ENVIRONMENTAL LAW & POLICY CENTER

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**Re: Public Comments on Lakeshore Terminal Railroad LLC, FESOP No. F089-50463-00732**

Dear Grogan,

The Environmental Law & Policy Center, Conservation Law Center, Gary Advocates for Responsible Development, Green EC, Just Transition Northwest Indiana, and Northern Lake County Environmental Partnership (collectively, "Commenters") respectfully submit the following comments on the above-referenced Draft Federally Enforceable State Operating Permit ("FESOP") ("Draft Permit") issued by the Indiana Department of Environmental Management ("IDEM") to Lakeshore Terminal Railroad LLC ("Lakeshore Terminal"), for its operation of a short-line transloading operation at 1150 East 145th Steet, East Chicago, Indiana ("Transloading Facility"). We appreciate the opportunity to make these public comments. Please let us know if you have any questions or if you would like to meet to discuss any of these issues.

Commenters are non-profit organizations that work to promote a healthier environment for all. Commenters advocate for vigorous enforcement of federal and state environmental laws to protect public health and ensure that businesses do not receive a competitive advantage by polluting the environment.

## Background

Lakeshore Terminal Railroad, LLC operates this Transloading Facility as part of Patriot Rail Company on a 36-acre site with 650 railcar spots, 10 acres for storage and lay-down space, and less than 1 mile of railroad track.[1] The Transloading Facility primarily focuses on transfer of petroleum products and chemicals from semi-truck to rail. Bulk liquid storage tanks on site are

[1] *See* Lakeshore Terminal Railroad at https://patriotrail.com/rail/lakeshore-terminal-railroad-ltr/ and https://patriotrail.com/wp-content/uploads/2026/03/HYDRA-LAKESHOREds2bhmm.pdf.

"variable volumes and configurations totaling 170,000+ gallons."[2] Lakeshore Terminal previously operated in this location as a noncarrier, focusing on freight car repair and cleaning, but filed to become a Class III rail carrier in 2023.[3]

The Technical Support Document ("TSD") states that this permit action will

> increase[e] the throughput of the existing permitting transloading operation EU1. This will increase the source-wide [potential to emit ("PTE")] of regulated pollutants (VOC, single HAP, total HAPs) to above Title V thresholds. The Permittee has chosen to transition their current Registration to a FESOP and limit the PTE of regulated pollutants (VOC, single HAP, and total HAPs) to under Title V thresholds.[4]

There is a significant threshold difference between Registration and Title V permits:[5]

| Registration Thresholds Table | | Title V Thresholds for Major Sources | |
|---|---|---|---|
| **Type of Pollutant** | **Maximum Threshold in Tons Per Year** | **Type of Pollutant** | **Potential to Emit Threshold (Minimum) in Tons Per Year** |
| Volatice Organic Compounds (VOCs) | 25 | VOCs | 50 (in serious nonattainment areas) |
| Nitrogen dioxide (NOX) | 25 | NOX | 50 (in serious nonattainment areas) |
| Sulfur dioxide (SO2) | 25 | SO2 | 100 |
| Carbon monoxide (CO) | 100 | CO | 100 |
| Particulate matter smaller than 10 microns (PM10) | 25 | PM10 | 100 |
| Particulate matter smaller than 2.5 microns (PM2.5) | 25 | PM2.5 | 100 |
| Lead | 5 | Lead | 10 |
| Fluorides | 25 | Single hazardous air pollutant (HAP) | 10 |
| Hydrogen sulfide / reduced sulfur compounds | 25 | A combination of HAPs | 25 |

[2] HYDRA at Lakeshore Terminal Railroad: Midwest's Premier Liquid Bulk Transload Hub, https://patriotrail.com/wp-content/uploads/2026/03/HYDRA-LAKESHOREds2bhmm.pdf.
[3] *See* 88 Fed. Reg. 87044 (December 15, 2023), https://www.federalregister.gov/documents/2023/12/15/2023-27636/lakeshore-terminal-railroad-llc-acquisition-and-operation-exemption-track-in-lake-county-ind.
[4] Technical Support Document ("TSD") for New Source Review and FESOP No. F089-50463-00732 at 12, pdf 76.
[5] IDEM, Emissions Applicability Thresholds, https://www.in.gov/idem/airpermit/information-about/potential-to-emit-and-source-category/emissions-applicability-thresholds.

So, while IDEM's description is technically accurate, it does not capture the magnitude of the increases. Under Lakeshore Terminal's current Registration, the Transloading Facility has a throughput maximum of "60,000 gal/day of liquid commodity, without control, and exhausting outside."[6] The maximum throughput under the Draft Permit is "240,000 gal/day of volatile liquids, and exhausting outside."[7] The throughput increase is coming from an increase in tanker truck traffic to/from the facility—from 30 maximum trips/day under the Registration to 90 trips/day under the Draft Permit.[8] The increase in semi-truck traffic will result in an increase of at least 7 tpy of PM emissions on the quarter mile of facility road.[9] This is also not the full impact of increased truck traffic on the community, as these trucks will increase PM emissions over miles of community roadways, which is unaccounted for by air permitting.

The potential to emit ("PTE") for the Transloading Facility under the Draft Permit includes 53.55 tpy VOC and 37.9 tpy of total and single HAPs.[10] The PTE after issuance is 49.5 tpy of VOC, 24.76 tpy total HAPs, and 9.74 tpy of a single HAP,[11] each of which is just below Title V major source thresholds as shown in the chart above. However, Indiana requires new facilities with a PTE VOCs of 25 tpy to "reduce VOC emissions using best available control technology (BACT)."[12] To avoid triggering these BACT requirements, Lakeshore Terminal is proposing to take a limit and "not exceed 24.99 tons per twelve (12) consecutive month period."[13] This is a mere 22 pounds below the limit.

The Transloading Facility emissions, including ozone and smog-producing pollutants like VOC, likely contribute to the nearby Indiana Dunes National Park's ranking as among the top 10 National Parks with unhealthy air and hazy skies.[14]

Facilities that would otherwise be subject to the Title V major source program based on their PTE, can use a FESOP, also called a synthetic minor permit, to avoid Title V permitting by agreeing to limit criteria pollutant emissions below the Title V major source thresholds. All FESOPs must "assure compliance with all applicable requirements."[15] A FESOP must include "[m]onitoring and related record keeping and reporting requirements that assure that all reasonable information is

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[6] Registration No. R089-47845-00732 (June 27, 2024), https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_FILE&dID=83655259&dDocName=83659302&Rendition=web&allowInterrupt=1&noSaveAs=1 at 2.
[7] Draft Permit at 4.
[8] *Compare* Registration TSD Appendix A at pdf 44 *with* Draft Permit TSD Appendix A at pdf 86.
[9] *Id.*
[10] TSD at pdf 78.
[11] *Id.* at pdf 79.
[12] 326 IAC 8-1-6.
[13] Condition D.1.2(a), Draft Permit at 22.
[14] 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.
[15] 326 IAC 2-8-4(1).

provided to evaluate continuous compliance with the applicable requirements."[16] Specifically, all "[c]ompliance certification, testing, monitoring, reporting, and record keeping requirements [must be] sufficient to assure compliance with the terms and conditions of the FESOP."[17] Not only must such monitoring, recordkeeping, and recordkeeping "assure that all reasonable information is provided to evaluate continuous compliance with the applicable requirements," it must also "yield reliable data from the relevant time period that are representative of the source's compliance with the FESOP."[18] Additionally, Compliance certification must include "a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices."[19] Finally, EPA has explained that the enforceability of Clean Air Act permits must be "unambiguous" and must allow IDEM, EPA, and the public to "take appropriate enforcement action"[20] if its terms are exceeded.[21]

As explained below, the Draft Permit fails to satisfy these requirements and must be revised.

**Comments**

1. **IDEM must revise the Draft Permit to require monitoring, recordkeeping, and reporting adequate to assure compliance with emission limits**

    a. Condition D.1.2 limits VOC emissions from the transloading operation to "24.99 tons per twelve (12) consecutive month period" to avoid BACT requirements under 326 IAC 8-1-6. As previously mentioned, this is a mere 22 *pounds* below the limit and, therefore, provides no safety backstop. The only compliance mechanism in the Draft Permit is the equations in Condition D.1.3. IDEM must explain how these calculations will assure compliance with the limit without any other monitoring provision.

    b. Relatedly, the equations in Condition D.1.3 to determine compliance with VOC and HAP emissions limits rely on the "loading loss" associated with a given product ($LL_i$). However, the permit does not explain how Lakeshore Terminal must calculate loading loss, or whether this method will provide sufficient accuracy to assure Lakeshore Terminal stays within the 22-pound margin of error for VOCs. Condition D.1.3 should describe the method for calculating loading loss, and IDEM must explain how this method will assure compliance with emissions limits.

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[16] 326 IAC 2-8-4(3).
[17] 326 IAC 2-8-5(a)(1).
[18] 326 IAC 2-8-4(3) and (3)(A)(ii).
[19] 326 IAC 2-8-5(a)(1)(B).
[20] *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 ("*Tesoro Order*"), at 9.
[21] *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. *See also* 326 IAC 2-8-6.

c. Condition D.1.1 (should be D.2.1) provides particulate matter ("PM") emission limits for the 5.02 MMBtu/hr and 25.106 MMBtu/hr natural gas-fired boilers. However, Section D.2 does not require any monitoring, recordkeeping, or reporting to assure compliance with these PM emission limits. IDEM must revise the Draft Permit to include monitoring, recordkeeping, and reporting requirements sufficient to assure compliance with the PM emission limits.

d. Condition D.1.5(a) (Record Keeping Requirements) identifies records needed "to establish compliance with the VOC and HAP limits" but contains ambiguities. D.1.5(a) states that "the Permittee shall maintain records in accordance with (1) through (3) below[,]" and that these records will be sufficient to establish compliance. However, Condition D.1.5(a) contains elements (1) through (5), all of which are needed to establish compliance. Additionally, D.1.5(a)(4) identifies "information necessary to calculate the loading loss[,]" but merely lists "[r]ecords of purchase orders, invoices, and safety data sheets (SDS) for each volatile liquid loaded" twice (Conditions D.1.5(a)(4)(A) and (B) are duplicates). It is not clear Lakeshore Terminal can calculate loading loss with information from purchase orders, invoices, and safety data sheets alone. IDEM must clarify that Lakeshore Terminals must comply with D.1.(5)(a)(1) through (5) to establish compliance with VOC and HAP limits and must identify all records needed to support loading loss calculations.

**2. IDEM must include the preventive maintenance plan in the Final Permit**

IDEM must ensure that each FESOP "assure[s] compliance with all applicable requirements,"[22] which include, among other things, any requirements of a federally enforceable state implementation plan ("SIP") and any preconstruction requirements that are incorporated into the permit.[23] The Draft Permit fails to include all applicable requirements because it does not include Lakeshore Terminal's preventive maintenance plan ("PMP"). While IDEM emphasizes the "living" nature of the Plans and its ability to inspect them, neither of those facts override the statutory and regulatory requirements (and related EPA orders) stating that they are the types of plans that must be included in Clean Air Act permits.[24] IDEM must revise the Draft Permit to include the PMP for three reasons:

- First, the Plans are required by the Indiana SIP. Lakeshore Terminal is required to have and implement a PMP under SIP-approved Indiana regulations at 326 IAC 1-6-3 and 2-8-4(9),

[22] 326 IAC 2-8-4(1).
[23] 326 IAC 2-7-1 (definition at "applicable requirement" at (6); *Pacific Coast Order* at 7 ("applicable requirements include the requirement to obtain preconstruction permits that comply with preconstruction review requirements under the Act, EPA regulations, and State Implementation Plans").
[24] *See generally* 42 U.S.C. §§ 7661c(a)-(c); 40 C.F.R. §§ 70.6(a)(1), (3)(i)(A) and (B); 326 IAC 2-7-1(6); *Oak Creek Order* at 26; *Columbia University Order* at 27.

which makes it an applicable requirement.[25] Because the Indiana SIP requires Lakeshore Terminal to have and apply the PMP, IDEM must include it in the Draft Permit.

a. Second, specific provisions of the Draft Permit, including Conditions B.11(a), D.1.3 (for the transloading operation), and D.1.2 (for the natural gas-fired boilers B1 and B2; note this provision is misnumbered and should be D.2.2), require Lakeshore Terminal to have, implement, and comply with the PMP. EPA has found that when "compliance with the approved [plan] is required" by the specific terms of a permit, "the plan must be included in the permit."[26]

b. Third, the Permit must incorporate the PMP in order to make the provisions requiring compliance and implementation of the PMP enforceable as required by 326 IAC 2-8-6. Without including the specific requirements of the PMP in the Permit, Conditions B.11(a), (b), and (c), D.1.3, and D.1.2 (should be D.2.2) are unenforceable, because it is impossible for IDEM, EPA, and the public to determine whether Lakeshore Terminal is complying with the requirements of the Plans and, if not, to take appropriate enforcement action.

Therefore, IDEM must revise the Draft Permit to include the PMP.

### 3. IDEM should clarify or correct likely clerical errors in the Draft Permit

IDEM should correct, or else explain, the following likely clerical errors:

a. The Table of Contents fails to list Sections D.2 and E.1.

b. Section D.1 has two Conditions D.1.3 (and is missing a Condition D.1.4). The compliance determination requirements provision for VOCs and HAPs should be renumbered as Condition D.1.4.

c. Condition D.1.5 (record keeping requirements) includes Conditions D.1.5(a) and D.1.5(c) but is missing a condition (b).

d. Conditions D.1.5(a)(4)(A) and (B) are duplicates.

e. Section D.1 has two Conditions D.1.5. The reporting requirements provision should be renumbered as Condition D.1.6.

f. Section D.2 provisions are misnumbered as Conditions D.1.1 and D.1.2 and should be renumbered as Conditions D.2.1 and D.2.2.

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[25] 40 C.F.R. § 70.2 (definition at "applicable requirement" at (1)).

[26] *In the Matter of WE Energies Oak Creek Power Plant, Permit No. 241007690-P-10* (June 12, 2009), https://www.epa.gov/sites/default/files/2015-09/documents/dpr_response2014.pdf ("*Oak Creek Order"*), at 26. *See also In the Matter of Columbia University,* Pet. No. II-2000-08 (Dec. 16, 2002), https://www.epa.gov/sites/default/files/2015-08/documents/columbia_university_decision2000.pdf ("*Columbia University Order*"), at 27 (noting where a facility is subject to a plan, the permit must "properly incorporate that plan.").

**Summary and Conclusion**

As discussed above, the Draft Permit fails to assure compliance with FESOP regulations and IDEM should revise the Draft Permit accordingly by:

- explaining how the calculations in Condition D.1.3 will assure compliance with the limit in Condition D.1.2 without any other monitoring provision, when the limit is only 22 pounds below the threshold requiring BACT;
- requiring monitoring, recordkeeping, and reporting requirements sufficient to assure compliance with the PM emission limits in Condition D.1.1 (should be D.2.1);
- including the preventive maintenance plan in the permit; and
- clarifying or correcting likely clerical errors.

Finally, IDEM should consider providing more detailed information in the Technical Support Document to fully explain and provide crucial context for the proposed change—including the scope of the increased throughput and emissions.

Thank you for considering these comments. Please feel free to reach out with any questions or if you need additional information.

Sincerely,

/s/ Kerri Gefeke

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