



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105**

July 30, 2009

**SUBJECT:** Key US EPA Messages for the Colorado River Indian Tribes (CRIT)  
August 3, 2009 Council Meeting Regarding the Siemens Water  
Technologies/CRIT Final Permit Application.

**Status of Permit Application:**

- 1) The US EPA is responsible under the Resource Conservation and Recovery Act (RCRA) for permitting carbon regeneration facilities that process RCRA regulated hazardous wastes on tribal lands;
- 2) The Siemens carbon regeneration facility is currently legally operating under “interim status” conditions as prescribed by RCRA. That interim status to continue regulated activities was triggered by the formal submittal of an initial Permit Application, Part A that was endorsed by the CRIT;
- 3) The US EPA remains respectful of the sovereignty of the CRIT and will continue to work closely with the CRIT Office of the Attorney General and Environmental Protection Office to address CRIT’s issues and concerns;
- 4) As owners of the land upon which Siemens is operating CRIT, along with Siemens, are held to be co-applicants under RCRA, responsible for placement, justification and merits of the project. The US EPA remains strictly neutral on such business concerns;
- 5) To date US EPA has not received a complete Final Part B Application from Siemens and the CRIT. It is a legal requirement that US EPA receive a complete application before it can act upon it. (CRIT signature on the Application is necessary for completeness);
- 6) At the May 18, 2009 CRIT Council Meeting, US EPA requested a decision by June 12, 2009, from the Council on whether it intended to sign the Final Part B Application;
- 7) To date CRIT has neither signed the Application nor in any way indicated its intention to do so. US EPA currently considers the Application incomplete;

- 8) Therefore, the US EPA considers it no longer appropriate for Siemens to continue operating under interim status conditions without a targeted date for resolution of the pending application status;
- 9) Accordingly, if US EPA does not receive a complete Final Part B Application from Siemens and the CRIT by September 1, 2009, it plans to issue a formal Notice of Deficiency (NOD) of the Application and proceed to denial of a final operating permit;
- 10) The CRIT will have the opportunity to formally comment upon and challenge any US EPA proposed or final permit decision concerning the Siemens facility; and
- 11) If US EPA does ultimately decide to deny the Permit Application it will assure and manage closure of the regulated units that process RCRA hazardous waste in such a manner that will allow Siemens to continue processing non-RCRA wastes. (Currently less than 20 percent of their input is RCRA regulated.).

Additional Issues and Messages:

- 1) Under RCRA US EPA may deny a permit for only three reasons:
  - a. An incomplete permit application,
  - b. Inability of US EPA to write a permit that is protective of human health and the environment, and
  - c. The facility construction is so deficient that it cannot meet US EPA permit conditions;
- 2) Though supplemental data and information will likely be further required to develop a permit, the current Final Part B Application appears technically sufficient to begin development of a final enforceable permit if the Application is made legally complete with the CRIT's signature;
- 3) The enhanced protections requested by the CRIT and negotiated by US EPA for this facility have been implemented, but are only voluntary until prescribed in a final permit. US EPA cannot assure compliance with non-permitted non-enforceable voluntary operating conditions;
- 4) In keeping with CRIT's expressed interest in enhancing human health and environmental protections at the facility beyond minimum requirements, US EPA directed Siemens to comply with appropriate portions of the Maximum Achievable Combustion Technology (MACT) rules of the Clean Air Act, to conduct a "trial burn" to help establish more protective operating conditions

and to create sufficient data for a robust Human Health and Ecological Risk Assessment (HHREA);

- 5) The CRIT Council requested that US EPA make a presentation of their analysis of the HHERA to help it in making a final signature decision. We met that request on May 18, 2009. Highlights of that analysis and presentation are as follows:
  - a. The “trial burn” identified and measured the concentration of chemicals that are released from the facility,
  - b. The primary potential pathway of concern for pollution from this facility is through the air,
  - c. The US EPA used local weather and census data along with computer based tools to model how and where those chemicals would distribute in the environment (the land, air and water) and who would be potentially impacted,
  - d. The US EPA used national data to analyze toxic effects of the released chemicals in the local environment,
  - e. The US EPA’s analysis of the HHERA indicated that the CRIT and Parker would not expect any adverse health impacts from normal operations at the facility if the tested operating conditions were incorporated in a Final Permit,
  - f. Even if permitted, Siemens will under normal operating conditions emit some regulated pollutants to the atmosphere. The HHERA and permit conditions however, will assure that the emissions remain health protective, and
  - g. Of the five similar carbon regeneration facilities in the nation processing regulated hazardous wastes, Siemens has the most stringent and protective air pollution control equipment, and is currently meeting the highest US EPA air protection standards.

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