COMMENTS REGARDING GENERAL PERMIT CONDITIONS

MODULE III:

III-1. One commenter recommended that the draft Permit not attempt to constrain the number and type of containers the Permittees may maintain for satellite accumulation, or where the Permittees may choose to locate 90-day accumulation containers.

RESPONSE: The Region agrees that satellite accumulation requirements do not need to be part of a RCRA permit and removed constraints on the number and type or location of containers in satellite accumulation areas from draft Permit condition Table III-1, which has been renamed "Table III-1 Container Storage Areas and Design Capacities." The Region has also deleted the note below Table III-1, which previously read: "Locations may vary due to facility needs. Permit Attachment Appendix III contains diagrams and maps with unit locations."

III-2. One commenter suggested the deletion of draft Permit conditions III.C., III.D.1, III.D.2, III.E.1, III.E.2, III.E.3.a and III.E.3.b as duplicative of draft Permit condition III.B.3. The commenter expressed concern that, should the Permittees violate one of the conditions set forth in III.C., III.D.1, III.D.2, III.E.1, III.E.2, III.E.3.a or III.E.3.b, the Agency not cite the Permittees for multiple violations of the same requirement simply because the requirement is stated multiple times in the Permit.

RESPONSE: The Region agrees that one violation of one provision of the container standards set forth in 40 CFR Part 264, Subpart I, which are incorporated in draft Permit condition III.B.3 (now Permit condition III.B.4.), should not result in citations for multiple violations of the Permit. Conversely, violations of multiple Subpart I provisions should be considered for multiple citations, and that might not be apparent if the Agency were to accept the commenter's recommended deletions.

Therefore, the Region has added language in Permit conditions III.C., III.D.1, III.D.2, III.E.1, III.E.2, III.E.3.a and III.E.3.b to clarify that compliance with the requirements set forth in these provisions is part of the obligation to comply with Permit condition III.B.4.'s broad reference to Subpart I. Thus, the Region believes that this language will protect the Permittees if any future enforcement action seeks to cite multiple violations of Permit conditions arising from a one-time failure to comply with only one of Subpart I's many requirements. At the same time, the added language will clarify the Region's ability to cite multiple Permit violations where there are multiple violations, including violations of more than one of Subpart I's requirements.

III-3. One commenter recommended the deletion of draft Permit condition III.D.3. on the grounds that it purported to tell the Permittees how to comply with draft Permit condition III.D.1, was not supported in the administrative record, and was either duplicative of draft Permit condition III.B.3 or constituted a vague and confusing effort to impose requirements beyond the scope of the regulations.

RESPONSE: The Region has retained Permit condition III.D.3, which is intended to ensure the safe use of containers that are compatible with the hazardous wastes to be stored. The procedures referenced in the documents included in Permit condition III.D.3. are relevant to ensuring the compatibility of waste and containers. The references to the Waste Analysis Plan, Permit Attachment Section C and Permit Attachment Appendix IV include the specific procedures and equipment required to assure compliance with Permit condition III.D.1.

III-4. One commenter recommended that the Region include a note on Table III-2, referred to in draft Permit condition III.E.3.c, to indicate that Table III-2 "represents information for the major types of containers managed at the Facility" and that "[o]ther containers of various volume and configuration may also be received."

RESPONSE: The Region agrees with the commenter and has modified Permit condition III.E.3.c. to clarify that the Permittees cannot exceed the maximum volumes of hazardous waste for each *container* in each category of containers listed in Table III-2. And, instead of adding the note below Table III-2, has included it in the body of Permit condition III.E.3.c.

III-5. One commenter suggested revisions to draft Permit condition III.F.2.a. to more closely track the regulatory language pertaining to the Permittees' obligation to remove spilled or leaked waste and accumulated precipitation from the sump or collection area.

RESPONSE: The Region has revised Permit condition III.F.2.a. so that it tracks the regulatory requirement at 40 CFR § 264.175(b)(5).

III-6. One commenter suggested the deletion of draft Permit condition III.F.2.b, which would require removal of liquids from the containment area within 24 hours of the initial accumulation, based on a daily inspection of the area as required by Permit Attachment Section F and Permit Attachment Appendix XII.

RESPONSE: The Region agrees with the commenter and has deleted draft Permit condition III.F.2.b. and renumbered draft Permit condition III.F.2.c., which tracks the language in 40 CFR § 264.175(b)(5), as Permit condition III.F.2.b. This change also necessitated renumbering draft Permit condition III.F.2.d. as Permit condition III.F.2.c.

III-7. One commenter suggested the deletion of draft Permit conditions III.G.2 through III.G.6 as duplicative of draft Permit condition III.G.1. Like the comments expressed with respect to draft Permit condition III.B.3, the commenter maintained that one violation of one provision of the container air emissions standards set forth in 40 CFR Part 264, Subpart CC, which are referred to in draft Permit condition III.G.1, should not result in citations for multiple violations of the Permit. The commenter argued further that the Permit should reference only the Subpart CC Compliance Plan at Permit Attachment Section O and Permit Attachment Appendix XX, rather than attempt to restate the regulatory requirements.

RESPONSE: The Region agrees that one violation of one provision of the container air emission standards set forth in 40 CFR Part 264, Subpart CC, which are referred to in draft Permit condition III.G.1, should not result in citations for multiple violations of the Permit. However, just as with the Region's position regarding the recommended deletion of draft Permit conditions pertaining to the Subpart I container standards, the Region does not think that multiple violations of Subpart CC's requirements should only be met with a citation to one violation of draft Permit condition III.G.1 either. But, in this case, although the Region maintains that it may continue to cite multiple violations of the Subpart CC requirements if they occur, the Region is choosing to delete draft Permit conditions III.G.2 through III.G.6.

The Region's approach with respect to the deletion of these draft Permit conditions is different from its approach to comments relating to draft Permit conditions III.C., III.D.1, III.D.2, III.E.1, III.E.2, III.E.3.a and III.E.3.b. as set forth in the Region's Response to Public Comment III-2. Here, the Region is also now requiring the revision and resubmittal of Permit Attachment Appendix XX, Subpart CC Compliance Plan, and, if necessary, Permit Attachment Section O, by the Permittees, as explained below. The Region anticipates that the revised Appendix XX is the best place to keep all the references to the Subpart CC requirements applicable to the Facility and that, once certain corrections are made, as detailed below, draft Permit conditions III.G.2 through III.G.6 will be unnecessary.

Because the Permit Attachment Appendix XX, Subpart CC Compliance Plan, contains some errors identified during the Region's review of these comments, the Region is requiring the resubmittal of the Permit Attachment Appendix XX, Subpart CC Compliance Plan, and, if necessary, a revised Permit Attachment Section O, in accordance with Permit conditions I.G.7 and I.K.2.

The Subpart CC Compliance Plan must be revised to: (1) reference the appropriate permit requirements at 40 CFR Part 264 instead of the interim status requirements at 40 CFR Part 265 (unless the interim status standards are appropriate); (2) revise any descriptions of the exclusion from Subpart CC referenced in 40 CFR § 264.1080(b)(7) to make clear that units subject to the deferral to the Clean Air Act requirements are equipped with, operating, and in compliance with the relevant CAA standard; (3) include all the most-current attachments; (4) revise Table 1 in Appendix XX to clarify the note indicating T-11 is "[e]xempt from treatment since benzene concentration is less than 10 ppmw," (5) similarly, modify Table T-1 to clarify the note regarding T-19; and (6) revise or rename Table 2 in Appendix XX, since it does not include either T-11 or T-19 but nonetheless purports to identify the units subject to Subpart CC that are not "equipped with and operating air emission controls" under the CAA, (see Permit condition I.K.2.). The Permittees have the option to comply with Subpart CC requirements instead of the Subpart FF requirements. If the Permittees choose to do so, they must reflect this choice in the revised the Subpart CC compliance plan.

The Subpart CC Compliance Plan includes a reference to RF-2 and its afterburner in Table 1. As with the other units listed on Table 1, the Permittees have pointed to the CAA Benzene NESHAP requirements -- specifically, 40 CFR § 61.348 -- as a basis for finding Subpart CC requirements inapplicable to RF-2, or its afterburner. The Table indicates,

"[r]egenerated carbon must contain less than 10 ppmw benzene and the unit must meet 99+% benzene destruction efficiency."

While RF-2 is a miscellaneous unit, 40 CFR § 264.601 specifically requires that such units be located, designed, constructed, operated, maintained, and closed in a manner that will ensure protection of human health and the environment. It also requires that permits for such units contain:

> ". . . such terms and provisions as necessary to protect human health and the environment, including, but not limited to, as appropriate, design and operating requirements, detection and monitoring requirements, and requirements for responses to releases of hazardous waste or hazardous constituents from the unit. . ."
>
> 40 CFR § 264.601.

The requirement also specifically directs the Region to include in the Permit for RF-2 those requirements of 40 CFR Part 264, Subparts AA through CC "that are appropriate for the miscellaneous unit being permitted." Id. Module V of the Permit includes a comprehensive range of requirements applicable to RF-2, its afterburner and other associated equipment and controls. In light of these comprehensive requirements, the Region evaluated the extent to which the requirements of 40 CFR Part 264, Subparts AA through CC might nonetheless also be appropriate for RF-2 and its associated afterburner and other equipment.

With respect to RF-2, and its afterburner, Module V's Fugitive Emissions provision, at Permit condition V.E., pertains to the prevention of the release of fugitive emissions from the combustion zone. The referenced CAA standard at 40 CFR § 63.1206(c)(5) is met by the Permittees maintaining the combustion chamber as a sealed system.

In addition, as referenced in the Subpart CC Compliance Plan, the applicability of 40 CFR § 61.348 to RF-2 and the afterburner are a valid basis for asserting that CAA-required controls are installed and operating on RF-2 and its afterburner in compliance with CAA. Under that theory, the listing of RF-2 and its afterburner on Table 1 as "[w]aste management units that are exempt from Subpart CC requirements because they are otherwise regulated under the Benzene Waste Operation NESHAP" seems entirely appropriate. The controls being operated would include the ancillary equipment such as the wet electrostatic precipitator and Venturi scrubber that are associated with RF-2.

The equipment associated with RF-2 may, in some cases, meet the definition of "equipment" subject to the requirements of 40 CFR Part 264, Subpart BB (*i.e.*, "each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange or other connector, and any control devices or systems required by" Subpart BB). Where hazardous waste emissions come into contact with or are contained in such equipment at 10% or more organic concentrations by weight, the Region considered whether it might be appropriate to require that the Permittees include such equipment in the Subpart BB Compliance Plan and decided against doing so for the very reason set forth with respect to RF-2 and its afterburner in the Subpart CC Compliance Plan in Table 1. The thermal treatment system, including its associated air pollution control equipment, is designed to destroy organic emissions such as benzene. Because the entire system is subject to and in compliance with the Benzene Waste Operation NESHAP, coupled with all the particular requirements that will apply

to the system once Module V is in effect, the Region is satisfied with the inclusion of RF-2 and its afterburner on Table 1 in the Subpart CC Compliance Plan. Any "equipment" associated with RF-2 need not also be added to the revised Subpart BB Compliance Plan.

The Region notes that, pursuant to 40 CFR §§ 264.1089(a) and (j), information relating to the units that are deferred from compliance with Subpart CC requirements under 40 CFR § 264.1080(b)(7) must be kept in the Operating Record for as long as the deferral is being invoked.[26] As a result, the Region has clarified the Operating Record requirement in Permit Module II by adding language referencing the Subpart CC requirements to Permit condition II.M.1.b.

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III-8. One commenter suggested the deletion of draft Permit conditions III.H.3 through III.H.5 as duplicative of the Inspection Plan at Permit Attachment Section F and Permit Attachment Appendices XII and XX. The commenter further asserted that the draft Permit conditions inaccurately paraphrase the rules they are based on and create new obligations beyond what the regulations would otherwise require of the Permittees.

RESPONSE: The Region has added language to Permit conditions III.H.2 through III.H.5 to clarify that compliance with the requirements set forth in these provisions is part of the obligation to comply with Permit condition III.H.1's broad reference to the inspection of containers in accordance with Permit Attachment F and Permit Attachment Appendices IV and XII.

The Region has retained Permit condition III.H.3, which is based on the regulatory requirement at 40 CFR § 264.174. One reason for the retention of this Permit condition, which has been revised to better track the regulatory requirement on which it is based, is that it provides more detail regarding the requirement than Permit Attachment Section F and Permit Attachment Appendix XII.

The Region has retained Permit condition III.H.4, since it contains requirements missing from the Permit Attachment Appendix XII pertaining to the inspection and monitoring of air emission control equipment. This provision is necessary in case the Facility receives any container with air emission control equipment.

The Region agrees with the commenter that since the requirements are already in Permit Attachment Appendix XX there is no reason to repeat them in the Permit. However, rather than deleting the requirement altogether, the Region has replaced draft Permit condition III.H.5 with a new Permit condition that refers the Permittees to Permit Attachment Appendix XX instead of relisting the regulations in 40 CFR Part 264, Subpart CC.

III-9. One commenter objected to language in draft Permit condition III.I. purporting to require recordkeeping under 40 CFR § 264.1086 for containers that are exempt under 40 CFR §

[26] Pressure relief devices associated with tanks will be considered as included with their hazardous waste management unit in the Subpart CC Compliance Plan.

264.1082(c), because that provision exempts such containers from the standards specified in 40 CFR §§ 264.1084 through 264.1087.

RESPONSE: The Region has revised Permit condition III.I. such that, with respect to containers subject to the exemption at 40 CFR § 264.1082(c), the Permittees are bound only to comply with the applicable recordkeeping requirements of 40 CFR § 264.1089.

III-10. One commenter suggested revisions to draft Permit condition III.I.5, in order to reflect that Permit Attachment Appendix VII already contains the information listed in the Permit condition and its sub-paragraphs.

RESPONSE: The Region has modified Permit condition III.I.5 to reflect the requirements in 40 CFR § 264.175. All the sub-paragraphs to draft Permit condition III.I.5 have been deleted, since the information required is in section D.3.1 in Permit Attachment Section D and in Permit Attachment Appendix VII.

III-11. One commenter objected to references in the draft Permit conditions III.I.6 and III.J to "reactive" waste since the draft Permit expressly prohibits the management of reactive waste in Section II.H.5, and the Waste Analysis Plan.

RESPONSE: The Region has modified Permit conditions III.I.6 and III.J to delete references to reactive waste and has deleted draft Permit condition III.J.4, which was related to the management of reactive waste.

III-12. One commenter requested that the Region clarify that draft Permit conditions III.J and III.K apply only to the management of hazardous wastes.

RESPONSE: The Region agrees with the commenter and has modified Permit conditions III.J and III.K by adding the word "hazardous" to the Permit conditions to clarify that these Permit conditions apply only to the management of hazardous wastes. See also Permit conditions III.I.3., III.I.6., IV.D.2., IV.E.2., IV.K.1., IV.K.2., IV.G.7., Table IV-2, V.B.1.a., and V.B.2.a.[27]

III-13. One commenter objected to draft Permit condition III.J.4 as not reflecting the existing regulatory requirements, which include no prohibition on stacking of drums of ignitable waste.

RESPONSE: The Region agrees with the commenter and has deleted draft Permit condition III.J.4.

[27] See also the Region's Responses to Public Comments V-2, V-6, V-8, and V-9.