COMMENTS REGARDING GENERAL PERMIT CONDITIONS

MODULE II:

II-1. One commenter suggested revisions of draft Permit condition II (renumbered Permit condition II.A.). (General Facility Description) to: (1) differentiate between incoming spent carbon that is RCRA-regulated and that which is not RCRA-regulated; (2) clarify the waste feed process for RF-2; and (3) clarify information about the waste water treatment system and the facility's Clean Water Act-regulated discharges.

RESPONSE: The Region has incorporated the suggested revisions regarding incoming spent carbon, and the suggested revisions about the waste feed, with minor alterations, and has included the suggested language about the waste water treatment system and the Facility's discharges. One of the minor alterations was to change the reference to some of the incoming spent carbon as "exempt from hazardous waste classification" to indicate that such spent carbon "is not classified as hazardous waste upon receipt." Another was to change the phrase "received by the facility" to "received at the facility," in the additional text recommended by the commenter. Another minor alteration to the suggested changes was not to delete the word "operating" in reference to the carbon regeneration unit, RF-2.

II-2. One commenter suggested revisions to draft Permit condition II.A.2. in order to clarify the scope of regulated activities under the Permit.

RESPONSE: The Region has revised draft Permit condition II.A.2., renumbered Permit condition II.B.2., to clarify the intent, which is to prohibit activities that are subject to hazardous waste permitting requirements, except in accordance with the Permit.

II-3. One commenter suggested revisions to draft Permit condition II.A.3., in order to clarify the scope of the Permittees' obligations to comply with RCRA's land disposal restrictions.

RESPONSE: The Region has revised draft Permit condition II.A.3., renumbered Permit condition II.B.3., by deleting the first sentence as unnecessary and simplifying the remaining language, which requires compliance with 40 CFR Part 268.

II-4. One commenter suggested revisions to draft Permit condition II.A.4., to remove the reference to "modifications to the units," to clarify that some permit modifications may be made without submitting a request to the Region, and to clarify that some permit modifications may occur outside of the context of c-related deliverables set forth in draft Permit condition I.G.7.

RESPONSE: The Region agrees with the commenter and has revised draft Permit condition II.A.4., renumbered Permit condition II.B.4., as suggested.

II-5. One commenter suggested revisions to draft Permit condition II.A.6. because the cited rule, at 40 CFR § 264.73(b)(9), provides that the Permittees must certify that they have "a program in place to reduce the volume and toxicity of hazardous waste that is

generated on-site to the degree determined by the Permittee[s] to be economically practicable."

RESPONSE: The Region revised draft Permit condition II.A.6., renumbered Permit condition II.B.6., to include the phrase "determined by the Permittees," in order to track the regulatory language.

II-6. One commenter recommended changes to draft Permit condition II.E.2. in order to reference the inspection requirements in 40 CFR § 264.15(a) instead of paraphrasing those requirements in the draft permit condition.

RESPONSE: The Region revised draft Permit condition II.E.2., renumbered Permit condition II.F.2., to reference the inspection requirements in 40 CFR § 264.15(a) instead of paraphrasing them.

II-7. One commenter recommended changes to draft Permit condition II.E.3. in order to reference the inspection requirements in 40 CFR § 264.15(b) instead of paraphrasing select requirements in the draft Permit condition.

RESPONSE: The Region revised draft Permit condition II.E.3., renumbered Permit condition II.F.3., to reference the inspection requirements in 40 CFR § 264.15(b) instead of paraphrasing them.

II-8. One commenter suggested revisions to draft Permit condition II.E.4. in order to better track the regulatory provision at 40 CFR § 264.15(c).

RESPONSE: The Region revised draft Permit condition II.E.4., renumbered Permit condition II.F.4., to better track the regulation at 40 CFR § 264.15(c).

II-9. One commenter suggested revisions to draft Permit condition II.E.5. to incorporate the regulatory provision at 40 CFR § 264.15(d).

RESPONSE: The Region revised draft Permit condition II.E.5., renumbered Permit condition II.F.5., to incorporate the regulation at 40 CFR § 264.15(d) and has deleted the remaining language, which is included in the cited regulations.

II-10. One commenter recommended deletion of draft Permit conditions II.F.1. and II.F.2. as not consistent with EPA's RCRA permit requirements.

RESPONSE: The Region deleted draft Permit conditions II.F.1. and II.F.2. Draft Permit condition II.F.1 was redundant of the conditions in Module V that require proper maintenance, calibration and operation of the equipment and instruments listed in Table V-3. Draft Permit condition II.F.2 was overly broad and therefore vague and arguably duplicative of the entire Permit. The Region also renumbered draft Permit conditions II. through II.E. as Permit conditions II.A. through II.F.

II-11. One commenter recommended revising draft Permit condition II.H.1. to state the hazardous waste that the Permittees may manage as opposed to stating that the Permittees are prohibited from managing hazardous wastes not listed in Table II-2. The commenter also recommended that the Permit refer to Table C-1 in Permit Attachment Section C. (The same commenter also provided comments on draft Permit condition II.H.5.h., which are addressed in the response to similar comments associated with Module V, [see the Region's Response to Public Comment V-5].)

RESPONSE: The Region rephrased Permit condition II.H.1. so that it references hazardous waste codes that the Permittees may manage, instead of management of waste codes not on the list as prohibited from being managed. The Region deleted Table II-2 and, in its place, references Table C-1 of Permit Attachment Section C instead.

II-12. One commenter recommended changes to draft Permit condition II.J.4. to allow for the possibility that the Permittees could seek approval in accordance with 40 CFR § 264.35 to reduce the required aisle space in the hazardous waste container storage area.

RESPONSE: The Region modified Permit condition II.J.4 to clarify that the Permittees could seek a modification of the Permit to change the minimum aisle space required between the hazardous waste containers in the container storage area.

II-13. One commenter suggested revisions to draft Permit condition II.J.5., arguing that EPA had misstated its own rule in the draft Permit condition pertaining to preparedness and prevention arrangements with local authorities and objecting to the requirement that such arrangements be updated every five years.

RESPONSE: The Region incorporated some of the suggested revisions into Permit condition II.J.5. and rejected others. With respect to the commenter's assertion that the draft permit purported to compel the permittees to make arrangements with third parties who are not bound to comply with the permit, the Region revised the first sentence of Permit condition II.J.5. so that the Permittees' obligation is to *attempt* to maintain such arrangements. The arrangements need only be "maintained" as opposed to "made" because initial arrangements have already been made, as reflected in the facility's Contingency Plan. See Permit Attachment Section G and Permit Attachment Appendix XIII.

Similarly, the Region revised the requirement in Permit condition II.J.5. that purported to compel the permittees to obtain a third party's refusal to renew such arrangements in writing. Permit Condition II.J.5. requires that the permittees need only "seek to confirm" the refusal in writing. However, 40 CFR § 264.37(b) requires that the refusal be documented in the operating record. If the third party will not document its refusal to renew such arrangements in writing, the permittees can memorialize that refusal in writing themselves. This element of the requirement has been retained in Permit condition II.J.5.

The Region revised the requirement in draft Permit condition II.J.5. to maintain documentation of the refusal by local authorities to make arrangements with the Permittees for the operating life of the facility. Under Permit condition II.J.5., the Permittees need only

maintain such information in the operating record for five years or until the next attempt to update the arrangements is made. If the local authority continued to refuse to renew the arrangements, the new refusal to renew would again need to be documented and maintained in the operating record for the ensuing 5-year period (or until the attempts to renew the arrangements were made again).

The Region opted not to delete the requirement in Permit condition II.J.5. that the Permittees periodically update the preparedness and prevention arrangements with local authorities. The Region determined that the requirement to update the preparedness and prevention arrangements with local authorities every 5 years throughout the life of the Permit is warranted in light of the limited burden to the Permittees imposed by the obligation and the potential significance of the risks that may be posed if these arrangements are not periodically updated. See, for example, March 5, 2010 Memorandum from Matt Hale, Director, Office of Resource Conservation and Recovery, US EPA, to RCRA Directors re: Preparedness and Prevention Requirements for RCRA TSDFs, listed at "2016 09 26 Administrative Record Addendum.pdf." See also 45 FR 33154, 33186/1, May 19, 1980, ("[T]he Agency believes that where appropriate to protect human health and the environment in emergencies, it is vital that local authorities have up-to-date facility contingency plans in their possession.").

II-14. One commenter suggested that draft Permit condition II.K.2., which requires all revisions to the facility's contingency plan be submitted to all local police departments, fire departments, hospitals and state and local emergency response teams that may be called upon to provide emergency services, would be confusing and overly burdensome to receiving agencies. The commenter points to the March 5, 2010 Memorandum from Matt Hale, Director, Office of Resource Conservation and Recovery, US EPA, to RCRA Directors re: Preparedness and Prevention Requirements for RCRA TSDFs -- referenced in the preceding response -- as the basis for asserting that only significant changes in volumes or quantity of waste handled or significant design changes ought to trigger the need to provide contingency plan revisions to local emergency authorities. The commenter provided similar comments with respect to draft Permit condition II.K.3.

RESPONSE: To the extent that the commenter objects to Permit condition II.K.3. as an overly broad obligation to revise (or update) the contingency plan for changes that may not be considered "significant," the Region declines to revise Permit condition II.K.3. Permit condition II.K.3.a. tracks the regulation found at 40 CFR § 264.54. The Region considers each of the triggers for revising the contingency plan that are listed at II.K.3.a.i. through II.K.3.a.v. as "significant" enough to warrant the revision of the contingency plan. As a result, the Region has declined to make any changes to Permit condition II.K.3.a.

As noted, the commenter points to Mr. Hale's 2010 memorandum for the proposition that only significant changes to the Facility are intended to trigger the Permittees' obligation to submit a revised, updated contingency plan to local response agencies. Again, EPA determined that the triggers listed in Permit condition II.K.3 are significant and the Permit condition is in conformance with both the applicable regulatory language (see 40 CFR §§ 264.53 and 264.54). Furthermore, the sentence in Mr. Hale's memorandum immediately preceding the text quoted in the comment makes it clear that the memorandum includes some –

but not all -- examples of events necessitating updated written information (*i.e.*, an update to the contingency plan), which, in turn, would necessitate submittal of the updated written information to local authorities. It does not, as the commenter suggests, lead to the conclusion that ***only*** significant changes in volumes or quantity of wastes handled or significant design changes would trigger the obligation to submit revisions to the contingency plan to local authorities. Additionally, the examples in the memorandum are a non-exhaustive illustration of when the contingency plan should be revised, not whether the revisions need to be submitted to local authorities. If the contingency plan is revised at all, the revision must be kept in the Operating Record and must be submitted to the local authorities. The Region's approach is consistent with 40 CFR §§ 264.53 and 264.54 and the Region is therefore retaining the language that tracks the regulation in Permit condition II.K.2.

In responding to this comment, the Region determined that three (3) tables were missing between pages 4 and 5 of the Contingency Plan, although these tables had been included in a previously submitted version of the Contingency Plan as Appendix XIII of the April 2012 Permit application. See "2012 04 RCRA Application_Vol II-Appendix XIII_Rev 1.pdf." In addition, the Region determined that the phone number for EPA Region IX listed in Section 4.3 of the Contingency Plan is no longer the correct phone number and requires updating. As a result of these issues, the Region corrected the Contingency Plan by altering the version of the plan that was included in the 2016 Permit Application in the following ways:

1. the Region corrected the EPA Region IX phone number listed in Section 4.3 of the Contingency Plan [U.S. Environmental Protection Agency Region IX, 24-Hour Environmental Emergencies, (800) 300-2193]; and

2. the Region included the following materials between pages 4 and 5 of the Contingency Plan from the April 2012 Permit Application Appendix XIII: Table 2-1 Hazardous Wastes Received at the Parker Facility, Table 2-2 Organic Constituent Ranges for Spent Activated Carbon and Table 2-3 Metal Constituent Ranges for Spent Activated Carbon.

Because the Region's final decision on the Permit application includes a Contingency Plan that has been revised from the version that was submitted with the Permit application, the Region added a provision in Permit condition I.K. to require that the Permittees submit both a hard copy and an electronic copy of the revised Contingency Plan to the off-site response agencies listed in section 4.1 and the hospital listed in section 4.2 of the Contingency Plan within thirty (30) days of the effective date of the Permit. (See Permit condition I.K.4.) The Region also added a provision to Permit condition I.K.5., new Permit condition I.K.5.b., to require a link to an electronic version of the Contingency Plan be submitted to these entities by the time the Permittees send notice of the Information Repository to the entities on the Facility mailing list in accordance with Permit Condition I.K.5.a. [See also the Region's Response to Public Comment I-25, Permit condition I.J.3 and 40 CFR §§ 124.33(e) and 270.30(m).]

II-15. One commenter suggested revisions to draft Permit conditions II.L.1.a. and II.L.1.b. in order to better track the language in the regulations regarding manifest discrepancies that may be discovered and would then need to be reported.

RESPONSE: The Region revised the language in Permit conditions II.L.1.a. and II.L.1.b. as suggested to track the regulatory language. However, the Region also added citations to the list of regulatory provisions in Permit condition II.L.1., with which the Permittees must comply. The citations to 40 CFR §§ 270.30(l)(7) and (8) are incorporated into the body of Permit condition II.L.1. because, while 40 CFR § 264.72 only requires a manifest discrepancy report for "significant differences" between the type or quantity of hazardous waste under § 264.72(a)(1), 40 CFR § 270.30(l)(7) indicates that a report must also be submitted for manifest discrepancies described in both §§ 264.72(a)(2) (rejected wastes) and (3) (container residues that exceed the quantity limits for empty containers). Additional revisions to Permit condition II.L.1. make clear these reports are required as well.

In addition, after the issuance of the draft Permit, EPA promulgated regulations that necessitated additional revisions to Permit condition II.L.1 and the notice requirement in Permit condition II.C.1. On November 28, 2016, EPA issued the Hazardous Waste Generator Improvements Rule, which included revisions to 40 CFR Parts 257, 258, 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 271, 273, and 279. 81 FR 85732 (Nov. 28, 2016). And, on the same day, the Agency promulgated "Hazardous Waste Export-Import Revisions." 81 FR 85696, (Nov. 28, 2018). Later, on January 3, 2018, the Agency promulgated a Final Rule entitled "Hazardous Waste Management System; User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations," which included revisions to 40 CFR Parts 260, 262, 263, 264, 265, and 271. 83 FR 420, (Jan. 3, 2018).

To incorporate the newly promulgated regulations relating to hazardous waste imported from a foreign source into the final Permit, the Region revised Permit condition II.C.1. from the draft permit, where it was formerly draft Permit condition II.B.1., to conform the permit conditions regarding imports of hazardous waste to the revised regulations. Revised Permit condition II.C.1. requires that the Permittees provide notice of hazardous waste imports in accordance with 40 CFR §§ 264.12(a) and 264.71. The brackets at the end of the permit condition also now include a reference to the revised hazardous waste import requirements at 40 CFR § 262.84.

The Region also revised Permit condition II.L.1. to include citations to regulatory provisions that were promulgated or revised as part of the Hazardous Waste Generator Improvements Rule or the User Fees for the Electronic Hazardous Waste Manifest System Rule. Specifically, this included a reference to EPA's manifest fee program (see 40 CFR Part 264, Subpart FF) and additional citations to 40 CFR §§ 260.4 (Manifest copy submission requirements for certain interstate waste shipments), 260.5 (Applicability of electronic manifest system and user fee requirements to facilities receiving state-only regulated waste shipments), 264.1300 et seq. (Fees for the Electronic Hazardous Waste Manifest Program) and 270.30(l)(7) (Manifest discrepancy report) and (8) (Unmanifested waste report).

II-16. One commenter recommended deletion of draft Permit condition II.M.1.b. because the draft Permit condition created confusion in terms of whether it was intended to add Operating Record obligations beyond those set forth in draft Permit condition II.M.1.a. The commenter further asserted that, because the Region did not include a justification for the imposition of MACT EEE record-keeping requirements in the administrative

record for the draft Permit, the Region had no authority to impose the MACT EEE record-keeping requirements from 40 CFR § 63.1211.

RESPONSE: The Region's intention in including draft Permit condition II.M.1.b. in the draft Permit was not to add additional obligations beyond what is required in accordance with 40 CFR § 264.73, except to the extent that records pertaining to RF-2 (a "miscellaneous unit" regulated under 40 CFR § 264.600 *et seq.*) are not specifically listed in Part 264. Therefore, while the Region deleted the reference in the body of Permit condition II.M.1.b. to 40 CFR § 63.1211, it added in its place a reference to Module V, which includes its own specific references to RF-2-related documents that must be kept in the Operating Record for the facility, (see, *e.g.*, Permit conditions V.C.2.iv., V.C.4.i., etc.). The reference to 40 CFR § 63.1211 remains in the brackets at the end of Permit condition II.M.1.b. as a reference, and specific permit conditions from Module V that reference the Operating Record are listed there as well. The Region also added a qualifier to Permit condition II.M.1.b. ("in accordance with Permit condition II.M.1.a.") that is intended to clarify that Permit condition II.M.1.b. was not meant to add requirements beyond those described generally in Permit condition II.M.1.a. See a further explanation of this approach to this type of comment in Response to Comments III-2.

II-17. One commenter suggested that the table of Operating and Maintenance Manuals Maintained on Site in Permit Attachment Appendix XXI and Table D-2 Operating and Maintenance Manuals in Permit Attachment Section D (referenced in draft Permit condition II.M.1.c) should both be revised to incorporate more up-to-date information regarding the manufacturers of carbon vessels and the carbon monoxide continuous emissions monitoring system.

RESPONSE: The referenced tables in Permit Attachment Appendix XXI and Permit Attachment Section D were found in an identical form in the Permit application submitted by the Facility operator, who also is the commenter. The Region declines to make the suggested revisions since they are inconsistent with the Permit application. If the list of operating and maintenance manuals required to be maintained on site needs to be updated because the equipment listed on that table has changed since the table was submitted in the Permit application, the Permittees should have updated the table and resubmitted the application at that time. The Region has added a new paragraph to Permit condition I.K. that requires the Permittees, if necessary, to submit a revised and updated Permit Attachment Appendix XXI and revised and updated Permit Attachment Section D, with an accompanying request for a permit modification, within sixty (60) days of the effective date of the Permit. See Permit condition I.K.6., Permit Attachment Appendix XXI and Permit Attachment Section D. Any updates or revisions to this table may be accomplished in this manner.

II-18. One commenter objected to the inclusion of draft Permit condition II.M.1.d. as not supported by information in the administrative record and, therefore, as improper.

RESPONSE: Draft Permit condition II.M.1.d. required that the Permittees develop a quality control program for the CMS. The Region maintains that a quality control program for the CMS at the facility is important to ensure that the CMS is functioning properly. However, the Region recognizes that such a program could be incorporated into the periodic trial burn plans

required in accordance with final Permit condition V.I. instead of as part of a separate requirement pursuant to procedures more appropriate for facilities that are subject to the MACT EEE requirements.

As a result, the Region made substantial revisions to draft Permit condition II.M.1.d. such that Permit condition II.M.1.d. now refers to the time frames for maintaining documents in the operating record. Permit condition V.I.1.c.vii. now includes a provision that requires the Permittees to develop and implement a CMS quality control program as part of the development and implementation of the periodic PDT process, now set forth in Module V. The Region also revised Permit condition V.G.5. to remove the reference to the requirement to maintain in the operating record the site-specific CMS quality control performance evaluation test plan procedures in accordance with 40 CFR § 63.8(d). Instead, Permit condition V.G.5. now simply requires that the CMS quality control program documentation be maintained for three years.

While the basic requirements of a CMS quality control program set forth in 40 CFR § 63.8 should be included in work plans submitted pursuant to Permit condition V.I., the specific parameters and schedule can be tailored to the CMS at the Facility, subject to review and approval during the PDT work plan review and approval process.

The Region replaced draft Permit condition II.M.1.d. with a new Permit condition II.M.1.d that requires maintenance of the records that are required to be kept in the Operating Record for specific time frames. These requirements were added to clarify that, for the most part, the record keeping requirements for the Operating Record include a three-year retention period. However, the Permit condition II.M.1.d. also makes clear that there are exceptions, such as where the records must be maintained until closure in accordance with 40 CFR § 264.73(b), or where they must be maintained for five (5) years in accordance with Permit conditions V.C.5.viii. or V.G.1. The final Permit condition II.M.1.d. also acknowledges that other permit conditions may also specify specific retention periods for specific records and includes references to Permit conditions I.I.1., IV.J.4., V.C.5.viii., V.G.1., and VI.B.2. See also the Region's Response to Public Comment V-37.

II-19. One commenter objected to the citations to certain reporting requirements found in 40 CFR Parts 61 and 63 that were contained in draft Permit condition II.M.2. The commenter objected to the requirements referred to as not supported by information in the administrative record, and requested their deletion.

RESPONSE: The Region has removed the references to 40 CFR Parts 61 and 63 from Permit condition II.M.2., but added a reference to any conditions in the Permit that require reporting of information. This reference will include the specific reporting requirements applicable to RF-2 that are found in Module V. As explained in the Region's Response to Public Comment IV-2, the Region has removed references to 40 CFR Part 61 requirements that were in the draft Permit, because these requirements apply to the Facility independently from this Permit. The Region had drawn from the requirements for hazardous waste combustors at 40 CFR Part 63, Subpart EEE, as guidance in developing requirements applicable to the miscellaneous unit RF-2. However, the Region has reconsidered its reference to Part 63, Subpart EEE, and has opted to model the RF-2-related reporting requirements on RCRA's reporting requirements instead. See, *e.g.*, Permit Condition V.G.

II-20. One commenter suggested that language be added to draft Permit conditions II.P., II.Q. and II.R. to specify that changes in financial assurance mechanisms, changes in cost estimates, and changes in insurance coverage will not be considered changes to the Permit and will not require applications for permit modifications under 40 CFR § 270.42.

RESPONSE: The Region agrees with the commenter's recommended changes to draft Permit conditions II.P.2.a. and II.Q. and has revised the language of these permit conditions accordingly.

With respect to the suggested changes to draft Permit condition II.R, the Region agrees in part with the commenter's suggested revisions. The Region agrees that changes to the ***type*** of financial assurance for bodily injury and property damage (*e.g.*, surety bond changed to insurance policy) will not require a permit modification, but disagrees with the commenter regarding changes to the ***level*** of financial assurance. In accordance with 40 CFR § 264.147, Permit condition II.R. provides that changes to the ***level*** of financial assurance for bodily injury and property damage (*i.e.*, at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs) will require a permit modification.