

US EPA ARCHIVE DOCUMENT

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Mr. Craig Dufficy  
US Environmental Protection Agency (5306P)  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Re: **Response of Northern Indiana Public Service Company, D. H. Mitchell Generating Station to U.S. EPA Request for Information under Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act**

Dear Mr. Dufficy:

By this letter, the Northern Indiana Public Service Company ("NIPSCO") responds to the United States Environmental Protection Agency's ("U.S. EPA's") Request for Information under Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act ("Requests") regarding the D.H. Mitchell Generating Station ("DHMGS"). The Requests were provided as an enclosure to a letter from U.S. EPA that was received by NIPSCO on August 27, 2010. By agreement of the parties, NIPSCO was afforded 25 business days to respond to the Requests from the date of its receipt of said letter.

Although NIPSCO has made a diligent and good faith effort to respond fully and completely to the Requests, NIPSCO nonetheless respectfully sets forth the general objections stated on the attached Exhibit A to preserve its rights. Subject to, and without waiving such general objections, NIPSCO responds as stated below to each of the 10 numbered items of the Requests based upon the information available to it and reasonably ascertainable within the time frame allotted by U.S. EPA.

**U.S. EPA Request 1:** *Relative to the National Inventory of Dams criteria for High, Significant, Low, or Less than Low, please provide the potential hazard rating for each management unit and indicate who established the rating, what the basis of the rating is, and what federal or state agency regulates the unit(s). If the unit(s) does not have a rating, please note that fact.*

**NIPSCO Response to U.S. EPA Request 1:** The DHMGS does not have any units which receive liquid-borne material nor does it include any former units currently believed to contain free liquids other than temporarily ponded rainwater. Accordingly, NIPSCO believes the DHMGS has no units subject to the Requests. NIPSCO notes that the DHMGS has not been operated for coal-based electricity generation since 2002.

Although it does not believe there to be any units at the DHMGS subject to the Requests, NIPSCO notes that, when the DHMGS operated to generate coal-based electricity prior to the cessation of

those operations in 2002, the DHMGS utilized 6 former ponds which then received materials. While NIPSCO does not believe those former ponds to be subject to the Requests, NIPSCO mentions them here (and elsewhere below) in an abundance of caution and in a good faith effort to error (if at all) on the side of being overly responsive. To NIPSCO's knowledge, none of those former ponds at the DHMGS have been rated under National Inventory of Dams criteria. Moreover, to NIPSCO's knowledge, none of the those former ponds at the DHMGS are large enough to have been subject to the National Inventory of Dams criteria or those of Indiana pertaining to the regulation of dams.

**U.S. EPA Request 2: What year was each management unit commissioned and expanded?**

**NIPSCO Response To U.S. EPA Request 2:** As explained within NIPSCO's response to U.S. EPA Request 1, the DHMGS is not believed to contain any units subject to the Requests. The 6 former ponds nonetheless referenced within NIPSCO's response to U.S. EPA Request 1 and the years in which each were initially in service are: Primary 1 (1956), Primary 2 (1956), Primary 3 (1969), Primary 4 (1981), Secondary 1 (1956) and Secondary 2 (1956). None of these former ponds were subsequently expanded.

**U.S. EPA Request 3: What materials are temporarily or permanently contained in the unit? Use the following categories to respond to this question: (1) fly ash; (2) bottom ash; (3) boiler slag; (4) flue gas emission control residuals; (5) other. If the management unit contains more than one type of material, please identify all that apply. Also, if you identify "other", please specify the other types of materials that are temporarily or permanently contained in the unit(s).**

**NIPSCO Response to U.S. EPA Request 3:** As explained within NIPSCO's response to U.S. EPA Request 1, the DHMGS does not contain any units subject to the Requests. Nonetheless, in an abundance of caution and good faith effort to error (if at all) on the side of being overly responsive, NIPSCO states below the types of materials known to have previously been received by each of the former ponds not subject to the Requests.

Primary 1- bottom ash, fly ash

Primary 2- bottom ash, fly ash

Primary 3- bottom ash, fly ash

Primary 4- bottom ash, fly ash

Secondary 1- bottom ash, fly ash

Secondary 2- bottom ash, fly ash

NIPSCO has confirmed that minor quantities of materials remain in each of the above-listed former ponds and intends to remove the same within following two calendar quarters.

**U.S. EPA Request 4: Was the management unit(s) designed by a professional engineer? Is or was the construction of the waste management unit(s) under the supervision of a professional engineer? Is inspection and monitoring of the safety of the waste management unit(s) under the supervision of the Professional Engineer?**

**NIPSCO Response to U.S. EPA Request 4:** As explained within NIPSCO's response to U.S. EPA Request 1, the DHMGS is not believed to contain any units subject to the Requests. The design and construction of the 6 former ponds believed to not be subject to the Requests referenced within NIPSCO's response to U.S. EPA Request 1 was carried out by qualified contractors working under the supervision of Professional Engineers. NIPSCO currently conducts visual inspections of the former ponds under the supervision of a Professional Engineer at least biannually. A schedule for further inspections is currently being evaluated.

**U.S. EPA Request 5:** *When did the company last assess or evaluate the safety (i.e. structural integrity) of the management unit(s)? Briefly describe the credentials of those conducting the structural integrity assessments/evaluations. Identify actions taken or planned by facility personnel as a result of these assessments or evaluations. If corrective actions were taken, briefly describe the credentials of those performing the corrective actions, whether they were company employees or contractors. If the company plans an assessment or evaluation in the future, when is it expected to occur?*

**NIPSCO Response to U.S. EPA Request 5:** As explained within NIPSCO's response to U.S. EPA Request 1, the DHMGS is not believed to contain any units subject to the Requests. The former ponds believed to not be subject to the Requests but described above were visually inspected by a Professional Engineer and a senior environmental manager on September 3, 2010. As mentioned above, NIPSCO intends to conduct removal activities with respect those former ponds. Such work will be performed by qualified contractors. A schedule for further inspections is currently being evaluated.

**U.S. EPA Request 6:** *When did a State or Federal regulatory official last inspect or evaluate the safety (structural integrity) of the management unit(s)? If you are aware of a planned State or Federal inspection or evaluation in the future, when is it expected to occur? Please identify the Federal or State regulatory agency or department which conducted or is planning the inspection or evaluation. Please provide a copy of the most recent official inspection report or evaluation.*

**NIPSCO Response to U.S. EPA Request 6:** As explained within NIPSCO's response to U.S. EPA Request 1, the DHMGS is not believed to contain any units subject to the Requests. NIPSCO is not aware of any past or planned State or Federal regulatory inspection or evaluation regarding the safety or the structural integrity of the former ponds believed to not be subject to the Requests but nonetheless described above.

**U.S. EPA Request 7:** *Have assessments or evaluations, or inspections conducted by State or Federal regulatory officials conducted within the past year uncovered a safety issue(s) with the management unit(s), and, if so, describe the actions that have been or are being taken to deal with the issue or issues. Please provide any documentation that you have for these actions.*

**NIPSCO Response to U.S. EPA Request 7:** As explained within NIPSCO's response to U.S. EPA Request 1, the DHMGS is not believed to contain any units subject to the Requests. NIPSCO is not aware of any State or Federal regulatory inspection or evaluation regarding the safety of the above-described former ponds believed to not be subject to the Requests within the past year.

**U.S. EPA Request 8:** *What is the surface area (acres) and total storage capacity of each of the management units? What is the volume of material currently stored in each of the management units? Please provide the date that the volume measurement was taken. Please provide the maximum height for the management unit(s). The basis for determining maximum height is explained later in this enclosure.*

**NIPSCO Response to U.S. EPA Request 8:** As explained within NIPSCO's response to U.S. EPA Request 1, the DHMGS is not believed to contain any units subject to the Requests. Nonetheless, again in a good faith effort and abundance of caution, NIPSCO is pleased to provide the below-stated estimated information regarding the former ponds described above. The listed operational capacities were estimated in August 2010 and represent sums slightly less than each former pond's theoretical maximum capacity. The stated current material storage volumes were also estimated in August 2010.

Available drawings reviewed by NIPSCO to assess the maximum heights of the 4 primary ponds listed below did not clearly or reasonably indicate maximum heights. NIPSCO has thus estimated the maximum heights of each of those former ponds to be between 9 and 12 feet above existing grade. The two secondary ponds listed below are known to be incised and, accordingly, do not have a listed maximum height.

Primary 1- 1.4 acres, capacity 36,000 CY, currently storing <100 CY

Primary 2- 1.7 acres, capacity 50,000 CY, currently storing 5,000 CY

Primary 3- 1.9 acres, capacity 50,200 CY, currently storing 5,000 CY

Primary 4- 2.3 acres, capacity 55,000 CY, currently storing 10,000 CY

Secondary 1- 0.52 acres, capacity 4200 CY, currently storing <50 CY

Secondary 2- 0.48 acres, capacity 3900 CY, currently storing <50 CY

**U.S. EPA Request 9:** *Please provide a brief history of known spills or unpermitted releases from the unit within the last ten years, whether or not these were reported to the State or Federal regulatory agencies. For purposes of this question, please include only releases to surface water or to the land (do not include releases to groundwater).*

**NIPSCO Response to U.S. EPA Request 9:** As explained within NIPSCO's response to U.S. EPA Request 1, the DHMGS is not believed to contain any units subject to the Requests. Nonetheless, NIPSCO has provided (above) responsive information regarding former ponds previously used at the DHMGS in an abundance of caution and good faith effort to error (if at all) on the side of being overly responsive to the Requests. No spills or unpermitted releases are known to have occurred from those former ponds within the last ten years.

**U.S. EPA Request 10:** *Please identify all current legal owner(s) and operator(s) at the facility.*

**NIPSCO Response to U.S. EPA Request 10:** NIPSCO currently owns and operates the DHMGS.

\* \* \* \*

I certify that the information contained in this response to EPA's request for information and the accompanying documents is true, accurate, and complete. As to the identified portions of this response for which I cannot personally verify their accuracy, I certify under penalty of law that this response and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.



Mr. Gregory Costakis  
Manager  
Station Chemistry & Environmental Compliance



## Exhibit A

### **General Objections**

General Objection No. 1: NIPSCO objects to the Requests to the extent that they exceed the authority granted to the U.S. EPA under Section 104(e) of CERCLA. NIPSCO specifically objects to the Requests to the extent that U.S. EPA has not presented “a reasonable basis to believe that there may be a release or threat of release of a hazardous substance or pollutant or contaminant” at the DHMGS. *See* 42 USC § 9604(e)(1).

General Objection No. 2: NIPSCO objects to the introductory paragraph (i.e. the first, unnumbered paragraph) (“Introductory Paragraph”) of the Requests on the grounds that the paragraph is ambiguous, vague, overbroad, or too indefinite to be capable of reasonable interpretation. For the purposes of responding to the Requests, NIPSCO assumes that detention basins at the DHMGS that receive *de minimus* amounts of coal dust through fugitive dust emissions are outside the scope of the Requests.

General Objection No. 3: NIPSCO objects to the terms “management unit” and “unit” as ambiguous, vague, overbroad, or too indefinite to be capable of reasonable interpretation. By “management unit” and “unit,” NIPSCO assumes, for the purpose of this response, that U.S. EPA intends the terms to refer to the basins, ponds, impoundments and disposal facilities which receive or store liquid-borne coal combustion byproducts or residuals except incidentally in *de minimus* quantities.

General Objection No. 4: NIPSCO objects to the term “material” as ambiguous, vague, overbroad, or too indefinite to be capable of reasonable interpretation. By “material,” NIPSCO assumes, for the purposes of this response, that U.S. EPA intends the term to refer to liquid-borne coal combustion byproducts and residuals. NIPSCO additionally objects to other aspects of the Requests which also ambiguous, vague, overbroad, or too indefinite to be capable of reasonable interpretation.

General Objection No. 5: NIPSCO objects to the Requests to the extent they purport to require NIPSCO to divulge information protected by the attorney-client privilege, the work product privilege, or any other privilege recognized under applicable law.

General Objection No. 6: NIPSCO objects to the Requests to the extent they call for NIPSCO to make legal conclusions concerning any statute or regulation. NIPSCO also objects to the Requests to the extent they require NIPSCO to (a) conduct inspections, assessments, calculations or other activities not otherwise required by an applicable law or (b) develop or create documents that do not exist or that NIPSCO is not otherwise required to create or maintain by applicable law.

General Objection No. 7: NIPSCO objects to the Requests to the extent they seek information previously provided to U.S. EPA, already available to U.S. EPA, or possessed by another governmental agency. By way of example and not limitation, this objection includes information regarding prior state or federal governmental inspections. Requests for such information are duplicative and unreasonably burdensome. NIPSCO also objects to other aspects of the Requests to the extent they seek information which is similarly unreasonably burdensome to obtain or produce.

General Objection No. 8: NIPSCO objects to the Requests to the extent that, through that Request, U.S. EPA seeks information not relevant to the purpose stated in U.S. EPA's letter dated August 27, 2010 or CERCLA Section 104(e).

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