

**BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF: )  
 )  
The Clean Air Act Title V )  
Operating Permit Renewal ) PERMIT NO. T173-46378-00007  
For the Warrick Newco LLC )  
Primary Aluminum Reduction )  
Facility in Newburgh, Indiana )

**PETITION FOR EPA TO OBJECT TO THE TITLE V OPERATING PERMIT  
RENEWAL FOR THE WARRICK NEWCO LLC, PRIMARY ALUMINUM  
PRODUCTION FACILITY IN NEWBURGH, INDIANA**

Pursuant to section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), the Sierra Club (“Petitioner”) hereby petitions the Administrator of the United States Environmental Protection Agency (“EPA”) to object to the Title V Operating Permit Number T173-46378-00007<sup>1</sup> for the Warrick Newco LLC primary aluminum reduction facility known as the “Warrick Newco Plant,” located in Newburgh, Warrick County, Indiana. Petitioner requests that EPA object to the Title V renewal permit for the Warrick Newco Plant because the permit, as issued by IDEM, fails to ensure that any restart of Potlines number 2 or 6 will occur in compliance with all applicable requirements.

In Part 70 Permit Number T173-46378-00007, the Indiana Department of Environmental Management (“IDEM”) proposed issuance of a renewal of the Title V operating permit for the Warrick Newco Plant with a five-year term and an expiration date of May 14, 2029. This proposed permit was issued for public comment by IDEM on October 24, 2023. Public comments were submitted to IDEM on the draft Title V renewal permit on November 27, 2024 by the Environmental Integrity Project.<sup>2</sup>

IDEM submitted the proposed Part 70 Permit to EPA on April 25, 2024 and EPA’s 45-day comment period ended 15 days later on May 10, 2024.<sup>3</sup> This petition is being submitted within 60 days of the end of EPA’s 45-day review period, and thus this petition is timely.

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<sup>1</sup> A copy of this proposed permit is attached hereto as Exhibit 1 (see PDF pages 4 through 203 of Exhibit 1).

<sup>2</sup> A copy of these comments is attached hereto as Exhibit 2.

<sup>3</sup> A copy of IDEM’s Notice of the Part 70 Permit No. 173-46378-00007, Proposed to U.S. EPA Region 5 is attached hereto in Exhibit 1 (see PDF pages 1 through 3 of Exhibit 1).

## BACKGROUND

The Warrick Newco Plant is a primary aluminum production plant located in Newburgh, Indiana. The Plant is comprised of potlines that reduce alumina ore to elemental aluminum and supporting processes, including an anode bake furnace and a paste production facility. The Plant began operating in 1960, and much of the equipment for the Plant dates back decades.

In 2016, Alcoa, Warrick Newco LLC's parent company, shut down all Warrick Newco potlines. There were several news stories indicating that it was a permanent shutdown of the smelter. For example, a story in the March 24, 2016 Evansville Courier & Press read "End of an era: Alcoa Warrick smelter shuts down," and stated that "[a]luminum manufacturing has officially ceased at Alcoa Warrick Operations."<sup>4</sup> Alcoa itself stated in a January 7, 2016 press release that "Alcoa will permanently close its 269,000 metric ton Warrick Operations smelter in Evansville, Indiana by the end of the first quarter of 2016."<sup>5</sup> This announcement of permanent closure of the smelter made national news<sup>6</sup> as well as international news.<sup>7</sup> It is notable that Alcoa stated that it was "permanently" closing the Warrick smelter, rather than stating it would "idle" the smelter as Alcoa stated in a November 2015 press release regarding its Intalco and Wenatchee primary aluminum smelters in Washington State.<sup>8</sup>

Despite its statements about permanent closure and despite the laying off of staff (or staff that departed after accepting retirement or severance packages),<sup>9</sup> Alcoa restarted potlines #3, #4, and #5 of the Warrick aluminum smelter beginning in 2017. According to Alcoa's July 11, 2017 press release for the restart, the process to restart the three potlines would begin "immediately" and was expected to be completed in the second quarter of 2018.<sup>10</sup> Thus, the restart of the three potlines was projected to take 9-11 months to complete. Alcoa stated in its press release that two of the five smelting potlines (potlines #2 and #6) would be classified as "curtailed capacity and will remain idle." *Id.*

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<sup>4</sup> See "End of an era: Alcoa Warrick smelter shuts down," Evansville Courier & Press, Mar. 24, 2016, available at <https://www.courierpress.com/story/money/business/2016/03/24/end-of-an-era-alcoa-warrick-smelter-shuts-down/87127026/>.

<sup>5</sup> <https://news.alcoa.com/press-releases/press-release-details/2016/Alcoa-to-Close-Warrick-Smelter-and-Curtail-Remaining-Capacity-at-Pt.-Comfort-Refinery/default.aspx>.

<sup>6</sup> See, e.g., Alcoa is closing the largest aluminum smelter in the US, Business Insider, Jan. 8, 2016, available at <https://www.businessinsider.com/r-alcoa-plans-to-close-largest-us-aluminum-smelter-amid-tumbling-prices-2016-1>.

<sup>7</sup> See, e.g., Alcoa shuts Warrick aluminum smelter after 56 years of operation, Shanghai Metals Market, Mar. 29, 2016, available at <https://news.metal.com/newscontent/100088913/Alcoa-shuts-Warrick-aluminum-smelter-after-56-years-of-operation>.

<sup>8</sup> <https://news.alcoa.com/press-releases/press-release-details/2015/Alcoa-to-Curtail-Smelting-and-Refining-Capacity-to-Further-Drive-Upstream-Competitiveness/default.aspx>.

<sup>9</sup> As discussed in <https://www.courierpress.com/story/money/business/2016/03/24/end-of-an-era-alcoa-warrick-smelter-shuts-down/87127026/>.

<sup>10</sup> <https://news.alcoa.com/press-releases/press-release-details/2017/Alcoa-Corporation-Plans-Partial-Restart-of-Aluminum-Smelter-at-Warrick-Operations/default.aspx>.

Upon restarting potlines #3, #4, and #5, the smelter had several issues of noncompliance with emission limits at the potlines and anode bake furnace. Notably, an Agreed Order with the State of Indiana states that Warrick Newco determined that “inexperienced staff, caused by the 2016 smelter shutdown, [are the] cause of excess emissions due to longer open pot time, pot stability, pot lid damage, and general housekeeping issues.”<sup>11</sup> Alcoa ultimately curtailed potline #4 in July 2022 due to operational issues.<sup>12</sup>

Despite this background and restart issues, IDEM has listed the still shutdown potlines #2 and #6 as authorized to operate in the Warrick Title V operating permit. Further, IDEM has stated that the “restart of the Potlines does not require Warrick Newco LLC to get a prior re-approval from IDEM [Office of Air Quality (OAQ)] or that Warrick Newco LLC needs to submit a written operating plan to minimize emissions during potlines startup since they have never been removed from its Part 70 operating permit.”<sup>13</sup>

IDEM’s statements regarding Potlines #2 and #6 mean that the Part 70 operating permit fails to ensure compliance with the applicable requirements that would apply to the restart of either Potline #2 or Potline #6. Petitioner thus requests that EPA object to the Part 70 operating permit for the Warrick Newco Plant.

## PETITIONER

**Sierra Club** is a nonprofit corporation incorporated in California, with more than 650,000 members nationwide and 9,000 members in the state of Indiana, including members who reside in the area around Newburgh where Warrick Newco operates. Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of Earth; to practicing and promoting responsible use of the Earth’s resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club’s concerns encompass the exploration, enjoyment, and protection of air quality and surface waters in Indiana.

## STANDARD OF REVIEW

Under the Clean Air Act, “any person” may petition EPA to object to a proposed permit “within 60 days after the expiration of [EPA’s] 45-day review period.” 42 U.S.C. § 7661d(b)(2); *see also* 40 C.F.R. § 70.8. Each objection in the petition must have been “raised with reasonable specificity during the public comment period provided for in § 70.7(h) of this part, unless the

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<sup>11</sup> *See* Exhibit 3, June 21, 2023 Agreed Order, State of Indiana v. Warrick Newco LLC, Case Nos. 2022-28833-A, 2022-28988, & 2022-29108-A, Findings of Fact, ¶ 6.

<sup>12</sup> *See id.* ¶ 7; Alcoa Press Release, “Alcoa Announces Partial Curtailment at Warrick Smelter in Indiana,” July 1, 2022, <https://news.alcoa.com/press-releases/press-release-details/2022/Alcoa-Announces-Partial-Curtailment-at-Warrick-Smelter-in-Indiana/default.aspx>.

<sup>13</sup> *See* IDEM, Addendum to the Technical Support Document (ATSD) for a Part 70 Operating Permit Renewal, Warrick Newco, LLC, Response to EIP Comment 5, at p. 19 (see PDF page 221 of Exhibit 1).

petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.” 40 C.F.R. § 70.8(d). Any objection included in the petition “must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements [of 40 C.F.R. Part 70].” 40 C.F.R. § 70.12(a)(2).

Upon receipt of a petition, EPA “*shall* issue an objection within [60 days] if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter.” 42 U.S.C. § 7661d(b)(2) (emphasis added); *see also* 40 C.F.R. § 70.8(c) (“The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this part.”).

## GROUNDS FOR PETITION

For the reasons described below, Sierra Club petitions EPA to object to Title V Operating Permit Number T173-46378-00007 because of IDEM’s blanket statement in the permit record that would allow the restart of Potline #2 or Potline #6 without any evaluation of whether any requirements of the Indiana State Implementation Plan (SIP), federal regulations, or the Clean Air Act must first be met before a potline could be restarted. Because of this statement in the Title V permit record purporting to excuse Warrick Newco from applicable requirements, the permit is not in compliance with the Clean Air Act and Part 70 regulations. *See* 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c).

As of the date of this petition, two of the Warrick Newco facility’s five potlines have been shut down for eight years. Comments submitted to IDEM during the public comment period stated that IDEM should not include these two shutdown potlines (i.e., Potline #2 and Potline #6) as authorized to operate in the Title V renewal permit for the Warrick Plant.<sup>14</sup> The commenter also stated that, alternatively, if IDEM was to continue to list Potlines #2 and #6 in the Title V operating permit, then IDEM “must at the minimum clearly explain in the Part 70 permit the requirements and procedures that must be followed before restarting operations” of the potlines, including the requirements to review applicability for state and/or federal construction permitting regulations and NESHAP requirements.<sup>15</sup> IDEM stated that Warrick Newco had not requested that these potlines be removed from the Title V operating permit and that it would continue to list the potlines in the permit until Warrick Newco LLC submits an official application requesting to remove these potlines from its operating permit.

Based on significant, years-long noncompliance at Potlines #3, #4, and #5, there is no guarantee that the Warrick Newco facility would be able to comply with applicable emission limits if it restarted Potlines #2 and #6, which have been shut down now for eight years. Indeed, it is not clear whether Potlines #2 or #6 can comply with the requirements of the National

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<sup>14</sup> *See* Exhibit 2, November 27, 2023 letter from counsel for Environmental Integrity Project, to Hachem Ismaili Alaoui, IDEM, at 12.

<sup>15</sup> *Id.*

Emission Standards for Hazardous Air Pollutants (NESHAPs) applicable to Primary Aluminum Reduction Plants in 40 C.F.R. Part 63, Subpart LL, as revised in 2015,<sup>16</sup> because the potlines shut down before the first compliance dates in October 2016 (for potline work practice standards) and in October 2017 (for potline work practice standards, new carbonyl sulfide (COS) and PM limits for potlines).<sup>17</sup>

In response to these public comments on this issue, IDEM stated that it must receive an official application from Warrick Newco to remove either Potline #2 or #6 from the Part 70 operating permit, and IDEM stated that it has not received any such formal application from Warrick Newco.<sup>18</sup> IDEM further stated that “the restart of the Potlines does not require Warrick Newco LLC to get a prior re-approval from IDEM-OAQ or that Warrick Newco needs to submit a written operating plan to minimize emissions during potlines startup since they have never been removed from its Part 70 operating permit.”<sup>19</sup>

Petitioners request that EPA object to this statement in the permit record for the Warrick Newco Part 70 operating permit because this statement is not in compliance with applicable requirements or the requirements of 40 C.F.R. Part 70. IDEM cannot issue such a blanket statement of inapplicability without an evaluation of the facts and the regulatory landscape that exists at the time that Warrick Newco decides to begin operation of Potline #2 or #6 in the future. By including in the permit record such a blanket future non-applicability determination without requiring an evaluation of pertinent facts regarding any restart of Potline #2 or Potline #6, IDEM cannot claim that the Warrick Newco Part 70 operating permit ensures the Warrick facility’s compliance with all applicable requirements of the Indiana SIP, federal regulations, or the Clean Air Act.

For example, although Warrick Newco’s permit application indicated that Potlines #2 and #6 are subject to the Maximum Achievable Control Technology (“MACT”) requirements in 40 C.F.R. Part 63, Subpart LL,<sup>20</sup> Warrick Newco did not submit any performance testing information including whether the potlines showed compliance with the requirements of the MACT regulations of 40 C.F.R. Part 63, Subpart LL. Yet, such information is required to be submitted in a Part 70 permit application pursuant to 40 C.F.R. 70.5(c)(3)(v).

Further, 40 C.F.R. § 63.9(h) states that “[b]efore a title V permit has been issued to the owner or operator of an affected source...the owner or operator of such source shall submit to the Administrator a notification of compliance status, signed by the responsible official who shall certify its accuracy, attesting to whether the source has complied with the relevant standard.” 40

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<sup>16</sup> 80 Fed. Reg. 62390, 62414-62427 (Oct. 15, 2015); 40 C.F.R. Part 63, Subpart LL.

<sup>17</sup> See 80 Fed. Reg. 62390, 62395 (Oct. 15, 2015).

<sup>18</sup> See Exhibit 1, Addendum to the Technical Support Document (ATSD) for a Part 70 Operating Permit Renewal, Warrick Newco, LLC, Response to EIP Comment 5, at p.18 (see PDF page 221 of Exhibit 1).

<sup>19</sup> *Id.* at p. 19 (see PDF page 222 of Exhibit 1).

<sup>20</sup> See Alcoa, Warrick Newco LLC Title V Renewal Application 173-44800-00007, February 14, 2023, application form FED-01 for Potlines #2 and #6 at PDF page 34 (attached as Exhibit 4 hereto).

C.F.R. § 63.840(c) defines an affected facility under 40 C.F.R. Part 63, Subpart LL as a “potroom group.” Thus, Potlines #2 and #6 are each “affected facilities,”<sup>21</sup> and Warrick Newco is required to submit a notification of compliance status with the requirements of 40 C.F.R. Part 63, Subpart LL before a Title V permit has been issued. IDEM’s statement in response to Petitioner’s comment that the restart of the Potlines “does not require Warrick Newco LLC to get a prior re-approval from IDEM-OAQ” does not comply with this notification requirement in 40 C.F.R. § 63.9(h).

There may be other requirements of the Indiana SIP including construction permitting or prevention of significant deterioration (PSD) permitting that may apply to the restart of Potline #2 or #6 depending on the specific facts and the regulations and laws that are in existence at the time either Potlines #2 or #6 are restarted. All of these requirements are “applicable requirements” as that term is defined in 40 C.F.R. § 70.2. By making this *carte blanche* statement in the permit record that the “restart of the Potlines does not require Warrick Newco LLC to get a prior re-approval from IDEM-OAQ,” IDEM appears to have made a future regulatory applicability determination without review of the facts or regulations that may apply at such a time when either Potline #2 or #6 may be restarted. Thus, this statement by IDEM does not ensure that the Warrick Newco facility will comply with applicable requirements of the Indiana SIP or the Clean Air Act. *See, e.g.*, 42 U.S.C. § 7475(a) (prohibition on construction or modification without compliance with PSD requirements).

For the foregoing reasons, Petitioner requests that EPA object to this IDEM statement in the permit record for the Warrick facility because this statement could potentially allow the restart of Potlines #2 or #6 without meeting all applicable requirements, and thus Part 70 Operating Permit T173-46378-00007 and the underlying permit record for the Warrick Newco facility will not ensure compliance with all applicable requirements. Petitioner requests that EPA object to the Part 70 operating permit for Warrick Newco and require IDEM to revise its permit record to delete this statement: “the restart of the Potlines does not require Warrick Newco LLC to get a prior re-approval from IDEM-OAQ or that Warrick Newco needs to submit a written operating plan to minimize emissions during potlines startup since they have never been removed from its Part 70 operating permit.”<sup>22</sup>

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<sup>21</sup> *See also* 62 Fed. Reg. 52,384, 52386 (Oct. 7, 1997) (“Under the proposed standard, affected sources included *each* new and existing potline of reduction cells...”) [emphasis added].

<sup>22</sup> *See* Exhibit 1, Addendum to the Technical Support Document (ATSD) for a Part 70 Operating Permit Renewal, Warrick Newco, LLC, Response to EIP Comment 5, at p.19 (see PDF page 222 of Exhibit 1).

DATED: July 9, 2024

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## INDEX OF EXHIBITS TO PETITION

<b>Exhibit Number</b>	<b>Title/Description</b>
1	Notice of the Part 70 Permit No. 173-46378-00007, Proposed to U.S. EPA Region 5, with attached a) Title V Operating Permit Number T173-46378-00007 for Warrick Newco LLC, issued May 14, 2024, b) Addendum to the Technical Support Document (ATSD) for a Part 70 Operating Permit Renewal, Warrick Newco, LLC, and c) Technical Support Document (TSD) for a Part 70 Operating Permit Renewal, Warrick Newco, LLC, and d) Notices of Final Decision, Title V Renewal Warrick Newco LLC
2	Public Comments submitted by Environmental Integrity Project to Indiana Department of Environmental Management on Draft Title V Operating Permit Number T173-46378-00007 for Warrick Newco LLC, November 27, 2023
3	June 21, 2023 Agreed Order, State of Indiana v. Warrick Newco LLC, Case Nos. 2022-28833-A, 2022-28988, & 2022-29108-A
4	Alcoa, Warrick Newco LLC Title V Renewal Application 173-44800-00007, February 14, 2023