

**ALLIANCE FOR THE GREAT LAKES • ENVIRONMENTAL LAW
& POLICY CENTER • HOOSIER ENVIRONMENTAL COUNCIL •
NATIONAL PARKS CONSERVATION ASSOCIATION •
SAVE THE DUNES • SIERRA CLUB HOOSIER CHAPTER**

Comments on US Steel Gary Works Draft NPDES Permit

Via Email:

Richard Hamblin, Permit Manager rhamblin@idem.in.gov

Via US Postal Service--First Class Mail:

Richard Hamblin, Permit Manager
IDEM/OWQ/NPDES/PS
100 N Senate Ave Rm 1255
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Re: US Steel Gary Works, Draft NPDES Permit No. IN0000281

Dear Mr. Richard Hamblin:

Alliance for the Great Lakes, the Environmental Law and Policy Center, Hoosier Environmental Council, the National Parks Conservation Association, Save the Dunes and Sierra Club Hoosier Chapter respectfully submit these comments concerning the National Pollutant Discharge Elimination System (NPDES) Draft Permit No. IN0000281 (Draft Permit) issued by the Indiana Department of Environmental Management (IDEM) to United States Steel Corporation (USS) for its Gary Works facility in Gary, Indiana. We appreciate the IDEM's and USS's willingness to provide information regarding the Draft Permit and the opportunity to submit these comments.

With 85% of America's fresh surface water, the Great Lakes are a national and international treasure, providing drinking water, jobs and recreation to tens of millions of people. Restoration of the health of the Great Lakes, including reduction of water pollution, pays dividends - for every dollar spent on bringing the Great Lakes back to health, the region sees three dollars returned in economic activity.¹

Comment 1--IDEM Should Require Renewed Investigation of Mercury Control Technologies

USS filed its last engineering review report assessing mercury control technologies on February 28, 2013. Following submission of that report, IDEM granted Streamlined Mercury Variances

¹ <https://www.glc.org/news/GLRI-report-092518>

(SMV) for all mercury discharges at the facility. Since that time, IDEM has not required USS to resume any investigation of mercury control technologies that could potentially remove mercury from effluent and achieve Water Quality-Based Effluent Limitations (WQBEL) for mercury (i.e., 1.3 ng/l monthly average and 3.2 ng/l daily maximum) that IDEM has identified for the facility. Instead, the Draft Permit renews the existing SMVs for outfalls 018, 019, 020 and 028/030 for yet another five-year term with interim discharge limits that exceed the WQBEL, without imposing any obligation on USS to investigate, pilot test and/or select an effective mercury control technology to achieve compliance.

For the reasons set forth in Comments 2 and 3, IDEM should not renew the SMVs. Rather, IDEM should issue a Schedule of Compliance for each of the outfalls that includes technology-forcing requirements that will require USS to complete its investigation, pilot testing and technology selection and then install mercury control technology that will bring USS into compliance. If, however, IDEM elects to continue the SMVs, the mercury Pollution Minimization Program Plan (PMPP) for each outfall should be modified to incorporate these technology-forcing requirements to achieve compliance with WQBELs as soon as practicable but within the term of the SMV.

Comment 2--Renewal of SMVs is not Warranted

The SMVs granted to USS over the years have not achieved an important pollution control goal and should not be renewed. In the Draft Permit Fact Sheet, IDEM acknowledges that the SMV is an interim measure, and is intended to help the permittee to achieve compliance with applicable water quality standards: “The goal of the SMV is *to reduce the effluent levels of mercury*, and achieve as soon as practicable, compliance with the WQBELs through implementation of a Pollution Minimization Program Plan (PMPP).” Draft Permit Fact Sheet, p. 101 (emphasis added). IDEM may renew an SMV “if the applicant demonstrates that the implementation of the PMPP has achieved progress toward the goal of reducing mercury from its discharge except as provided in subsection (d),” (327 IAC 5-3.5-7(d)). Since the SMVs are not moving USS meaningfully toward compliance through demonstrated reductions of mercury in effluent continued renewal of the SMVs is not warranted and not supported by Indiana’s pollution control regulations.

Neither the Draft Permit Fact Sheet nor the Draft Permit contain findings to sustain IDEM’s continued renewals of the SMVs. If IDEM has concluded that USS has presented in its permit renewal application data sufficient to demonstrate actual, long-term reduction of mercury in the effluent at any of the outfalls for which an SMV has been granted, then IDEM should state that conclusion affirmatively and present the specific data or references upon which it relies.

If IDEM has not made, or cannot make, an express finding that USS has achieved meaningful mercury reductions during the preceding term of SMVs for each outfall, then the pollutant reduction goal of the SMV has not been satisfied--and either the request for renewal of the SMV must be denied, or the PMPP associated with that SMV must substantially revised to put the permittee on a path towards compliance (See 327 IAC 5-3.5-7(d)). Since the regulatory conditions for SMV renewal have not been met for this permit renewal, IDEM's renewals for Outfalls 018, 019, 020 and 028/030 are not warranted and may violate the SMV regulations. Indiana's SMV program is not intended to create a scheme of perpetually renewed SMVs that push compliance into an indefinite future (See IAC and IC regulations referenced in Draft Permit Fact Sheet, p 100-102).

Comment 3--New SMV for Outfall 015 is not Warranted

In the 2015 Final Permit, IDEM established an SMV for Outfall 015 and assigned an Interim Discharge Limit (IDL) of 3.7 ng/L monthly average, which is well-above the applicable WQBELs (i.e., **1.3 ng/l monthly average** and 3.2 ng/l daily maximum). The IDL for Outfall 015 was in effect until IDEM removed the SMV in the January 13, 2017, modified permit. That modified permit reverted the effluent limitation back to the WQBEL and established a 60-month Schedule of Compliance, at the end of which USS would have been required to achieve compliance with the WQBELs.

The SMV for Outfall 015 in the Draft Permit is moving in the wrong direction. The Draft Permit contains a new SMV for Outfall 015 and sets a new IDL of **14 ng/L monthly average, more than three times** the IDL established in the 2015 permit for this outfall. Neither the Draft Permit nor the Fact Sheet explain the basis for this backsliding other than indicating that this was the **highest daily value** for mercury from the previous two years. Since an SMV, if properly granted, is intended to **reduce** rather than increase mercury levels in effluent, IDEM should clearly state the justification for granting a new SMV for Outfall 015 (Draft Permit Fact Sheet p. 100-102). The SMV regulations cannot be applied in such a way as to allow a permittee to increase mercury in its effluent. IDEM should consider removing the SMV for Outfall 015 and instituting a compliance schedule that will bring the mercury effluent at this outfall into compliance with the WQBELs as soon as practicable.

Comment 4--SMV/PMPPs are not Stringent enough

A mercury PMPP incorporated into an SMV is intended to achieve actual reductions of mercury in effluent during the term of the PMPP and achieve, as soon as practicable and no later than the end of the SMV term, compliance with the applicable WQBELs (E.g. Draft Permit Fact Sheet, p. 101; Draft Permit, p. 146). Data included in USS's Renewal Application do not demonstrate that actual reductions have been achieved, despite PMPPs in effect for over ten years for this facility.

Merely renewing the SMVs with PMPPs that have not led to sustained, demonstrable reductions of mercury in effluent does not satisfy regulatory requirements (See IAC and IC regulations referenced in Draft Permit Fact Sheet, p 100-102). IDEM should reconsider the PMPPs associated with each outfall and strengthen the requirements, such that it is reasonable to expect that compliance with water quality standards will be achieved by the end of the SMV term.

If IDEM does not believe compliance via performance of the PMPPs will likely be achieved, then renewing the SMVs is not warranted and does not meet regulatory requirements for granting an SMV (See IAC and IC regulations referenced in Draft Permit Fact Sheet, p 100-102). IDEM should remove the SMVs and establish a Schedule of Compliance that will force USS to implement mercury control technologies that will achieve compliance. Similarly, since the PMPP incorporated into the new SMV for Outfall 015 (see Draft Permit, p. 146) is nearly identical to the existing PMPPs at other outfalls which have not achieved compliance, this comment applies equally to Outfall 015.

Comment 5--Possible Violation of Antibacksliding and Antidegradation Requirements

In Section 5.5 of the Draft Permit Fact Sheet, IDEM notes that effluent limitations for conventional, toxic and non-conventional pollutants at Outfalls 028/030 (Outfall 600), 034, 015 and Internal Outfall 609 have been revised and are now less stringent than the corresponding limitations contained in the previous permit. IDEM correctly notes that the anti-backsliding regulations do not allow loosening of effluent limitations unless one of the stated exceptions applies (See 327 IAC 5-2-10(a)(11)).

IDEM offers no explanation for the exception to 327 IAC 5-2-10(a)(11) in either the Draft Permit or the Fact Sheet that justifies the loosening of pre-existing limitations. IDEM does note in Section 5.5 that USS "...has consistently met the TBELs identified above. Therefore, those TBELs shall be retained from the previous permit." If this is offered as a rationale for less stringent effluent limitations, it is invalid; Indiana regulations do not recognize this as a valid basis for violating the anti-backsliding policy. In its presentation slide deck, IDEM states that none of the regulatory exceptions to the anti-backsliding rule applies. Thus, the less stringent effluent limitations at those outfalls appear to violate 327 IAC 5-2-10(a)(11).

In Section 5.6 of the Fact Sheet, IDEM offers an explanation for compliance with the state's antidegradation policy, i.e. the new permit limitations are not the result of deliberate activity taken by the permittee. However, since IDEM admits that higher mass limitations have been set due to increased flow, it is important to know whether the increased flow is the result of deliberate USS activity. If so, it is possible the antidegradation regulation will be violated. We ask that IDEM explain how it has complied with the antidegradation regulation, 327 IAC 2-1.3.

In light of the above comments, we, the undersigned organizations, respectfully request that IDEM provide a detailed response and the opportunity for further discussion as appropriate prior to finalizing the Draft Permit.

Respectfully submitted,

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