



# CHICAGO LEGAL CLINIC, INC.

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July 11, 2017

Scott Pruitt, Administrator  
U.S. Environmental Protection Agency  
U.S. EPA Headquarters  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code: 1101A  
Washington, DC 20460

RECEIVED  
2017 JUL 13 PM 1:40  
OFFICE OF THE  
EXECUTIVE SECRETARY

Re: Petition - Proposed Title V Operating Permit Renewal, Indiana Harbor Coke Company, L.P. – a contractor of ArcelorMittal USA, Inc. 08936982-00382 – by the Indiana Department of Environmental Management

To The Administrator:

Please be advised that I represent the Southeast Environmental Task Force (“SETF”), a not-for-profit organization based in southeast Chicago. SETF’s mission is to improve environmental quality in the Calumet region. SETF accomplishes this by providing a public education and advocacy on environmental and health issues. SETF works to improve the quality of life for community members through preservation of natural areas, sustainable development, and environmentally responsible business practices.<sup>1</sup> SETF’s members include residents who live, recreate and work in Indiana in close proximity to the steelmaking facility which includes the Indiana Harbor Coke Company L.P. (“IHCC”).

Please accept this as a formal Petition pursuant to 42 U.S.C. §7661d(b)(2), commonly cited as Section §505(b)(2) of the Clean Air Act (“CAA §505(b)(2)”). As you know, this section of the Clean Air Act allows any person to petition for your review of a Title V operating permit as long as the Petition is timely filed and is based on objections that were raised during the public comment period. Under this Section, you must grant or deny this Petition within 60 days after the Petition is filed. A denial is subject to judicial review.

On May 5, 2017 SETF submitted written comments in response to the Indiana Department of Environmental Management’s Public Notice about a proposed renewal of the Title V permit for the IHCC facility located at 3210 Watling St. MC2-990, East Chicago, IN 46312.<sup>2</sup> On May 9,

<sup>1</sup> <http://setaskforce.org/>

<sup>2</sup> <http://www.in.gov/apps/idem/caats/searchById.jsp?id=36982>; IDEM’s proposed permit for IHCC and other public documents related to this permit are available at: <http://permits.air.idem.in.gov/36982d.pdf>. IDEM’s “virtual filing cabinet” for IHCC, which includes IHCC’s permit application for a renewal operating permit, is available at: <http://vfc.idem.in.gov/DocumentSearch.aspx?xAIID=12959>

2017, SETF submitted additional comments that included IHCC's First Quarterly Report for 2017. True and accurate copies of SETF's comments are attached and incorporated into this Petition. The 45-day period during which U.S. EPA could have objected to the proposed permit concluded on May 25, 2017. Upon information and belief, no objections were made by U.S. EPA by this deadline. This Petition is being submitted to the Administrator within the subsequent 60-day period during which members of the public can petition U.S. EPA to review and object to the proposed Title V permit. Although IDEM has not issued a final permit or any response to SETF's comments, this Petition is being filed to request U.S. EPA's review of the proposed permit and to preserve SETF's rights under 42 U.S.C. §7661d(b)(2) and 42 U.S.C. §7607.

SETF respectfully requests the Administrator to review this permit record, grant the Petition, and make objections for the reasons described in this Petition.

#### Background

- On or about March 21, 2016, IHCC submitted a Title V Operating Permit renewal application to the IL EPA.
- On or about April 10, 2017, IDEM published a Statement of Basis and proposed Title V Operating permit in response to the facility's application.
- Also on April 10, 2017 the IL EPA submitted the proposed permit to the U.S. EPA and provided public notice regarding the proposed permit.
- On May 5, 2017, SETF submitted to IDEM written comments and a formal request for a public hearing.
- The public comment period ended on May 10, 2017.
- The U.S. EPA's 45-day review period concluded on May 25, 2017.

As of the date of this Petition, IDEM has not issued a final permit for the facility. In the absence of a final permit and in light of the deadline for filing this Petition, SETF is submitting this Petition to ensure its objections to the proposed permit are asserted to U.S. EPA, and preserved for purposes of the record of this matter.

#### Facts In Support of SETF's Petition

##### **IHCC**

IHCC is one of several contractors that operate specific units within the ArcelorMittal integrated steel mill in East Chicago. IHCC operates the coke batteries and conducts related activities. IHCC's existing permit includes a requirement to capture coke oven gases for use as fuel and/or to direct the coke oven gases through pollution control equipment. IHCC recently came to the attention of SETF because of an U.S. EPA Finding of Violation/Notice of Violation ("NOV") issued in June, 2016. SETF subsequently discovered six NOVs directed to IHCC since 2010, covering virtually the entire period IHCC has operated under its existing permit. True and accurate copies of these six NOVs are attached and incorporated as part of SETF's request.

The first NOV was issued by the U.S. EPA on May 13, 2010. This NOV is partly based on information that was submitted by IHCC to the U.S. EPA following an information request and covers the period from January, 2005 through April, 2008. IHCC reported 277 hours of bypass venting above the permitted 19% daily limit, 160 excess tons of sulfur dioxide (SO<sub>2</sub>), and 15.9 excess tons of particulate matter (PM) emitted from the bypass stacks since January, 2005. The

U.S. EPA also noted that a Compliance Demonstration Report dated April 19, 2008, showed an average PM emission rate of 21.502 pounds per hour coming from the A2 waste heat stack, in violation of IHCC's permit limits. U.S. EPA further asserts IHCC also failed to report 22 deviations from 24-hour permit requirements, which occurred in 2005, 2006, and 2007. According to this NOV, IHCC also violated its operating standards through its practice of certifying compliance in its quarterly Title V deviation reports when malfunctions and/or emergencies have led to exceedances of permit limits.

The next NOV was issued by the U.S. EPA on September 13, 2012, and addresses IHCC's bypass venting events from October 2009 through December 2011. In response to an information request, IHCC reported 12, 201, and 224 days of venting over the 19% 24-hour limit, respectively, in 2009, 2010, and 2011. In addition, U.S. EPA asserts IHCC also exceeded the 14% annual venting limit in 2012 and 2011.

The U.S. EPA NOV dated April 23, 2013, again focuses on IHCC's bypass venting practices for the period from January 2012 through March 2013. IHCC submitted results to the U.S. EPA of its stack study which revealed that an additional 5.2% of total coke oven gases are emitted from its bypass vent stack lids. On March 12, 2013, the U.S. EPA requested that IHCC provide data detailing total bypass venting in 2012. From IHCC's response, the U.S. EPA discovered that IHCC vented coke oven gases through its bypass vents over the 19% limit for 239 days for the period January 1, 2012 to March 13, 2013. U.S. EPA also discovered that IHCC vented 20.8% of total coke oven gases through its bypass vents in 2012. IHCC is required to embody "good air pollution control practices for minimizing emissions" (40 C.F.R. §§ 63.6(e)(1)(i) and 63.7300(a)); U.S. EPA asserted the facility was in violation of this standard in respect to bypass venting.

In December of 2013, the U.S. EPA requested that IHCC hire an independent contractor to perform four consecutive weeks of opacity testing at various operations throughout the facility. The results of this testing are based on data for the period from September through October of 2013. According to the test results, for the period of September 30, 2013 to October 28, 2013, U.S. EPA asserts IHCC committed the following violations: 1) fugitive charging opacity emitted in excess (542 occasions); 2) fugitive pushing opacity emitted in excess (46 occasions); 3) fugitive coking opacity emitted in excess (57 occasions); 4) bypass venting opacity emitted in excess (127 occasions); 5) push-charge machine baghouse stack opacity emitted in excess (57 occasions); 6) failure to adhere to opacity limitations from all emission units at the facility (174 occasions); 7) failure to minimize charging emissions which escaped the oven door by collecting such emissions in a mobile hood; 8) failure to minimize pushing emissions which escaped the cokeside oven door by collecting such emissions in a stationary shed. Both of the NOV's issued in 2013 warn that excess coke oven emissions increase the amount of acid rain and PM.

The NOV dated February 5, 2015 addresses lead emissions from the facility. The information in the NOV is based on self-reporting by IHCC. According to the facility's Annual Compliance Certification reports to IDEM covering January, 2012 through December, 2013, U.S. EPA states that IHCC exceeded its lead emission limit on 59 and 216 separate occasions in 2012 and 2013 respectively. The U.S. EPA asserts that excess lead is detrimental to the nervous system, especially in children.

The U.S. EPA NOV/FOV that was issued to the facility in June, 2016 alleges multiple violations of improperly sealing the ovens to prevent toxic gases from being released into the environment. This most recent NOV is based on data from November, 2014 through April, 2016. IHCC performed filterable and condensable PM stack tests at various bypass vent stacks on four different dates between November, 2014 and April, 2016. According to U.S. EPA, results from three out of the four tests show that IHCC failed to limit PM emissions from vent stacks to the 11.875 lbs/hour as a 24-hour average limit. Staff from U.S. EPA and IDEM visited the facility on March 14, 2016, and staff from U.S. EPA returned on June 13, 2016. During both visits, agency staff observed ovens across all four batteries continuously leaking emissions. Although the leaks were brought to their attention, U.S. EPA asserts IHCC staff did not take steps to eliminate the leaks during the time of the agency visit. As a result, U.S. EPA asserted violations for: 1) failure to recycle the gases emitted during the coking process and utilize them as the only fuel source for the ovens during normal operations; 2) failure to prevent routing of gases directly into the atmosphere unless they first pass through the common tunnel after burner; 3) failure to ensure that the facility had a 0.0 percent leaking coke oven doors or that the doors were operated under negative pressure; and 4) failure to take corrective action and stop doors from leaking within 45 minutes from the time each leak was first observed. U.S. EPA asserts IHCC's violations led to excess PM emissions.

IHCC's own compliance reports reveal numerous deviations that are repetitive and frequent. Many of these deviations are due to equipment that is not functioning properly. One of the most significant issues is IHCC's failing coke oven doors. This problem was also recognized in the U.S. EPA's FOV/NOV. According to IHCC's own self-reporting, they experienced approximately 2,213 deviations due to coke oven door-related problems in the first 6 months of 2016 alone. These and other self-reports are found on IDEM's public virtual filing cabinet at: <http://vfc.idem.in.gov/DocumentSearch.aspx?xALID=12959>

In the Quarterly Deviation and Compliance Monitoring Report for the first quarter of 2016 (January 1- March 31), IHCC acknowledges 957 deviations from permit requirements. Many of these are exceedances of emissions. On several occasions, IHCC exceeded its emission limits for fugitive emission percentage, venting limit percentage, lead, PM, and SO<sub>2</sub>. Other deviations were operational in nature. IHCC failed to run baghouses during production, failed to submit emergency reports within 2 days of incident, failed to position oven dampers properly, failed to keep baghouse pressure within range, and failed to wash baffles on quench towers. The largest number of deviations were due to door fires. The facility reported 792 deviations due to door fires and 25 deviations for failure to document door fires.

IHCC's second quarter report for 2016 (April 1- June 30) acknowledges approximately 1,666 deviations for many of the same reasons as the previous report. Emission limits exceeded during this quarter include: fugitive emissions opacity percentage, venting limit percentage, lead, PM, and SO<sub>2</sub>. This report also acknowledges the same operational deviations. IHCC personnel failed to run baghouses during production, failed to position oven dampers, and failed to wash baffles on quench towers. The most significant deviations in this report were once again door fires. IHCC reported 1,421 door fires due to oven leaks and the failure to document fires 9 times.

In its compliance report for the third quarter of 2016 (July 1- September 30), IHCC lists a total of 1,900 deviations. Coke oven door leaks contribute the bulk of the deviations, with 1707 door

fires reported this quarter. Many of the same deviations were repeated on this self-report, including violations of: opacity limits, lead emission limits, PM emission limits, venting limits, oven damper position requirements, and failure to document door leaks. On November 30, 2016, IDEM notified IHCC that on the basis of this report, IDEM "...has determined these deviations to be violations of the State of Indiana air pollution control rules and conditions of your air permit."

IHCC's quarterly report for the fourth quarter of 2016 (October 1 – December 31<sup>st</sup>) reports 2,242 door fires lasting longer than 15 minutes on the push side or 45 minutes on the coke side, the "result of aging ovens." IHCC also self-reports deviations from permit standards for fugitive emissions, lead emissions, particulate matter emissions, visible emissions, and coke oven gas venting. IHCC also reported 85 occasions when it deviated from an operational requirement for the positioning of the oven dampers. On February 9, 2017, IDEM notified IHCC that on the basis of this report, IDEM "...has determined these deviations to be violations of the State of Indiana air pollution control rules and conditions of your air permit."

True and accurate copies of IHCC's quarterly reports and IDEM's subsequent correspondences were attached to the written comments SETF submitted as part of IDEM's permitting process, which are attached to and incorporated into this Petition.

### **The Community In Proximity to IHCC**

According to information derived from the demographic feature of U.S. EPA's ECHO database, there are 31,665 people living within a three-mile radius of the IHCC facility (see: <https://echo.epa.gov/detailed-facility-report?fid=110043543957>). Approximately 40% of the people who live within this three-mile radius are African-American and almost 50% are Hispanic. U.S. EPA's ECHO database also indicates that there are 11,502 households in this area, with a total population of 9,826 children 17 years and younger. This area is non-attainment for ozone and particulate matter air quality standards.

In addition to nearby residential areas, IHCC operates in proximity to educational institutions, recreational areas and valuable ecological resources. IHCC is located adjacent to Lake Michigan. Several schools, parks, and other recreation areas are located in close proximity to the facility, including Benjamin Franklin Elementary School, Abraham Lincoln Elementary School, Joseph L. Block Jr. High School, East Chicago Central High School, East Chicago Urban Enterprise Academy, Jeorse Park on the lakefront, Callahan Park, and Nunez Park. The community of East Chicago maintains these schools and parks as safe havens and valuable resources for its residents, especially children.

Carolyn Marsh, a NW Indiana resident who is a member of SETF, has identified several other nearby schools, including Whiting Kindergarten, the Nathan Hale Elementary School, Whiting Middle School, Whiting High School, George Rogers Clark High School and Middle School, and Franklin Elementary School. Ms. Marsh also identifies several public recreational areas that are potentially impacted by IHCC's operations, including the Whiting Lakefront Park and Whihala Beach, the Hammond Lakefront Park and Bird Sanctuary, the Hammond Marina, the Lost Marsh Golf Course, and the Lake George Memorial Park and Forsythe Parks at Wolf Lake, Hammond.

### Legal Requirements In Support of SETF's Comments

The proposed operating permit for IHCC must comply with 326 IAC 2 and 40 CFR Part 70 Appendix A and contain the conditions and provisions specified in 326 IAC 2-7 as required by 42 U.S.C. 7401, et. seq. (Clean Air Act as amended by the 1990 Clean Air Act Amendments), 40 CFR Part 70.6, IC 13-15 and IC 13-17. This type of operating permit is identified as a "Part 70 Operating Permit" by IDEM. U.S. EPA has approved Indiana's program to implement the Title V Permitting Program.<sup>3</sup> U.S. EPA retains the authority to object to permits (42 USC §7661d(b)), to issue or deny permits that do not align with the Administrator's objections (42 USC §7661d(c), and to terminate, modify, revoke or reissue permits (42 USC §7661d(c)). The Administrator's authority to object extends to the applicable requirements of the Clean Air Act and the requirements of an applicable implementation plan. 42 USC §7661d(b).

The Indiana Harbor Coke Company is required to have a Part 70 Operating Permit. 326 IAC 2-7-2. The Commissioner may only issue a Part 70 permit renewal if certain conditions have been met, including receipt of a complete application. 326 IAC 2-7-8(a). Pursuant to 326 IAC 2-7-4(a)(9), a complete application must include the following elements:

1. a description of the compliance status of the source with respect to all applicable requirements;
2. for requirements for which the source is not in compliance at the time of a Part 70 issuance, a narrative description of how the source will achieve compliance with the requirements;
3. for sources that are not in compliance, a compliance schedule that includes remedial measure, including an enforceable sequence of actions with milestones leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of Part 70 permit issuance;
4. the compliance schedule "shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject", and shall be supplemental to, and shall not sanction noncompliance with the applicable requirements on which it is based."

Pursuant to 326 IAC 2-7-6, each Part 70 Permit shall contain requirements with respect to compliance including "...a compliance schedule consistent with section 4(c)(10) of this rule."

In addition to the requirements of Indiana law, the Clean Air Act includes a directly relevant, legally controlling definition of a schedule of compliance:

The term "schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an application implementation plan, emission standard, emission limitation, or emission prohibition.

42 U.S.C. §7661(3). In order to fulfill its responsibilities as a permitting authority under the Clean Air Act, IDEM must assure compliance with each applicable standard, regulation or

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<sup>3</sup> <https://www.epa.gov/caa-permitting/indiana-title-v-operating-permit-program-approval-history>

requirement that originates in the Clean Air Act. 42 U.S.C. §7661a(b)(5)(A). A permit application must include a schedule of compliance. 42 U.S.C. §7661b(b)(1). An operating permit cannot be issued in the absence of a compliance schedule. 42 U.S.C. §7661c(a). The Clean Air Act further authorizes a state permitting authority to terminate or revoke permits for cause. 42 U.S.C. §7661a(b)(5)(D).

An operating permit application submitted by IHCC that does not include a compliance schedule expressed in terms "at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject" is legally inadequate. An Operating Permit renewal cannot be issued to IHCC by IDEM in the absence of a complete application and that does not incorporate a compliance schedule with the terms and conditions mandated pursuant to 326 IAC 2-7-4(a)(9) and the Clean Air Act.

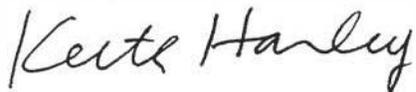
If IHCC and IDEM cannot fulfill these requirements as part of the permit renewal process, SETF asserts the appropriate course of conduct is permit revocation pursuant to 326 IAC 2-1.1-9 and 42 U.S.C. §7661a(b)(5)(D) until such time that a legally adequate operating permit application is submitted and a legally adequate permit can be issued.

#### SETF's Specific Petition Requests

SETF requested that IDEM conduct a public hearing and a subsequent written comment period as part of deciding whether to renew IHCC's Operating Permit. This request has not been granted. SETF is petitioning the U.S. EPA Administrator to object to this Operating Permit if it does not include a public hearing and subsequent written comment period. 42 U.S.C. §7661a(b)(6). SETF further petitions the U.S. Administrator to object to the proposed Operating Permit because IDEM is proposing a permit based on IHCC's application that does not include a legally adequate schedule of compliance that will address longstanding compliance issues at IHCC. 326 IAC 2-7-4(a)(9); 326 IAC 2-7-6(1); 42 U.S.C. §7661(3); 42 U.S.C. §7661a(b)(5)(A); 42 U.S.C. §7661b(b)(1). SETF further petitions the U.S. Administrator to object to the proposed Operating Permit renewal because IDEM's proposed permit does not include an enforceable schedule of compliance. 326 IAC 2-7-8(a); 42 U.S.C. §7661c(a). In the absence of a schedule of compliance, SETF is petitioning for the U.S. EPA Administrator to object and determine that the appropriate course of conduct pursuant to 326 IAC 2-1.1-9 and 42 U.S.C. §7661a(b)(5)(D) is for IHCC's existing Operating Permit to be revoked until such time that longstanding compliance issues are resolved. 42 U.S.C. §7661d(e).

Thank you for your consideration of this Petition. Please contact me if you have any questions or require any additional information regarding this matter.

Sincerely,



Keith Harley  
Attorney for Southeast Environmental Task Force

enc

cc Bruno L. Pigott, Commissioner  
Indiana Department of Environmental Management  
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Indiana Harbor Coke Company  
Indiana Harbor Coke Company, L.P.  
c/o CT Corporation System  
150 West Market Street, Suite 800  
Indianapolis, IN 46204

Sources – Attached Documents

U.S. EPA 2010 Notice of Violation:

[https://yosemite.epa.gov/r5/r5ard.nsf/b7d2ca869c9cflf586257576006fb461/26c0b9ca2176c92b8625775b006c8677/\\$FILE/ard-016988.pdf](https://yosemite.epa.gov/r5/r5ard.nsf/b7d2ca869c9cflf586257576006fb461/26c0b9ca2176c92b8625775b006c8677/$FILE/ard-016988.pdf)

<http://www.suncokewatch.com/sites/suncokewatch.com/files/USEPA%20June%203,%202010%20NOV%20to%20SunCoke.Indiana%20Harbor%20Coke%20Company.pdf>

U.S. EPA 2012 Notice of Violation:

[https://yosemite.epa.gov/r5/r5ard.nsf/b7d2ca869c9cflf586257576006fb461/f50c33ca96558f1c86257a930058t048/\\$file/r5-052323.pdf](https://yosemite.epa.gov/r5/r5ard.nsf/b7d2ca869c9cflf586257576006fb461/f50c33ca96558f1c86257a930058t048/$file/r5-052323.pdf)

U.S. EPA April, 2013 Notice of Violation:

[https://yosemite.epa.gov/r5/r5ard.nsf/b7d2ca869c9cflf586257576006fb461/c2663db9f7eac81986257c0c005759ef7/\\$FILE/r5-053546.pdf](https://yosemite.epa.gov/r5/r5ard.nsf/b7d2ca869c9cflf586257576006fb461/c2663db9f7eac81986257c0c005759ef7/$FILE/r5-053546.pdf)

U.S. EPA December, 2013 Notice of Violation:

[https://yosemite.epa.gov/r5/r5ard.nsf/b7d2ca869c9cflf586257576006fb461/08605cfa59cd407686257c6100791f80/\\$FILE/r5-054904.pdf](https://yosemite.epa.gov/r5/r5ard.nsf/b7d2ca869c9cflf586257576006fb461/08605cfa59cd407686257c6100791f80/$FILE/r5-054904.pdf)

U.S. EPA 2015 Notice of Violation:

[https://yosemite.epa.gov/r5/r5ard.nsf/b7d2ca869c9cflf586257576006fb461/c4b502419189161c86257df0006b69ce/\\$file/r5-056531.pdf](https://yosemite.epa.gov/r5/r5ard.nsf/b7d2ca869c9cflf586257576006fb461/c4b502419189161c86257df0006b69ce/$file/r5-056531.pdf)

U.S. EPA 2016 Notice of Violation:

[https://yosemite.epa.gov/r5/r5ard.nsf/b7d2ca869c9cflf586257576006fb461/30da8290a5c8971886257fe000617a22/\\$file/indiana%20harbor%20coke%20company%20nov%20to%20nov.pdf](https://yosemite.epa.gov/r5/r5ard.nsf/b7d2ca869c9cflf586257576006fb461/30da8290a5c8971886257fe000617a22/$file/indiana%20harbor%20coke%20company%20nov%20to%20nov.pdf)

All documents submitted by IHCC as well as IDEM-generated documents regarding IHCC can be found at:

<http://vfc.idem.in.gov/DocumentSearch.aspx?xAllID=12959>