ENVIRONMENTAL LAW & POLICY CENTER

October 22, 2026

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Sent via email

Re: Public Comments on IN0053201, Northern Indiana Public Service Company LLC (NIPSCO) – R.M. Schahfer Generating Station (RMSGS)

Dear Ms. Etter,

The Environmental Law & Policy Center, Citizen Action Coalition, Conservation Law Center, Faith in Place, Gary Advocates for Responsible Development, Indiana Audubon, Just Transition Northwest Indiana, Northern Lake County Environmental Partnership, and Prairie Rivers Network (collectively, "Commenters") respectfully submit the following comments on the above-referenced draft IN0053201 renewal wastewater permit ("Draft Permit") issued by the Indiana Department of Environmental Management ("IDEM") to Northern Indiana Public Service Company LLC ("NIPSCO") for its electric power generating facility located at 2723 East 1500 North, Wheatfield, Indiana ("R.M. Schahfer Generating Station" or "the Facility").

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.

This is an extremely complex permit which raises substantial questions, particularly around the comingling of waste streams from four separate facilities, including a coal-fired power plant, a natural gas-fired peaker plant, natural gas-fired electric power generating turbines, a hyperscale data center, and current and legacy coal ash wastewater. It is very unclear from the record presented to the public what pollutants IDEM expects will be discharged into the Kankakee River.

Background

Thank you for the opportunity to comment on the October 2026 NIPSCO – R.M. Schahfer Generating Station Draft Permit ("Draft Permit") IN0053201 and for the hard work involved in writing a NPDES permit. We offer these comments to better protect Indiana and federal waters

and ensure compliance with the federal Clean Water Act ("CWA") and Indiana water quality laws and regulations.

IDEM must significantly revise the Draft Permit before finalizing it. Because of the extensive revisions required, IDEM should reissue the revised Draft Permit for public comment before issuing the final permit. As described below, the Draft Permit is missing critical terms and conditions needed to comply with federal and state law and to protect the Kankakee River watershed and all those who live, work, and recreate within it.

NIPSCO R.M. Schahfer Generating Station is a natural gas and coal-fired power steam electric generating facility. Besides renewing its current NPDES permit, the facility is adding a new natural gas Peaker Plant, a combined cycle gas turbine (CCGT) facility with 4 CCGTs, and an Amazon data center. In its initial permit application submitted in April 2025, the Facility planned to permanently stop coal combustion and shut down Units 17 and 18. However, on December 23, 2025, the Department of Energy issued Order No. 202-25-12, requiring NIPSCO to "take all measures necessary to ensure that Schahfer Units 17 and 18 are available to operate."[1] The Department has issued serial renewal orders purportedly under Section 202(c) for this plan along with other coal plants around the country on similar grounds as the Orders to NIPSCO and it is anticipated that the Department of Energy will issue additional renewal orders to NIPSCO after its current order expires, consistent with this pattern.

In response to the DOE orders, NIPSCO submitted a 20-page supplemental Application indicating that it now intends to permanently cease coal combustion by December 31, 2028. So, under the current Application and Draft Permit, NIPSCO will continue its coal operations, while adding three new large-scale projects, each operated by separate entities, all regulated under one NPDES Permit.

IDEM must revise the Draft Permit in the following ways:

- add TBELs, WQBELS, and/or monitoring for unregulated pollutants from Outfalls 001/002 and 014;
- incorporate complete and adequate temperature limits;
- require monitoring that will accurately characterize the Facility's discharge and not remove the monitoring conditions for selenium and other toxic pollutants;

[1] Department of Energy, Order No. 202-25-12 (Dec. 23, 2025), https://www.energy.gov/documents/order-number-202-25-12-schahfer, pg. 5; ELPC and others have challenged the DOE's Orders for R.M. Schahfer, *Sierra Club et al. v. Dep't of Energy*, Nos. 26-1056, 26-1159, 26-1187 (D.C. Cir.), which suffer from the same legal and technical flaws the United States Court of Appeals found in invalidating a similar order issued to the J.H. Campbell plant, in West Olive Michigan. Michigan v. Dep't of Energy, No. 25-1159 (Sept. 11, 2026).

- evaluate the Facility's discharge for potential pollutants of concern including bioaccumulative toxins and PFAS;
- provide the information used to justify its Antibacksliding determination;
- provide a Tier 2 Antidegradation analysis;
- properly regulate the Cooling Water Intake Structure for the new units;
- require that the hardness of receiving waters be established before the permit is issued;
- establish the size and contour of the allowed mixing zone as required by 327 IAC 2-1-4;
- explain how three different operators of separate facilities will be regulated under a single NPDES permit; and
- clarify, correct, or explain errors and/or discrepancies in the Draft Permit.

As explained below, the Draft Permit fails to satisfy CWA requirements and federal and state regulations. Further, IDEM must ensure that the permit does not cause a violation of downstream water quality standards. We ask that IDEM address these deficiencies in the final permit in order to comply with federal and state law and to protect the Kankakee River watershed.

1. R.M. Schahfer Generating Station, Receiving Waters, and Draft Permit

R.M. Schahfer Generating Station is currently an 1105 MW coal and natural gas-fired power steam electric generating facility occupying roughly 3,000 acres in a mixed agricultural, wood, and rural residential area northeast of Wheatfield, along the Kankakee River. The Kankakee River, largely channelized in Indiana, flows southwest and crosses into Illinois before joining with the Iroquois River and flowing north to join with the Des Plains River near the Midewin National Tallgrass Prairie to form the Illinois River (which eventually drains into the Mississippi River). The Facility has two outfalls—Outfall 001 empties directly into the Kankakee River and Outfall 002 empties into Davis Ditch, part of a managed drainage network that also discharges to the Kankakee River.

NPDES permit IN0053201 allows R.M. Schahfer Generating Station to discharge wastewater into the Kankakee River, which is designated for full-body contact (recreational use), a well-balanced warm water aquatic community (aquatic life use), human health and wildlife (fishable use), and a public water supply. 327 IAC 2-1-3. The Kankakee River is impaired for aquatic life and fish and shellfish consumption in the section to which the Schahfer plant discharges.[2] Specifically, the Kankakee River, Assessment-Unit INK0189_02, HUC 071200010809, is on the 2024 303(d) list for impairments (biological integrity and PCBs in fish tissue) and there is a TMDL for the Kankakee/Iroquois River Watershed for *E. coli*.[3] U.S. EPA approved the Kankakee/Iroquois River

[2] *See* How's My Waterway (last accessed Oct. 1, 2026), https://mywaterway.epa.gov/community/071200010809/overview.
[3] Fact Sheet at 19.

Watershed TMDL report on September 29, 2009 for 80 impairments.[4] Davis Ditch and Stahlbaum Ditch are also part of the Kankakee River basin but have not been assessed for any impairments.[5]

IDEM issued the current permit with an effective date of October 1, 2020, and modified the permit on July 18, 2023. NIPSCO submitted a renewal application on April 2, 2025, and an addendum to the application on April 10, 2026. While the current permit expired on March 31, 2026, IDEM regulations allow NPDES permits to be administratively extended provided the permittee submits a complete application no later than 180 days prior to the permit expiration date. IC 13-15-3-6.

2. Legal Background: Clean Water Act and Indiana Water Quality Law

The federal CWA prohibits the discharge of a pollutant from a point source into "waters of the United States" unless authorized by and in compliance with a NPDES permit. 33 U.S.C. §§ 1311(a), 1342(b), 1342. Indiana law similarly prohibits discharges of pollutants that lack state authorization. Ind. Code § 13-30-2-1.

Under the CWA and federal regulations, the R.M. Schahfer Generating Station NPDES permit must include several things. First, the CWA requires that permits control the specific kind of pollution generated at steam electric generating facilities through both federal and case-by-case technology-based limits (TBELs). 33 U.S.C. § 1311(b)(2); 40 C.F.R. § 125.3(c)(2). Second, NPDES permits must include limits to protect receiving waters (WQBELs). 33 U.S.C. §§ 1311, 1312; 40 C.F.R. Parts 122-125, Part 131. Third, NPDES permits must include monitoring that will accurately characterize the effluent. 40 C.F.R. 122.48.

Section 402 of the CWA, 33 U.S.C. § 1342, created the NPDES program, under which EPA may issue NPDES permits for point source discharges to waters of the United States. Section 402(b) of the Act, 33 U.S.C. § 1342(b), authorizes the EPA Administrator to delegate to the states the authority to issue NPDES permits. EPA delegated the state of Indiana, through IDEM, the authority to issue NPDES permits in 1977 and IDEM now implements the federal permitting program.[6] As part of that program, IDEM must comply with federal NPDES permitting regulations as well as IDEM regulations. 40 C.F.R. § 123.25.

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[4] *Id.*
[5] *Id. See also* How's My Waterway (last accessed Oct. 1, 2026), https://mywaterway.epa.gov/community/071200010809/overview.
[6] EPA – Indiana Memorandum of Agreement, July 22, 1977, available at https://www.epa.gov/sites/default/files/2013-09/documents/in-moa-npdes.pdf.

Comments

Comment 1: IDEM must evaluate and establish case-by-case Technology-based Limits ("TBELs") in the Draft Permit

The Clean Water Act requires permits to include TBELs for conventional pollutants based on the best conventional technology ("BCT") and TBELs for all toxic and nonconventional pollutants based on the best available treatment technology economically achievable ("BAT"). 33 U.S.C. §§ 1311(b)(2), 1317(a)(1), 1317(a)(2). There are two methods of applying these TBELs: through federal effluent limitation guidelines ("ELGs") and "[o]n a case-by-case basis," when "EPA-promulgated effluent limitations are inapplicable." 40 C.F.R. § 125.3(c)(2).

Where ELGs have not been established, IDEM is required to establish case-by-case BAT TBELs for all toxic and nonconventional pollutants known to be present in the discharge. 40 C.F.R. § 125.3(c)(2). To develop these case-by-case TBELs based on BAT, IDEM is to use the factors in 33 U.S.C. § 1314(b) and 40 C.F.R. § 125.3(d)(2), including the reasonableness of the relationship between the costs of reducing effluent and the benefits of that effluent reduction. IDEM must evaluate these pollutants of concern for case-by-case TBELs and include monitoring that will accurately characterize the discharge. 40 C.F.R. § 122.48 (NPDES permits must include monitoring at "type, intervals, and frequency sufficient to yield data which are representative of the monitored activity"); see also 40 C.F.R. § 123.25 (applying the regulation to the states).

IDEM, however, has not evaluated any pollutants for case-by-case TBELs in the Draft Permit or Fact Sheet. Instead, the Factsheet's TBEL analysis focuses solely on the federal limits for Steam Electric Point Source Category ("ELGs").[7] But the Facility discharges numerous other pollutants that should be evaluated for case-by-case TBELs. For example, NIPSCO's antidegradation analysis showed that the groundwater near the landfill has concentrations above the method detection limit for multiple pollutants: Nitrate as N, Chloride, Fluoride, Sulfate, Barium, Boron, Iron, Lithium, Magnesium, Manganese, Molybdenum, Nickle, and Strontium.[8] IDEM should have evaluated these pollutants for case-by-case TBELs at Internal Outfall 201 where landfill leachate is discharged to the final settling basin before being discharged to the Kankakee River via Outfall 001.

Additionally, NIPSCO claims that it intends to cease coal-combustion by December 31, 2028, which would allow it to avoid BAT limits for arsenic, mercury, selenium, and nitrate for its flue-gas desulfurization ("FGD") discharge at Outfall 001. It is still speculative whether NIPSCO will be able to shut down these units by that date as it is subject to repeated DOE orders to continue operating. Given that, IDEM should have required TBELs for these pollutants.

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[7] *See* Fact Sheet at 20.
[8] April 2025 Application at PDF 109.

Comment 2: IDEM must revise the Draft Permit to incorporate complete and adequate temperature limits

Indiana regulations have four conditions for surface waters outside of a mixing zone for temperature. 327 IAC 2-1-6(a)(4). However, the Draft Permit only includes three of the four conditions.[9] The Draft Permit fails to include the maximum water temperature limits chart and the requirement that water temperature not exceed those limits "more than one percent (1%) of the hours in the twelve (12) month period" or "by more than three (3) degrees Fahrenheit." 327 IAC 2-1-6(a)(4)(D). IDEM must revise the Draft Permit to include all of the relevant regulations to ensure that minimum surface water quality criteria is maintained. *See also* 40 C.F.R. 131.12(a)(4).

Such temperature regulations are critically important to the aquatic life in the Kankakee River. NIPSCO is adding in four combined-cycle gas turbines ("CCGTs"), which are able to shut-down and start-up much more rapidly than the existing coal-fired units at the facility. This can increase the risk of cold shock to fish, that are drawn to the warm water discharged from the facility and then can be harmed or killed if the warm water discharge shuts off rapidly, causing a significant temperature change.[10] Because fish deliberately swim near the discharge in the winter and are then subject to cold shock, a mixing zone is not appropriate for winter heat discharges. During the summer, heat discharges may also exacerbate the damage done by the high level of nutrient pollution in the Kankakee River by creating toxic cyano-bacteria known to be favored by high temperatures.[11]

Despite this increased risk, the Draft Permit includes inadequate temperature limits and monitoring. The Draft Permit requires that "there should be no abnormal temperature changes that may adversely affect aquatic life unless caused by natural conditions" outside of the mixing zone.[12] This narrative permit limit is vague and potentially unenforceable.[13] The Draft Permit also fails to define the mixing zone that applies here. Since IDEM is setting temperature limits based on this mixing zone, it must clearly define the mixing zone and explain how it was established.[14]

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[9] *See* Draft Permit Outfall 001/002, footnote [13] at 6.

[10] Schoenfuss, H., *et. al,* Effects of Rapid Thermal Cycling (Cold Shock) on Fish Health: Evidence from Controlled Laboratory Experiments, Behavior, and Telemetry. Water 2023, 15, 3937, https://www.mdpi.com/2073-4441/15/22/3937.

11 EPA, Climate Change and Freshwater Harmful Algal Blooms, (Feb. 6, 2026), https://www.epa.gov/habs/climate-change-and-freshwater-harmful-algal-blooms.

[12] Draft Permit at 6.

[13] *See* County and City of San Francisco v. U.S. EPA, 604 U.S. 334 (2025).

[14] Commenters could find no information on any mixing zone in any of the following sources: NPDES Permit Renewal Application Permit # IN0053201 NIPSCO – R.M. Schahfer Generating Station (April 2, 2025); NPDES Permit No. IN0053201, Additional Information for the NPDES Permit Renewal Application (March 11, 2026); NPDES Permit No. IN0053201 2026 Addendum to April 2025 Permit Renewal Application (April 10, 2026).

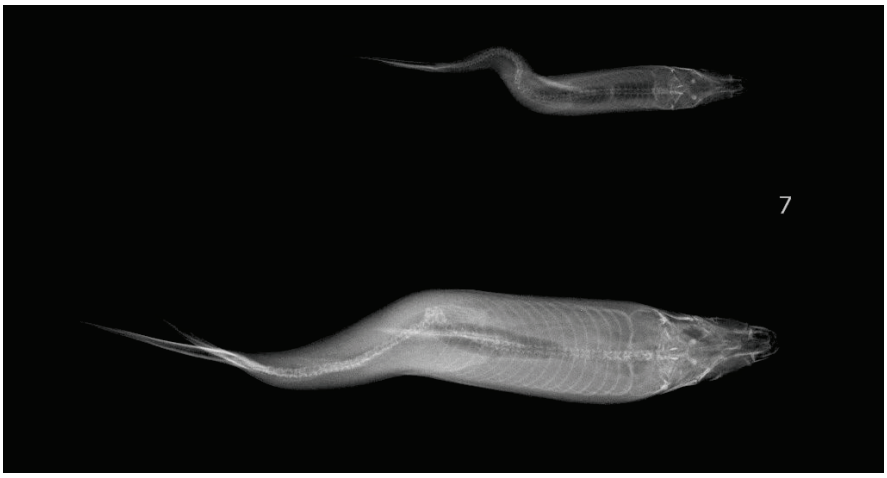
Finally, NIPSCO is only required to measure temperature once per week via grab sample. NPDES permits must include monitoring "type, intervals, and frequency sufficient to yield data which are representative of the monitored activity."[15] Weekly temperature sampling is completely insufficient to account for the rapid temperature changes that can occur at the Facility once it adds in the CCGT units which are capable of rapid shutdowns and startups. Certainly, NIPSCO is capable of installing a 24-hour temperature gauge to provide continuous sampling, and IDEM should require it to do so.

IDEM must revise the permit to include enforceable and effective temperature limits, and representative monitoring requirements, that adequately protect aquatic organisms and the Kankakee River.

Comment 3: IDEM must include monitoring that will accurately characterize the discharge

A. IDEM must not remove the monitoring conditions for selenium and other pollutants

Selenium is a significant threat to aquatic life. Selenium bioaccumulates in the aquatic food chain and chronic exposure to the pollutant in fish and aquatic invertebrates can cause reproductive impairments (e.g., larval deformity or mortality).[16] Selenium causes mutations and reproductive impairment in fish and amphibians, sometimes decimating populations. The spines of these fish have been deformed by selenium, for example.[17]



[15] 40 C.F.R. § 122.48(b); *see also* 40 C.F.R. § 123.25 (applying the regulation to states).
[16] https://www.epa.gov/wqc/aquatic-life-criterion-selenium.
[17] https://www.fisheries.noaa.gov/feature-story/spinal-deformities-sacramento-san-joaquin-delta-fish-linked-toxic-mineral-selenium-new.

Because these pollutants persist in the environment, even minute discharges can cause harm to aquatic life. Selenium can cause reproductive harm or disrupt aquatic ecosystems at freshwater concentrations as small as 1.5 ug/L.[18]

Despite the severe environmental impacts of pollutants like selenium, however, IDEM actually removed limits for selenium, nitrate/nitrite, ammonia, boron, chloride, manganese, and zinc at Internal Outfall 201.[19] IDEM's reasoning was that the limits were included in the previous permit because of FGD wastewater from Units 14 and 15 which have since been shut down, and therefore the facility no longer needed to monitor for the pollutants. However, Internal Outfall 201 includes landfill leachate and deep well data from around the landfill show the presence of manganese, boron, chloride, and other pollutants.[20] IDEM must explain this discrepancy and how NIPSCO will ensure that the landfill leachate at Internal Outfall 201 does not contain those pollutants if it does not monitor for them.

Instead, because the Draft Permit shows that the landfill is increasing concentration of these pollutants in the groundwater, IDEM should maintain limits for the landfill leachate discharged through Outfall 201 through imposing a case-by-case TBEL.[21] If IDEM does not include specific water quality-based limits for selenium, manganese, boron, chloride, ammonia, nitrate/nitrite, and zinc in the permit, IDEM should at least require monitoring to ensure that data exists demonstrating that these chemicals are not a concern in the R.M. Schahfer Generating Station's effluent. In any case, IDEM must provide the data and analysis which provide the basis for removing the selenium and arsenic monitoring provisions from the Draft Permit.

B. IDEM must revise the Draft Permit to include monitoring of important pollutants

The Draft Permit's monitoring scheme is entirely inadequate and fails to monitor for many important pollutants. IDEM should require monitoring for pollutants that are identified as present in the discharge from the application. IDEM routinely foregoes adding this monitoring on the grounds that these pollutants did not have a reasonable potential ("RP") to cause or contribute to an exceedance of a water quality standard. Monitoring is required to characterize the discharge

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[18] That is the equivalent of about 1.5 parts per billion. U.S. Environmental Protection Agency, Aquatic Life Ambient Water Quality Criterion for Selenium in Freshwater 2016 – Fact Sheet (June 2016), https://www.epa.gov/sites/default/files/2016-06/documents/se_2016_fact_sheet_final.pdf.

[19] Fact Sheet at 29.

[20] Fact Sheet at 31. *See also* Christian Thorsberg, The AI Boom is Prolonging Indiana's Fossil Fuel Era, With Hidden Costs for Water (July 12, 2026), https://www.circleofblue.org/2026/water-energy/the-ai-boom-is-prolonging-indianas-fossil-fuel-era-with-hidden-costs-for-water/ ("Existential concerns for the quality of [the groundwater] were raised in 2018, when testing showed that Schahfer's coal ash landfill had contaminated the plant's own groundwater with cobalt, arsenic, lithium, radium, boron, and molybdenum in levels above federal thresholds.").

[21] 40 C.F.R. § 125.3(c)(2).

and obtain data for TBEL evaluations, not just to create data for RP analyses. Even when the Draft Permit requires monitoring, however, the frequency is insufficient for many pollutants, sometimes only once or twice per month. An additional monitoring failure includes the fact that IDEM notes that water quality criteria for chloride and sulfate are hardness dependent but then only *suggests* that the Facility monitor for hardness to determine if there is an reasonable potential to exceed water quality standards rather than including it as a requirement.[22] Finally, while IDEM does not allow discharge of polychlorinated biphenyls ("PCBs"), IDEM is only requiring NIPSCO to take a single sample during the entire five-year permit period at Outfalls 001 and 014 to confirm that PCBs are not in the discharge.[23] IDEM must require the Facility to monitor for hardness as well as increase the monitoring frequency for PCBs.

When drafting NPDES permits, state permitting agencies like IDEM are expected to both research potential pollutants of concern and evaluate whether they require technology-based effluent limitations (TBELs) or water quality-based effluent limitations (WQBELs). EPA, NPDES Permit Writer's Manual at 4-15.2. This research and review should include the values reported by NIPSCO in its certified discharge monitoring reports (DMR) and any other important information about the discharge, like EPA Toxic Release Inventory (TRI) Form Rs, technical reference documents about the effluent, industry, or raw materials; and related Clean Air Act permits "that could provide site-specific background information about the types of pollutants and wastestreams at a facility." *Id.* EPA's NPDES Permit Writer's Manual further notes that a permit writer is expected to research potential pollutants of concern even when the applicant states that the pollutants are "believed absent." *Id.*

This initial analysis of pollutants of concern is critical to drafting a permit that meets federal and state laws. IDEM cannot establish the needed TBELs, WQBELs, and monitoring requirements when it ignores the existence of a pollutant entirely.

NIPSCO has disclosed that pollutants of concern are present in its Outfall 001 effluent,[24] which is a combination of sanitary wastewater, treated landfill leachate and stormwater, cooling tower blowdown, low volume waste sources, strainer backwash and direct evaporative cooler blowdown, flue gas desulfurization blowdown wastewaters, bottom ash transport water, coal pile runoff, coal combustion residuals impoundment dewatering water, construction dewatering water, "startup" waters from the adjacent data center and the CCGT facility, and stormwater.[25] IDEM, however, failed to consider most of these pollutants for TBELs, WQBELs, or even monitoring.[26] In fact, most of these pollutants are never mentioned in the Fact Sheet. These pollutants are listed below in Table 1.

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[22] *Id.* at 31.
[23] *Id.* at 43.
[24] *NPDES Permit (No. IN0053201) 2025 Renewal Application, NIPSCO – R.M. Schahfer Generating Station* at PDF 23-32, Form 2C, Section V for Outfall 001, From 2C Part V for Outfall 001, at PDF 36-46 (April 2, 2025) ("2025 Application").
[25] Draft Permit at 2.
[26] Fact Sheet at 20-22 (TBEL and WQBEL discussion). *See also* Fact Sheet Section 5.3 at 22-32.

Table 1, Pollutants Ignored by IDEM Despite Their Presence in NIPSCO Discharge[27]		
Pollutants	IDed as present in Application?	Discussed in Draft Fact Sheet or Draft Permit?
Bromide	Present	No
Phosphorus	Present	No
Sulfide	Present*	No
Aluminum	Present	No
Magnesium	Present	No
Copper	Present	No
Lead	Present*	No
Nickel	Present	No
Silver	Present*	No
Tin	Present*	No
Titanium	Present*	No
Vanadium	Present	No
Cyanide, Total	Present*	No
Strontium	Present*	No
Acetone	Present	No

* Pollutants were marked as "Believed Absent" in the 2025 Application, but the 2026 Addendum identified them as having future estimated discharges at Outfall 001.

Additionally, IDEM also failed to consider limits or monitoring for pollutants that NIPSCO is required to test for. Those pollutants are listed below in Table 2.

Table 2, Pollutants Ignored by IDEM Despite Requirement to test NIPSCO Discharge at Outfall 001[28]		
Pollutants	IDed in Application as "Testing Required"?	Discussed in Draft Fact Sheet or Draft Permit?
Chromium, Hexavalent	Yes	No
Copper	Yes	No

[27] *See* 2025 Application, Form 2C Part V for Outfall 001, at PDF 36-46; *NPDES Permit (No. IN0053201) NIPSCO – R.M. Schahfer Generating Station, 2026 Addendum to April 2025 Permit Renewal Application* at PDF 15 (April 10, 2026) ("2026 Addendum").
[28] *See* 2025 Application, Form 2C Part V for Outfall 001, at PDF 36-46.

Nickel	Yes	No
Silver	Yes	No
Vanadium	Yes	No
Cyanide (Free & Total)	Yes	No
Total Phenols	Yes	No
Dioxin	Yes	No
Others	Yes	No
Volatile Organics	Yes	No
Semi-Volatile Organic-Acids	Yes	No
Semi-Volatile Organic-Bases	Yes	No
Chloroform	Yes	No

Of the pollutants in Table 2, only copper and nickel are even mentioned in the Draft Permit or Fact Sheet. However, monitoring for copper and nickel is only required for Stormwater Outfalls and Stream Monitoring Sites, not at Outfall 001, even though testing for these pollutants is required at Outfall 001 and the pollutants are believed present in that effluent.[29] Additionally, the Draft Permit requires NIPSCO to notify IDEM if "any activity has occurred or will occur which would result in the discharge of any toxic pollutant that is not limited in the permit if that discharge will exceed" certain notification levels.[30] This includes 200 µg/l for acrolein and acrylonitrile, 500 µg/l for 2,4-dinitrophenol and 2-methyl-4,6-dinitrophenol, which are included in Tables 2 and 3 as volatile organics and semi-volatile organic-acids.[31] IDEM must explain how NIPSCO is to detect the presence of these pollutants in its discharge when the permit does not require the Facility to monitor for them (despite the requirement to test for them).

Table 3, Pollutants Ignored by IDEM Despite Requirement to test NIPSCO Discharge at Outfall 201[32]

Pollutants	IDed in Application as "Testing Required"?	Discussed in Draft Fact Sheet or Draft Permit?
Bromide	Yes	No
Chloride	Yes	**Yes**
Fluoride	Yes	No
Nitrate/Nitrite	Yes	**Yes**

[29] *See* Draft Permit at 17 and Fact Sheet at 32 and 42.
[30] Draft Permit at 69.
[31] There are multiple pollutants in these categories, including 7 "Other" pollutants, 43 "Volatile Organics", 12 "Semi-Volatile Organic-Acids", and 39 "Semi-Volatile Organic-Bases". *See* 2025 Application, Form 2C Part V for Outfall 001, at PDF 36-46.
[32] *See* 2025 Application, Form 2C Part V for Outfall 001, at PDF 58-68.

Phosphorus	Yes	No
Sulfate	Yes	No
Barium	Yes	No
Boron	Yes	**Yes**
Cobalt	Yes	No
Magnesium	Yes	No
Molybdenum	Yes	No
Manganese	Yes	**Yes**
Antimony	Yes	No
Arsenic	Yes	Yes
Beryllium	Yes	No
Cadmium	Yes	No
Chromium	Yes	No
Chromium, Hexavalent	Yes	No
Copper	Yes	No
Lead	Yes	No
Mercury	Yes	Yes
Nickel	Yes	No
Selenium	Yes	**Yes**
Silver	Yes	No
Thallium	Yes	No
Vanadium	Yes	No
Zinc	Yes	**Yes**
Cyanide (Free & Total)	Yes	No
Total Phenols	Yes	No
Dioxin	Yes	No
Others	Yes	No
Volatile Organics	Yes	No
Semi-Volatile Organic-Acids	Yes	No
Semi-Volatile Organic-Bases	Yes	No
Chloroform	Yes	No

Despite NIPSCO being required to test its discharge for the pollutants in Table 3, only a handful of them are discussed in the Draft Permit or Fact Sheet. Mercury and arsenic are required to comply with ELG limits "as soon as possible beginning 120 days after the facility permanently ceases coal combustion, but no later than April 30, 2035."[33] IDEM is proposing to remove the monitoring and limits for the other pollutants mentioned in the Fact Sheet (those with the bold 'yes' in the third

[33] Fact Sheet at 28.

column), including chloride, nitrate/nitrite, boron, manganese, selenium, and zinc, despite NIPSCO's application identifying these pollutants as requiring to be tested for at Outfall 201.[34]

C. IDEM must revise the Draft Permit to include monitoring PFAS

IDEM must evaluate NIPSCO's discharges for the presence of PFAS. IDEM seems to have done nothing about potential PFAS discharges, despite the fact that EPA issued a Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category which addresses the need to develop limits and monitoring requirements for PFAS.[35] Additionally, the Wisconsin Department of Natural Resources found PFAS at eight power plants.[36] Even if NIPSCO is not using PFAS in its cooling system water, PFAS is likely onsite, even if just from legacy use of firefighting foam that could have contaminated groundwater. PFAS is also likely present in the data center waste.[37] Despite these facts, neither the Draft Permit, the Fact Sheet, NIPSCO's 2025 Application, nor 2026 Addendum even mention PFAS. IDEM's failure to even consider whether limits and monitoring are needed for these dangerous "forever chemicals" violates the CWA's requirements that NPDES permits contain BAT TBELs for toxics like PFAS and water quality limits to protect the use of the Kankakee River as a drinking water source. 33 U.S.C. §§ 1311, 1312.

IDEM has the authority to establish case-by-case limits for all PFAS to protect the use of the Kankakee River as a drinking water source based on Indiana's narrative water quality standard prohibiting substances or combinations of substances in concentrations toxic or harmful to human health. 327 Ind. Admin. Code 2-1-6; *see also* Attachment 5, EPA, *Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs* at 4 (Dec. 5, 2022) (EPA PFAS Memo) (discussing use of narrative water quality standards for PFAS limits).[38] IDEM should establish numeric limits for PFAS in the Final Permit to protect the Kankakee River watershed and the downstream communities that rely upon the Kankakee River for their drinking water and for subsistence fishing. IDEM should base these limits on the federal PFAS drinking water standards.[39] The permit should at least include monitoring to determine if, and to what extent, it is in the discharge.

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[34] Fact Sheet at 29. *See also* 2025 Application, Form 2C Part V for Outfall 001, at PDF 58-68.
[35] *See* Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, https://www.federalregister.gov/documents/2024/05/09/2024-09185/supplemental-effluent-limitations-guidelines-and-standards-for-the-steam-electric-power-generating.
[36] *Id.*
[37] *See e.g.*, Oliver Milman, US datacenters face further backlash over wastewater pollution, THE GUARDIAN (Sept. 8, 2026), https://www.theguardian.com/us-news/2026/sep/08/us-datacenters-wastewater-pollution.
[38] https://www.epa.gov/system/files/documents/2022-12/NPDES_PFAS_State%20Memo_December_2022.pdf.
[39] https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas.

In sum, IDEM must now consider the pollutants discharged by NIPSCO but ignored in the Draft Permit. As part of that consideration, IDEM must evaluate them for case-by-case TBELs, for WQBELs, and for monitoring, as discussed above.

D. IDEM must revise the Draft Permit to ensure adequate monitoring of the Stormwater Outfalls and Stream Monitoring Sites

IDEM's Fact Sheet for the R.M. Schahfer Generating Station recognizes that the facility has "shallow groundwater and a potential for periodic flooding," and that this "groundwater [is] in the area of the Restricted Waste Site Type I Landfill (RWS I), that historically accepted FGD Sludge and Coal Ash."[40] Additionally, IDEM concedes that this groundwater "has been impacted by a showing of elevated levels of sodium, sulfate, and specific conductance."[41] These findings indicate that the FGD sludge and coal ash has contaminated the groundwater at the site.[42] IDEM even explains that the stream monitoring sites exist because of the potential for FGD sludge and coal ash landfill waste to infiltrate into the groundwater and then into the drainage ditches.[43] Despite this risk, the Draft Permit only requires monitoring at multiple stormwater outfalls and stream monitoring sites once every year after a storm event. Given the severe environmental impacts of coal ash contamination to the Kankakee River and the communities downstream, IDEM must include more frequent monitoring at these sites to ensure that no pollution is occurring.

Additionally, IDEM failed to include the Stormwater Pollution Prevention Plan ("SWPPP") with the permit which thwarts public engagement as it negates the public's ability to review and evaluate the adequacy of the SWPPP. This is particularly egregious as the northern portion of the Facility, including the intake settling basin and final settling basin, are in a FEMA flood zone.[44] IDEM should include the SWPPP with the Fact Sheet so the public has an opportunity to evaluate the adequacy of the SWPPP and the Facility's compliance with 327 IAC 15-6.

Comment 4: IDEM must provide the information used to justify its Antibacksliding determination

Generally, a permit cannot be renewed with less stringent effluent limitations than in the previous permit. *See* 33 U.S.C. 1342(o); 40 C.F.R. 122.44(l); *see also* 327 IAC 5-2-10(a)(11). However, circumstances which allow for applying less stringent effluent limitations include: material and

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[40] Fact Sheet at 17.
[41] Fact Sheet at 17.
[42] *See also*, Christian Thorsberg, The AI Boom is Prolonging Indiana's Fossil Fuel Era, With Hidden Costs for Water (July 12, 2026), https://www.circleofblue.org/2026/water-energy/the-ai-boom-is-prolonging-indianas-fossil-fuel-era-with-hidden-costs-for-water/.
[43] Fact Sheet at 18.
[44] *See* Department of Homeland Security, FEMA Flood Map Service Center: Search by Address (last accessed Oct. 22, 2026), https://msc.fema.gov/portal/search.

substantial alterations to the facility; information that was not available at the time of previous permit issuance that "would have justified the application of a less stringent effluent limitation at the time of permit issuance"; where it is necessary because of uncontrollable events "for which there is no reasonably available remedy"; permit modifications under CWA Sections 301(c), (g)-(i), (k), (n), or 316(a); or the installation of "treatment facilities required to meet the effluent limitations in the previous permit . . . [that] has nevertheless been unable to achieve the previous effluent limitations . . . [and the new limitations] may reflect the level of pollutant control actually achieved." 327 IAC 5-2-10(a)(11)(B); *see also* 40 C.F.R. 122.44(l)(2).

IDEM asserts that the changes in the daily maximum and monthly average effluent limitations for total suspended solids ("TSS") and the monthly average limit for Oil and Grease ("O&G") at Outfall 001 is not backsliding even though they are less stringent than in the previous permit. IDEM asserts that "information was available during this permit renewal that was not available at the time of permit issuance last renewal that would have justified the application of a less stringent effluent limitation."[45] While technically compatible with 327 IAC 5-2-10(a)(11)(B), IDEM fails to provide *what information* justified the determination. Neither the Draft Permit nor NIPSCO's applications explain what information NIPSCO provided for IDEM to justify issuing a less stringent standard for TSS and O&G at Outfall 001. IDEM must provide this information for public and EPA review. Additionally, IDEM must explain whether this backsliding of TSS and O&G has the potential to "result in a violation of a water quality standard" in violation of 327 IAC 5-2-10(a)(11)(C).

Comment 5: IDEM must provide a Tier 2 Antidegradation analysis

States are required to develop antidegradation policies which ensure that existing "water uses and the level of water quality necessary to protect the existing uses [are] maintained and protected." 40 C.F.R. 131.12(a)(1). Where the water quality "support[s] the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water," the State must "assure water quality adequate to protect existing uses fully" unless it finds "that allowing lower water quality is necessary to accommodate important economic or social development in the area." 40 C.F.R. 131.12(a)(2). Indiana's antidegradation requirements are provided at 327 IAC 2-1.3. The Tier 1 antidegradation standard states that "[w]here designated uses of waters are impaired there shall be no additional lowering of the water quality with respect to the regulated pollutants that are causing the impairment." 327 IAC 2-1.3-3(a)(2).

The Fact Sheet incorrectly asserts in section 5.6 that "the NPDES permit does not propose to establish a new or increased loading of a regulated pollutant" at Outfalls 001 and 002, even though in section 5.5 it clearly states that the permit has less stringent limits for TSS and O&G at Outfall

[45] *Id.* at 33.

001, which means there is increased loading of two regulated pollutants.[46] IDEM then asserts that the new or increased loading of TSS at Outfall 014 and O&G at Outfalls 001 and 014 are not subject to antidegradation because the limits "were established in accordance with the Tier 1 antidegradation standard."[47] However, IDEM has never identified the pollutants responsible for the existing impairments and, thus, has not complied with the Tier 1 antidegradation provision.

If the reason IDEM found that the antidegradation standard was met is because the Kankakee River is not impaired for TSS and O&G, it should say this clearly instead of inaccurately stating that the new permit will not increase loading of regulated pollutants. Additionally, IDEM must provide its rationale for failing to perform a Tier 2 Antidegradation analysis.

Comment 6: IDEM improperly regulated the Cooling Water Intake Structure for the new units

Cooling water intake structures ("CWIS") harm fish and aquatic species through impingement, where the fish and aquatic organisms are killed or harmed from being drawn towards and held against the intake screen, and entrainment, where smaller organisms are killed or harmed by being drawn into the intake structure. IDEM must require that the "location, design, construction, and capacity of a cooling water intake structure ("CWIS") at any point source for which a standard is established pursuant to Section 301 or 306 of the CWA shall reflect the best technology available ("BTA") for minimizing adverse environmental impact."[48]

A. IDEM relies on outdated, inaccurate, or unverifiable data for NIPSCO's CWA Section 316(b) reports

Under 40 C.F.R. § 122.21(r), a Permittee seeking a renewed NPDES permit for a CWIS at an existing facility or new unit at an existing facility must submit various reports, including the Source Water Physical Data, the CWIS Data, and the Source Water Baseline Biological Characterization Data. Here, NIPSCO is relying on outdated information that does not adequately reflect the potential harm to wildlife in the area, including its prior CWIS report from 2015 ("2015 Report").[49] The 2015 Report does not contain any actual impingement or entrainment studies at the Facility. Rather, it is based on publicly available information from online sources.[50] The only actual study referenced in the 2015 Report is from 2001 and was conducted over 3 miles upstream from the

[46] Fact Sheet at 32–33. This also directly contradicts the paragraph above which states that "[t]he NPDES permit proposes to establish new or increased loading of TSS at Outfall 014 and Oil and Grease at Outfalls 001 and 004." *Id.* at 33.
[47] *Id.*
[48] 40 C.F.R. § 401.14.
[49] 2025 Application at PDF 115.
[50] *Id.*

Facility.[51] Additionally, this 2001 Report has not been included in either the Draft Permit, Fact Sheet, 2025 Application, or 2026 Addendum and is not readily available to the public.[52]

NIPSCO did not make any substantial updates to the 2015 Report for this NPDES permit application. Instead, NIPSCO just noted that the Indiana Department of Natural Resources has updated the Endangered, Threatened, and Rare species list and included species listed in the neighboring La Porte and Porter Counties.[53] But, IDEM fails to evaluate the impact on several Indiana state protected species that are identified as being in Jasper County.[54] Merely listing species present in other counties without any analysis does not satisfy NIPSCO's duty to "characterize the biological community in the vicinity of the cooling water intake structure."[55]

Additionally, the Applications and Fact Sheet fail to include all of the wildlife that could be impacted by the Facility and its CWIS. For example, there is no discussion of any bird species, including the whooping crane, an endangered species which has been spotted in the Wheatfield, Indiana area.[56] IDEM and NIPSCO completely fail to discuss the whooping crane and the potential negative impact the NPDES permit could have on it or other bird species. However, as the U.S. Fish and Wildlife Service notes, reduced river flows from increased freshwater intakes have negatively impacted the species.[57] IDEM must require NIPSCO to complete an accurate biological survey to evaluate its impacts on the Kankakee River watershed fauna.

Finally, IDEM has not satisfied its duties to consult with the U.S. Fish and Wildlife Service on its CWIS. IDEM was required to submit NIPSCO's CWIS application to U.S. Fish and Wildlife Service for them to review whether it would impact federally threatened and endangered species.[58] IDEM only submitted NIPSCO's April 2025 application, which assumed Units 17 and 18 would shut down by December 2025 and did not include the 4 CCGT units or Project Orion.[59] IDEM did not submit the updated information to USFWS for its review, even though the new CCGT units will take in a substantial amount of water through the CWIS. So, USFWS made its determination with data suggesting that the Facility's water use would decrease substantially in the next permit term, when in reality the Facility's water use will remain high, at over 34 MGD at peak. Additionally, as discussed above, USFWS did not address any potential impacts to threatened and endangered bird species. IDEM must submit NIPSCO's revised application to U.S. Fish and Wildlife Service to review as this could impact its determinations.

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[51] 2025 Application at PDF 134.
[52] Commenters were unable to find a copy online.
[53] Fact Sheet at 55-56; 2025 Application at PDF 116.
[54] *See* Fact Sheet at 56 and 60.
[55] 40 C.F.R. § 122.21(r)(4).
[56] *See* https://ebird.org/species/whocra/US-IN?continue.
[57] *See* https://www.fws.gov/species/whooping-crane-grus-americana.
[58] 40 C.F.R. § 125.98(h).
[59] Fact Sheet at 44.

B. IDEM applied the incorrect impingement BTA standards

IDEM adopted the incorrect impingement and entrainment BTA standards in the Draft Permit because it applied the BTA standards for an existing facility, rather than the BTA standards for "new units" at an existing facility, which apply because NIPSCO is proposing to add two new units: the CCGT facility and Project Orion.

A "new unit" at an existing facility is subject to impingement and entrainment BTA standards contained in 40 C.F.R. § 125.94(e). However, the Draft Permit claims that the facility, including the two new units which will be constructed during the permit term, will comply with the BTA standard for impingement mortality for existing units at existing facilities, contained in 40 C.F.R. § 125.94(c)(3) (a maximum actual through-screen intake velocity of 0.5 feet per second ("fps")).[60] While this may be a correct impingement determination for the existing Units 17 and 18 at the facility, IDEM has incorrectly applied this standard to the new CCGT units and Project Orion.[61] Further, as will be discussed in the section below, because IDEM failed to properly apply 40 C.F.R. § 125.94(e), which provides the BTA standards for impingement *and entrainment*, it improperly conducted a site-specific entrainment BTA analysis for the entire Facility, including the new units, under 40 C.F.R. § 125.94(d).[62]

IDEM's BTA standard in the Draft Permit is incorrect for two key reasons. First, the regulations clearly identify that "new units" at existing facilities are subject to the BTA standards for impingement and entrainment in 40 C.F.R. § 125.94(e), not the impingement BTA standards in 40 C.F.R. § 125.94(c) which IDEM is applying here. *See* 40 C.F.R. § 125.94(a)(3) ("The owner or operator of a new unit is subject to the impingement mortality and entrainment standards under paragraph (e) of this section for all cooling water intake flows used by the new unit."). The CCGT facility and Project Orion are new units under these regulations and must be regulated as such. A "new unit" is defined as a

> new "stand-alone" unit at an existing facility where construction of the new unit begins after October 14, 2014, and that does not otherwise meet the definition of a new facility at § 125.83 or is not otherwise already subject to subpart I of this part. A stand-alone unit is a separate unit that is added to a facility for either the same general industrial operation or another purpose. A new unit may have its own dedicated cooling water intake structure, or the new unit may use an existing or modified cooling water intake structure.[63]

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[60] Draft Permit at 72.
[61] Fact Sheet at 49.
[62] Fact Sheet at 59.
[63] 40 C.F.R. § 125.92(u).

The proposed new CCGT units and Project Orion fit within this regulatory definition. The CCGT units are separate units which are added to the facility for the same general industrial operation and use the existing CWIS. Project Orion is a separate unit added for another purpose that uses the existing CWIS. Therefore, IDEM must apply the BTA standards in 40 C.F.R. § 125.94(e) to these new units.[64]

IDEM's use of theoretical calculations to speculate on future through-screen intake velocity demonstrate why there are separate stand-alone regulations applicable to new units. IDEM has used such estimates to project through-screen velocity for Project Orion plus the CCGT facility at 0.5 fps (the maximum allowed). However, not only is the water intake from these new units speculative, it is also speculative that there will not be any overlap between Units 17 and 18 and the CCGT Facility. Units 17 and 18 are currently under a DOE order to continue operation. If Units 17 and 18 were to overlap with the CCGT facility, then the water usage at the facility would almost double and the "actual through-screen intake velocity" would clearly exceed the 0.5 fps limit.

Applying the proper regulations, the owner or operator of a new unit at an existing facility must meet one of two different BTA standards.

> (1) reduce the design intake flow for the new unit, at a minimum, to a level commensurate with that which can be attained by the use of a closed-cycle recirculating system for the same level of cooling for the new unit; or
> (2) demonstrate to the Director that the technologies and operational measures employed will reduce the level of adverse environmental impact from any cooling water intake structure used to supply cooling water to the new unit to a comparable level to that which would be achieved under § 125.94(e)(1) . . . include[ing] a showing that the entrainment reduction is equivalent to 90 percent or greater of the reduction that could be achieved through compliance with § 125.94(e)(1) . . . [and] a showing that the impacts to fish and shellfish, including important forage and predator species, within the watershed will be comparable to those which would result under the requirements of § 125.94(e)(1).[65]

IDEM must revise the Permit to require NIPSCO to comply with one of the two BTA standards under 40 C.F.R. § 125.94(e) and to comply with the monitoring standards for new units at existing facilities in 40 C.F.R. § 125.96(d). The Draft Permit does not contain any of these applicable requirements.

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[64] The CCGT units also do not meet the definition of a "new facility" because the new units do not increase the design capacity of the existing CWIS. 40 C.F.R. § 125.83.
[65] 40 C.F.R. § 125.94(e).

First, the Draft Permit does not meet the BTA standard contained in 40 C.F.R. § 125.94(e)(1). The design intake flow of the CWIS is 57.6 MGD. NIPSCO states that it is using closed-cycle recirculating systems for the CCGT facilities and direct evaporative cooling for Project Orion,[66] which are projected to require 34.35 MGD when both facilities are operating at peak.[67] To comply with 40 C.F.R. § 125.94(e)(1), IDEM must require NIPSCO to reduce the design intake flow to 34.35 MGD at a minimum.

If NIPSCO would rather comply with the alternative requirements in 40 C.F.R. § 125.94(e)(2), it must demonstrate that whatever alternative measures it puts in place reduce the level of adverse environmental impact to a comparable level as reducing the design intake flow would and must include the required showings on the potential entrainment reduction and on the impact to fish. Neither the Draft Permit nor NIPSCO's April 2025 Application or April 2026 Addendum contain that required information.

Second, IDEM must include stricter monitoring requirements to comply with 40 C.F.R. § 125.96(d). IDEM must require NIPSCO to monitor the intake flow and velocity daily and the flow monitoring must include measuring cooling water withdrawals, make up water withdrawals, and blowdown volume.[68] The Draft Permit requires NIPSCO to monitor flow, but does not require them to measure cooling water withdrawals, make up water withdrawals, and blowdown volume as required for new units. If NIPSCO chooses to comply with the alternative requirements in 40 C.F.R. § 125.94(e)(2), it must also monitor for entrainable organisms and the latent entrainment mortality in front of the intake structure.[69]

C. IDEM conducted an improper entrainment BTA analysis

As discussed above, for the new units at the Facility, IDEM must establish BTA standards based on 40 C.F.R. § 125.94(e). For existing Units 17 and 18, IDEM must establish BTA standards for entrainment on a site-specific basis under 40 C.F.R. § 125.94(d) and determine BTA based on analyzing five mandatory factors ("Must Factors") and considering six additional discretionary factors ("May Factors"). See 40 C.F.R. § 125.98(f). IDEM's analysis of these factors is improper and based on outdated and incomplete information, which makes it insufficiently protective of aquatic life.

The first Must Factor, is the "[n]umbers and types of organisms entrained, including, specifically, the numbers and species (or lowest taxonomic classification possible) of Federally-listed,

[66] Draft Permit at 72.
[67] Fact Sheet at 48.
[68] 40 C.F.R. § 125.96(d)(2).
[69] 40 C.F.R. § 125.96(d)(3).

threatened and endangered species, and designated critical habitat (e.g., prey base)."[70] However, this section provides no data—no numbers or types of organisms that have been entrained over the last permit period or at any time. Instead, IDEM repeats vague assertions that protected species are unlikely to be affected and that the closed cycle cooling system reduces intake water, none of which is relevant to this factor. IDEM's analysis refers back to its analysis in Section E of the Fact Sheet titled Threatened, Endangered, and Other Protected Species Susceptible to Impingement and Entrainment.[71] But as explained above, this "analysis" is insufficient, because it is based on outdated and insufficient wildlife surveys.

For several of the other Must and May Factors, IDEM relies on the facility ceasing coal combustion by December 31, 2028, which is uncertain at this point.[72] This includes the fourth and fifth Must Factors and three of the six May Factors. IDEM states that the "primary entrainment BTA determination is that RMSGS intends to cease coal combustion by December 31, 2028, and that a closed-cycle recirculating system will be utilized by the CCGT facility and DEC [Direct Evaporative Cooling] will be utilized by Project Orion.[73] However, IDEM fails to explain the impact if coal combustion continues past 2028 by a Department of Energy 202(c) order or reliability must run agreement or the impact of the high use of water for the CCGT.

IDEM must explain how a retirement date that is not enforceable in the Draft Permit is sufficient as the primary basis for the 316(b) entrainment BTA determination. When making a site-specific entrainment BTA determination, IDEM must explain why these selected technologies or measures have been chosen over any entrainment control technologies or measures that perform better.[74] The Fact Sheet does not include any discussion of entrainment control technologies or measures.

Comment 7: IDEM must clarify how the multiple different units operated by different parties will be properly regulated under one NPDES permit.

The Draft Permit covers four distinct projects, operated by three legally distinct operators: Units 17 and 18 operated by NIPSCO; the Peaker Plant operated by NIPSCO; the CCGT units operated by NIPSCO Generation, LLC (an affiliate of NIPSCO, commonly referred to as "GenCo"); and Project Orion, which the Draft Permit only identifies as being operated by a "third-party operator."[75]

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[70] 40 C.F.R. § 125.98(f)(2)(i).
[71] *Id.*
[72] *Id.* at 61-62.
[73] *Id.* at 63.
[74] 40 C.F.R. § 125.98(f)(1).
[75] Fact Sheet at 4. While the Draft Permit does not identify the third-party operator, NIPSCO's recent filings with the Indiana Utility Regulatory Commission show that it intends to provide water and wastewater treatment services to Amazon for a commercial data center. *See VERIFIED PETITION OF NORTHERN INDIANA PUBLIC SERVICE COMPANY LLC ("NIPSCO"), Cause No. 46484*, https://iurc.portal.in.gov/docketed-case-details/?id=b450f8fc-bccc-f111-a05a-001dd80072e8.

Despite the CCGT units and Project Orion being operated by third parties, NIPSCO is the only entity listed as a Permittee on the Draft Permit, making it unclear whether GenCo or the Project Orion operator can be held legally liable for any permit violations that occur from the units under their control.

This issue is further complicated by the fact that Units 17 and 18, the new CCGT units, and Project Orion are co-mingling their waste and discharging through Outfall 001,[76] which would make it impossible to determine the source of any pollution discharged through that Outfall. IDEM must ensure that all operators at the source can be held liable for any violations of the Permit or of the Clean Water Act.

This risk is particularly concerning given NIPSCO's role as a public utility. NIPSCO recently filed a petition ask the Indiana Utility Regulatory Commission to decline exercising its jurisdiction over its wastewater deal with Amazon for Project Orion, because NIPSCO claims that "NIPSCO's other retail customers shall have no financial responsibility for any and all liabilities that may arise from NIPSCO's provision of water and/or wastewater related services to Amazon and will be reimbursed for use of infrastructure already funded by NIPSCO customers."[77] But the Draft Permit allows for Project Orion to comingle its wastewater with that from the other units which would make it difficult to determine which source caused a permit or water quality standard violation. This could result in liability being passed on to consumers if IDEM and NIPSCO inaccurately assign liability for a violation to NIPSCO that was actually caused by Project Orion.

IDEM must revise the Draft Permit to ensure that each operator of the different units can be held liable and to include proper monitoring requirements to allow the regulators and the public to accurately determine the source and cause of any permit violation.

Comment 8: IDEM should clarify, correct, or explain errors and/or discrepancies in the Draft Permit

There are several discrepancies or identified errors between the Draft Permit, the Fact Sheet, and/or the underlying studies which support provisions of the Draft Permit. IDEM should clarify, correct, or else explain, the following:

- The Draft Permit discharge limitations chart for temperature at Outfalls 001/002 cites to footnote [28], however there is no footnote [28].[78]

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[76] *Id.*
[77] *See VERIFIED PETITION OF NORTHERN INDIANA PUBLIC SERVICE COMPANY LLC ("NIPSCO"), Cause No. 46484*, https://iurc.portal.in.gov/docketed-case-details/?id=b450f8fc-bccc-f111-a05a-001dd80072e8.
[78] *See* Draft Permit at 2 and 7 (ending at footnote [21]).

- Figure 1, Site Location Map of the Fact Sheet is incomplete.
    - Figure 1 has a label for "Final Discharge Entry" which the Draft Permit lists as a second Outfall 001 location (Entry to the Kankakee).
    - Figure 1 is missing Internal Outfalls 301, 401, and 501
    - Figure 1 has a label for "Proposed Peaker Plant Outfall Monitoring Location" but no label for Outfall 014. IDEM must provide whether this is Outfall 014.
    - Figure 1 has two labels for "Stream Monitoring Site 011S".
    - Figure 1 is missing Stream Monitoring Site 0135.

- The Fact Sheet states that the submerged open area used to calculate the velocity of water through the traveling screens is 113.6 square inches.[79] This is a typo and should be 113.6 square feet.[80]

- The permit does not address the Facility's expected decommissioning date and the impact on the NPDES permit. IDEM should clarify the impact on the NPDES permit if the Facility's retirement date extended or canceled and how an uncertain future event can be the basis for the entrainment BTA, and other, permitting decisions.

- There is no information in the Draft Permit, Fact Sheet, 2025 Application or 2026 Addendum detailing the expected pollutants from Outfall 014.

Summary and Conclusion

Without the above changes, it is unclear whether the Draft Permit assures compliance with the Clean Water Act and NPDES regulations. In summary, Commenters request the following changes to the Draft Permit Modification:

[79] Fact Sheet at 49.
[80] Application at 192.

Change Requested	Discussion in Comments
Evaluate and establish case-by-case Technology-based Limits ("TBELs") in the Draft Permit; specifically evaluate	Comment 1
Revise the Draft Permit to incorporate complete and adequate temperature limits	Comment 2
Include monitoring that will accurately characterize the discharge including selenium and PFAS and adequate monitoring of Stormwater Outfalls and Stream Monitoring Sites	Comment 3
Provide the information used to justify its Antibacksliding determination	Comment 4
Provide a Tier 2 Antidegradation analysis	Comment 5
Revise the Best Technology Available Analysis for the Cooling Water Intake Structure	Comment 6
Clarify how the multiple different units operated by different parties will be properly regulated under one NPDES permit	Comment 7
Clarify, correct, or explain errors and/or discrepancies in the Draft Permit	Comment 8

Because of the importance and long-term impact of the limits and monitoring conditions in the NPDES permit, IDEM should reissue the revised Draft Permit for public comment before issuing the final permit.

Thank you for considering these comments. Please feel free to reach out with any questions or if you need additional information. In addition, please notify all persons listed below with any changes to the status of this permit, including any revisions to the Draft Permit and the issuance of a final permit.

Sincerely,

/s/ Kerri Gefeke

_____

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