Writers, EPA 832-B-95-008 (Sept. 1995) at 4-22, 4-23.

²³ *Id.* at Ex. 4-3.

Exhibit 4-3. Example Permit Language for Implementing Selected CSO Controls

II. Long-Term Control Plan	
The permittee shall implement and effectively operate and maintain the CSO controls identified in the long-term control plan. The implementation schedule for these controls shall be as follows:	
<u>Activity</u>	<u>Completion Date</u>
[insert name of activity]	[insert date]
<i>Site-Specific Language:</i>	
1. Retention basin	
• Complete design of [named] retention basin.	[insert date]
• Submit construction drawings for [named] retention basin.	[insert date]
• Initiate construction of [named] retention basin.	[insert date]
• Complete construction of [named] retention basin.	[insert date]
2. [Named street] sewer separation	
• Complete design.	[insert date]
• Solicit bids.	[insert date]
• Award contracts.	[insert date]
NOTE: A compliance schedule exceeding the term of the permit may only be included in the permit if explicitly authorized in the applicable State WQS.	

Commenters could not identify any Draft Permit condition requiring the Sanitary District to implement, operate, or maintain the control measures selected in the LTCP, or incorporating the LTCP's implementation schedule. The Fact Sheet describes several of the measures required by the LTCP, including "separation in the Michigan Avenue drainage which will result in the elimination of CSO Outfall 002," "upgrades to the Alder Street, Roxanna, and 145th Street pump stations," "[a] new force main... between the Alder Street Pump Station and the CSO Lagoon," "[a] new CSO Lagoon Pump Station," and modification of "UV equipment at the WWTP to disinfect wet weather discharges from the CSO Lagoon." However, none of these were adopted as permit conditions.

The U.S. EPA's CSO Control Policy and guidance for permit writers suggests IDEM must include the selected CSO controls, the proposed O&M program requirements, and the proposed post-construction compliance monitoring program in the permit. Commenters recommend that IDEM revise Attachment A to require compliance with the approved LTCP, and to require compliance with the specific LTCP controls, O&M measures, and the implementation schedule in the LTCP.

III. The Permit Should Promote Transparency and Public Understanding**A. Identify CSO Outfalls on a Map**

The Draft Permit provides coordinates for the Sanitary Districts three CSO outfalls, but the map in the Fact Sheet depicts only Outfall 001. Commenters recommend that the Draft Permit include a map showing the CSO outfalls, similar to the map on page 2 of the Sanitary

District's 2019 CSO Operational Plan.²⁴ This would improve public accessibility and awareness. A map may also serve to inform any government officials or others less familiar with the Sanitary District as interagency remediation projects proceed.

B. Clarify Expectations for Potential Amendment to Long-Term Control Plan

The Fact Sheet states that the Sanitary District proposed an amendment to its LTCP, which "IDEM continues to work with East Chicago to approve[.]" The proposed amendment has already been pending for about two years.²⁵ This lengthy period of consideration, coupled with IDEM's stated intention to approve the amendment, raises concerns about whether the Sanitary District will continue to make appropriate progress toward reducing CSO discharges in the meantime.

Commenters do not wish to rush the evaluation of a significant change in infrastructure plans, but caution against a process that effectively halts progress toward implementation of the approved LTCP indefinitely. Unless and until IDEM approves the amendment, the Sanitary District is obligated to comply with the terms of the existing LTCP. Commenters ask that IDEM explain the delay, outline the amendment process going forward, and clarify its expectations about the Sanitary District's compliance with the existing, approved LTCP in the interim.

Conclusion

Commenters appreciate IDEM's consideration of these recommendations. The Sanitary District performs an essential, challenging, and perhaps underappreciated job. These comments aim primarily to ensure that its NPDES permit imposes the standards that that will adequately control discharges of mercury and raw sewage. Stronger controls on these discharges will better protect water quality in the Grand Calumet River, the Indiana Harbor Canal, and Lake Michigan, and will help secure the efficacy of remediation efforts in this area.

Very truly yours,



Rachel Schwartz
Public Service Law Fellow
Conservation Law Center

²⁴ East Chicago Sanitary District, Combined Sewer Overflow Operational Plan, Revision 3 (June 24, 2019), VFC no. 82880218.

²⁵ IDEM provided comments on the proposed amendment on October 25, 2024, and then sent those comments a second time on March 31, 2025. The Sanitary District requested an extension to submit a response, making the Sanitary District's response deadline June 29, 2025. Over a year has passed since that deadline. Commenters do not know the status of the proposed amendment. *See* Leigh Voss, IDEM Municipal NPDES Permits Section, to Kenneth Myers, East Chicago Department of Utilities (May 15, 2025), VFC no. 83808079.