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October 9, 2026

BY EMAIL ONLY
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Re: Unilever Manufacturing Significant Permit Revision, No. 089-50437-00229

Dear Ms. Wade:

The Conservation Law Center, the Environmental Law & Policy Center, the Northern Lake County Environmental Partnership, and Gary Advocates for Responsible Development (collectively "Commenters") submit the following comments regarding the draft Federally Enforceable State Operating Permit Significant Revision ("Draft Revision") for Unilever Manufacturing, Inc. ("Unilever") at 1200 Calumet Avenue in Hammond Indiana, No. 089-50437-00229. We appreciate the opportunity to submit these public comments and thank you for your attention in advance.

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 public health and ensure businesses do not receive a competitive advantage by polluting the environment.

Permitting History

This permitting action concerns the reversal of determinations IDEM made as part of Unilever's most recent Federally Enforceable State Operating Permit ("FESOP") Renewal, No. 089-48454-00229.[1] In September 2025, IDEM issued a draft permit renewal for public notice and comment, and the present Commenters submitted comments. Commenters raised, among other issues, a lack of compliance determination requirements for permit Conditions D.2.1, D.2.2, D.2.3, and D.2.4, which establish particulate matter ("PM") emission limits for multiple units.[2]

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[1] *See* FESOP Renewal for Unilever Manufacturing, Inc., No. 089-48454-00229 (Feb. 11, 2026), VFC no. 83931795.

[2] *See* Addendum to the Technical Support Document of FESOP Renewal for Unilever Manufacturing, Inc., No. 089-48454-00229 (Feb. 11, 2026), VFC no. 83931795 at 2.

IDEM published the approved FESOP Permit Renewal on February 11, 2026 ("Permit Renewal"). In its response to public comments, IDEM agreed in part with Commenters, stating, "[u]pon further review of the current draft permit, IDEM determined that additional stack testing is needed for Silos and Chip Mixer units to assure compliance with the limits in Conditions D.2.1, D.2.2, D.2.3, and D.2.4."[3] IDEM instituted new stack testing requirements for fourteen emissions units: seven soap noodle silos, each with an uncontrolled potential to emit (PTE) $PM/PM_{10}/PM_{2.5}$ of 30.59 tons per year, and seven chip mixers, each with an uncontrolled PTE $PM/PM_{10}/PM_{2.5}$ of 26.28 tons per year.[4] IDEM did not require testing for the chip bagging station and bagging silos because "the aspiration filters are able to provide sufficient particulate control when properly operated and maintained to assure compliance with Conditions D.2.1 and D.2.4."[5]

The Permit Renewal incorporated an apparent error. IDEM had confused which of the emissions units uses aspiration filters and which exhaust to a stack. While Chip Mixer #1 may once have exhausted to a stack, the seven chip mixers now vent indoors, making stack testing infeasible.[6] Additionally, a different emissions unit, the Soap Noodle Bagging Silo Dust Collector/Bagging Operation (DC-31613), exhausts to a stack, not an aspiration filter, but was omitted from the new stack testing requirement.

Now, in response to an application from Unilever, IDEM proposes to reverse the decision it made just eight months ago. This Draft Revision would eliminate stack testing requirements for all fourteen of the emissions units, without substituting any other monitoring or reporting requirements. Rather than correcting the error, it would return the permit to the state that IDEM had already determined was inadequate to assure compliance with emissions limits.

Legal Background

FESOPs must "assure compliance with all applicable requirements."[7] They must include "[m]onitoring and related record keeping and reporting requirements that assure that all reasonable information is provided to evaluate continuous compliance with the applicable requirements."[8] The "monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement."[9]

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[3] *Id.* at 2.
[4] *See id.*; Technical Support Document Appendix A of FESOP Renewal for Unilever Manufacturing, Inc., No. 089-48454-00229 (Feb. 11, 2026), VFC no. 83931795 at 7-8.
[5] *See* Addendum to the Technical Support Document of FESOP Renewal at 2-3.
[6] IDEM noted in its response to comments for the Permit Renewal that chip mixer #1 had been required to do a one-time stack test as part of condition for permit 089-19871-00229. Reviewing that document, the chip mixers at that time used a dust collection system and exhausted to stack 23. However, stack 23 does not exist in the current permit, and since at least July 20, 2010, the chip mixers have used aspiration filters and exhausted indoors.
[7] 326 IAC 2-8-4(1).
[8] 326 IAC 2-8-4(3).
[9] 326 IAC 2-8-4(3)(A)(ii).

Additionally, an agency decision should not be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[10] "[A]n agency decision is arbitrary and capricious where there is no reasonable basis for the decision."[11] Furthermore, even if IDEM has authority to take an action, its decision to do so may still be arbitrary and capricious if "its failure to provide any explanation requires us to speculate as to the basis for its decision."[12]

Comments

Just eight months after finding "that additional stack testing is needed…to assure compliance with the limits in Conditions D.2.1, D.2.2, D.2.3, and D.2.4," IDEM is removing that requirement entirely for fourteen emissions units, including seven that were untouched by the error (i.e., the soap noodle silos). The Draft Permit substitutes no new compliance determination measures or controls.

IDEM explains its reasoning in the following sentences, which do not provide an adequate basis for the about-face:

> After reviewing the location of the units and taking into account relatively low PTE of each unit and the need to build additional facilities in order to properly test, IDEM has determined that the testing is not necessary. The compliance monitoring requirements in the permit are sufficient to determine compliance of the units.[13]

First, it is difficult to see how the units' potential emissions could be described as "relatively low." Together, these 14 units have an uncontrolled PTE 398.09 tons per year of $PM/PM_{10}/PM_{2.5}$, accounting for almost 75% of the 535.22 potential tons per year for the whole source.[14] Individually, they are among the highest emitting units at the facility. Furthermore, source-wide emissions, after consideration of the "integral control device," are 71.94 tons per year of PM_{10} and $PM_{2.5}$. If controls for any 2 or more of these 14 units underperform, the source could easily exceed the threshold requiring a Title V permit.

Second, only stack testing of the chip mixers would present "the need to build additional facilities in order to properly test." The soap noodle silos and Soap Noodle Bagging Silo Dust Collector/Bagging Operation (DC-31613) do not present the same concern.

Third, the remaining "compliance monitoring requirements in the permit" are the same requirements that IDEM recently determined were insufficient. As noted in Commenters' earlier submission, daily visible emissions monitoring for "abnormal" conditions has little bearing on the numeric, hourly particulate matter limitations. A Preventive Maintenance Plan that is submitted to IDEM only upon request and that does not involve emissions monitoring offers little assurance that these numeric limitations will be met.

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[10] IC 4-21.5-5-14.
[11] *Ind. State Bd. of Health Facility Adm'rs v. Werner*, 841 N.E.2d 1196, 1206-07 (Ind. Ct. App. 2006) (quoting *Chesser v. City of Hammond*, 725. N.E. 2d 926, 930 (Ind. Ct. App. 2000).
[12] *Id.* at 1208.
[13] Technical Support Document to Draft Significant Permit Revision for Unilever Manufacturing, Inc., No. 089-50437-00229, VFC no. 84015142 at 3.
[14] *See* Appendix A to Technical Support Document for FESOP Renewal at 1.

In light of the lack of reasonable basis or clear explanation for the Draft Revision, Commenters offer the following recommendations:

1. IDEM should maintain stack testing requirements for the soap noodle silos, as there has been no showing that these measures are infeasible or unnecessary.

The original conditions underlying IDEM's decision to add stack testing requirements remain unchanged. The seven soap noodle silos have PM, PM_{10}, and $PM_{2.5}$ emission limits specified in Conditions D.2.1, D.2.2, D.2.3, and D.2.4 to maintain the facility's FESOP status, avoid PSD permitting, and remain below the Lake County limits for PM_{10} and PM. The removal of the stack testing requirement leaves the permit with only once daily visible emissions monitoring to confirm the pollution control devices are functioning as intended.[15] That method remains inadequate to assure compliance with particulate matter limitations. It is especially disconnected from the limits in D.2.1, D.2.2, D.2.4, and D.2.4, which are expressed in lbs/hr and g/dcsf. Unilever's application for this Revision does not present any new information to suggest stack testing would be infeasible for the soap noodle silos; it merely reiterates information that was available to IDEM when it issued the Permit Renewal.[16]

2. IDEM should impose stack testing requirements for the Soap Noodle Bagging Silo Dust Collector/Bagging Operation, as the FESOP Renewal suggests is needed.

In its response to comments for the Permit Renewal, IDEM distinguished between units with aspiration filters exhausting indoors and units exhausting to stacks. While units exhausting to stacks would require stack testing, aspiration filters could provide "sufficient particulate control when properly operated and maintained to assure compliance with D.2.1. and D.2.4."[17] In making this distinction, IDEM seems to have mistakenly categorized the Soap Noodle Bagging Silo Dust Collector/Bagging Operation (DC-31613) as a unit controlled by an aspiration filter and venting indoors, rather than a unit exhausting to a stack.[18] The Soap Noodle Bagging Silo Dust Collector/Bagging Operation exhausts to stack 30.[19] From IDEM's own description then, IDEM should have required Unilever to do stack testing on the soap noodle silos and the bagging silos as part of the Permit Renewal.

3. IDEM should impose appropriate monitoring requirements for the chip mixers, to assure compliance with numeric particulate matter emissions limits.

The seven chip mixers have PM, PM_{10}, and $PM_{2.5}$ emission limits specified in Conditions D.2.1, D.2.2, D.2.3, and D.2.4 to maintain the facility's FESOP status, avoid PSD permitting, and remain below the Lake County limits for PM_{10} and PM. With the removal of the stack testing requirement discussed above, the chip mixers are left with a single method to determine compliance with these limits—semi-annual inspections of the aspiration filters required by

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[15] *See* Draft Significant Permit Revision for Unilever Manufacturing, Inc., No. 089-50437-00229, VFC no. 84015142, Condition D.2.7.
[16] *See* Unilever Manufacturing, Inc. to IDEM-OAQ, FESOP Significant Permit Revision (May 29, 2026), VFC no. 83973750 at 5.
[17] Addendum to the Technical Support Document of FESOP Renewal at 2-3.
[18] *See id.*
[19] *See* FESOP Renewal, Condition A.2(a)(10).

Condition D.2.9. Condition D.2.10(b) then requires Unilever to "maintain records of the dates and results of the semi-annual inspections" (though it mistakenly states that the requirement is in Condition D.2.10 instead of D.2.9). While Commenters agree that semi-annual inspections and recordkeeping of the semi-annual inspection results is important, compliance determination really requires a reporting provision to ensure that not only regulators, but the public can be assured that the chip mixers are in continuous compliance of their emissions limits.

4. IDEM must include the Preventive Maintenance Plan in the final permit.

A FESOP must include "the operational limitations and standards… that assure compliance with all applicable requirements at the time of FESOP issuance." "Applicable requirements" include, among other things, any requirements of a federally enforceable state implementation plan ("SIP").[20] The Draft Permit fails to include all applicable requirements because it does not include the Preventive Maintenance Plan ("PMP"). IDEM must include the PMP in the Permit for three reasons:

First, the Permittee is required to have and implement a PMP under regulations 326 IAC 1-6-3 and 326 IAC 2-8-4. These provisions are included in in the federally-approved SIP, which makes them an "applicable requirement." Therefore, IDEM must include in the FESOP "the operational limitations and standards" needed to assure the PMP is properly developed, maintained, and implemented. Those limitations and standards are not present if the permit is silent as to the actual terms of the PMP.

Second, Condition D.2.5 requires Unilever to have and implement a PMP for the soap noodle silos, chip mixers, and Bagging Operation (DC-31613). 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."[21]

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, Condition D.2.5 is unenforceable, because it is impossible for IDEM, EPA, and the public to determine whether the Permittee is complying with the requirements of the PMP, and, if not, to take appropriate enforcement action.

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

5. IDEM should address Unilever's noncompliance with the existing permit's stack testing requirements.

In its application, Unilever acknowledged that stack testing would be required on August 10, 2026, under the terms of its existing permit. However, Unilever did not indicate it planned to conduct stack testing (even for the soap noodle silos). It instead emphasized "the need for quick

[20] 326 IAC 2-8-4(1).
[21] *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/2015-08/documents/oak_creek_decision2007.pdf, at 26.

issuance of the permit revision."[22] No recent stack testing report has been published on IDEM's Virtual File Cabinet.

If Unilever has not conducted stack testing and IDEM allows this noncompliance to pass unmentioned, it risks signaling that facilities may proactively comply with the permit they have requested, rather than the permit they have. Commenters understand Unilever's challenge with respect to stack testing of the chip mixers, but it is difficult to justify Unilever's failure to comply with stack testing requirements for the soap noodle silos. IDEM has indicated that there are no pending enforcement actions relevant to this permit.[23] Commenters request that IDEM take appropriate enforcement action and indicate whether it has accounted for the absence of stack tests in its permitting determination.

Conclusion

Commenters recognize that errors in drafting complex permits may occur and require correction. Rather than correcting an error, however, this Draft Revision would restore insufficient compliance measures, leaving the FESOP without adequate monitoring and related record keeping and reporting requirements. These changes would not satisfy regulations governing FESOPs. Such a reversal, made without reasonable explanation, would also be arbitrary and capricious.

Sincerely,



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[22] *See* Unilever Manufacturing, Inc. to IDEM-OAQ, FESOP Significant Permit Revision (May 29, 2026), VFC no. 83973750 at 7.
[23] *See* Technical Support Document to Draft Significant Permit Revision at 3.