



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
We make Indiana a cleaner, healthier place to live.

Mitchell E. Daniels, Jr.
Governor

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July 12, 2007

Mr. Arthur E. Smith, Jr.
Sr. Vice President & Environmental Counsel
Environmental, Health & Safety
NiSource Corporate Services
801 E. 86th Avenue
Merrillville, IN 46410

Dear Mr. Smith:

Re: Intent to Operate Dean H. Mitchell Generating
Station--NIPSCO

Thank you for your letters of June 26, 2007 and July 5, 2007 regarding NIPSCO's intent to operate the Dean H. Mitchell Generating Station.

Your June 26, 2007 letter states: "NIPSCO seeks clarification on the steps and circumstances needed to reactivate Mitchell." You further state: "NIPSCO requests that IDEM review and provide comments on the approaches presented in the attached reports¹."

In summary the Guernsey & Company reports advocate resuming operation of the Mitchell facility without first receiving a preconstruction "New Source Review" air pollution permit, while the Burns & McDonnell report concludes that a preconstruction "New Source Review" air pollution permit is likely to be required.

The different interpretations of the requirements for reactivation are understandable considering the various court decisions that have been issued around the country in response to EPA's Coal Fired Electric Generating Unit New Source Review enforcement initiative which commenced approximately ten years ago. Recent court decisions, including some addressing actions by Indiana sources which had received IDEM permits have clarified the judicial interpretation of parts of the New Source Review Regulations. While there are still a number of issues that have not been fully resolved by the courts, this letter presents IDEM's best current understanding of the New Source Review requirements under the Clean Air Act and the implementing regulations.

¹ *Economic Evaluation of Alternatives Concerning the Dean H. Mitchell Generating Station*, December 29, 2006, C.H. Guernsey & Company, the January 31, 2007 addendum to that report, and Guernsey's February 19, 2007 memorandum titled "Evaluation of Suggestions to Replace Major Equipment at Mitchell"; *D.H. Mitchell Reactivation Report* Submitted to Northern Indiana Public Service Co., January 2007, Burns and McDonnell.

For the following reasons, I conclude that the reactivation of the Mitchell Plant will require a preconstruction New Source Review permit:

1. The facility is presumed to be permanently shut down under EPA's September 6, 1978 Memorandum from Edward E. Reich, Director of Stationary Source Enforcement titled "PSD Requirements." The presumptive shutdown standard in this memorandum has been used as the foundation of EPA policy as recently as the September 7, 2001 letter from Douglas E. Hardesty of EPA Region 10 to Jerald W. Holmes of the Colville Tribal Enterprise Corporation regarding the Startup of Quality Veneer & Lumber Facility. EPA's September 6, 1987 policy states:

"A source which had been shut down would be a new source for PSD purposes if the shutdown was permanent. Conversely, it would not be a new source if the shutdown was not permanent. Whether a shutdown was permanent depends upon the intention of the owner or operator at the time of the shutdown as determined from all the facts and circumstances, including the cause of the shutdown and the handling of the shutdown by the State. **A shutdown lasting for two years or more, or resulting in removal of the source from the emissions inventory of the State, should be presumed permanent.** The owner or operator proposing to reopen the source would have the burden of showing that the shutdown was not permanent and overcoming the presumption that it was."
2. NIPSCO's December 5, 2001 press release is titled "NIPSCO announces shutdown of Dean H. Mitchell Generating Station." The press release further characterized the plans to "indefinitely shut down its Dean H. Mitchell Generating Station.... This decision is based onand the significant cost required to maintain the aging facility."
3. The substantial investment required to make the facility operable (estimated to be at least \$35,000,000 without environmental considerations) along with the nature of the investments (i.e. Unit 4 economizer replacement, Unit 6 Primary Superheat Replacement, Units 6 & 11 Precipitator replacements) do not appear to fall within the "routine maintenance repair and replacement exclusion" as that exclusion is interpreted by the United States District Court, Southern District of Indiana in its June 18, 2007 "Order on Motions for Partial Summary Judgment Regarding the Application of the Routine Maintenance Repair and Replacement Exclusion at Beckjord, Cayuga, Gallagher, Gibson, and Miami Fort Plants."² That decision evaluated a number of projects for: nature and extent, purpose, frequency, and cost. For each project evaluated, the court determined that projects which appear to be similar in scope to the proposed work to restart the Mitchell facility were not covered by the routine maintenance repair and replacement exclusion. In addition, the program of testing and replacing boiler tubes with limited wall thickness outlined in the Guernsey report may also exceed the scope of the routine maintenance repair and replacement exclusion.
4. Since the facility has not operated for the past 5 years, its past actual emissions are zero, so if the restarted facility emits more than 15 tons of PM₁₀, 40 tons of VOC, NO_x, or SO₂, 100 tons of CO, 0.6 tons of lead, or 200 pounds of mercury the restart is a major modification because it will cause a significant emissions increase and it is therefore subject to the new source review requirements.

Lake County Indiana is currently designated as a nonattainment area for Ozone and PM_{2.5}. Therefore, the facility will need to incorporate "Lowest Achievable Emission Rate" technology

² U. S. v. Cinergy Corp., United States District Court, Southern District Indiana, Case 1:99-cv-01693-LJM-JMS (Order issued by Judge Larry J. McKinney, June 18, 2007).

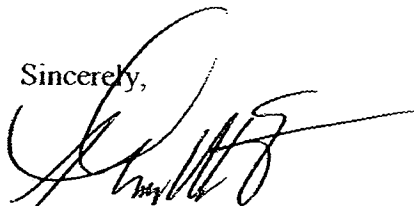
and obtain emissions offsets from existing sources for VOC, NO_x, and PM₁₀. The facility will need to install Best Available Control Technology for SO₂ and possibly mercury and lead.

In addition, the source will need to meet its obligations under Indiana's Clean Air Interstate Rule which limits NO_x and SO₂ and the Clean Air Mercury Rule which limits mercury.

If you would like to proceed in accordance with this letter, IDEM is required (and is able to) issue the appropriate NSR permit within 270 days of receipt of a complete application which includes acceptable LAER and BACT emission control proposals, identification of the emission offsets obtained for the project, air quality modeling for the PSD pollutants and all other required information.

If you have any questions about this letter, please contact me at (317) 232-8611.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Easterly', with a long horizontal flourish extending to the right.

Thomas W. Easterly
Commissioner