

CRIT COMMENTS REGARDING PROPOSED DRAFT PERMIT

C-33. One commenter requested that the Region make a Final Permit decision expeditiously.

RESPONSE: In issuing the Final Permit, the Region reviewed and considered the extensive comments received. The Region balanced the interests in moving quickly with the benefits of accuracy and thoroughness in evaluating and responding to the comments. The time taken to complete the Final Permit decision is a product of that process.

C-34. One commenter requested that the Region continue government to government consultation with the Colorado River Indian Tribes (CRIT) throughout the term of any permit, including when the final decision is issued and during all post-issuance monitoring.

RESPONSE: Consistent with EPA's letters to CRIT dated March 5, 2015 and March 7, 2016, the Region intends to continue regular consultation with CRIT after the Final Permit decision for the Facility is made. The Region expects to continue regular consultation with CRIT on a government to government basis for as long as the Facility is processing hazardous waste. This includes consultation throughout the life of any renewal of the RCRA permit that may be issued through and until closure is completed. Also, per the May 4, 2011 EPA Policy on Consultation and Coordination with Indian Tribes:

“Tribal officials may request [at any time] consultation in addition to EPA’s ability to determine what requires consultation. EPA attempts to honor the tribal government’s request with consideration of the nature of the activity, past consultation efforts, available resources, timing considerations, and all other relevant factors.”

When planning on-site compliance inspections or other visits to the Facility, the Region routinely gives advance notice to appropriate CRIT government officials.

C-35. One commenter requested that the Region add a provision to the Final Permit that includes the frequency of any routine inspections to be conducted at the Facility by EPA.

RESPONSE: EPA inspection schedules are not included in RCRA permits. The Final Permit includes inspection requirements applicable to the Permittees. EPA’s inspection activities are determined based upon law, guidance and resources. RCRA requires RCRA-permitted Treatment, Storage and Disposal Facilities like the Facility to be inspected at least once every two years. See RCRA Section 3007(e)(1), 42 USC § 6927. The Region has this inspection obligation for the Facility, which is the only required EPA-inspection for this Facility. The Region has the discretion to periodically inspect the Facility for compliance with other federal environmental statutes such as the Clean Water Act, Clean Air Act, and Toxic Release Inventory Act.

C-36. One commenter requested that the Region notify CRIT in a timely manner of any and all inspections and allow CRIT EPO to be present at any and all inspections or testing performed at the Facility by EPA.

RESPONSE: EPA inspection procedures are not part of a RCRA permit. No EPA inspection procedures are included in the Final Permit. In general, the Region's enforcement personnel invite appropriate tribal environmental staff to accompany them on all routine on-site compliance inspections, including those that involve testing.

C-37. One commenter requested that the Region include a Permit condition requiring that EPA or the operator conduct soil sampling for "semi-volatile, volatile, organochlorine pesticides and [PCBs]." The commenter is requesting this to establish a baseline that can be used for comparison at the time of closure. The commenter further requested that, after such testing, the Region engage in government to government consultation with CRIT to discuss such results. The commenter further suggested that the Region engage in additional government to government consultations with CRIT when certain things, such as testing, closure, or trial burns, are triggered.

RESPONSE: The Region has already required the Facility operator, Evoqua, to take background samples at the time of closure as described in Section 6.2.4 of Permit Attachment Appendix XV, "RCRA Facility Closure Plan", and in Section 3.0 and Table 5-2 of Permit Attachment Appendix XVII, "Closure Activities Sampling and Analysis Plan and Closure Activities Quality Assurance Project Plan."

"Background samples will also be collected from three separate locations according to the SAP. The locations are shown in the SAP, and have been selected outside of the facility's operational areas and will represent constituent concentrations that have not been impacted by site operations. The results of these soil samples will be used in the development of metals closure performance standards for the site." See Section 6.2.4 of Permit Attachment Appendix XV.

"Background soil samples will also be collected from three separate locations (at 3 depths each) as shown on Figure 3-2. The locations are outside of the facility's operational areas and will represent constituent concentrations that have not been impacted by site operations. The results of these soil samples will be used in the development of metals closure performance standards for the site." See Section 3.0 and Table 5-2 (copied below) of Permit Attachment Appendix XVII.

The Region declines to include permit conditions applicable to the Agency as opposed to the Permittees. This Permit does not preclude CRIT from doing its own soil sampling to establish a background baseline at any time.

See also the Region's Response to Public Comment C-34, above.

C-38. One commenter requested that the Region provide documentation on the known effects on human health and the environment of the toxins emitted at the Facility.

RESPONSE: To evaluate the multiple adverse health impacts associated with long-term or chronic human exposures to toxic chemicals, EPA has established a peer-reviewed toxicological database that details the wide-range of chemical-specific adverse health impacts. This database includes detailed information on each constituent's ability to elicit cancer

(carcinogenic substances), as well as the type and nature of non-carcinogenic, or systemically toxic adverse health impacts (e.g., hepatic toxicity, renal toxicity, developmental toxicity, neurotoxicity, etc.). To access detailed scientific data and the supporting peer-reviewed literature regarding the potential health impacts associated with specific chemicals emitted from the Facility, please visit EPA's Integrated Risk Information System (IRIS) website: <https://www.epa.gov/iris>.

This EPA database was used in part in the 2008 risk assessment prepared by the Facility operator to characterize potential health impacts associated with the Facility's emissions. This information is found in the Risk Characterization Section (4.4) of that document.

Potential ecological impacts were evaluated by comparing calculated concentrations or exposures to toxicity reference values (TRVs) derived to be protective of these receptor groups. The TRVs are an indirect measure of the toxicity or potency of chemical constituents in the ecosystem. Constituent-specific TRVs and their ecological health endpoints can be located or obtained from a variety of sources, including the USEPA, the States of Arizona and California, ecological databases and the published literature.¹³²

C-39. One commenter requested that the Region add a provision to the Permit that would require the Permittees to copy CRIT on all submittals sent to EPA. The commenter also

¹³² See, California Environmental Protection Agency (CEPA), 2002, California Wildlife Exposure Factor and Toxicity Database (CalTox), Office of Environmental Health Hazard Assessment, at http://www.oehha.org/cal_ecotox/default.htm; Chrostowski, P. C. and Durda, J., 1991, Effects of air pollution on the desert tortoise: An ecological risk assessment, Paper presented at 12th Annual Meeting of the Society of Environmental Toxicology & Chemistry, November 3- 7, Seattle, Washington; Craig, D. and P. L. Williams, 1998, Willow Flycatcher (*Empidonax traillii*), In The Riparian Bird Conservation Plan: a strategy for reversing the decline of riparian-associated birds in California, California Partners in Flight at http://www.prbo.org/calpif/htmldocs/riparian_v-2.html; Efroymsen, R., Will, M., and Suter, G., 1997, Toxicological Benchmarks for Screening Contaminants of Potential Concern for Effects on Terrestrial Plants, 1997 Revision, ES/ER/TM-85/R3; Environment Canada (EC), 2000, RATL: A Database of Reptile and Amphibian Toxicology Literature, B.D. Pauli, J.A. Perrault and S.L. Money, National Wildlife Research Centre, Canadian Wildlife Service, Environment Canada Technical Report Series No. 357, Headquarters 2000, Canadian Wildlife Service; Mayer, F.L. and Eilersieck, M.R., 1986, Manual of Acute Toxicity: Interpretation and Data Base for 410 Chemicals and 66 Species of Freshwater Animals. US Fish and Wildlife Service, Washington, DC, Resource Publication 160; National Oceanic and Atmospheric Administration (NOAA), 2006, Screening Quick Reference Table (SQiRTs), Hazmat Report 99-1; Sample, B., Opresko, D., Suter, G., 1996, Toxicological Benchmarks for Wildlife, 1996 Revision, ES/ER/TM-86/R3; Schafer, E.W., and Bowles, W.A., 1985, Acute oral toxicity and repellency of 933 chemicals to house mice and deer mice, Arch. Environ. Contam. Toxicol. 14(1):111-129; Schafer, E.W., Bowles, W.A., and Hurlbut, J., 1983, The acute oral toxicity, repellency, and hazard potential of 998 chemicals to one or more species of wild and domestic birds, Arch. Environ. Contam. Toxicol. 12:355-382; U.S. Environmental Protection Agency (USEPA), 1996b, Eco Update, Ecotox Thresholds, Office of Solid Waste and Emergency Response, EPA 540/F-95/038; USEPA, 1999, Screening Level Ecological Risk Assessment Protocol for Hazardous Waste Combustion Facilities, EPA 530-D-99-001A; USEPA, 2003c, Technical Summary of Information Available on the Bioaccumulation of Arsenic in Aquatic Organisms, EPA-822-R-03-032, December 2003; USEPA, 2003d, Region 5, RCRA Ecological Screening Levels, August 22, 2003; USEPA, 2004c, Draft Aquatic Life Water Quality Criteria for Selenium – 2004, Office of Water, EPA-822-D-04-001, November; USEPA, 2007b, EcoTox Database at <http://www.epa.gov/ecotox>; and World Health Organization (WHO), 1998, WHO toxic equivalency factors (TEFs) for dioxin-like compounds for humans and wildlife, Prepared by Younes, M., Summary of WHO meeting in Stockholm, Sweden on June 15-18, 1998, International Programme on Chemical Safety.

requested that EPA advise the CRIT EPO immediately of any notices required by draft Permit conditions I.E.11. (regarding changes in operations that could result in non-compliance) and I.E.13. (regarding non-compliance that could endanger human health or the environment).

RESPONSE: As Permittees, the submittals required by the Permit are the joint responsibility of Evoqua (as operator) and CRIT (as owner). However, the Region recognizes that, as a practical matter, most, if not all, the submittals under the Permit are likely to be sent by the operator, Evoqua. The Region has added Permit condition I.G.1.b. to require that CRIT Environmental Protection Office (EPO) be copied on all submittals.

As far as notice from the operator required by Permit Condition I.E.11., that requirement, as revised, states:

“The Permittees shall give advance notice to the Director of any planned changes in the permitted Facility or activity which may result in noncompliance with Permit requirements.” Permit Condition I.E.11.

New Permit Condition I.G.1.b. now requires:

“All reports, correspondence, notices, including emergency notices, or other deliverables required by this Permit, or required to be submitted to EPA or the Regional Administrator under regulatory provisions cited in this Permit, shall also be delivered to the Director of the CRIT Environmental Protection Office or his or her designee.” Permit Condition I.G.1.b.

Thus, CRIT EPO will have notice of any such instances of anticipated non-compliance. See also the Region’s Response to Public Comment C-40, below.

The commenter’s other concern related to Permit Condition I.E.13’s requirement that notice be provided to the National Response Center¹³³ where non-compliance could result in harm to human health or the environment. The language in new Permit Condition I.G.1.b. specifically includes the requirement that emergency notices be provided to CRIT EPO, which would include notices required under I.E.13. (See also the Region’s Responses to Public Comment I-23 and I-25 and Permit Condition I.E.13.a.)

C-40. One commenter requested EPA to immediately notify CRIT EPO, CRIT Fire Department, and CRIT Homeland Security (with follow-up written notice to the CRIT Tribal Council and CRIT AG’s Office) of any leaks or spills and include substances, potential health effects and remedial measures taken or planned.

¹³³ In the draft permit, the 24-hour notice required under this provision was simply required to be provided “to the Director,” without further instruction as to how to accomplish providing such notice on weekends, or after hours.

RESPONSE: RCRA permits govern obligations of treatment, storage and disposal Facility owners and operators and not EPA; therefore, it would be inappropriate for the Region to impose a notification requirement on itself in the Permit. Thus, the Region declines to add the notification requirement requested by the commenter.

The Region notes that the Permit does include requirements for the Permittees to follow in the event of spills, leaks or other unpermitted releases. These include notification and reporting requirements. Because the Final Permit requires that all submittals under the Permit, including emergency notifications, also be delivered to the Director of the CRIT EPO or his or her designee, any written notifications and reporting to EPA relating to leaks, spills or other releases would also be submitted to CRIT EPO. See Permit Condition I.G.1.b. See also the Region's Responses to Public Comments I-23 and I-25.

The Final Permit also requires that the Facility coordinate with local CRIT authorities on preparedness and prevention matters, and on contingency planning. Section II.J.5 requires the Permittees to coordinate with local CRIT authorities on preparedness and prevention. The Permit also requires that the Permittees maintain a Contingency Plan. That plan identifies the CRIT Fire Department as the "primary responding agency" during an emergency situation. See Permit Conditions II.J and II.K. See also Section 4 of Permit Attachment Appendix XIII (Contingency Plan).