

COMMENTS REGARDING GENERAL PERMIT CONDITIONS

MODULE VI:

VI-1. One commenter suggested deleting draft Permit condition VI.A.5 as overly broad. The commenter further argued that the provision is not required or authorized by any regulatory provision.

RESPONSE: Draft Permit condition VI.A.5 required that the Permittees provide, upon request of the Region, all “raw data and reports, including inspection reports, laboratory reports, drilling logs, geological and hydrogeological investigations, bench-scale or pilot-scale data, laboratory data and other supporting information gathered or generated during activities undertaken pursuant to this Permit...”

Permit condition II.M.1 requires that the Permittees maintain a written Operating Record at the Facility in accordance with 40 CFR § 264.73. That regulation requires, among other things, that the Permittees record, as it becomes available, and maintain in the Operating Record, the following:

Monitoring, testing or analytical data, and corrective action where required by subpart F of this part and §§264.19, 264.191, 264.193, 264.195, 264.222, 264.223, 264.226, 264.252-264.254, 264.276, 264.278, 264.280, 264.302-264.304, 264.309, 264.602, 264.1034(c)-264.1034(f), 264.1035, 264.1063(d)-264.1063(i), 264.1064, and 264.1082 through 264.1090 of this part. Maintain in the operating record for three years, except for records and results pertaining to ground-water monitoring and cleanup which must be maintained in the operating record until closure of the facility.” 40 CFR § 264.73(b)(6).

Furthermore, Permit condition I.I.2. tracks the regulatory requirement of 40 CFR § 264.74(a), requiring that all “records, including plans, required under this Permit,” be made available to the Region. In addition, RCRA itself already mandates that the Permittees furnish the information that was listed in draft Permit condition VI.A.5. RCRA Section 3007(a) applies to “any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes.” Such persons are required “to furnish information relating to” hazardous wastes and allow authorized EPA representatives “at all reasonable times to have access to, and to copy all records relating to such wastes.” 42 U.S. Code § 6927.

Due to the comprehensive nature of the corrective action-related information that must be kept in the Operating Record and made available to the Region under the draft Permit conditions and, indeed, RCRA’s statutory authority, the Region deleted draft Permit condition VI.A.5. However, the Region has also revised Permit condition VI.B.2 to clarify that the spill and release reporting records and data subject to other Permit conditions must also be maintained in the Operating Record, as authorized by 40 CFR § 264.73(b)(6). Specifically, the Region is requiring maintenance in the Operating Record until closure is certified complete:

“(b) records of spills and releases, new HWMUs, SWMUs, or AOCs, or emergency incidents or non-compliance that may pose an endangerment required to be reported in accordance with the Permit Attachment Appendix XIII, (Contingency Plan) and/or Permit Conditions I.E.13., IV.I.1.b., IV.J.2., VI.D. and/or VI.E.1.a.”

The Region is requiring these records to be maintained until closure of the Facility is complete because these are the very types of records that will be necessary to ensure that all contaminated areas, if any are identified, are properly addressed during the closure process. The preservation of these records will assist in streamlining decisions concerning appropriate measures or areas on which to focus - or not - further investigation.

VI-2. One commenter suggested deleting draft Permit condition VI.A.6 as “draconian.” This draft Permit condition stated that the failure to timely submit the information required in the Permit, or falsification of any submitted information, would be grounds for termination of the Permit in accordance with 40 CFR § 270.43.

RESPONSE: The Region deleted draft Permit condition VI.A.6, since the requirements of 40 CFR § 270.43 relating to Permit termination are already addressed in Permit condition I.B.1. The language of 40 CFR § 270.43 allows for termination of a RCRA permit for noncompliance with **any** condition of the permit.

VI-3. One commenter suggested revisions to draft Permit conditions VI.A.7 through VI.A.7.c. The commenter suggested that the conditions requiring 45-days advance notice of every person who would be working on corrective action as overbroad and burdensome. The commenter made further suggestions regarding additional requirements relating to corrective action contractors and project coordinator.

RESPONSE: The Region generally agreed with the commenter and has incorporated the suggested revisions, but the provisions were renumbered as Permit conditions VI.A.5. through VI.A.5.c.

VI-4. One commenter suggested adding the words “to the environment” to draft Permit condition VI.E.1. to ensure that the spill notification provision is triggered only when hazardous waste is released to the environment and not, for example, inside the secondary containment.

RESPONSE: The Region incorporated the suggested language in draft Permit condition VI.E.1., limiting the obligations set forth in Permit condition VI.E. to spills or releases outside any RCRA-required secondary containment. In addition, during the review of draft Permit condition VI.E., the Region determined that the process for reporting newly discovered spills or releases should include the actions necessary to respond to spills or releases from tank systems as set forth in Permit Condition IV.I. The Region revised Permit Condition VI.E.1. to require the Permittees to follow the process identified in Permit Condition IV.I., including the requirements to: (1) immediately stop the flow of hazardous waste and determine the cause of the release; (2) remove waste and accumulated precipitation within 24 hours of the detection of the leak to prevent further release and to allow inspection and repair of any system from which the release occurred; (3) contain and inspect any visible releases to the environment; and (4) determine

whether the system from which the release or spill occurred should be closed and/or repaired. Permit Condition VI.E.1.a. also includes the obligation to report the release within 24 hours of detection – just as is required for releases or spills from tank systems in accordance with the requirements of Module IV. The Region maintains that these processes for reporting and responding to releases or spills of hazardous waste should be generally the same, regardless of whether the release or spill is from a tank system or another unit or area at the Facility.

The Region also reevaluated several Permit conditions in Module VI relating to investigations and corrective measures considering the changes made to conform Module IV and Module VI provisions, as explained above. In light of its reevaluation, the Region also made relatively minor but necessary modifications to Permit conditions VI.A.4., VI.B.3., VI.D.3., VI.E.3., VI.E.4., VI.H.1., VI.H.4., VI.H.5., and VI.I.1. to clarify and harmonize the processes for undertaking investigations and corrective measures and for ensuring appropriate due process is afforded to the Permittees in the implementation of these requirements. The specific changes are reflected in the “red-lined” document comparing the Draft Permit, as proposed, to the final Permit, as issued, which accompanies the Region’s Responses to Public Comments. These changes can be characterized, generally, as: (1) changes acknowledging that, based on the circumstances, additional investigations or corrective measures or both may be appropriate; and (2) changes providing the Director more discretion whether to require a particular submittal instead of mandating that the Director require the submittal.

VI-5. One commenter objected to the language in draft Permit condition VI.E.2, which requires a Permit modification whenever there is a spill greater than a pound. The modification would update the list of hazardous waste management units, solid waste management units and areas of concern by noting the release from the unit or area. The commenter further suggested that a Permit modification should only be appropriate if there were a determination following a release that contamination was going to be left in place or that additional assessment will be necessary at a later time.

RESPONSE: The Region disagrees with the recommendation to delete the requirement for a Permit modification to modify one or more of the lists of HWMUs, SWMUs and AOCs in Module VI to reflect the fact that the spill occurred. Since Permit Condition I.G.7. anticipates that the Permittees may request the modification be a Class I modification with no prior Director approval, modifications relating to relatively minor spills above a pound may be undertaken with minimal effort. It is important that, at the time of closure of the Facility, the history of spills and releases be appropriately documented for each HWMU, SWMU and AOC in order to ensure a complete and thorough closure. The Region has determined that the prompt updating of Section J and the Module VI HWMU, SWMU and AOC lists is the most appropriate means of accomplishing this.

VI-6. One commenter suggested additional language be added to draft Permit conditions VI.E.4, VI.F.1, VI.I.1, VI.J and VI.M to clarify that decisions made by the Region in accordance with these Permit conditions are subject to the Permit’s dispute resolution provisions.

RESPONSE: The Region agrees that its decisions ought to be subject to the Permit’s dispute resolution provisions. However, in response to the numerous recommendations the

commenter made throughout the draft Permit for specific provisions to be included within the ambit of the dispute resolution provisions of draft Permit condition I.L., the Region decided instead to revise Permit condition I.L. to clarify that the Permittees ought to be able to invoke the dispute resolution provisions of the Permit whenever they are unable, after using best efforts and good faith, to resolve a Permit-related dispute with EPA. See Response to Public Comment I-40, above.

VI-7. One commenter suggested deleting the reference to EPA's RCRA Facility Investigation Guidance, OSWER Directive 9502.00-6C, dated May 1989, since this guidance is 26 years old and was never taken by the Agency beyond "interim final" status. The commenter further objected to the reference, included in draft Permit condition VI.G.1 for developing any RCRA Facility Investigation Final Report, as a rigid and inflexible approach to corrective action.

RESPONSE: The Region declines to delete the reference to the May 1989 RCRA Facility Investigation Guidance. Rather than being a rigid and inflexible approach to corrective action, Permit condition VI.G.1 merely requires that the Permittees consider taking into account the referenced 1989 Guidance. When and if the provisions of Permit condition VI.G.1 are ever triggered, the Permittees may also want to consider reviewing the list of guidance documents identified in the Region's Addendum for additional helpful guidance and other materials. See "2016 09 26 Administrative Record Addendum.pdf."

VI-8. One commenter suggested that draft Permit condition VI.L. (incorrectly identified as draft Permit condition V.L. in the comments) exceeds the Region's authority to require sampling and analysis of soil and groundwater. The commenter refers to the preamble to the proposed Subpart X Miscellaneous Unit requirements. The proposed rule's preamble provided, in part: "for miscellaneous units, Subpart F requirements under § 264.101 for corrective action will always apply. However, the requirements under § 264.91 through 264.100 for monitoring and response action programs apply only to those units that have a potential for contamination of ground water. These standards will apply on a case-by- case basis through the new § 264.602 . . ." [citing 52 FR 46946, at 46955, (Dec. 10, 1987)].

RESPONSE: Even though the Agency chose not to regulate carbon regeneration units or other Subpart X Miscellaneous Units as incinerators, the Agency also left open the possibility – as mentioned in the quotation included in the comments – that monitoring and response action requirements might be appropriate on a case-by-case basis.

However, as written, this Permit merely provides a process for undertaking ground water protection activities or corrective action obligations, if necessary, in the future. Nothing in the Permit would currently impose such obligations on the Permittees, apart from Facility closure. Facility closure would trigger certain investigations as part of dismantling and closing individual units or areas and, ultimately, the Facility.

Draft Permit condition VI.L. requires that information *be addressed* in any Permit modification application that seeks to demonstrate "no releases of hazardous wastes or hazardous constituents from HWMU(s), SWMU(s) and/or AOC(s) . . . that pose a threat to human health or the environment."

The language quoted by the commenter that specifically states that the monitoring and response action programs will be applied on a case by case basis to Miscellaneous Units is at odds with the commenter's conclusions that the Region lacks the authority to impose such obligations at this Facility. Here, the Region has decided that leaving open the possibility of requiring a monitoring and response program to be implemented, if necessary, is appropriate in this case.

VI-9. One commenter suggested deletion of certain units, (*i.e.*, venturi scrubber, the RF-1 emissions stack, carbon adsorber – PV1000, slurry transfer inclined plate settler tank, scrubber recycle tank T-17 and the filter press), from draft Permit Table VI-1. The commenter asserted that these units have been removed from the Facility and do not constitute hazardous waste management units. The commenter also requested deletion of the RF-2 induced draft fan and emissions stack from draft Permit Table VI-1, asserting that these units merely manage exhaust gas, which the commenter asserts is not a hazardous waste.

RESPONSE: The Region declines to delete the requested units from the list of hazardous waste management units in Module VI.

The referenced table ("Table VI-1 - Hazardous Waste Management Unit Identification, New Unit Name") is found in a similar form in the Permit application submitted by the Facility operator. The Region disagrees with the suggested revisions since they are not reflected on the Permit application which was submitted by the commenter. If the list of hazardous waste management units needs to be updated because the units have either been removed since the table was submitted in the Permit application or are not "hazardous waste management units," the Permittees should have updated the table and resubmitted the application. The Region will not unilaterally revise the table based solely on the operator's comment.

However, the Region has added a new provision to Permit Condition I.K. that requires the Permittees, if necessary, to submit a revised and updated Table VI-1 and revised and updated Permit Attachment Section J, with an accompanying request for a Permit modification, within 60 days of the effective date of the Permit. Any updates or revisions to this table may be accomplished in this manner. See Permit condition I.K.7.

The Region is also clarifying that releases from the stack, which are expressly provided for in the Permit, are not considered releases to be reported in accordance with Permit Condition VI.E. The word "unpermitted" has been added as a qualifier to the word "releases" in both the Cover Sheet for the Permit and in Permit condition VI.E.1. so as to make this point clear.

To reduce the unnecessary inclusion of materials as attachments to the Permit, the Region has also removed the RCRA Facility Assessment (RFA) as a Permit Attachment and has replaced the reference to this attachment in Permit condition VI.A.1. to refer instead to Permit condition Table VI-1 - Hazardous Waste Management Unit Identification, New Unit Name, Permit condition Table VI-2 - Solid Waste Management Unit Identification and Permit condition Table VI-3 - Areas Of Concern (AOC) Identification Table, New Unit Name. The Region has deleted draft Permit condition VI.C.1. pertaining to the RFA and substantially revised Permit condition VI.C.

The Region has also removed significant portions of the Performance Demonstration Test (PDT) Report (Permit Application Appendix V) and the Human Health and Ecological Risk Assessment (HHERA) (Permit Application Appendix XI). Permit Attachment Appendix V and Permit Attachment Appendix XI include only the initial text of the Permit Application Appendices. The full copies of the RFA, the PDT Work Plan, the PDT Report, and the HHERA are available on EPA's website for the Facility and in the Administrative Record for this final decision.⁴⁷

⁴⁷ See <https://www.epa.gov/az/evoqua>. See also, *e.g.*, the RFA at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf."