

From: [RENO, JENNIFER](#)
To: [BATES, DONNA](#)
Cc: [Freeman, Lori](#)
Subject: FW: Follow Up to Duke Energy's Response to NOV and Opportunity to Confer | Gallagher Station (EPA ID No.: IND000807057)
Date: Thursday, June 27, 2024 1:28:46 PM
Attachments: [image001.png](#)
[Follow Up to Duke Energy Response to NOV and Opportunity to Confer Gallagher Station \(EPA ID No. IND000807057\).pdf](#)

Hi Donna,

Please scan the above document and below email into VFC under Duke Energy-Gallagher Station, New Albany, Floyd County, EPA ID No. IND000807057.

Thanks!

From: Bednarcik, Jessica L <Jessica.Bednarcik@duke-energy.com>
Sent: Thursday, June 27, 2024 12:14 PM
To: Brown, Todd <brown.todd@epa.gov>; r5lecab@epa.gov
Cc: RENO, JENNIFER <JRENO@idem.IN.gov>; Freeman, Lori <lfreeman@idem.IN.gov>; Kafka, Michael T. <Michael.Kafka@duke-energy.com>
Subject: Follow Up to Duke Energy's Response to NOV and Opportunity to Confer | Gallagher Station (EPA ID No.: IND000807057)

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

Dear Mr. Brown,

Please find attached a letter following up on Duke Energy's April 23, 2024, response to EPA Region 5's Notice of Violation and Opportunity to Confer, Duke Energy Gallagher Station (EPA I.D.: IND000807057). Please contact me if you have any questions regarding this letter or Duke Energy's April 23 response letter.

Best regards,
Jessica Bednarcik

Jessica Bednarcik, PE, PMP

SVP, Enterprise Safety and Generation Services (ESGS)
525 S. Tryon Street, Charlotte, NC 28202 / Mail Code: DEP36B
Office: (704) 382-8768 / Mobile: (704) 907-8628





Jessica L. Bednarcik
Senior Vice President
Enterprise Safety & Generation Services
525 South Tryon Street, DEP-36B
Charlotte, NC 28202
o: 704.382.8768
c: 704.907.8628
jessica.bednarcik@duke-energy.com

SENT VIA ELECTRONIC MAIL

June 27, 2024

brown.todd@epa.gov
r5lecab@epa.gov

Re: Follow Up to Response to Notice of Violation and Opportunity to Confer | Duke Energy Gallagher Station (EPA I.D.: IND000807057)

Dear Mr. Brown:

I am following up on Duke Energy Indiana, LLC's ("Duke Energy") letter of April 23, 2024, responding to the U.S. Environmental Protection Agency's ("EPA") letter dated March 25, 2024, titled Notice of Violation and Opportunity to Confer ("NOV") | Duke Energy Gallagher Station (EPA I.D.: ND000807057) ("April NOV Response"). In its April NOV Response, Duke Energy provided responses to each of the 13 violations asserted by EPA along with supporting documentation and documented specific actions Duke Energy had taken to address certain of EPA's assertions in the NOV. Although Duke Energy has not yet received a reply from EPA, without prejudicing the interpretations and positions espoused in its April NOV Response, Duke Energy sends this follow-up letter to notify EPA of the additional actions Duke Energy has subsequently taken in response to the NOV.¹

Follow-up Responses to Notice of Violation and Opportunity to Confer

1. Although the safety factor assessments posted on Duke Energy's CCR website in accordance with subparagraph (f)(12) of section 257.107 are fully substantiated by engineering calculations demonstrating their veracity, and nothing in the regulatory text or preamble requires that the engineering calculations supporting the 2021 assessment be posted, Duke Energy has placed the full set of engineering drawings in the operating record and will post them on its CCR Rule Compliance Data & Information website ("CCR Website") within 30 days thereof.
2. Although Duke Energy's fugitive dust control plan meets the requirements of paragraph (b) of section 257.80 by setting forth with specificity the measures and equipment that will be used to control fugitive dust and detailing each of the techniques determined by the facility to effectively mitigate fugitive dust, Duke Energy has revised the plan in a manner intended to comport with EPA's statements in the NOV regarding this issue, has placed it in the operating record, and will post it on the company's CCR Website within 30 days thereof.
3. With respect to Gallagher Station's CCR fugitive dust control reports for the years 2016 through 2023, although information regarding applicable and appropriate fugitive dust control measures was available to the public throughout this period by virtue of the fact that the facility's fugitive dust control plan contains a robust description of the actions the facility consistently undertakes to control fugitive dust, Duke Energy has revised the 2023 report in a manner intended to comport with EPA's statements in the NOV regarding this issue, has

¹ With this April NOV Response, Duke Energy neither concedes its stated positions on what the CCR rule requires nor waives its due process rights.

placed it in the operating record, and will post it on the company's CCR Website within 30 days thereof. In addition, Duke Energy will utilize this new format in all CCR fugitive dust control reports in 2024 and beyond.

4. Although all the facility's annual groundwater monitoring and corrective action reports include complete datasets and lab reports by sampling event and well, as well as summary tables highlighting the appendix IV constituents exceeding any groundwater protection standards and the level of the exceedances, in order to comport with EPA's statements in the NOV regarding this issue, for all background and downgradient wells providing data relevant to CCR rule compliance, going forward, Duke Energy will post a notice for each sampling event in which an exceedance of groundwater protection standards is detected.
5. As explained in the April NOV Response, as set forth in condition D21 of IDEM's ash pond closure permit, until such time IDEM approves the modified closure plan, which will allow for construction of the proposed containment wall around the North Ash Pond, Primary Pond, and Primary Pond Ash Fill, Duke Energy is permitted neither to proceed with closure of the basins nor select a final remedy for the site (including Ash Pond A), which will be site-wide in light of the small size and close proximity of the CCR units at the facility. Importantly, however, Duke Energy has been proceeding with interim remedies, and in accordance with paragraph (a) of section 257.97, has been posting semi-annual reports to the company's CCR website "describing the progress in selecting and designing the remedy," as well as the progress made during any interim remedial activities. In compliance with the instructions of our state environmental regulator, Duke Energy continues to diligently move forward with the actions required to secure approval of its proposed closure method and to select and implement a remedy, including (i) placing a copy of the modified closure plan application along with all supporting materials in the county library and (ii) scheduling a public meeting, which will satisfy not only the state's requirements but also 40 C.F.R. § 257.96(e). See letter from IDEM titled "Completeness Review, Closure Plan and Post-Closure Plan Application, Gallagher Generating Station North Ash Pond and Primary Pond Ash Fill," to Duke Energy dated May 17, 2024, attached hereto as Attachment "A." At such time IDEM issues its final approval of the modified closure plan, Duke Energy will expeditiously advance closure of the units in a manner that is in compliance with both state and federal requirements and select a remedy.
6. Although nothing in the CCR rule requires a new notification each and every time a subsequent event would have triggered closure but for the occurrence of the event first giving rise to forced closure of the CCR unit, to comport with EPA's statements in the NOV regarding this issue, Duke Energy has placed in the operating record additional closure notifications for each of the identified units including a statement that the unit would also have had to close pursuant to other subsequent triggering events set forth in paragraphs (a) and/or (b) of 40 C.F.R. § 257.101, as applicable. These additional closure notifications will be posted on the company's CCR Website within 30 days of placement in the operating record.

Based on the foregoing actions, combined with the actions Duke Energy earlier took as set forth in its April NOV Response, we believe the issues identified by EPA in the NOV have been fully and finally resolved. However, as stated in our April NOV Response, Duke Energy stands ready to meet with EPA and answer any outstanding questions the agency may have after it has had the opportunity to review this follow-up letter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Bednarcik', written over the word 'Sincerely,'.

Jessica Bednarcik
SVP, Enterprise Safety and Generation Services

cc: Jenifer Reno, IDEM (jreno@idem.in.gov)
Lori Freeman, IDEM (lfreeman@idem.in.gov)
Michael Kafka, Duke Energy (michael.kafka@duke-energy.com)



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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Eric J. Holcomb
Governor

Brian C. Rockensuess
Commissioner

May 17, 2024

VIA EMAIL Rebecca.Warren@duke-energy.com

Duke Energy Indiana, LLC
Attn: Rebecca Warren
Environmental Specialist
1000 East Main Street
Plainfield, Indiana 46168

Re: Completeness Review
Closure Plan and Post-Closure Plan Application
Gallagher Generating Station North Ash Pond and Primary Pond Ash Fill
Floyd County
SW Program ID 22-UP-01

Dear Ms. Warren:

The completeness review of the closure and post-closure plan application we received November 11, 2022 (VFC #[83442840](#)) and additional information received November 17, 2023 (VFC #[83567384](#)) for the Gallagher Generating Station North Ash Pond and Primary Pond Ash Fill coal combustion residual impoundments located at 30 Jackson Street in New Albany has been completed. We have determined your closure and post-closure plan application is complete and will now proceed to technical review.

This letter concerns the results of a completeness check on the closure and post-closure plan only. It shall not be construed to imply that any technical items are adequate or inadequate, or that the plan or facility is in any other way acceptable or unacceptable.

This determination of completeness triggers time frames for completing the public process requirements of 329 IAC 10-12-1 (Rule 12). A copy of Rule 12 is enclosed for your reference. Review this rule immediately and act accordingly as failure to comply may result in the denial of your plan. Rule 12 includes some requirements for which you are responsible and others for which IDEM is responsible.

Please note the next requirement to meet is to place a copy of the complete plan and supplemental information we requested at a library in Floyd County within five days of receipt of this letter (329 IAC 10-12-1(e)).



Visit on.IN.gov/survey or scan the QR code to provide feedback.

We appreciate your input!



At your earliest convenience please contact Lindsey Hummel at (317) 232-7833 or LHummel@idem.IN.gov to coordinate the completion of the public process requirements.

Sincerely,



Thomas Kreke, Chief
Solid Waste Permits Section
Office of Land Quality

Enclosure: Notice of Receipt
329 IAC 10-12-1

cc with enclosure: Floyd County Health Department
Floyd County Commissioners
Floyd County Solid Waste Management District
Director, Southeast IDEM Regional Office
Mayor, City of New Albany
Mr. Owen Schwartz, Duke Energy Indiana, L.L.C.
Owen.Schwartz@duke-energy.com

NOTICE OF RECEIPT OF COMPLETE APPLICATION

On November 11, 2022, the Indiana Department of Environmental Management (IDEM) received a closure/post-closure plan from Duke Energy Indiana, LLC at 30 Jackson Street, New Albany, Floyd County. The closure/post-closure plan and additional information received November 17, 2023 has been determined to be complete. The closure/post-closure plan is available online via IDEM's Virtual File Cabinet (VFC). Please go to: <http://vfc.idem.in.gov/>. You can search there for documents using a variety of criteria. A copy of the closure/post-closure plan may also be available for review at:

New Albany - Floyd County Public Library, 180 West Spring Street, New Albany, 47150

If you need assistance accessing the application, please contact the Solid Waste Permits Section at (317) 232-4473 or toll free within Indiana at (800) 451-6027, or send an e-mail to OLQ@idem.IN.gov with the permit information in the subject line.

You may comment during the 30-day public comment period initiated as follows:

1. If you received this notice by U.S. mail, you should submit your comments within 33 days of the notice postmark date (30 days from the date IDEM mailed the notice, plus 3 days because the notice was sent via U.S. mail).
2. If you received this notice by email, you should submit your comments within 30 days of the date IDEM sent the email.
3. If an IDEM representative personally gave ("served") you this notice, you should submit your comments within 30 days of the date you were given the notice.

You may request that IDEM hold a public hearing. If a public hearing is held, IDEM will make a separate announcement of the date, time, and location of the hearing. Comments and supporting documentation, or a request for a public hearing should be sent in writing to IDEM at the address below. Email is preferred. If you do not want to comment at this time but would like to receive notice of future action related to this permit application, please contact IDEM at the address below. Please refer to SW Program ID 22-UP-01 in all correspondence. Comments should be sent to:

Lindsey Hummel, IDEM, Office of Land Quality, 100 North Senate Ave., IGCN 1154, Indianapolis, IN 46204-2251

(800) 451-6027

Or dial directly: (317) 232-7833

Fax: (317) 232-3403 attn: Lindsey Hummel

E-mail: LHummel@idem.IN.gov

For additional information please see the application.

Following the end of the public comment period, IDEM will issue a Notice of Decision (NOD) stating whether the approval has been issued or denied. If comments are received during the public notice period, the final decision will include a document that summarizes the comments and IDEM's response to those comments. If you have submitted comments or have asked to be added to the mailing list, you will receive the NOD. The notice will provide details on how you may appeal IDEM's decision, if you disagree with that decision. The final decision will also be available online via the Virtual File Cabinet, at the address indicated above.

Rule 12. Actions for Permit and Renewal Permit Application

329 IAC 10-12-1 Public process for new solid waste land disposal facility permits; major permit modifications; minor permit modifications

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3; IC 13-20-1

Affected: IC 5-3-1-2; IC 5-3-1-6; IC 5-3-2; IC 13-15-3-3; IC 13-20; IC 36-9-30

Sec. 1. (a) A person submitting an application for one (1) of the following shall submit an affidavit as required by 329 IAC 10-11-2.5(a)(19) and shall make notice as required in subsection (b):

- (1) A new solid waste land disposal facility permit.**
 - (2) A major modification for a lateral expansion permit or a vertical expansion permit.**
 - (3) A minor modification permit for an acreage expansion that would not:**
 - (A) increase the facility's permitted capacity to dispose of solid waste by the lesser of:**
 - (i) more than ten percent (10%); or**
 - (ii) five hundred thousand (500,000) cubic yards; or**
 - (B) in an acreage expansion, increase the area within the permitted solid waste boundary by more than one (1) acre.**
- (b) The notice required by subsection (a) must include the following:**
- (1) Not more than ten (10) working days after submitting an application, an applicant shall make a reasonable effort to notify the owners of record of adjoining land to the solid waste land disposal facility or proposed solid waste land disposal facility.**
 - (2) The notice provided by the applicant in this subsection must:**
 - (A) be in writing;**
 - (B) include the date on which the application for the permit was submitted to the department; and**
 - (C) include a brief description of the subject of the application.**
- (c) A public meeting must be conducted by the applicant submitting an application for the following:**
- (1) A new solid waste land disposal facility permit.**
 - (2) A major modification to a solid waste land disposal facility permit.**
 - (d) The applicant shall complete the following for the public meeting as required in subsection (c):**
 - (1) Within sixty (60) days after the date the applicant received notification from the commissioner that the application has been deemed complete, conduct a public meeting in the county where the solid waste land disposal facility or major modification designated in the application will be located.**
 - (2) Publish notice of the public meeting at least ten (10) days prior to the meeting in a newspaper of general circulation in the county where the solid waste land disposal facility or major modification will be located. The notice must:**
 - (A) be at least two (2) columns wide by five (5) inches long;**
 - (B) not be placed in the part of the newspaper where the legal notices and classified advertisements appear;**
 - (C) include the time and date of the public meeting;**
 - (D) state the exact place of the public meeting; and**
 - (E) have every effort made by the applicant and the department to coordinate the publication date of the notice of the public meeting held by the applicant as required by this subdivision with the publication date of the notice of public hearing held**

by the department as required in subsection (i)(1).

(3) Conduct the public meeting as follows:

(A) Present a brief description of the location and operation of the proposed solid waste land disposal facility or major modification.

(B) Indicate where copies of the application have been filed.

(C) If the applicant proposes a design alternative, the applicant must briefly describe the alternative design.

(D) State that the department will accept written comments and questions from the public on the permit application and announce the address of the department and name of the person accepting comments on behalf of the department.

(E) Provide fact sheets on the proposed solid waste land disposal facility or major modification that have been prepared by the department for the public. A department representative shall attend the meeting.

(F) Offer the opportunity for public comments and questions.

(e) Within five (5) days after the date the applicant received notification from the commissioner that the application has been deemed complete by the department, the applicant shall place a copy of the complete application and any additional information that the department requests at a library in the county where the solid waste land disposal facility or major modification will be located.

(f) The applicant shall pay the costs of complying with subsections (c) through (e).

(g) Failure of the applicant to comply with subsections (c) through (f) may result in the denial of the application by the department.

(h) Public notice must be made by the department as required by IC 5-3-1-2(i) after the date the applicant received notification from the commissioner that the permit application is deemed completed. The public notice must meet the following requirements:

(1) Indicate where copies of the application are available for public review.

(2) State that the department will accept comments from the public on the application for at least thirty (30) days.

(3) Offer the opportunity for a public hearing on the application.

(4) The department shall publish the notice in accordance with IC 5-3-1-6.

(5) If the facility boundary of the proposed solid waste land disposal facility or major modification, if also a lateral expansion, will be within one (1) mile of the county boundary, the department will publish the notice in accordance with IC 5-3-1-6 in the adjacent county.

(6) In addition to the requirements in IC 5-3-1-6, the department shall publish the notice in two (2) newspapers in the county where the solid waste land disposal facility or major modification is located, if there are two (2) newspapers of general circulation in the county.

(i) The department shall hold a public hearing if required by IC 13-15-3-3. The following apply to a public hearing:

(1) The department shall publish notice of the hearing as required in IC 5-3-1 and IC 5-3-2 in newspapers of general circulation in the county where the solid waste land disposal facility (if a major modification) or proposed solid waste land disposal facility is located.

(2) During a hearing, a person may testify within the time provided or submit written comments, or both. The department will consider testimony that is relevant to the requirements of IC 13 and this article.

(Solid Waste Management Board; 329 IAC 10-12-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1812; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2756; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3792; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1804, eff Apr 1, 2004)



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Eric J. Holcomb
Governor

Brian C. Rockensuess
Commissioner

May 17, 2024

VIA EMAIL

New Albany - Floyd County Public Library
180 West Spring Street
New Albany, Indiana 47150

Re: Documents for Public View

Dear Sir/Madam:

A copy of the coal combustion residual closure/post-closure plan for the Gallagher Generating Station Ash Pond System has been or will soon be delivered to your library by a representative of Duke Energy Indiana, LLC.

You will find enclosed a copy of the public notice announcing the receipt of this closure/post-closure plan and indicating the document's availability at your library. Please make these documents available to the public for the next 60 days, because concerned citizens who wish to comment on this application will need to review it. The public notice will appear in a local newspaper soon.

Please date and sign the enclosed verification of receipt form and email it to me at LHummel@idem.IN.gov.

Thank you very much for your cooperation and if you have any questions regarding this matter, please call me at (317) 232-7833.

Sincerely,

Lindsey Hummel
Solid Waste Permits Section
Office of Land Quality

Enclosures: Public Notice
Verification of Receipt Form

cc with enclosure: Floyd County Health Department
Floyd County Commissioners
Floyd County Solid Waste Management District
Director, IDEM Southeast Regional Office
Mayor, City of New Albany

From: [Poe, Diane L](#)
To: emccorkle@nafclibrary.org
Cc: [Hummel, Lindsey](#)
Subject: Gallagher Generating Station Ash Pond Closure Plan Permit Application Receipt
Date: Friday, May 17, 2024 10:28:00 AM
Attachments: [051724 22-UP-01 Completeness Receipt Library Ltr.pdf](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Attached is correspondence regarding the above property in Floyd County. A hardcopy will **not** be sent to the addressee.

If you have any questions, please contact Lindsey Hummel, permit manager. Her information is in the last paragraph of page 1 above her signature block.



Indiana Department of
Environmental Management

Diane Poe
OLQ Permits Branch Administrative Assistant
• (317) 232-4473 • dpoe@idem.IN.gov

Protecting Hoosiers and Our Environment



| www.idem.IN.gov

From: [Poe, Diane L](#)
To: ["legals@newsandtribune.com"](mailto:legals@newsandtribune.com)
Bcc: [OAKES, GLYNDA](#); [Hummel, Lindsey](#)
Subject: Gallagher Generating Station Ash Pond Closure Plan Permit Application Receipt
Date: Friday, May 17, 2024 10:23:00 AM
Attachments: [051724 22-UP-01 NOR only media.docx](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

To Whom It May Concern:

Please insert for one time only the enclosed legal notice, in The News and Tribune on Wednesday, May 22, 2024 (or earliest possible date).

Starting January 2019, we are asking all newspapers to provide us an estimated invoice prior to publishing this notice. You may email it to my attention. Please include **Account Number 00495** on all billing correspondence.

As we understand it, you will provide us with a notarized form (publishers claim) and clippings showing the date on which the advertisement appeared in your paper and on your website. This information should be mailed or emailed to Diane Poe at the following address:

OLQPermits@idem.in.gov or

Indiana Department of Environmental Management
Office of Land Quality
Permits Branch
IGCN Room 1101
100 North Senate Avenue
Indianapolis, Indiana 46204-2251

Please contact Diane Poe at (317) 232-4473 or dpoe@idem.IN.gov or Lindsey Hummel at (317) 232-7833 or LHummel@idem.in.gov if you have any questions. Thank you for your cooperation.



Indiana Department of
Environmental Management

Diane Poe
OLQ Permits Branch Administrative Assistant
• (317) 232-4473 • dpoe@idem.IN.gov

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