COMMENTS REGARDING GENERAL ISSUES (C)

C-1. One commenter objected to the draft Permit on the basis that the issuance of a Resource Conservation and Recovery Act (RCRA) permit for this Facility violates several environmental, tribal, and historic-preservation laws and policies, namely EPA's Tribal Consultation policies and guidance, the National Historic Preservation Act, Executive Order 12898 on Environmental Justice, Title VI of the US Civil Rights Act, RCRA, the Clean Air Act, the Native American Graves Protection and Repatriation Act,[48] the American Indian Religious Freedom Act, and Executive Order 13007 on Indian Sacred Sites. The commenter further claims that the permitting process is unfair to Native Americans.

RESPONSE: The U.S. Environmental Protection Agency's (EPA's) RCRA permitting regulations apply equally to facilities within or outside of Indian country. And, since this Facility is located in Indian country, EPA Region 9 (the Region) has, throughout the Facility's life, made a concerted effort to engage the Tribe and the community on the Facility and its hazardous waste operations. See also the Region's Response to Public Comment C-18, below, regarding the Region's consideration of environmental justice as part of the decision-making process.

The Region has endeavored over the years to incorporate environmental justice considerations into its review of permit applications for RCRA permits. It takes this responsibility very seriously and notes that the Environmental Appeals Board has reinforced the importance of undertaking an environmental justice analysis in its opinions.[49] *See*, *e.g.*, *In re: Chemical Waste Management of Indiana, Inc.*, 6 EAD 66, 67-76 (1995) (concluding that the Region should exercise its discretion to implement the Executive Order on Environmental Justice "to the greatest extent practicable"); *In re: Envotech, L.P.*, 6 EAD 260, 278-283 (1996); and *In re: Shell Gulf of Mexico, Inc. & Shell Offshore, Inc. (Frontier Discovery Drilling Unit)*, 15 E.A.D. 103, 111 (2010).

In performing the environmental justice analysis for this Facility, the Region collected available demographic data for a five-mile radius from the Facility and La Paz County, and compared that with data available for the state of Arizona, the Region and nationally. Based on a review of this demographic data, the Region concluded that the population within a five-mile radius of the Facility is above both the State and national average in its percentages of minority (54%) and low income (58%) residents. The Region also concluded that both the population within a five-mile radius of the Facility and La Paz County contain significantly higher percentages of Tribal or Indigenous populations than in the State or nationally. See Environmental Justice Findings USEPA Statement of Basis, Appendix E, (hereafter, "EJ Findings"), p. 481/1064, at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf."

Environmental justice concerns also helped inform the framework for the Human Health and Ecological Risk Assessment (HHERA) insofar as it was designed to ensure protection of

[48] Native American Graves Protection and Repatriation Act, Public Law 101-601; 25 U.S.C. §§ 3001-3013.
[49] See also "EPA Statutory and Regulatory Authorities Under Which Environmental Justice Issues May Be Addressed in Permitting," December 1, 2000, at https://www.epa.gov/sites/production/files/2015-02/documents/ej_permitting_authorities_memo_120100.pdf.

sensitive individuals, such as children, the elderly, those with predispositions (*i.e.*, susceptibilities), and communities with unique exposure patterns. See EJ Findings, p. 484/1064, at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf." See also "2016 04 RCRA Application_Appendix XI_Rev 1.pdf." In addition, the health-based threshold for systemic health impacts in this assessment was reduced by 75% in an effort to account for cumulative exposures from any other facilities in the surrounding area. Id.

According to the Region's Environmental Justice Analysis:

> "The risk assessment demonstrates that, even with conservative assumptions, the potential risks associated with the Facility operations are below regulatory and target levels for human health impacts (both carcinogenic and non-cancer) and ecological impacts." See EJ Findings, p. 478/1064 at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf."

In evaluating the possible impacts of its permitting decision for the Facility on nearby minority and low-income residents, the Region took into consideration numerous factors that sought to address the particular and practical impacts of its decision on these members of the community. For example, the Region considered that both "[r]ecreational and subsistence fishing occurs both along the [Colorado R]iver and in the 250 miles of irrigation canals on the [CRIT] Reservation." See EJ Findings, p. 480/1064, at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf." The Region also "conducted a survey within a five-mile area around the Facility using NEPAssist[50] to identify healthcare facilities, schools and community gathering places."[51]

In performing the environmental justice analysis that accompanied its draft permit, the Region also considered data regarding linguistic isolation in the nearby community, which may limit a household's capacity for civic engagement in the regulatory process. See EJ Findings, p. 481/1064, at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf." And, the Region looked at both education and employment levels within the surrounding community. Education level may influence susceptibility and vulnerability to environmental pollution. Limited formal education is a barrier to employment, health care and social resources, and can increase the risk of poverty, stress, and impacts from environmental stressors. See id., p. 482/1064 at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf." Low employment levels also increase stress and impacts from environmental stressors. Finally, in evaluating health data for the community, the Region found that the percentage of the total population without health insurance is higher than the state and national percentages. Id.

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[50] According to EPA's NEPAssist website, (https://www.epa.gov/nepa/nepassist): "NEPAssist is a tool that facilitates the environmental review process and project planning in relation to environmental considerations. The web-based application draws environmental data dynamically from EPA Geographic Information System databases and web services and provides immediate screening of environmental assessment indicators for a user-defined area of interest. These features contribute to a streamlined review process that potentially raises important environmental issues at the earliest stages of project development."

[51] See also "2018 03 14-CCR-090600226-2017 CCR Final Report-Big River Development.pdf" and "2018 06 07-CCR-090400051-2017 CCR+Certification of Delivery.pdf."

The Region has conducted numerous public meetings during the past two decades concerning this Facility and these efforts were, in part, in recognition that the Facility is located on Native American Indian lands.[52] And, the Region undertook a series of community interviews conducted with Tribal and non-Tribal residents within the community, government officials and other stakeholders as part of developing a site-specific and community-specific approach to ensuring appropriate outreach to and participation by the public in the decision-making process.[53]

In March of 2015, EPA reached out to the Tribal and Parker communities by holding an informational public meeting at the Parker Community Senior Center. EPA answered questions and provided the audience with information on how to get involved during the public comment period and public meeting/public hearing that would be held after the Region announced the draft permit decision.

The issuance of the draft permit was announced on September 28, 2016 and the public comment period opened on October 1, 2016. EPA held a public meeting for the community and a public hearing to obtain public comment on November 1, 2016 at the CRIT Tribal Casino meeting rooms in Parker, AZ. And, on November 15, 2016, EPA extended the public comment period, to January 9, 2017.[54]

In processing the Facility's permit application, proposing the draft Permit and issuing this final Permit decision, the Region has complied with all applicable requirements. Please see the following responses to comments regarding specific authorities mentioned by the commenter, which are also the subject of other comments from this commenter:

[52] See, *e.g.*, "1994 06 14 Response to 01241994 Letter re Part B Permit Application.pdf," "1994 06 20 Response to 06141994 Letter from EPA.pdf," "2001 02 17 List of Concerns raised by community.pdf," "2002 08 13 Parker Pioneer Article about 2002 08 07 Public Meeting.pdf," "2002 08 07 Westates Public Workshop Documents.pdf," "2002 11 04 Letter re Response to concerns re public meeting on 08072002.pdf," "2003 08 29 Meeting Notes 08012003 NHPA Meeting - Various Recipients.pdf," "2003 08 29 Meeting Notes from 08012003 NHPA Meeting - DEddyJr.pdf," "2004 01 21 Memo Public Notice Air Emissions and RA Public Workshop w_o mailing list.pdf," "2004 02 11 Public_Workshop_Public_Hearing w o sign in sheets & incomplete pp.pdf," "2004 02 11 Public Workshop Public Hearing.pdf," "2005 01 11 Email re Action Items for 2004 12 17 Meeting.pdf," "2005 03 24 Ltr to David Harper re Feb 2004 Public Meeting.pdf," and "2016 10 26 Parker Pioneer PP_1026A_16.pdf."

[53] See, "2011 10 19 Interview 1 for PIP.pdf," "2011 12 19 Interview 2 for PIP.pdf," "2011 12 20 Interview 3 for PIP.pdf," "2011 12 21 Interview 4 for PIP.pdf," "2011 12 21 Interview 5 for PIP.pdf," "2011 12 21 Interview 6 for PIP.pdf," "2012 04 13 Interview 7 for PIP.pdf," "2012 04 13 Interview 7 notes for PIP.pdf," "2012 04 16 Interview 8 for PIP.pdf," "2012 04 16 Interview 9 for PIP.pdf," "2012 04 16 Interview 9 notes for PIP.pdf," "2012 04 23 Notes from 3 Interviews for PIP.pdf," "2012 05 07 Interview 10 for PIP.pdf," "2012 05 08 Interview 11 for PIP.pdf," "2012 09 12 Interview 12 for PIP including notes.pdf," and "2012 09 12 Interview 12 for PIP.pdf." See also "2011 03 17 Final signed CRIT Chairman letter for Public Participation at Siemens.pdf."

[54] See, "2016 09 28 Email Notification of Proposed Permit Decision.pdf"; "2016 09 29 Email Notification of Prposed Permit Decision.pdf"; "2016 10 03 Parker Line Online EPA Public Comments.pdf"; "2016 10 26 Email Transmitting Public Notice to Parker Pioneer.pdf"; "2016 10 26 Parker Pioneer PP_1026A_16.pdf"; "2016 11 01 Public Hearing Transcript.pdf"; "2016 11 10 Letter re Extension of Public Comment Period.pdf"; "2016 11 14 Email to CRIT Librarian re revised docs.pdf"; "2016 11 14 Fact Sheet for Proposed Permit (English).pdf"; and "2016 11 15 Evoqua Public Notice (English).pdf."

- Federal trust responsibility and consultation with respect to the Colorado River Indian Tribes (CRIT) (See the Region's Response to Public Comment C-15);

- the National Historic Preservation Act (NHPA) (See the Region's Response to Public Comment C-16);

- Executive Order 12898 on Environmental Justice (See the Region's Response to Public Comment C-18);

- Title VI of the US Civil Rights Act (See the Region's Response to Public Comment C-18);

- RCRA (See the Region's Response to Public Comments C-2 through C-18, generally); and

- The Clean Air Act (CAA) (See the Region's Response to Public Comment C-10).

Responses to the comments relating to the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), the American Indian Religious Freedom Act of 1978 (AIRFA), and Executive Order 13007– Indian Sacred Sites, are provided here. However, the Region's response with respect to the NHPA (C-16) is also relevant with respect to the commenter's assertions regarding the Agency's purported failure to comply with NAGPRA, AIRFA and Executive Order 13007 regarding Indian Sacred Sites.

NAGPRA was enacted in 1990 and represents "the culmination of 'decades of struggle by Native American tribal governments and people to protect against grave desecration, to [effect the repatriation of] thousands of dead relatives or ancestors, and to retrieve stolen or improperly acquired cultural property.'" *Yankton Sioux Tribe v. US Army Corps of Engineers*, 83 F. Supp. 2d 1047, 1054, (D.S.D., 2000) (citing Jack F. Trope and Walter R. Echo-Hawk, The Native American Graves Protection and Repatriation Act: Background and Legislative History, 24 Ariz. L. J. 35, 36 [1992]). The Act focuses on establishing the rights of Indian tribes and their lineal descendants to obtain repatriation of certain human remains, funerary objects, sacred objects, and other objects of cultural import from federal agencies and museums. In addition to its repatriation requirements, the Act makes several specific provisions for the protection of Native American cultural items, including human remains, which are excavated or discovered on federal or Tribal lands after November 16, 1990. See 25 U.S.C. §§ 3001-3013.[55]

However, for the following reasons, the Region believes that NAGPRA is inapplicable to the RCRA permit decision at hand. There is no evidence in the record relating to this decision to suggest that any cultural items subject to NAGPRA are implicated by this final RCRA permit decision. See 43 CFR Part 10. There is no evidence of any cultural items subject to NAGPRA excavated or discovered as part of the development or operation of the Facility or the RCRA permitting process. Nor is there any evidence of any such cultural items in the possession or control of EPA. On the other hand, there is ample evidence in the Administrative Record

[55] See also, *Yankton Sioux Tribe, supra,* 83 F. Supp. at 1054-1055.

demonstrating that the Region undertook to uncover whether cultural resources or items might be impacted by its RCRA permitting decision. See the Region's Response to Public Comment C-16, below.[56]

Notably, the land on which the Facility is located is CRIT's Tribal reservation land, so the disposition of Tribal remains, graves or other cultural or religious artifacts – to the extent relevant -- would properly be directly addressed by and between the Tribe and its lessee. Here, there is no particular information unknown to the Tribe or BIA, or any particular reason that related to hazardous waste management at the Facility, suggesting the Region had a responsibility to interfere in the Tribe's relationship with its lessee with respect to any specific cultural item, or an explicit invitation from the Tribe to do so. See, *e.g.*, "1995 07 20 Building Permit Application.pdf."

The original lease of the Facility by the Colorado River Indian Tribes to the Facility operator was approved in early 1991. And, BIA, CRIT and the operator, as the signatories to the original lease agreement, explicitly addressed the issues of "antiquities" that may have been excavated or discovered during "all phases" of site development, as well as excavation or construction activities thereafter. The 1991 Lease Agreement required the lessees to leave "undisturbed and plainly marked" any graves, ruins or other antiquities within the exterior boundaries of the leased premises. It also required that the lessee/Facility operator report such findings to CRIT and BIA immediately. See, "1993 08 30 Request of Documents.pdf" at Section 31, pp. 51-53/111.

The Region also notes that the March 1991 lease agreement was already in effect and the Facility itself was already in construction when it achieved RCRA "interim status" as an existing facility later that year, (the Facility's interim status was effective as of August 21, 1991). See Facility Information US EPA Statement of Basis, p. 6/1064 at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf."

The Region acknowledges that other indigenous populations besides CRIT or its members may have interests in Tribal remains, graves or other cultural or religious artifacts that may have been excavated or discovered at or around the Facility. The Region notes that the original lease agreement uses the phrase "antiquities" without reference to any specific Tribal affiliation. Here, the Region has no information to suggest that any excavation or other activities at the Facility led to the discovery of cultural items subject to NAGPRA's requirements or, indeed, the discovery or excavation of any "antiquities," whether they may have been CRIT-related antiquities or otherwise. Therefore, there is no information indicating that NAGPRA has any applicability to this permit decision. (See also the Region's Response to Public Comment C-16, below.)

[56] See also, e.g., "1990 02 16 Letter EEI retained for Env Assessment.pdf"; "1990 11 29 Letter Re_Cultural_Resources_Determination.pdf"; "2002 09 27 Letter re Consultation on the Protection of Tribal Cultural Resources.pdf"; "2003 12 10 Letter with documents re Requesting Info about California Tribes.pdf"; "2003 12 15 Letter re Proposed EPA Undertaking.pdf"; "2003 12 23 Letter re Acitivities Conducted pursuant to NHPA - Various Recipients.pdf"; "Undated Book Passage on the CRIT.pdf"; and "UNDATED CRIT Mohave Resource Listing.pdf."

AIRFA was enacted in 1978. See 42 U.S.C. § 1996, *et seq*. The statute seeks to protect and preserve the traditional religious rights and cultural practices of Native Americans, including their rights of access to sacred sites, and the freedom to worship through ceremonial and traditional rites. The Act requires policies of all governmental agencies to eliminate interference with the free exercise of Native religion, based on the First Amendment, and to accommodate access to and use of religious sites to the extent that the use is practicable and is not inconsistent with an agency's essential functions.

Although AIRFA directs federal entities to accommodate access to and use of religious sites consistent with federal laws and mandates, it does not create a basis for objecting to the Region's permitting decision in this matter. See, *e.g.*, *Lyng v. Northwest Indian Cemetery Protective Ass'n,* 485 US 439, 455, 99 L Ed 2d 534, 108 S Ct 1319, (S.Ct. 1988) and *Henderson v. Terhune*, 379 F.3d 709, 711 (9th Cir. 2004). Nonetheless, the Region's decision in this matter involved extensive consultation, outreach and other communications with the Tribe and careful consideration of the religious interests and concerns raised by community members during public hearings and other meetings held in connection with the Region's permit decision. These considerations included the concerns expressed by some Mohave Elders, who regard Black Peak as sacred. (Further information about the Tribal consultation process in which the Region engaged, and the Region's consideration of religious interests and concerns during the NHPA decision-making process, is included in the Region's Responses to Public Comments C-15 and C-16, below.) Thus, the Region's decision-making process is consistent with the federal government's policy, as set forth in AIRFA. See, also, *Lyng*, *supra*, 485 US at 454-455.

Executive Order 13007 on Indian Sacred Sites was designed to protect and preserve Indian religious practices. It directs each federal agency that manages federal lands to "(1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites." 61 FR 26771, May 29, 1996.

Executive Order 13007 does not apply to EPA in the context of this permit decision since neither the Facility nor the land comprising the Facility is managed by EPA. In addition, the plain language of the Executive Order demonstrates that it provides no authority under which to challenge the permit decision, stating:

> "Sec. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person."

However, again, just as with the comments made with respect to the Region's adherence to AIRFA, the NHPA process that the Region undertook with respect to this RCRA permit decision demonstrates that the Region acted in conformance with Executive Order 13007. For example, the Region considered both access to and ceremonial use of "Indian sacred sites by Indian religious practitioners" and how such access and use might be impacted by this decision. See Executive Order 13007, Section 1. The NHPA process undertaken by the Region also demonstrates how the Region considered the potential for the permitting decision

to adversely affect the physical integrity of any such sacred sites and whether any such adverse impacts could be avoided. *Id.* For example, in developing its NHPA analysis, the Region considered ***all*** the land within a mile radius of the Facility as sacred land, from where prayers to Black Peak could be made.

See additional information regarding the NHPA analysis in the Region's Response to Public Comment C-16, below.

C-2. Several commenters claim that the permitting process has been tainted because the Agency was biased in allowing the Facility to operate for an extended period without proper permits or the landowner's signature on the permit application. The commenters assert that the Region was compelled, but failed, to deny the Facility's permit application when a complete application was not received by September 1, 2009.

RESPONSE: The Region acknowledges that the permitting process has taken longer than expected. However, because the Facility qualified and has continued to qualify for interim status under RCRA and the accompanying federal regulations, 40 CFR Part 265 and Part 270, Subpart G, the Facility is and has been operating legally under RCRA's hazardous waste program. In accordance with 40 CFR § 270.70(a), facilities that qualify for interim status "shall be treated as having been issued a permit." Furthermore, under interim status, the facility owner and operator must continuously comply with regulations designed to protect human health and the environment, as described in 40 CFR Parts 265 and 270. Pursuant to 40 CFR §§ 270.71-72, once a facility has entered interim status, while some changes may be made without prior Agency approval, the facility is not permitted to deviate from the wastes, processes, and design capacities specified in its Part A application without prior Agency approval.

Regarding the Facility operating for an extended period without the proper landowner signature, under RCRA's interim status requirements, a hazardous waste treatment, storage or disposal facility is not required to obtain a landowner signature in order to operate. Rather, the signature requirement contained in 40 CFR § 270.10(b) is part of the permit application process and must be satisfied before the Agency will deem a permit application complete. If an applicant fails to correct deficiencies in a permit application, the Agency may deny the application. See 40 CFR §§ 124.3(d), 270.10(e)(5). In fact, as part of the application process, the Tribe signed the Part A permit application in 1992. See "1992 11 30 Revised RCRA Part A Permit Application.pdf."

One of the commenters appears to rely for its argument on EPA's July 30, 2009 briefing paper prepared in anticipation of an August 3, 2009 meeting between EPA and the CRIT Tribal Council. See "2009 07 30 US EPA Messages for CRIT Council Meeting.pdf," (Supplemental Administrative Record). This briefing paper included the Region's stated intention to issue a notice of deficiency and a proposed denial of the application if a complete Part B Permit Application was not received by September 1, 2009. The commenter argues that this statement compelled the Agency to deny the permit application even though CRIT signed and certified the Facility's revised Part B permit application shortly afterwards, in December of 2009. The September 1 deadline was discretionary and was not required by statute or regulation and

therefore did not establish a legally binding deadline. The regulations governing RCRA Permit Applications do not compel the Region to propose a permit denial in these circumstances. See 40 CFR §§ 124.3(d), 270.10(e)(5) and 270.73 (Emphasis added). For example, 40 CFR § 124.3(d) states, in pertinent part, "If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied . . ." While the July 30, 2009 briefing paper reflects the Region's need to see progress on the Tribal government's commitment to support the private lessee/operator's efforts to seek a RCRA permit, these ongoing communications by no means obligated the Agency to propose a permit denial if the Agency's stated "deadline" was not met. Neither does the failure to propose a denial of the permit for that reason constitute a misrepresentation or omission to either the Tribe or the community. (See also the Region's Response to Public Comment C-3, below.)

While the deadline passed, EPA observed that a Tribal Resolution approving the Tribe's signature and certification on the application was passed unanimously by the CRIT Tribal Council on October 26, 2009. (See: "2009 10 01 Section LCertification_Revision 1.pdf"; "2009 12 11 Certification of Permit Application.pdf"; and "2009 10 26 CRIT Resolution.pdf."[57]) And, as noted, the Tribe signed the application shortly afterwards, in December 2009. The Region also notes that CRIT reaffirmed its signature on the final Part B permit application in April of 2016. See, "2016 04 25 CRIT Ltr re Evoqua HW Permit Application.pdf."

As explained in the Statement of Basis for the draft Permit, the Region has engaged in numerous discussions and consultation with various CRIT tribal officials, including the CRIT Tribal Council, about the Permit application, the Tribe's obligations with respect to the application and the Facility, and the Agency's permit decision-making process. See Tribal Consultation with Colorado River Indian Tribes (CRIT) US EPA Statement of Basis, p. 11/1064 at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf." These communications have occurred throughout the entire life of the Facility.[58]

One of the commenters claims -- but does not support or explain -- that EPA "provided misinformation to the tribal government and tribal members and also withheld other important information" and that such actions led to the Tribe signing the final Part B permit application. Because the commenter has failed to explain these assertions, the Region can only respond that it has consistently provided outreach and informational materials in good faith to both the Tribal government and the community regarding all aspects of the decision-making process, as evidenced generally throughout the documents contained in the Draft Permit Administrative Record and the Supplemental Administrative Record.[59] With the exception of some minor and

[57] See, also, *e.g.,* "2007 09 26 Letter Landowner signature and certification of Hazardous Waste Permit Application.pdf," "2007 10 15 Siemens Response re Landowner Signature and Certification of Permit Application .pdf," and "2016 03 07 USEPA R9 Ltr to CRIT re Signature Request and Status of EPA Consultation with CRIT.pdf."
[58] See also the Region's Response to Public Comment C-15 and footnote 101, below.
[59] See, *e.g.*: "1995 05 31 cover ltr CRIT w_o Encl Inspection Rpt Transmittal Letter Mar 1995.pdf"; "2000 08 31 Parker Public Library - Request to enclose documents.pdf"; "2000 09 26 Email Westates Publications 2000.pdf"; "2000 10 05 Review of Waste Permit Application – Oct 2000.pdf"; "2000 12 14 Email Westates_Publication_For the Record.pdf"; "2001 01 22 CRIT AG w_o encls.pdf"; "2001 07 20 Memo re Materials delivered to CRIT Reservation.pdf"; "2003 09 19 Re_Requesting Comments on Proposed Area of Potential Effects_DEddyJr.pdf";

specific errors, which are explained in these Responses to Comments, the Region is unaware of any incorrect information it may have communicated to CRIT or the general public, nor is it aware of any omissions of information that it should have provided to CRIT or the general public in advance of asking for the Tribe's signature on the RCRA permit application.

C-3. Several commenters expressed the concern that the permitting process has been illegitimate because the Agency has exhibited a pro-facility bias.

RESPONSE: The Region did not approach the permitting process with bias or with a predetermined outcome in mind.[60] One commenter based its concern on an incorrect statement from a previous EPA RCRA Permitting website that has since been corrected. This statement said that the Region was "in the process of issuing permits" for the Evoqua and Romic facilities. This statement was poorly worded and should instead have indicated that the Region was in the process of "making permit decisions." The Region acknowledges the error. Notably, however, the Region actually denied the referenced Romic facility permit application in 2007 for lacking the trust landowner tribe's signature. (See December 17, 2007 Notice of Denial of RCRA Permit Application at: https://www3.epa.gov/region9/waste/romic/pdf/romic-permit-denial.pdf.)

Many other Regional documents and webpages make clear that the Region did not prematurely decide to issue a RCRA permit for the Evoqua Facility. For example, the Region's November 2016 fact sheet for the proposed permit specifies that the Region was "proposing to issue a permit" for the Facility. See Fact Sheet: Proposed Permit for the Evoqua Water Technologies LLC Facility Near Parker, Arizona at "2016 11 Fact Sheet for Proposed Permit (English).pdf." The Region's February 2017 HHERA Fact Sheet similarly provides that the Agency "will . . . be making a decision about whether or not to issue a RCRA permit to allow the facility to continue managing hazardous waste." See HHERA at Evoqua Water Technologies at "2017 02 Risk Assessment Fact Sheet.pdf." And, the Region's Revised Statement of Basis states that, after the close of the public comment period, "[t]he Agency will then make a final decision to issue or deny the permit for the Facility." See Section 3.4 How EPA Will Make a Final Decision, US EPA Statement of Basis, p.6/1064 at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf." See also the Region's Response to Public Comment C-12, below.[61]

"2003 09 30 Draft RFA Appendices.pdf"; "2003 10 14 Letter re Proposed Meetings and Workshops.pdf"; "2003 11 10 Letter EPA Meeting with Tribal Members.pdf"; "2003 11 18 Documents re Meeting with CRIT Tribal Members.pdf"; "2003 12 15 Public Access Amelia Flores.pdf"; "2003 12 30 Letters to Prospective Consulting Parties - DEddyJr.pdf"; "2004 01 09 Letter re Public Access - Amelia Flores.pdf"; "2004 01 09 Letter re Public Access - Jeannie Chavez.pdf"; "2004 02 11 Public_Workshop_Public_Hearing w o sign in sheets & incomplete pp.pdf"; "2005 04 29 Letter re Date set for EPA Workshop re Dioxin.pdf"; "2005 05 19 Email_Rescheduling the dioxin workshop.pdf"; "2006 02 28 Letter Concerning Public Access Amelia Flores.pdf"; "2006 02 28 Letter Concerning Public Access JSmith.pdf"; "2006 03 01 Memorandum Westates Web Page Launch.pdf"; "2006 03 26 Letter to thank for public access to documents.pdf"; "2006 07 31 Letter thanking for Public Access.pdf"; "2007 01 30 Section 106 NHPA Packet.pdf"; "2007 01 31 Letter Regarding Public Access.pdf"; "2015 03 05 EPA Response to CRIT Letter dated 20 Feb 2015.pdf"; and "2016 09 27 Letter with Transmittal Notifying CRIT of Draft Permit and Public Comment Period.pdf."

[60] The Region has previously addressed similar concerns raised by a representative of the Mohave Cultural Preservation Program. See "2002 11 04 Letter re Response to concerns re public meeting on 08072002.pdf."

[61] See also, e.g., EPA Fact Sheets and Public Notices dated: (1) September 2000, "Westates Carbon Has Requested a Hazardous Waste Treatment and Storage Permit," ("2000 09 26 Email Westates Publications 2000.pdf"); (2) August

C-4. One commenter objected to the issuance of a permit to the Facility because, the commenter claimed, the Agency has illegally allowed the Facility to operate for an extended period without an Environmental Impact Statement (EIS) or an EIS public participation process.

RESPONSE: The RCRA permitting process itself involves public participation and a thorough review of environmental considerations. The Agency is therefore not required to prepare an EIS under the National Environmental Policy Act (NEPA).[62] Federal regulation explicitly provides that "all RCRA . . . permits are not subject to the environmental impact statement provisions of section 102(2)(C) of the National Environmental Policy Act." 40 CFR § 124.9(b)(6). Consistent with this regulation, courts have established that the Agency need not prepare an EIS or otherwise comply with NEPA's public-participation requirements where "the agency is engaged primarily in an examination of environmental questions and where 'the agency's organic legislation mandate[s] specific procedures for considering the environment that [are] functional equivalents of the impact statement process.'" *Alabama ex rel. Siegelman*, 911 F.2d 499, 504 (11th Cir. 1990) (quoting *Texas Comm. on Natural Resources v. Bergland*, 573 F.2d 201, 207 (5th Cir. 1978), cert. denied, 431 U.S. 966 (1978)).

Further, BIA completed an Environmental Assessment (EA) under NEPA in 1991 as part of its decision to approve the lease of Tribal trust land for the construction and operation of the Facility.[63] BIA completed a Supplement to the Final Environmental Assessment (SEA) in 1996. Both the 1991 EA and 1996 SEA resulted in a Finding of No Significant Impact.[64]

2002, "Air Emissions Test at Westates," ("2002 08 01 EPA Notice Air Emissions Test.pdf"); (3) August 2002 "Risk Assessment at Westates," ("2002 08 01 EPA Notice Risk Assessment.pdf"); (4) December 17, 2003, "Public Notice Proposed Area of Potential Effects for US Filter Westates" ("2003 12 17 Public Notice Propsed Area of Potential Effects.pdf"); (5) January 2004 Public Notice Announcing a Public Workshop and Requesting Comments on US Filter Westates Proposed Air Emissions Test Plan and Risk Assessment Workplan," ("2004 01 21 Memo Public Notice Air Emissions and RA Public Workshop w_o mailing list.pdf" at p. 2/3); (6) May 31, 2006 "Public Notice Proposed Area of Potential Effects for US Filter Westates," ("2006 06 08 Public Notice for Proposed Area Potential Effects w o mailing list.pdf" at p. 2/5); and (7) August 1, 2006 "Public Notice Extension of Public Comment Period for Proposed Area of Potential Effects on Historic Properties for US Filter Westates," ("2006 08 09 Public Notice for Extended Comment Period.pdf" at p. 2/10).

[62] 42 USC § 4321, *et seq.*

[63] The EA was also previously addressed by the Region in correspondence to a representative of the Mohave Cultural Preservation Program. See, "2002 11 04 Letter re Response to concerns re public meeting on 08072002.pdf."

[64] See, "1990 02 16 Letter EEI retained for Env Assessment.pdf"; "1990 06 12 Transmittal of All Info Compiled from co approached the CRIT -06121990.pdf"; "1990 08 03 Letter Request for Review of Draft NEPA Document.pdf"; "1990 09 07 EPA Review of BIA Draft EA.pdf"; "1990 09 14 Notification of Intent to Construct Facility for Activated Carbon.pdf"; "1990 09 14 Re Review of Environmental Assessment.pdf"; "1990 09 XX EPA comments on BIA draft EA.pdf"; "1991 03 01 Final Environmental Assessment.pdf"; "1994 03 21 Letter Phase II Environmental Assessment.pdf"; "1996 05 01 Appendices G through Q to Final Environmental Assessment.pdf"; "1996 05 01 Appendix F to Supplement to Final Environmental Assessment.pdf"; and "1996 05 01 Supplement to the Final Environmental Assessment.pdf."

In order to address any concerns that the public may have with regard to activities conducted at the Facility, the Region has welcomed the submission of comments throughout the permitting process. Outreach to the public and the solicitation of public input into the decision-making associated with the Facility's application for a RCRA permit included seeking public comments on the draft permit[65] and, separately, on the risk-assessment[66] and trial burn test workplans.[67] The Region also solicited public comment throughout the National Historic Preservation Act (NHPA) process. See, for example, the fact sheets cited in the Region's Response to Public Comment C-3. See also the Region's Response to Public Comment C-16.

C-5. One commenter objected to the issuance of a RCRA permit to the Facility because, the commenter claimed, the Agency allowed the Facility to operate for 15 years without requiring a "Human Health and Ecological Risk Assessment" and because, the commenter further claimed, the assessment done by the operator in 2007 lacked any public participation component.

RESPONSE: The Facility has been operating as an "interim status" facility with respect to its RCRA status since August of 1991. The regulations governing interim status facilities have been promulgated to ensure that facilities operate safely until a RCRA permit decision has been made.

The Facility operator conducted a voluntary risk assessment in 1995 without EPA oversight. The operator used EPA's recommended methods and procedures to develop quantitative estimates of human health risk. While EPA did not oversee this site-specific risk analysis, the resulting risk-estimates turned out to be consistent with the findings from the EPA-

[65] See, *e.g.*, "2016 09 21 Evoqua-CRIT Draft Permit.pdf"; "2016 09 26 Fact Sheet for Proposed Permit (English).pdf"; "2016 09 29 Email Notifcation of Prposed Permit Decision.pdf"; "2016 10 03 Parker Line Online EPA Public Comments.pdf"; "2016 10 26 Email Transmitting Public Notice to Parker Pioneer.pdf"; "2016 10 26 Parker Pioneer PP_1026A_16.pdf"; and "2016 11 01 Public Hearing Transcript.pdf."

[66] See, (for the HHERA workplan), "2000 08 22 transmittal to B Angel w 1 encl and note.pdf"; "2000 08 31 Parker Public Library - Request to enclose documents.pdf"; "2000 11 13 transmittal to D Harper w 1 encl Note.pdf"; "2001 02 17 List of Concerns raised by community.pdf"; "2002 04 10 Inspection Warning Letter and Request for Info.pdf"; "Undated Potential Exposure Pathways.pdf"; "2002 08 01 EPA Notice Risk Assessment.pdf"; "2003 10 14 Letter re 09222003 Meeting with MCPP.pdf"; "2003 11 10 Letter EPA Meeting with Tribal Members.pdf"; "2004 01 09 Letter re Public Access - Amelia Flores.pdf"; "2004 01 09 Letter re Public Access - Jeannie Chavez.pdf"; "2004 01 21 Memo Public Notice Air Emissions and RA Public Workshop w_o mailing list.pdf"; "2004 02 11 Public_Workshop_Public_Hearing w o sign in sheets & incomplete pp.pdf"; "2005 03 16 PDT Plan Rev1 USEPA R9 Approval.pdf"; and "2005 03 21 EPA Approval of Air Emissions Test Plan.pdf."

[67] See, (for the trial burn test workplan), "2000 09 26 Email Westates Publications 2000.pdf"; "2000 12 14 Email Westates_Publication_For the Record.pdf"; "2001 01 17 ltr to Harper Angel re air emissions w_o encls.pdf"; "2003 10 14 Letter re Proposed Meetings and Workshops.pdf"; "2003 11 10 Letter EPA Meeting with Tribal Members.pdf"; "2003 11 18 Documents re Meeting with CRIT Tribal Members.pdf"; "2003 12 31 Letter re EPA Plans for a Public Workshop.pdf"; "2004 01 09 Letter re Public Access - Amelia Flores.pdf"; "2004 01 09 Letter re Public Access - Jeannie Chavez.pdf"; "2004 01 21 Memo Public Notice Air Emissions and RA Public Workshop w_o mailing list.pdf"; "2004 02 11 Public_Workshop_Public_Hearing w o sign in sheets & incomplete pp.pdf"; "2005 04 29 Letter re Date set for EPA Workshop re Dioxin.pdf"; "2005 05 19 Email_Rescheduling the dioxin workshop.pdf."

approved risk analysis conducted by the operator and completed in 2008. (See "2016 04 RCRA Application_Appendix XI_Rev 1.pdf," and "2008 03 13 Letter re Risk Assessment.pdf.")[68]

In 2001, the Region required that the Permit applicant/operator capture appropriate emissions data and perform a risk evaluation to demonstrate protectiveness of human health and the environment at the Facility and in the general vicinity. In August 2001, the Region requested that a Performance Demonstration Test (PDT or trial burn test) Plan and Risk Assessment Workplan (Workplan) be prepared. See "2001 08 21 Formal Request of Air Emissions Tests Plan and Risk Assessment Workplan.pdf." The risk assessment and the trial burn test are closely inter-related elements in the RCRA permit process. In its August 2001 letter, the Region identified various requirements for the HHERA. The Region considered the trial burn test and HHERA to be part of the process for completing its review of the RCRA facility permit application.

In April 2002, an "open house" was held by the operator at the Facility in Parker, Arizona, to provide the public with information about the Facility, the trial burn test, and the risk assessment process. The Facility operator submitted the first version of the Working Draft Risk Assessment Workplan in June 2002.[69] After several rounds of comments and response to comments, the Workplan was finalized and submitted to the Region in December 2003.[70] In January 2004, EPA issued a public notice in the Parker Pioneer and mailed the notice to the Region's mailing list for the Facility, inviting public comment on the Workplan.[71] The Workplan was made available in the Parker Public Library and CRIT Library in Parker, for public review.[72]

In April 2007, EPA provided approval to use the trial burn test air emissions data in the HHERA.[73] In summary, the Region believes that the Administrative Record for this decision

[68] The HHERA was initially presented in two documents: (1) The Draft Risk Assessment for the Siemens Water Technologies Corp. Carbon Reactivation Facility in Parker, Arizona, dated July 30, 2007; and (2) The Response to USEPA Region IX Comments on the Draft Siemens Water Technologies Corp. Carbon Regeneration Facility Risk Assessment, dated March 13, 2008. See, "2016 04 RCRA Application_Appendix XI_Rev 1.pdf."

[69] See, "2002 05 21 Apr 2002 Open House Participation.pdf"; and "2002 05 21 Open House Apr 2002.pdf." See also, "2003 05 07 Estimated Stack Emissions from Westates.pdf."

[70] See, "2002 08 01 EPA Notice Risk Assessment.pdf"; "2003 03 12 EPA Comments on PDT Plan and RA WP.pdf"; "2003 04 22 Letter re Request for Extension for Submittal of Revised Performance Demo Test Plan and RA WP.pdf"; "2003 05 07 Worksheet for Emissions tests 1993 1994 and 2000.pdf"; "2003 05 21 RA Anticipated Receptor Grid Layout.jpg"; "2003 05 21 RA Habitat Map - USGS Orthophotography.jpg"; "2003 05 21 RA Habitat Map - USGS Topography.jpg"; "2003 05 21 RA Vicinity Map.jpg"; "2003 05 29 RA protocol REDLINE 5_21_03.pdf"; "2003 05 29 RA protocol REVISED 5_ 21_ 2003.pdf"; "2003 05 30 RTC - PDT Plan and Risk Assessment WP.pdf"; "2003 05 30 RTC_Performance_Demo_Test_Plan_and RA WP.pdf"; "2003 09 25 Comments on PDT Plan and RA WP.pdf"; "2003 09 30 Draft RFA Appendices.pdf"; "2003 10 13 EPA Comments on Performance Demo Test Plan and Risk Assessment WP.pdf"; "2003 12 05 RTC Working Draft RA WP.pdf"; and "2003 12 05 Working_Draft_Risk_Assessment_Workplan.pdf."

[71] See, "2004 01 21 Memo Public Notice Air Emissions and RA Public Workshop w_o mailing list.pdf."

[72] See footnote 66, above, regarding documentation of community outreach about the HHERA workplan.

[73] See, "2006 11 30 Request for Complete Part B Permit Application and HH and Eco Risk Assessment Report.pdf"; "2007 04 02 Email_ Re Fw SiemensResponse to Data Review Comments.pdf"; "2007 04 10 Email_Evaluation of

reflects that it has in fact included adequate and appropriate outreach to and input from the community in the risk assessment process supporting this final permitting decision.[74]

C-6. One commenter objected to the issuance of a RCRA permit to the Facility on the basis that the risk analysis was based, in significant part, on only one trial burn test and that test was flawed and problem-plagued and that these problems were not revealed to the public. The commenter claimed that requiring only one trial burn test is an example of pro-polluter bias by EPA. The commenter also expressed concern that the Facility owner and operator knew there would be a trial burn test and were able to prepare for it. Another commenter asked whether future trial burn tests would be required.

RESPONSE: At this Facility, the Region required that the operator perform a trial burn test to establish appropriate operating parameters, including emission limits, because it determined that a trial burn test would be necessary for identifying the operating parameters that would be required if a permit were to be issued to this thermal treatment unit. The Region also required the Facility operator to perform an HHERA using the results of the trial burn to verify that the Facility operations do not pose an unacceptable risk to human health and the environment.

Given that there are some differences between carbon regeneration units and hazardous waste incinerators, the Region believes that using many of the same standards that RCRA would have applied to an incinerator in the Facility's Permit requirements for the carbon regeneration unit is a conservative approach. For example, RF-2 is used only for processing a relatively homogenous and well-characterized waste stream, spent carbon. Incinerators may take a much broader variety of waste streams both in terms of types and concentrations of toxic contaminants in the waste. Meanwhile, incinerators are required to comply with the numeric emission standards of the MACT EEE rule, a rule that does not apply to RF-2. The MACT EEE numeric standards have *not* been developed after undergoing a national risk assessment process but are generally thought to be protective of human health and the environment. In this case, the site-specific risk assessment performed by the operator demonstrates that this Facility may be operated such that its emissions are both within the MACT EEE numeric limits that were developed for incinerators and the site-specific risk numbers derived as part of the performance demonstration test, risk assessment and permit application process.

While RF-2 is not an incinerator, in requiring the trial burn, the Region considered that the RCRA regulations for incinerators allow for hazardous waste incinerator operating conditions to be based on the performance of only one trial burn test.[75] See 40 CFR §§ 264.340(b), 264.345(a), and 270.19(b). The Region did not deem it appropriate to require another trial burn test during the permit application period. The Region notes that the Permit

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Focus March 16 2007 RTC - Carbon Reactivation Furnace (RF-2) Performance Demo Test Data Review.pdf"; and "2007 04 18 Memo - Siemens Carbon RF-2 PDT Data Review.pdf."

[74] See, also, "2007 07 30 Draft_Risk_Assessment.pdf"; "2007 07 31 Email_Siemens Risk Assessment 07312007.pdf"; "2008 03 13 Executive_Summary_Carbon Regeneration Fac Risk Assessment.pdf"; and "2008 03 13 Letter re Risk Assessment.pdf."

[75] The Region notes that the RCRA incinerator regulations cease to apply once a hazardous waste incinerator has certified its compliance with the CAA MACT EEE standards in accordance with 40 CFR § 264.340(b).

requires that repeat trial burn tests be conducted periodically (every 5 years) to confirm that unit operations are within expected parameters. In addition, the HHERA will also be updated. See Permit Condition V.I.

In general, site monitoring activities such as trial burns are performed by the Facility owners and/or operators themselves, with Regional oversight. The RCRA and CAA regulations reflect this expectation for trial burn tests. See 40 CFR §§ 63.1207(b) and 270.62(d). For a trial burn test such as the one performed at the Facility, the Region's role is to review the workplan and request modifications, if necessary. See 40 CFR §§ 63.7(c)(2)(i), 63.1207(e)(1)(i)), and 270.62(b)(3), (b)(5), and (d). Once the Region approves the workplan, the Facility owner and/or operator conducts the trial burn test according to the approved workplan. See 40 CFR § 270.62(b)(8). At EPA's discretion, EPA may provide additional oversight during a CAA trial burn test. See 40 CFR § 63.7(b)(1). In this case, the Region determined that additional oversight was warranted for the Facility's trial burn test, and EPA staff were present during the test to verify proper testing procedures and to collect split samples. See "2006 03 28 NEW Monitoring Data and Sample Checklists; 2006 03 29 NEW Monitoring Data and Sample Checklists; 2006 03 30 NEW Monitoring Data and Sample Checklists; and 2006 03 28 Field Report.pdf."

Trial Burn Tests under the CAA and RCRA are coordinated tests, and cannot be conducted as "surprise" tests.[76] The trial burn test is not designed to test typical operating conditions, but instead tests the "extreme range of normal conditions" and is conducted under conditions that will result in higher than normal emissions. See, *e.g.*, 40 CFR §§ 63.1207(g) and (g)(1). These conditions are also referred to as "worst-case" conditions (Carbon Reactivation Furnace Performance Demonstration Test Plan (May 2003), p. 12 at Permit Attachment Appendix V.). The Facility must prepare in advance for the trial burn test and is required to specify details of the protocol in a test plan. See, *e.g.*, 40 CFR §§ 63.1207(f)(1), 63.1208(b) and 270.62(b)(2) - (b)(10). For example, extremes of feed flowrate, temperatures, and stack gas velocity and sampling methods were described in the Facility's Trial Burn Test plan. See Permit Attachment Appendix V.

Allowing the trial burn test to occur under normal operating conditions would not challenge the system sufficiently. Advance preparations are required to obtain the "worst-case" test conditions. For example, sufficient waste must be ready on hand to provide feed for the entire test week. In addition, "spiking" of the waste feed (i.e., adding representative contaminants) is necessary to obtain the maximum likely contaminant profile. Facility staff and management preparations are also necessary in advance of the stack sampling – three runs over three days -- to ensure that maximum feed rates, temperatures, and other conditions are met during the test.

During the trial burn test, stack emissions are monitored to determine whether the emissions are within regulatory limits. The Facility operator used the trial burn test results in the HHERA, and the Region used these test results and HHERA results to set limits for operating parameters in the draft Permit. See 40 CFR §§ 264.345(a), and 270.62 (b)(5)(iii) and (b)(11).

[76] The Region provided community members information about the trial burn test and why it would not be a surprise test in 2002. See, "2002 08 01 EPA Notice Air Emissions Test.pdf."

See also "2016 04 RCRA Application_Appendix XI_Rev 1.pdf." Stack emissions are expected to remain within acceptable risk limits, as long as the system remains within the operating parameters specified in the Permit.

After close scrutiny of the test results, EPA instructed the Facility operator to "please move forward" on the HHERA and informed the operator that "the qualified data from the March 2006 air emissions test could be used in the risk assessment."[77] This statement implies that the operational issues noted in the comment and described in the trial burn test report were not significant, and that accuracy of the test results was not compromised. See Carbon Reactivation Furnace RF-2 Performance Demonstration Test Report (June 30, 2006), pp. 15 – 17 at Permit Attachment Appendix V.[78] In one instance, the issue occurred before the trial burn test run had begun. In the other three instances, sampling of stack emissions had begun but was suspended until the issue was resolved. In all cases, the trial burn test report indicated that proper operating conditions were achieved as required by the regulations and specified in the workplan, during sampling of the stack emissions.[79]

The Region provided information about the outcome of the trial burn test in two fact sheets (See Risk Assessment at Evoqua Water Technologies, June 2016, at "2016 06 Risk Assessment Fact Sheet.pdf" and Risk Assessment at Evoqua Water Technologies, February 2017, at "2017 02 Risk Assessment Fact Sheet.pdf"), in records made available to the public,[80] and at public meetings.[81] EPA also conducted ongoing consultations with the Tribe, during which the results of the trial burn test were discussed.[82] In these venues, the Region would have been unlikely to enumerate the specifics of the trial burn test, such as the four operational problems noted in the comment, because the Region ultimately found that the results of the trial burn test could be used in the HHERA, as noted above. CRIT received a copy of the trial burn test report directly from the operator.[83] In addition, CRIT obtained information about the trial burn test from its contractor, who reviewed the trial burn test report and sent comments and opinions about the results directly to CRIT. In that review, CRIT's contractor did not take issue

[77] See "2007 05 21 Email_FW Siemens Project Response to update risk assessment workplan.pdf" at p. 2.
[78] See also "2007 01 26 Review of Siemens CRF RF-2 PDT - June 2006.pdf."
[79] See, *e.g.*, "2001 02 21 Preliminary Internal RF-2 Stack Test Data Oct 2000.pdf," "2002 05 21 Apr 2002 Open House Participation.pdf," "2002 05 21 Open House Apr 2002.pdf," "2005 03 24 Ltr to David Harper re Feb 2004 Public Meeting.pdf," "2005 04 29 Letter re Date set for EPA Workshop re Dioxin.pdf," "2005 05 19 Email_Rescheduling the dioxin workshop.pdf," "2006 01 01 Air Emissions.pdf." See, also, "2003 05 07 Worksheet for Emissions tests 1993 1994 and 2000.pdf." In addition, a "mini-trial burn" was conducted in 2005 to test for dioxin and other compounds. See, *e.g.*, "2015 01 13 Transmittal of Results from Mini Burn in April 2005.pdf."
[80] See, *e.g.*, "2006 07 31 Letter thanking for Public Access.pdf," "2007 07 31 Email_Siemens Risk Assessment 07312007.pdf," "2016 06 Risk Assessment Fact Sheet.pdf," "2016 09 26 Fact Sheet for Proposed Permit (English).pdf," "2016 09 29 Email Notifcation of Prposed Permit Decision.pdf," "2016 10 03 Parker Line Online EPA Public Comments.pdf," and "2016 11 14 Email to CRIT Librarian re revised docs.pdf."
[81] See, *e.g.*, "2015 02 23 Parker Pioneer EPA Meeting.pdf," "2015 03 10 Parker Pioneer EPA Meeting.pdf," "2016 03 07 USEPA R9 Ltr to CRIT re Signature Request and Status of EPA Consultation with CRIT.pdf," "2016 10 03 Parker Line Online EPA Public Comments.pdf," and "2016 10 26 Parker Pioneer PP_1026A_16.pdf."
[82] See, *e.g.*, "2016 03 07 USEPA R9 Ltr to CRIT re Signature Request and Status of EPA Consultation with CRIT.pdf."
[83] See, "2006 09 26 Email_Stack_Test_Report.pdf."

with any of the four "problems," but did mention two items to attend to regarding future operations at the Facility. [84]

C-7. One commenter objected to the issuance of a RCRA permit to the Facility on the basis that the Region falsely claimed it conducted the trial burn test and that it provided "oversight," when it was only present for a portion of the trial burn. The commenter pointed to an EPA fact sheet dated June 2016 to support its objection.

RESPONSE: The statement in the June 2016 Fact Sheet saying that EPA conducted the trial burn test was incorrect. EPA did not conduct the test, but did oversee the operator and its contractors, who performed the trial burn test. Numerous Regional outreach documents, including fact sheets and transcripts of verbal statements, provide correct information on this topic. See Risk Assessment at Evoqua Water Technologies, February 2017, at "2017 02 Risk Assessment Fact Sheet.pdf." The Region regrets the misstatement in the June 2016 fact sheet and has updated the fact sheet with the correct information on the EPA website.

EPA and CRIT EPO representatives were present for the entire three days of active trial burn testing (March 28 - 30, 2006) to observe key aspects of the trial burn test. See Air Emissions Test Calibration and Check Sheets / Runs 1-3, 03/28/2006 at "2006 03 28 Monitoring Data and Sample Checklists", "2006 03 29 Monitoring Data and Sample Checklists"," 2006 03 30 Monitoring Data and Sample Checklists." In addition, EPA staff and managers were present for the day prior to the active trial burn test, during pre-test preparations.[85] Three EPA staff were present on stack platforms during active trial burn testing to observe stack gas sampling performed by the operator's contractors. These EPA observers were present to confirm that stack gas sampling procedures were followed, and filled out checklists to document their observations. See Air Emissions Test Calibration and Check Sheets / Runs 1-3, 03/28/2006 at "2006 03 28 Monitoring Data and Sample Checklists," "2006 03 29 Monitoring Data and Sample Checklists," and "2006 03 30 Monitoring Data and Sample Checklists." In addition, one EPA staff collected split samples at three locations (spent carbon feed, waste water, and scrubber blowdown) during active trial burn testing to confirm the data at these key locations that would be submitted by the operator in its trial burn test report. See Field Report for Siemens Water Tech Corp Conducted March 28-30, 2006 at "2006 03 28 Field Report.pdf." Another EPA staff observed activities in the Facility control room during active trial burn testing and visited other locations of the Facility as needed. The statement in the Performance Demonstration Test Report (*i.e.,* that EPA was present only for portions of the trial burn test) appears to refer to certain aspects of the trial burn test that may not have been directly observed by EPA staff. Although EPA staff did not observe all aspects of the trial burn test at all times, the observations

[84] See, *e.g.*, letter from CRIT consultant Arcadis to CRIT Office of Attorney General, dated January 26, 2007, at "2007 01 26 Review of Siemens CRF RF-2 PDT - June 2006.pdf" at p. 2/8.

[85] See, *e.g.*, "2006 01 01 Air Emissions.pdf," "2006 02 14 Email - Schedule for Air Emissions Test.pdf," "2006 02 22 Email - Action Needed - HAZWOPR Certifications PPE for Air Emissions Test.pdf," "2006 03 23 Email_Pretest Calibrations.pdf," "2006 03 28 Evoqua Stack Test.pdf," "2006 03 28 Air Emissions Test Monitoring Data and Sample Checklists.pdf," "2006 03 29 Air Emissions Test Monitoring Data and Sample Checklists.pdf," "2006 03 30 Air Emissions Test EPA Notes.pdf," "2006 03 30 Air Emissions Test Monitoring Data and Sample Checklists.pdf," and "2006 07 28 submittal of final PDT Report.pdf."

of five EPA staff at key locations during the entire three days of active testing provided ample oversight of the trial burn test.[86]

C-8. One commenter objected to the issuance of a RCRA permit to the Facility because the Agency does not truly know what the "typical emissions" are at the Facility, because there was only one trial burn test, which was flawed, and because there has never been continuous monitoring of stack emissions for hazardous air pollutants.

RESPONSE: The Region's June 2016 Fact Sheet, entitled "Risk Assessment at Evoqua Water Technologies" included a pie chart entitled "What Typically Comes Out of the Smokestack?" It included relative percentages of the constituents emitted from the Facility stack, based on the results of the testing undertaken during the trial burn test, as presented in the trial burn report. The relative percentages shown in the pie chart are expected to be "typical" of what the relative ratios of the emission constituents are to each other.

As noted in the Region's Response to Public Comment C-6, above, a "single" stack test conducted by the Facility under "extreme range of normal conditions" is sufficient to characterize typical constituent concentrations in stack emissions. The "single" trial burn test consisted of three runs that were representative of what these ***maximum*** stack gas constituents would likely be, since it is based on spiked feed and not typical waste feed. And, as further noted in the Region's Response to Public Comment C-7, the operational problems encountered during the trial burn test at the Facility did not compromise the results of the test.

As explained in the Region's Response to Public Comment C-6, above, the trial burn test is not designed to test typical operating conditions, but instead tests the "extreme range of normal conditions" and is conducted under conditions that will result in higher than normal emissions. Moreover, these "worst-case" conditions challenge the system under conditions that one would not want normally replicated.

The commenter is correct in stating that there has never been continuous monitoring of stack emissions at the Facility for hazardous emissions or hazardous air pollutants. Continuous emissions monitors for some of these contaminants at the appropriate detection levels – which are often very low -- may not exist. Neither is sampling of continuous monitoring data feasible. Moreover, continuous emissions monitoring is not necessary to confirm concentrations of hazardous emissions in the stack gases. The monitoring of stack emissions, including monitoring for hazardous air pollutants, which occurred during the trial burn test, demonstrated that the established parameters result in emissions that do not pose an unacceptable risk to human health or the environment. As long as Facility operations remain within the operating parameters tested, the emissions of hazardous air pollutants can be assumed to remain within the ranges observed during the test. See 40 CFR §§ 63.1209(a)(1)(i), (b)(1), and (k) - (o).

The operator continuously monitors certain parameters as shown on Table V-2, specifically, the Groups A1 and A2 parameters that trigger an automatic waste feed cutoff if they are not met. See Permit Conditions V.C.1.f., V.C.1.g. and Table V-2. Continuous monitoring of

[86] See footnote 85, above. See also, *e.g.*, "2006 03 28 Field Report.pdf," "2006 03 28 Evoqua Stack Test.pdf," "2006 03 30 Memo - PDT Pictures .pdf," and "2006 06 30 PDT Report.pdf."

these parameters is important because many of them are indicators of proper functioning of the system, as demonstrated during the trial burn test. See, *e.g.*, Permit Attachment Section D, and Permit Attachment Appendices V, VI, X, XXII.

In addition, the Permit requires continuous emissions monitoring of carbon monoxide and links that continuous monitoring requirement to restrictions of carbon monoxide in the stack gas emissions. See Permit Conditions V.C.1.b., V.C.1.h., and Table V-1. The results of the continuous emission monitoring for carbon monoxide are used as an indicator to ensure complete combustion of volatile organic contaminants is occurring in RF-2.

The Permit also requires recordkeeping of continuous monitoring data and reporting of exceedances. See Permit Conditions I.E.9.b. and V.C.5.e.iii. These Permit Conditions ensure the emissions of hazardous air pollutants will remain within the range observed during the trial burn test. In addition, the Permit requires that the Facility periodically perform trial burn tests (every 5 years) to ensure the system remains within the operating parameters specified in the Permit. See Permit Condition V.I.

C-9. One commenter objected to the issuance of a RCRA permit to the Facility on the grounds that the Region's claim that fugitive emissions are within regulatory levels has no basis in fact because fugitive emissions have never been monitored at the Facility. The commenter further asserted that the Region had failed to advise the Tribal landowner that there had never been any monitoring of fugitive emissions at the facility.

RESPONSE: Fugitive emissions have been monitored at the Facility through work practices. The Facility operator monitors Volatile Organic Compounds (VOC) fugitive emissions annually at multiple locations at the Facility. See Subpart FF Compliance Plan at Permit Attachment Appendix XXIII, and the RCRA Facility Assessment (RFA) at Section 4.1 at p. 13.[87] Results of fugitive emissions monitoring (for example from monitoring events in 2011, 2012, 2013, and 2015) demonstrate compliance with regulatory standards at the monitored locations. See Permit Attachment Section F and Permit Attachment Appendix XII. See also the RFA at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf," at pp. 522-1056/1064.

In addition, Facility personnel visually inspect air pollution control equipment and pumps, valves, and pipes daily to check for fugitive emissions. See Inspection Schedule and Checklist, Permit Attachment Section F, Permit Attachment Appendix XII, and Permit Condition II.E. The Permit also requires inspections of RF-2 be conducted in accordance with these standards. See, *e.g.*, Permit Condition V.F. In addition, information about fugitive emissions was included in the HHERA, and the Region used the results to determine that impacts from long-term exposure to Facility emissions are insignificant. See "2017 02 Risk Assessment Fact Sheet.pdf." The HHERA report reflected that both concentrations of fugitive emissions from carbon unloading at the Facility and measured worker breathing zone concentrations are below occupational exposure limits. See "2008 03 13 Letter re Risk Assessment.pdf" and" "2016 04 RCRA Application_Appendix XI_Rev 1.pdf."

[87] The RCRA Facility Assessment (RFA) is at Appendix G to EPA's Revised Statement of Basis, at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf," at pp. 522-1056/1064. Page 13 of the RFA is at p. 537 of the pdf file.

In 2009, the Region briefed the CRIT Tribal Council about the monitoring of fugitive emissions within the context of the HHERA results.[88] The Region would not have intentionally misinformed the Tribe by telling any of members of the Tribal Council or representatives of CRIT EPO that there was no fugitive emissions monitoring occurring at the Facility, when such emissions monitoring was in fact occurring. The Region, therefore, disagrees with the commenter's assertion that the Region should have told the Tribe that no fugitive emissions had been monitored.

Indeed, fugitive emissions were addressed in detail in the HHERA, which was included in the Permit Application. See the HHERA Section 4.3 "Fugitive Emissions Exposure Assessment" and Section 4.2.2 "Fugitive Emissions" RCRA Part B Application, April 2016, at "2016 04 RCRA Application_Appendix XI_Rev 1.pdf." Results of three years of annual monitoring for fugitive emissions (2011, 2012, and 2013) were also included in the Permit Application. See Appendix F (Annual Method 21 Inspections Records) to the Subpart FF Compliance Plan, Permit Attachment Appendix XXIII. The CRIT EPO and CRIT Tribal government received copies of all documents pertaining to the Permit application, including the HHERA report.

C-10. One commenter objected to the issuance of a RCRA permit to the Facility on the basis that using the trial burn test to exempt the Facility from the Clean Air Act's Title V requirements is improper. The commenter asserted that the 2006 trial burn test was "completely flawed and problem plagued" and was, therefore, an insufficient basis on which EPA could conclude that "[t]he Facility's uncontrolled potential to emit criteria and HAP pollutants is below applicable major source thresholds, with the exception of sulfur dioxide (SO2) and oxides of nitrogen (NOx)."

RESPONSE: With respect to the commenter's assertion that the 2006 trial burn test was too old, flawed and problem plagued, please see the Region's Response to Public Comment C-6, above. See also the Region's Responses to Public Comments C-7, C-8, and C-9.

The Statement of Basis published with the Draft RCRA Permit explained the Region's determination that the Facility's uncontrolled potential to emit criteria pollutants (with the exception of SO2 and NOx) and HAPs is below applicable major source thresholds. See Section 5.4.6 "The Clean Air Act" U.S. EPA Revised Statement of Basis, p.10/1064 at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf." The Region has already set forth the reasons it disagrees with the commenter's concerns about the trial burn test. (See the Region's Response to Public Comment C-6, above.)

The Statement of Basis also explained how the Draft RCRA Permit would impose practically enforceable, synthetic minor limits on SO2 and NOx to keep emissions of those pollutants below CAA major source thresholds. See Section 5.4.6 "The Clean Air Act" U.S. EPA Revised Statement of Basis, p.10/1064 at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf." The Draft Permit Administrative Record included the Facility operator's September 2016 letter agreeing to the inclusion of practically enforceable permit limits in the RCRA Permit

[88] See "2009 05 28 ORC weekly hilite MMN.pdf."

to restrict its potential to emit SO2 and NOx to levels below major source thresholds. At that time, the operator agreed to the following limits:

> "For SO2, a 30 tons per year limit, demonstrated on a calendar year basis, using sulfur content of the feed, carbon reactivation production rate, and hours of operation over the course of the year, minus a 90% presumed sulfur removal rate from our scrubber system (which we believe to be a very conservative estimate of its removal efficiency).
> For NOx, a 22 tons per year limit, demonstrated on a calendar year basis, using the NOx stack gas concentration from the most recent stack test where NOx was measured (average of 3 runs), flow rate out the stack and the hours of operation of the of the [sic] reactivation unit."

See "2016 09 19 Evoqua Ltr to USEPA R9 re SO2 and NOx Limitations on Emissions.pdf."

We note that some changes to the draft Permit Conditions in Module V relate to the SO2 and NOx synthetic minor limits but do not affect the practical enforceability of those limits; they are noted here for completeness only. Please see the Region's Responses to Public Comments V-8, V-12, V-27, and V-39 for further information about these changes and other related matters pertaining to the trial burn test, and the SO2 and NOx requirements relating to the Final Permit Decision.

C-11. One commenter objected to the issuance of a RCRA permit to the Facility because, it alleged, the siting of the Facility was part of a strategic targeting of Tribal lands for hazardous waste management activities and because the Region remained silent as the Facility operator made false claims to tribal members and the general public about emissions.

RESPONSE: Based on the information available to it, the Region has no information other than the comment itself evidencing the alleged "targeting" of the Facility for development on Tribal lands in order to avoid local, county and state permits. See, *e.g.*, "1989 09 12 Letter Re_CRIT_Concerns_1989.pdf." Nor does the allegation affect the Region's RCRA permitting decision as EPA has an extremely limited role in where a private business enterprise locates. Typically, EPA has a voice in siting hazardous waste facilities only where there are specific siting requirements that apply under EPA's hazardous waste regulatory program. The only siting standards that apply to interim status facilities seeking permits are the flood plain requirements (40 CFR § 264.18(b)) and the prohibitions against disposal in salt domes, salt bed formations, underground mines or caves (40 CFR §§ 264.18(c) and 265.18). The prohibitions at 40 CFR §§ 264.18(c) and 265.18 are not relevant to this permit decision. And, the Facility is not located in a flood plain. See Permit Attachment Section B.

The Tribe negotiated and, along with BIA, approved a lease agreement, which initially went into effect in 1991. See the Region's Response to Public Comment C-4, above. The Region notes that the Tribe made and continues to maintain a business relationship with the Facility operator. The Region's involvement has been through the RCRA permitting process and has been appropriately implemented consistent with RCRA and EPA regulatory requirements. The Region has also engaged throughout the life of the Facility in government to

government communications with the Tribe regarding the Facility's operations and permitting. The Region notes that EPA's ongoing coordination with the Tribe involves a number of layers, including the Region's relationship to the Tribe as a co-regulator of a variety of activities conducted at the Facility. Fundamentally, however, the business decisions associated with the Facility's lease and operation on the Reservation are within the Tribe's sovereign prerogatives.

With respect to the assertion that the Region remained silent as the Facility operator made false claims to Tribal members and the general public about emissions, the Region has endeavored to ensure that the information provided to the public and to the Tribal Government by EPA regarding the Facility's emissions is accurate, concise and complete. The Region notes that it has been the subject of criticism by both the Facility operator and the commenter over the years both for statements and for omissions about the Facility and its impacts, including for the statements and omissions of others. However, the Region has consistently responded in an open and transparent manner that reflects its commitment to a fair permitting process that is engaged with all those who might be affected.[89] For example, when these same concerns were raised to the Regional Administrator in 2002, the Region affirmed that the information provided during its public meeting was factual and unbiased. And, the Region advised, it had "asked Westates to stop referring to the emissions as 'essentially steam.'" See "2002 08 13 Letter re Outrage at EPA Public Workshop on Facility statements and actions.pdf" and "2002 11 04 Letter re Response to concerns re public meeting on 08072002.pdf."

A wealth of information about the Facility's emissions has been presented to community members by both the Facility operator and EPA at various public meetings,[90] and through various informational materials,[91] as well as the HHERA, which was included in the Part B Permit Application. See "2016 04 RCRA Application_Appendix XI_Rev 1.pdf." As the commenter pointed out, the Regional Toxicologist presented a dioxin workshop to Tribal leaders and other community members in 2005.[92] As evidenced by the Administrative Record accompanying this Final Decision, the Region has done its best to present complex and detailed technical and risk-related information in as complete and comprehensible a manner as possible to the community.

Since the time Facility operations began in the early 1990s, the Region has engaged in extensive government to government consultation with CRIT and consistently reached out to the

[89] See, *e.g.*, "2002 06 20 Comments on EPA Fact Sheets .pdf," "2002 08 13 Letter re Outrage at EPA Public Workshop on Facility statements and actions.pdf," "2002 10 04 Request_for Meeting w RA.pdf," "2002 11 04 Letter re Response to concerns re public meeting on 08072002.pdf," "2004 06 09 Consultation regarding Air Emissions Test.pdf," and "2004 12 08 Letter re Consultation Regarding Air Emissions Test.pdf."
[90] See footnote 52, above.
[91] See, *e.g.*, "2000 09 26 Email Westates Publications 2000.pdf," "2000 12 14 Email Westates_Publication_For the Record.pdf," "2001 04 Westates In Depth Look Fact Sheets.pdf," "2001 04 03 Transmitting EPA Fact Sheets to Libraries.pdf," "2002 08 01 EPA Notice Air Emissions Test.pdf," "2002 08 01 EPA Notice Risk Assessment.pdf," "2004 02 11 Public Workshop Public Hearing.pdf," "2016 06 Risk Assessment Fact Sheet.pdf," and "2016 09 26 Fact Sheet for Proposed Permit (English).pdf."
[92] See, *e.g.*, "2005 03 24 Ltr to David Harper re Feb 2004 Public Meeting.pdf ," "2005 04 29 Letter re Date set for EPA Workshop re Dioxin.pdf."

general public and Tribal members with respect to this Permit decision.[93] The Region has taken seriously its obligations to include and reach out to minority, low-income and indigenous members of the community around the Facility, as evidenced by the significant volume of documents in the Administrative Record.

The Region has complied with the public participation process spelled out at 40 CFR Part 124. The Region also has complied with EPA guidance and policies on working and consulting with Tribal Governments. It has also complied with EPA's guidance and policies on engaging with and considering the concerns of minority, low-income and indigenous communities in its decision-making processes.[94] See also EJ Findings, p. 477/1064, at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf."[95]

C-12. One commenter objected to the issuance of a RCRA permit to the Facility because, the commenter claimed, Fact Sheets dated June, September and November 2016 were biased and misleading because some information was not included.

RESPONSE: The Region does not agree that alleged omissions from the referenced Fact Sheets exist or amounted to bias or any attempt to mislead the public. In fact, the referenced Fact Sheets provide the necessary information to enable the public to review a variety of documents associated with the proposed Permit decision. These documents contain the level of detail the commenter says is lacking in the referenced Fact Sheets. That particular details were not included renders the Fact Sheets neither false, biased nor misleading. See also the Region's Response to Public Comment C-17, below.

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[93] See, *e.g.*: "2003 07 25 Re_NHPA Consultation Meeting for August 1 2003.pdf "; "2004 06 09 Consultation regarding Air Emissions Test.pdf"; "2004 10 22 Memorandum re Westates Web Page and Attached Documents April 2004 through Oct 2004.pdf"; "2005 02 09 Draft Programmatic Agreement for NHPA Review.pdf"; and "2005 04 29 Letter re Date set for EPA Workshop re Dioxin.pdf."

[94] See, *e.g.*: "2003 07 25 Re_NHPA Consultation Meeting for August 1 2003.pdf"; "2003 12 23 Letter re Acitivities Conducted pursuant to NHPA - Various Recipients.pdf"; "2003 12 30 Letters to Prospective Consulting Parties - DEddyJr.pdf"; "2004 06 09 Consultation regarding Air Emissions Test.pdf"; "2004 10 22 Memorandum re Westates Web Page and Attached Documents April 2004 through Oct 2004.pdf"; "2005 02 09 Draft Programmatic Agreement for NHPA Review.pdf"; "2005 04 29 Letter re Date set for EPA Workshop re Dioxin.pdf"; "2006 06 22 Letter re Inquiry Regarding Dave Harper Letter 06052006.pdf"; "2007 03 05 NHPA ext to public comment period.pdf"; "2007 03 12 Email_Extension_to the Public Comment Period.pdf"; "2007 03 14 Email_Fw Contacts for Siemens NHPA.pdf"; and "2007 03 23 Email Re Siemens NHPA -- request of Mohave Elders for Meeting with US EPA.pdf."

[95] See also, *e.g.*,: February 1994, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations at https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf; May 2013 EPA Region 9 Regional Implementation Plan to Promote Meaningful Engagement of Overburdened Communities in Permitting Activities at https://www.epa.gov/sites/production/files/2015-02/documents/2013-05-region-09-plan.pdf; and July 2014 EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples, at https://www.epa.gov/sites/production/files/2017-10/documents/ej-indigenous-policy.pdf. See additional guidance, policy and other materials cited in the Draft Permit Addendum ("2016 09 26 Administrative Record Addendum.pdf") and the Supplemental Addendum, "2018 09 18 Supplemental Administrative Record Addendum.pdf."

The commenter also asserts that EPA failed to provide information to the public about emissions from the Facility. Many of the documents referred to in the Fact Sheets, and to which the Fact Sheets themselves direct the public, include detailed information about air emissions at the Facility. See, for example Statement of Basis, Draft Permit Module V, Draft Permit Appendix V, etc.

C-13. One commenter objected to the issuance of a RCRA permit to the Facility because, the commenter asserted, EPA falsely claims it performed a risk assessment.

RESPONSE: The Region has corrected the Fact Sheets and record to reflect that it oversaw, but did not conduct, a risk assessment. However, that an incorrect line in the November 2016 Fact Sheet suggested that EPA had performed the risk assessment -- as opposed to having overseen its performance -- was unfortunate but not, in the Region's view, a basis to require it either re-propose the draft Permit or deny the Permit application. The Fact Sheet was corrected later. See "2017 02 Risk Assessment Fact Sheet.pdf." Moreover, sufficient information was provided to the public over many years regarding the development of and conclusions in the risk assessment, which was included by the operator in the Permit Application, for the public to appreciate EPA's role, not as author but as the approving entity. See, *e.g.*: "2000 09 04 Affidavit of Publication.pdf"[96]; "2002 08 01 EPA Notice Risk Assessment.pdf"[97]; and "2004 02 11 Public Workshop Public Hearing.pdf" at pp. 56-57/110[98]. See also the Region's Response to Public Comment C-3, above.

Where the Agency requires a risk assessment as part of the RCRA permitting process, EPA is responsible for developing and providing the permit applicant with the technical and scientific guidance necessary to perform human health and ecological site-specific risk assessments. In addition, EPA is responsible for providing the permit applicant with Agency-approved models and algorithms necessary to generate quantitative estimates of human and ecological health impact. EPA is also responsible for compiling and maintaining a peer-reviewed scientific database which provides the applicant with access to hazard and toxicity criteria for the broad range of constituents released from this facility.

In this case, EPA conducted direct oversight of the site-specific risk analysis for the Facility by examining and reviewing workplans or protocols for each step of the risk assessment process. EPA commented upon the initial and multiple iterations of the draft risk assessment conducted by Evoqua for several rounds of modification. See, *e.g.*, "2001 08 21 Formal Request of Air Emissions Tests Plan and Risk Assessment Workplan.pdf"; "2001 09 17 Response to

[96] This document includes a September 2000 EPA Fact Sheet for Westates Carbon-Arizona Inc. stating that the operator "will use the results of the performance demonstration to prepare an evaluation of the risks of the operation. This is called a risk assessment. EPA will review the results as well as the facility's risk assessment as part of the permit application review."

[97] This document is an August 2002 EPA Fact Sheet for Westates Carbon consisting of 2 pages describing the Risk Assessment to be performed by the Facility operator.

[98] This document includes a one-page February 2004 EPA Fact Sheet for US Filter Westates providing information regarding how "Westates must estimate the risk its operations may pose to human health or the environment" and that "Westates must conduct both a human health risk assessment and an ecological risk assessment." It also includes a one-page February 2004 EPA Fact Sheet for US Filter Westates providing "Specifics about Westates' Proposed Risk Assessment."

EPA 08212001 Letter reduced size.pdf"; "2003 03 12 EPA Comments on PDT Plan and RA WP.pdf"; "2003 04 22 Letter re Request for Extension for Submittal of Revised Performance Demo Test Plan and RA WP.pdf"; "2003 05 30 RTC_Performance_Demo_Test_Plan_and RA WP.pdf"; and "2003 10 13 EPA Comments on Performance Demo Test Plan and Risk Assessment WP.pdf."

C-14. One commenter objected to the issuance of a RCRA permit to the Facility because, the commenter claimed, the Region failed to investigate Tribal members' testimony and information about possible elevated cancer rates in neighborhoods near the Facility. Another commenter asked whether EPA had researched or investigated any potential health related issues to the community posed by Facility operations.

RESPONSE: The Region takes the possibility of unacceptable adverse human health impacts resulting from environmental conditions in the vicinity of the Facility very seriously. As a result, in responding to this comment, the Region submitted a query to the Arizona State Cancer Tumor Registry, which compiles both current and historic cancer data since 1981. This inquiry and its results are explained in more detail, below.

Cancer represents a group of diseases in which abnormal cells divide and reproduce without regulation or control and can invade nearby or distant tissues. Cancer is not one disease - rather an extremely complex group of diseases wherein multiple factors influence the likelihood of developing cancer. Age, genetic factors, lifestyle behaviors (diet/smoking), physical factors, biological agents and chronic exposure to chemical carcinogens have all been associated with an increased likelihood of developing cancer.

Cancers are extremely common in the United States and are the second leading cause of death in the US, exceeded only by diseases of the heart and circulatory system. The overall lifetime risk (likelihood) of developing cancer (incidence) in the U.S. is one in three, and one of every four deaths in the US is attributable to some form of cancer.

Because of cancer's extreme prevalence, cases may appear to occur with alarming frequency within a community even when the number of cases remains within the expected statistical norms. Further, as the U.S. population continues to age and as cancer survival rates improve, in any given community many residents will have experienced or observed many forms or types of cancer.

Several considerations are important when investigating potentially elevated rates of cancer. Cancers vary considerably in causation, predisposing factors, target organs and rates of occurrence. Cancers are often caused by a combination of factors which interact in ways that are not fully understood. For tumors that have been associated with chronic chemical exposures, the extended latency duration both complicates and confounds attempts to associate cancers occurring at a given time with local environmental releases or contamination. That is to say, since tumors may not appear until years or even decades after an exposure may have occurred, it is difficult to associate specific tumors with any specific condition or release to the environment.

The Center for Disease Control & Prevention (CDC) defines an elevated rate of cancer or cancer cluster as a greater than expected number of "cases that occur within a subgroup in a

distinct geographic area under a defined duration of time."[99] That means more people within a distinct geographic or demographic group within a specific time period develop cancer than is typical for similar populations.

In defining an elevated rate of cancer, or cancer cluster, the CDC's use of the phrase "cases that occur within a subgroup in a distinct geographic area under a defined duration of time" may include:

- a greater than expected number of observed cases in a similar setting over a defined time window; or
- a greater than expected number of tumors of the same type (tissue of origin); or
- the subgroup in which the cancer occurs is defined by a specific demographic factor (race/ethnicity); or
- a greater than expected number of cases in a distinct geographic area within a discrete duration of time occurs.

Elevated rates of cancer in a specific community that consist of one type of cancer or a rare type of cancer - or a tumor type which is not typically observed within a specific demographic group - are more likely to have a common cause.

In preparing its response to this comment, EPA has examined several lines of complementary scientific evidence while investigating a potential "cancer cluster" in subgroups or communities proximate to the Facility and has not been able to identify any statistical findings nor anecdotal evidence of an unusual pattern, prevalence or type of cancer in the communities proximate to this Facility.

The site-specific HHERA has estimated the excess likelihood of developing cancer from Facility releases as well within the Agency's acceptable thresholds and these estimates range from four (4) in ten (10) million (4E-07) to nine (9) in one billion (9E-09). That means that the acceptable thresholds are between four in every ten million people to nine in every one billion people potentially developing cancer from Facility releases. These estimates include individuals whose exposure scenario patterns vary from subsistence to recreational. Chronic excess lifetime cancer risks were found to be at least five times (5x) lower than EPA's combustion risk assessment target level (1E-05).[100] The excess lifetime cancer risks were reduced to fifty (50x) or more times lower than the target level when just one compound (benzidine) was eliminated from the analysis. It should be noted that benzidine was not detected in the stack gas during the performance demonstration test (PDT), and has not been received at the Facility in spent carbon.

[99] See Investigating Suspected Cancer Clusters and Responding to Community Concerns: Guidelines from CDC and the Council of State and Territorial Epidemiologists, September 27, 2013, at https://www.cdc.gov/mmwr/preview/mmwrhtml/rr6208a1.htm.

[100] For more information about EPA's combustion risk assessment target level, see EPA's September 2005 Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities at https://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=P10067PR.txt.

The Arizona Cancer Registry is a population-based surveillance system that collects, manages and analyzes information on the incidence, survival and mortality of persons diagnosed with cancer. The Arizona Cancer Registry began collecting cancer case information in 1981 and as of January 1992, cancer officially became a reportable illness in Arizona. The State & Regional tumor registries are considered the most reliable source of cancer surveillance information and data currently available.

EPA collected data and Information from the Arizona Tumor registry from Dr. Chris Newton, Cancer Epidemiologist – see web link: http://azdhs.gov/gis/community-health-analysis-area/index.php . This data and information is provided with the Age Standardized Cancer Rates information set forth below.

EPA collected data and information from the US Centers for Disease Control & Prevention, Department of Health and Human Services & National Cancer Institute - CDC WONDER Online Data for Epidemiologic Research (2016) – see web link: US Cancer Statistics 1999 - 2014 Incidence - http://wonder.cdc.gov/cancer-v2014.html. This data and information is provided with the Age Standardized Cancer Rates information set forth below.

It should be noted that cancer rates were examined for all sites, all races and for all neoplasms. Cancer rates have been standardized for age and no crude cancer rates are reported. All rates are reported per 100,000 individuals.

Cancer rates are typically reported on an annual basis, and can vary substantially by year. Therefore, rates reported over longer durations of time provide a more accurate characterization of the occurrence patterns and trends within a given community or geographic area. In addition, cancer rates collected over extended durations of time provide a more accurate basis for comparative analysis than do rates compiled over any individual year.

In general, cancer rates for the State of Arizona are 10-20% lower than comparable rates in the US general population. In general, cancer rates for the County of La Paz are lower than comparable rates for the State of Arizona. Finally, boundary-specific cancer rates for CRIT are most closely correlated with the Arizona Department of Public Health's Community Health Analysis Areas (CHAAs). The CHAAs are individual geographic units within Arizona that were created for use by various disease monitoring programs. Arizona contains 126 CHAAs and the geographic unit that is germane to CRIT encompasses Parker, AZ.

Age Standardized Cancer Rates:

- US general population Age-Standardized Cancer Rate 471 cases/100,000 (1999-2014).

- Arizona Age-Standardized rates from 1995-2009 vary from 410-450 cases/100,000. The rate for the most recent time-period currently available is 378 (400 male/364 female) cases/100,000 (Feb 2018 reporting).

- Age-Standardized rates from 1995-2009 for La Paz County vary from 283-381 cases/100,000. The rate for the most recent time-period currently available is 325 (330 male/316 female) cases/100,000 (Feb 2018 reporting).

- Age-Standardized rate for the Parker, AZ (Community Health Analysis Area [CHAA]) 359-418 cases/100,000.

In addition, in response to this Public Comment, EPA contacted the authoritative scientific personnel below in search of anecdotal evidence of any unusual patterns, incidence or prevalence of cancer on the CRIT reservation or within the community of Parker, Az. The scientists below reported that they were not aware of and have not observed any unusual patterns of cancer in these communities:

Dr. Michael Allison – Native American Liaison – Arizona Department of Health

Dr. Hisini Lin – State Toxicologist - Arizona Department of Public Health – Office of Environmental Health

Dr. Jamie Ritchey – Director of Epidemiology – Intertribal Council of Arizona

Mr. Zachary Hargis – Parker Indian Health Center – Office of Environmental Health

Ms. Sylvia Dawavendewa – Executive Director, Colorado River Indian Tribe (CRIT) Health Department.

See, "2017 08 29 Record of Communication M. Allison.pdf"; "2017 09 01 Record of Communication J. Ritchey.pdf"; "2017 09 12 Record of Communication Z. Hargis.pdf"; "2017 08 Record of Communication H. Lin.pdf"; and "2017 08 Record of Communication S. Dawavendewa.pdf."

Based on the results of the investigation that EPA has undertaken, as reflected in the information set forth above, in the Draft Permit Administrative Record and the Supplement to the Administrative Record, the Region has found no evidence of increased rates of cancer in communities proximate to the Facility.

C-15. One commenter objected to the issuance of a RCRA permit to the Facility as a result of what the commenter claimed was the Region's failure to undertake adequate Tribal Consultation with the beneficial landowner, the Colorado River Indian Tribes.

RESPONSE: The Statement of Basis accompanying the draft permit explained that EPA initiated "formal" Tribal consultation consistent with EPA's May 4, 2011 Policy on Consultation and Coordination with Indian Tribes (available online at https://www.epa.gov/sites/production/files/2013-08/documents/cons-and-coord-with-indian-tribes-policy.pdf) with respect to the RCRA Hazardous Waste Permit Application submitted to EPA for the Facility in August of 2014. This reference to "formal" Tribal consultation was a general reference to the "formal" consultation provisions established in that May 2011 Policy. The reference reflects the simple fact that consultation *pursuant to* the 2011 Policy could not have occurred until *after* the Policy was issued. It was not intended to suggest, nor do the voluminous records in the Administrative Record support the commenter's claim, that "consultation" with CRIT began in 2014.

EPA's communications with CRIT began at least as far back as 1992, when the Region received an early draft of the RCRA permit application for the Facility with the signature of the Vice Chairman of the Tribe on behalf of the Tribe as the beneficial landowner of the Facility. See, "1992 11 30 Revised RCRA Part A Permit Application.pdf." More direct communications between EPA representatives and CRIT officials about the Facility have occurred since at least the early 1990s through to the present.[101] These communications included meetings with CRIT Tribal officials since at least as far back as 1994. See, "1994 05 03 Memo re May 18 Conference.pdf." And, the Region has continued to meet with the CRIT Tribal Council and its

[101] See, *e.g.*, "1989 08 24 Letter Info related to Air Quality Permit w o encls.pdf," "1990 10 25 Response to Letter of Determination.pdf," "1992 11 30 Revised RCRA Part A Permit Application.pdf," "1993 01 05 RCRA Preliminary Assessment 1.pdf," at p. 10/38, "1994 03 10 EPA Letter re formal enforcement action.pdf," "1994 03 16 CRIT response to USEPA Letter.pdf," "1994 05 03 Memo re May 18 Conference.pdf," "1994 06 14 Response to 01241994 Letter re Part B Permit Application.pdf," "1994 06 20 Response to 06141994 Letter from EPA.pdf," "1995 05 31 cover ltr CRIT w_o Encl Inspection Rpt Transmittal Letter Mar 1995.pdf," "2000 02 29 Letter re Dec 1998 Inspection Report.pdf," "2000 10 05 Review of Waste Permit Application - Oct 2000.pdf," "2000 12 14 Email Westates_Publication_For the Record.pdf," "2001 01 22 letter to CRIT AG w_o encls..pdf," "2001 02 27 Tribal Consultation of Westates Permit Decision.pdf," "2001 05 03 Letter Notifying CRIT Plans to Move Forward.pdf ," "2001 07 21 ltr w_o full encl list of Westates Generators.pdf," "2001 07 09 Superfund Waste to Wesates Carbon Facility.pdf," "2001 08 21 Letter Request complete copies of previous RCRA Permit Applications.pdf," "2001 08 30 Providing Information on Additional Carbon Regeneration Facilities.pdf," "2001 11 15 Invitation to Meeting 11192001.pdf," "2001 12 18 Letter w_o Enclosure of 4 Maps of CRIT and Parker_AZ.pdf," "2001 12 19 Invitation to Meeting 01032002.pdf," "2002 02 01 Transmittal of CFRs to CRIT.pdf," "2002 02 04 Letter Re RFA.pdf," "2002 09 27 Letter re Consultation on the Protection of Tribal Cultural Resources.pdf," "2003 02 05 Email - EPA Discussion with Chairman Eddy on 02042003.pdf," "2003 02 06 Pursuant to 02052003 Telephone Conversation.pdf," "2003 02 10 Invitation for EPA to Attend an Event on Tribal Lands.pdf," "2003 03 06 Letter re Plans for EPA to Attend Cultural Tour with Dave Harper.pdf," "2003 06 11 Question of Tribal Facility Determination.pdf," "2003 06 17 EPA Undertaking Under NHPA - Various Recipients.pdf," "2003 07 25 Re_NHPA Consultation Meeting for August 1 2003.pdf," "2003 08 29 Meeting Notes from 08012003 NHPA Meeting - DEddyJr.pdf," "2003 09 04 Letter re Followup to 07182003 Consultation Letter.pdf," "2003 09 10 Letter re Designated Areas of Potential Effects.pdf," "2003 09 19 Re_Requesting Comments on Proposed Area of Potential Effects_DEddyJr.pdf," "2003 10 14 Letter re Proposed Meetings and Workshops.pdf," "2003 11 10 Letter EPA Meeting with Tribal Members.pdf," "2003 12 30 Letters to Prospective Consulting Parties - DEddyJr.pdf," "2003 12 31 Letter re EPA Plans for a Public Workshop.pdf," "2004 03 19 EPA Response to Aug 2003 Letters.pdf," "2004 06 09 Consultation regarding Air Emissions Test.pdf," "2004 06 09 Letter re Consultation regarding Air Emissions.pdf," "2004 08 13 Memo_Working Draft_Programmatic Agreement.pdf," "2004 12 08 Response to 06092004 Letter re Air Emissions Test.pdf," "2004 12 08 Letter re Consultation Regarding Air Emissions Test.pdf," "2005 03 21 EPA Approval of Air Emissions Test Plan.pdf," "2005 04 29 Letter re Date set for EPA Workshop re Dioxin.pdf," "2006 02 14 Email - Schedule for Air Emissions Test.pdf," "2006 02 27 Letter Concerning NHPA process.pdf," "2006 02 27 Letter re Concerning APE.pdf," "2006 02 27 Letter Review of Mohave Program Letter of 2002.pdf," "2006 12 04 NHPA Meeting Notes.pdf," "2009 05 28 ORC weekly hilite MMN.pdf," "2009 12 11 Certification of Permit Application.pdf," "2011 05 25 Apr 2011 Inspection Report.pdf," "2012 05 25 NHPA final rpt letters w 2012 07 12 memo.pdf," "2014 01 28 Letter re Review of Hazardous Waste Permit App.pdf," "2016 03 07 USEPA R9 Ltr to CRIT re Signature Request and Status of EPA Consultation with CRIT.pdf," "2016 04 25 CRIT Ltr re Evoqua HW Permit Application.pdf," "2016 05 09 USEPA R9 Ltr to Evoqua re Part B Application.pdf," "2017 06 22 AX-17-001-0776 CRIT Patch.pdf," and "2017 07 27 EPA HQ reply to Chrmn Patch CRIT.pdf." See also, EJ Findings, p. 479/1064 at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf."

representatives and engage with the Tribe on a government-to-government basis regarding both the Facility and this final permit decision.[102]

As explained in EPA's Statement of Basis, EPA regards its consultation with CRIT as an important aspect of the Agency's procedures as it engages in the RCRA permitting process for the Facility. Moreover, the Tribe's status as the beneficial landowner of the Tribal trust land on which the Facility is located made the Region's consultation process with the Tribe all the more significant because CRIT is a co-applicant on the RCRA Permit Application. The Statement of Basis explained that the "formal" phase of the consultation process on the permit decision closed on May 20, 2016. But, it also makes clear that the consultation process in general, as evidenced by the Administrative Record for this decision, is a continuous process. EPA's correspondence and other communications with CRIT have made it clear that EPA plans to continue regular consultation with the CRIT government regarding hazardous waste management at the Facility for as long as the Facility is managing hazardous waste and until RCRA closure of the Facility is completed. See Section 6. Tribal Consultation with the Colorado River Indian Tribe (CRIT) USEPA Statement of Basis, p. 11/1064, at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf."[103]

To the extent that the commenter has also raised concerns that EPA has violated the federal government trust responsibility to CRIT, EPA disagrees with the assertion. See EPA's Response to Public Comment C-1. Although the United States has a general trust responsibility to federally recognized tribes, the Agency's decision making and permitting process with respect to this Facility are governed specifically by RCRA. The Region's compliance with appropriate permitting procedures, as well as compliance with cross-cutting statutes, such as the Endangered Species Act and the National Historic Preservation Act, demonstrate that the Region has acted consistently with the government's trust responsibility with respect to the Tribe. *See*, *e.g.*, *Gros Ventre Tribe v U.S.*, 469 F.3d 801, 810 (9th Cir. 2006); and *Morongo Band of Mission Indians v. FAA*, 161 F.3d. 569, 574 (9th Cir. 1998). See also 40 CFR § 270.3.

C-16. One commenter claimed that the Region violated the NHPA and made a mockery of the NHPA process and its federal trust responsibility and, for this reason, objected to the issuance of a RCRA permit for the Facility. The Region, the commenter claims, not only

[102] See, *e.g.*, "2001 03 29 Confirmation of Briefing for CRIT.pdf," "2002 09 27 Letter re Consultation on the Protection of Tribal Cultural Resources.pdf," "2003 02 06 Pursuant to 02052003 Telephone Conversation.pdf," "2003 07 25 Re_NHPA Consultation Meeting for August 1 2003.pdf," "2003 08 29 Meeting Notes from 08012003 NHPA Meeting - DEddyJr.pdf," "2003 09 04 Letter re Followup to 07182003 Consultation Letter.pdf," "2003 10 14 Letter re Proposed Meetings and Workshops.pdf," "2005 04 29 Letter re Date set for EPA Workshop re Dioxin.pdf," "2009 05 28 ORC weekly hilite MMN.pdf," "2011 05 24 Letter to Chairman Elderd Enas about Intended Site Visit.pdf," "2014 12 03 Meeting Agenda and Minutes w CRIT EPO.pdf," "2014 09 25 ORC R9 Weekly Activity Rpt.pdf," "2015 03 12 Tribal Consultation Presentation.pdf," and "2016 09 27 Letter with Transmittal Notifying CRIT of Draft Permit and Public Comment Period.pdf."

[103] See, also, *In re Desert Rock Energy Company, LLC*, 14 E.A.D. 484, at 500-501 (EAB 2009) (rejecting Diné Power Authority's claim that Region violated trust responsibilities in filing voluntary motion for remand); and *In re Shell Offshore, Inc., Kulluk Drilling Unit and Frontier Discoverer Drilling Unit*, 13 E.A.D. 357, at 402-403, (EAB 2007) (rejecting argument that Region had failed to satisfy obligations to work and consult with tribal governments under Executive Order 13175).

ignored the NHPA process while allowing it to drag on for years, it also violated civil rights, environmental justice, and other laws protecting sacred sites and religious freedom.

RESPONSE: The National Historic Preservation Act and its implementing regulations at 36 CFR Part 800 require EPA to review potential impacts of the proposed permit decision on historic properties as part of the decision-making process.[104] They also require that the Agency provide an appropriate opportunity for consulting partners to comment. See 54 U.S.C. §§ 300101, *et seq.*[105] The Statement of Basis accompanying the draft Permit summarized the Region's compliance with these requirements. See Statement of Basis at pp. 8-9/1064, at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf." It also included the Region's NHPA Determination for this permit decision at Appendix C (NHPA Determination). See Statement of Basis at pp. 424-448/1064. The NHPA Determination concluded that this permit decision will not result in any adverse effects to historic properties. Id.

The Region undertook an analysis of the potential impacts from the issuance of a RCRA hazardous waste permit for the Facility over approximately a decade. And, in June of 2012, the Region made its final NHPA Determination that "no adverse effect" on historic properties would occur as a result of the Region's decision. Both CRIT and the Arizona State Historic Preservation Office, among others, were consulting parties to the NHPA Determination and provided input on the decision. Id.

The Administrative Record for this decision demonstrates that EPA has satisfied all the key elements of the NHPA process. The Administrative Record shows that the Region engaged with appropriate consulting partners and the public on NHPA determinations.[106] The Region determined a reasonable Area of Potential Effects for the decision.[107] The Region then

[104] See also 40 CFR § 270.3(b).

[105] See also 54 U.S.C. § 100101 (note) and 16 U.S.C. § 470(b).

[106] See NHPA Determination, Statement of Basis at pp. 424-448/1064, at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf." See also, *e.g.*, "2003 10 01 Comments from consulting parties re Permit.pdf," "2003 11 25 Memorandum with Materials Received from Arizona SHPO.pdf," "2003 12 10 Letter with documents re Requesting Info about California Tribes.pdf," "2003 12 15 Letter re Proposed EPA Undertaking.pdf," "2004 06 09 Consultation regarding Air Emissions Test.pdf," "2004 08 13 Email Working Draft of Programmatic Agreement - Westates NHPA Process.pdf," "2005 02 09 Draft Programmatic Agreement for NHPA Review.pdf," "2005 04 29 Comments on the draft Programmatic Agreement.pdf." See also NHPA Timeline at Appendix B to the NHPA Determination at p. 437/1064, at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf."

[107] See, *e.g.*, "2003 10 01 Comments from consulting parties re Permit.pdf," "2003 11 25 Memorandum with Materials Received from Arizona SHPO.pdf," "2006 02 27 Letter Concerning NHPA process.pdf," "2006 02 27 Letter re Concerning APE.pdf," "2006 02 27 Letter Review of Mohave Program Letter of 2002.pdf," "2006 05 31 Public Notice for Proposed Area of Potential Effects.pdf," "2006 06 08 Public Notice for Proposed Area Potential Effects w o mailing list.pdf," "2006 06 08 Email-Greenaction Objection and Comments on Proposed Area of Potential Effects.pdf," "2006 06 09 Email - Greenaction Objection and Comments on Proposed area of Potential Effects.pdf," "2006 06 09 Email-Greenaction Objection and Comments on Proposed Areas of Potential Effects.pdf," "2006 06 12 Fax Transmittal - EPA Letters sent from CRIT.pdf," "2006 06 12 Letter Requesting Comments on Propsed Area of Potential Effects under NHPA.pdf," "2006 07 17 Email-NHPA Scope of Impact.pdf," "2007 02 16 Letter Re_Determination of Area of Potential Effects and Request for Information on Historic Properties under NHPA -

identified the historic and culturally significant properties within the Area of Potential Effects and, finally, assessed the potential effects of its decision-making on those properties.[108] Ultimately, the Region obtained all the appropriate concurrences on each of those determinations, including its ultimate determination that "no adverse effect" on historic properties would occur as a result of the Region's decision.[109]

During the NHPA process, the Region identified two sites within a one-mile radius of the Facility (Area of Potential Effects) as potential historic properties under the NHPA. One was the Parker Cemetery, a location where Navajo Code Talkers are interred. The second site that was considered consisted of all areas within the Area of Potential Effects from where Black Peak may be viewed or from where prayers might be directed toward Black Peak. Black Peak is a mountain that is sacred to the members of the Native American community in the area of the Facility, although it is located outside the Area of Potential Effects, at approximately 3 miles away from the Facility. As the NHPA Determination states:

> "Effectively, this means that EPA has assessed the potential impacts of the permit decision on the entire APE, not only specific locations of known historic properties. EPA believes that this approach to evaluating the potential impacts of the permit decision would also apply to locations outside the APE."[110]

In meeting its NHPA obligations, EPA identified potential effects of Facility operations on historic properties, including visual and auditory impacts, and impacts stemming from the mere presence of chemicals at the Facility and in the Facility's emissions. These impacts went

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with Enclosures.pdf," "2007 02 16 Letter Re_Determination of Area of Potential Effects and Request for Information on Historic Properties under NHPA - Various Recipients.pdf," "2007 03 05 NHPA ext to public comment period.pdf," and "2007 03 08 Letter Response to 02162007 Letter.pdf."

[108] See, *e.g.*, "2007 01 30 Section 106 NHPA Packet.pdf," "2007 02 16 Letter Re_Determination of Area of Potential Effects and Request for Information on Historic Properties under NHPA - with Enclosures.pdf," "2007 02 16 Letter Re_Determination of Area of Potential Effects and Request for Information on Historic Properties under NHPA - Various Recipients.pdf," "2007 03 02 Memoradum Public Notice for Designation of Area Potential Effects and Request for Info About Historic Properties for the PermitDecision.pdf," "2007 03 05 Public Notice - Determination of Area of Potential Effects_2.pdf," "2007 03 05 NHPA ext to public comment period.pdf," "2007 03 08 Letter in response to 2007 02 16 Letter from EPA.pdf," "2007 03 08 Letter Response to 02162007 Letter.pdf," "2007 03 12 Email Re Siemens NHPA - Extension to the Public Comment Period.pdf," "2007 03 12 public comment on NHPA.pdf," "2007 03 12 Letter from AZ State Parks after review of documents submitted on 2007 02 26.pdf," "2007 03 23 Email Re Siemens NHPA -- request of Mohave Elders for Meeting with US EPA.pdf," "2007 03 30 Emails Re Request Confirmation of April 2 Meeting re Siemens NHPA -- Request of Mohave Elders for Meeting.pdf," "2007 04 12 Public Notice_Extension of Public Comment Period for Request for Info about Historic Properties.pdf," "2011 09 20 SHPO Letter re APE and Risk Assessment NHPA.pdf," "2012 05 25 NHPA final rpt letters w 2012 07 12 memo.pdf," and "2012 06 19 SHPO Concurrence Final.pdf."

[109] See NHPA Determination, Statement of Basis at pp. 424-448/1064, at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf." See also, *e.g.*, "2012 05 25 NHPA final rpt letters w 2012 07 12 memo.pdf," and "2012 06 19 SHPO Concurrence Final.pdf."

[110] NHPA Determination, Statement of Basis at p. 430/1064, at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf."

beyond strict human health risk and included the potential impacts to cultural practices of specific indigenous populations in the area, like the Mohave Elders.[111]

The commenter invokes a September 10, 2003 letter from the then-Chairman of CRIT regarding the cultural and historic interests of the Tribe and its members that requested the Region not limit its NHPA analysis to physical considerations, but include the Tribe's cultural and spiritual resources in the Region's NHPA evaluation. The commenter argues that the Region ignored information, such as the Chairman's 2003 letter, which it claimed "unequivocally" documented "profound adverse effects" to cultural or historic properties. There are many more years of correspondence between the Region and CRIT leading up to the NHPA determination in 2012. The Region considered all of the long history of correspondence and other communications with the Tribe, the public, and other stakeholders in its NHPA evaluation.[112]

Ultimately, the analysis of potential impacts resulting from the Region's permit decision was examined in the context of the specific decision being made. That is to say, the Region determined that this RCRA permit decision would not impact the specific toxins or contaminants able to be treated at or emitted from the Facility. Thus, because the Facility operator could continue treating non-hazardous spent carbon, whether a hazardous waste management permit were issued or denied, the Region concluded that the Permit decision would not require the Facility to cease business operations. From the perspective of whether NOx emissions might impact the cemetery, the Region made a specific finding about the distinction between emissions from treating non-hazardous and hazardous waste carbon, concluding that the SOx and NOx emission rates from the Facility would not be affected by the issuance of the Permit:

> "EPA has determined that the release of SOx and NOx from the facility through stack emissions is determined by the sulfur or nitrogen content of incoming waste streams. However, the presence and/or concentration of these two compounds in the waste does not determine the RCRA hazardous or non-hazardous classification of the waste, nor does it correlate with such a classification. Thus, whether or not the permit is denied, the facility could continue operating and SOx and NOx emissions rates would not be affected by the permit decision." See, "2012 05 25 NHPA final rpt letters w 2012 07 12 memo.pdf."

Thus, the commenter's assertions that "[e]missions from treatment of hazardous and non-hazardous materials are not the same. . ." was specifically addressed by the Region, with respect to the Parker Cemetery. The Region maintains that the same holds true for other purported distinctions between non-hazardous and hazardous waste carbon, to which the commenter avers.

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[111] The review included information obtained from records collected over the years including for example, the transcript of a February 11, 2004 hearing regarding workplans for the anticipated performance demonstration test and risk assessment. See pp. 6-42/110, "2004 02 11 Public Workshop Public Hearing.pdf." See also NHPA Determination, Statement of Basis at pp. 433-435/1064, at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf."

[112] See, *e.g.*, footnotes 52, 53, 54, and 55, above.

There are a variety of factors that determine how spent carbon is characterized and whether it is considered a hazardous waste or even a solid waste. Some of these factors are dependent on where the spent carbon is generated and not necessarily on the specific characteristics or constituents in the spent carbon. See, *e.g.*, 40 CFR § 261.2.[113]

As the Region explained in a letter to the Tribal Chairman and copied to Tribal Council members in March of 2015, were EPA to deny the Permit application, the Agency would be unable to regulate air emissions at the Facility under RCRA Subtitle C. Without a RCRA permit, operations involving non-hazardous spent carbon – which might indeed have similar properties in terms of emissions to the hazardous spent carbon waste – could likely proceed with less stringent pollution controls.[114] The Facility would also need to apply for a Title V permit under the CAA. Thus, the Region has a fundamental disagreement with the assumptions underlying the commenter's claims.

As a result, the Region's determination that issuing a permit solely for the management of RCRA hazardous waste at the Facility will have no adverse effect on these nearby historic properties is appropriate in light of the specific waste streams managed at the Facility.

C-17. One commenter asserted that the Region repeatedly failed to disclose that a wide range of federal agencies and federal facilities send hazardous waste to the Evoqua Facility and that this non-disclosure reveals the Region's bias toward the Facility in the permit process. The commenter objected as well on the basis that the Region had not provided copies of hazardous waste manifests to CRIT Tribal Council members. Another commenter stated that EPA used this Facility for its own Superfund waste carbon. So, the commenter observed, it is ironic that the Agency is self-regulating at this Facility.

RESPONSE: As noted by the commenter, Evoqua receives hazardous waste from federal agencies such as the Department of Defense and the Department of Energy. EPA has also sent waste carbon to the Facility for regeneration including, for example, remediation waste associated with Superfund sites. See, *e.g.,* "2001 07 21 encl list of Westates Generators.pdf." The Facility operator has estimated that all the hazardous waste carbon sent by the Federal

[113] Note, for example, that spent carbon *sludge* that is regenerated at the Facility will not be considered a solid waste (and therefore not a hazardous waste) unless it is listed at either 40 CFR § 261.31 or § 261.32. Meanwhile, the spent carbon *spent material* that is regenerated at the Facility will be considered a solid waste (and potentially a hazardous waste) regardless of whether it is a listed waste or a characteristic waste. *See* Table 1 at 40 CFR § 261.2. The term "spent material" is defined at 40 CFR § 261.1(c)(1) as "any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing." The definition of the term "sludge" at 40 CFR § 260.10 means "any solid, semi-solid, or liquid waste ***generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility*** exclusive of the treated effluent from a wastewater treatment plant." (Emphasis added.) Thus, while these materials (spent material and sludge) may come from different types of sources, there may be very little to distinguish between the variety or toxicity of the materials coming off regenerated *solid waste* carbon during treatment and the variety or toxicity of the materials coming off regenerated *hazardous waste* carbon during treatment.

[114] See "2015 03 05 EPA Response to CRIT Letter dated 20 Feb 2015.pdf."

Government to the Facility is about 10% of the total hazardous waste carbon regenerated by the Facility. Data provided by the Region to the CRIT Tribal Council shows the percentage of hazardous waste spent carbon received from federal facilities at the Facility ranging from about 1% to 9% annually from 2001 through 2013. See "2015 03 05 EPA Response to CRIT Letter dated 20 Feb 2015.pdf."[115]

Issuance of permits to commercial hazardous waste facilities by EPA is not improper as a result of federal commercial relationships with regulated entities. By law, EPA has the responsibility for permit decisions at hazardous waste management facilities – either directly through an EPA permit decision such as the one at hand or indirectly through oversight of state actions – and may not defer that responsibility. EPA ensures that RCRA permit decisions are not biased by basing the decisions on regulatory and technical reviews, and by publicly documenting the bases for permit decisions.

EPA routinely imposes federal regulations on activities conducted by the Federal government, including activities such as Superfund cleanups that EPA conducts on its own. Permitting of a RCRA hazardous waste Facility is contingent on the Facility meeting the requirements of RCRA. The Agency's permit decisions do not consider potential use of a facility by Federal entities. Where the Region may be sending Superfund waste to the Facility, such activities are under the direction of another Regional Office, the Region 9 Superfund Division, which is not involved in the RCRA permitting decision, and not the Region 9 Land Division.[116] The Region's Land Division is responsible for making an independent, scientifically sound, and protective RCRA permit decision for this Facility.

The commenter is correct that EPA has not included in fact sheets specific information about waste generators that send spent carbon to Evoqua. However, EPA has provided other basic information about wastes sent to Evoqua (Fact Sheet: An In Depth Look - Hazardous Waste at Westates, April 2001).

The commenter is correct that the Region does not provide copies of the manifests to CRIT Tribal Council members, although the Region notes that it does provide the manifests it receives from the Facility operator to the commenter on a regular basis. See, *e.g.*, "2010 06 30 Transmittal of Manifest Submittals for Apr_May_Jun_2010.pdf," "2010 10 07 Transmittal Letter Waste Manifests July - Sept 2010.pdf," "2011 07 30 Waste Manifests from May 2011 – Jul 2011.pdf," and "2012 05 01 Transmittal Letter Waste Manifests Jan-Apr 2012.pdf." The Region has no obligation to transmit the Facility manifests to the Facility owner, nor have the Tribes requested that the Region do so.

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[115] See, also "2001 07 21 ltr w_o full encl list of Westates Generators.pdf," reflecting an example of the Region transmitting generator data to CRIT EPO.

[116] Decisions as to where the EPA Superfund programs may send waste generated from work being performed at Superfund sites are generally governed by EPA's Off-Site rule, which was promulgated on September 22, 1993 (58 FR 49200). See 40 CFR § 300.440. The rule requires that Superfund wastes may only be placed in a facility operating in compliance with RCRA or other applicable Federal or State requirements. See https://www.epa.gov/superfund/site-rule.

C-18. One commenter objected to the issuance of a RCRA permit to the Facility in light of the commenter's belief that the permit process and its issuance violate Executive Order 12898, relating to environmental justice, and Title VI of the Civil Rights Act.

RESPONSE: Environmental justice is a critical component of EPA's work protecting human health and the environment.[117] Toward that end, and as envisioned by Executive Order 12898,[118] the Region incorporated environmental justice considerations into its review of the Permit application. The Region surveyed publicly available environmental and demographic data for nearby communities, and made a concerted outreach effort to inform and involve affected communities. These actions, among others, are documented in the Region's environmental justice analysis, attached as Appendix E to the Statement of Basis. See EJ Findings, pp. 477 *et seq.* at p. 485/1064 at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf."

Here, the Agency has conducted a comprehensive and substantive environmental justice analysis that endeavors to include and analyze data that evaluated the contemplated permitting decision in the context of environmental justice. See, *In re: Avenal Power Center, LLC*, 15 EAB 384, 402 (Aug. 18, 2011). This analysis demonstrates the Region has met the Executive Order's goals, to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." E.O. 12898 at Section 1-101, E.O. 12898, 59 FR 7629, 7629 (Feb. 11, 1994). See, also, *e.g.*, *In Re: Energy Answers Arecibo, LLC (Arecibo Puerto Rico Renewable Energy Project)*, 16 EAB 294, at 325-326 (Mar. 25, 2014).

One way in which the Region addressed the potential impacts of the Permit decision on minority and low-income populations was to require that the risk assessment performed by the applicants identify risks from Facility operations when evaluated cumulatively with other exposures and impacts. The EJ Findings, for example, state:

> "The risk assessment consisted of a scientific study of the various ways toxic or hazardous substances from the Facility might come into contact with individuals and/or the ecosystem and a calculation of how likely it would be for adverse human health

[117] See, *e.g.*, National Academy of Public Administration Report, Environmental Justice in EPA Permitting: Reducing Pollution in High Risk Communities is Integral to the Agency's Mission, December 2001, at http://earthjustice.org/sites/default/files/library/reports/a-report-by-a-panel-of.pdf.

[118] Executive Order 12898 is not enforceable in the courts and does not create any rights, benefits, or trust responsibilities enforceable against the United States. While Executive Order 12898 is not enforceable against the United States, it is a Presidential order applicable to Federal agencies:

> "Sec. 2–2. Federal Agency Responsibilities for Federal Programs. Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons … from participation in, denying persons…the benefits of, or subjecting persons…to discrimination under, such programs, policies, and activities, because of their race, color, or national origin."

February 1994, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Section 2-2, at https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf.

> and/or ecological impacts to occur because of such toxic or hazardous substances at the Facility. The risk assessment considered a broad range of constituents, including approximately 160 compounds that have the potential to be emitted or released from the Facility. The health-based threshold for systemic health impacts in this assessment was reduced by 75% in an effort to account for cumulative exposures from any other facilities in the surrounding area."[119]

Based on the risk assessment, potential impacts of the Permit decision have been addressed in the Permit, primarily through the provisions that regulate the operation of RF-2. And, the Permit is not expected to have a significant adverse (including disproportionately high) impact on overburdened communities with respect to human health or the environment.

As part of the Permit application process, the risk assessment sought to account for cumulative exposures to those in proximity to the Facility. And, based on the EJ Analysis, the Region does not expect the Permit to have significant adverse impacts on overburdened communities. Thus, there were no specific permit terms developed to address issues identified in the EJ Findings.

The Permit does include a requirement at Permit Condition I.J. that the Permittees establish an information repository in accordance with 40 CFR § 124.33. This repository, which may be an online repository, will be useful to all members of the community, including low-income and minority residents in the area. Other outcomes of the EJ Findings outside the context of the Permit itself include the Region's continued commitment to ensure that key records relating to hazardous waste management at the Facility are available at the CRIT and Parker libraries for access by those who may not otherwise have ready access to the internet.[120]

As for the commenter's concerns that the issuance of a RCRA permit to the applicants would violate Title VI of the Civil Rights Act, the Region notes that Title VI does not apply to the Permit Decision. Title VI prohibits recipients of federal financial assistance, such as states or grantees, from discriminating based on race, color, or national origin. 42 U.S.C. § 2000d; 40 CFR § 7.30. A recipient is defined as:

> "any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance." 40 CFR § 7.25.[121]

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[119] EJ Findings, p. 484/1064 at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf."

[120] See, e.g., "2016 11 14 Email to CRIT Librarian re revised docs.pdf."

[121] In addition, it has long been recognized by the courts that activities "wholly owned by, operated by or for the, United States, cannot be fairly described as receiving Federal 'assistance.'" *U.S. Dep't of Transportation v. Paralyzed Veterans of Am*., 477 U.S. 597, 612 (1986) (holding that because the air traffic control system is "owned and operated" by the United States, it is not "federal financial assistance and is a federally conducted program)." *See also*, as stated by then-Deputy Attorney General Nicholas deB. Katzenbach to Hon. Emanuel Celler, Chairman, Committee on the Judiciary, House of Representatives (December 2, 1963):

> Activities . . . wholly owned by, and operated by or for, the United States, cannot fairly be described as receiving Federal 'assistance.'

Therefore, Title VI does not apply to EPA's own programs or activities and does not apply to the Region's decision whether to issue a hazardous waste treatment and storage permit for this Facility.[122] Additional information on how Title VI of the Civil Rights Act relates to EPA's work may be found at: https://www.epa.gov/ogc/external-civil-rights-compliance-office-title-vi.[123]

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C-19. One commenter claimed that the EPA made false claims during the public hearing on November 1, 2016, during which the EPA claimed that the electrostatic precipitator took out the residual metals and particles. The commenter claimed that this process resulted in only partial removal of particles and metals.

RESPONSE: One of the air pollution control technologies being used at the Facility is an electrostatic precipitator. This widely used technology is used to remove residual metals and particulates. In general, pollution controls are rarely 100% effective and this is true of an electrostatic precipitator. To the extent that any EPA representatives may have suggested otherwise, they were mistaken. The Region regrets any such misstatements.[124]

However, all the pollution control devices taken together are designed and operated to ensure that the emissions from the Facility do not pose an unacceptable risk to human health or the environment. As discussed elsewhere in these responses to comments, an HHERA was performed for the Facility. The HHERA ensures that Facility emissions meet EPA's human health and environmental risk guidelines. It also enabled the Region to ensure that the control limits for the Facility that are included in this Permit provide for the continued proper operation of the electrostatic precipitator and other pollution controls. See, *e.g.,* the Region's Responses to Public Comments V-12, V-41, C-1, C-3, C-5, C-6, C-9, C-13, C-14, C-21, C-26, and C-29.

C-20. One commenter claimed that in a 1993 edition of Industry Magazine, an ad for Wheelabrator showed a picture of a Mohave man, which could falsely mislead the public into thinking it was a Tribal company.

RESPONSE: The Region strongly believes that it is important that members of the CRIT and other residents in the community around the Facility have reliably accurate and relevant information about the Facility's operations in order to form opinions and provide

110 Cong. Rec. 13380 (June 10,1964).

[122] See also the definition of "EPA assistance" at 40 C.F.R § 7.25.

[123] See also US Department of Justice DOJ Title VI Legal Manual at https://www.justice.gov/crt/fcs/T6manual; and US Environmental Protection Agency Case Resolution Manual at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf.

[124] The Region points out that a public meeting was held prior to the public hearing. Statements regarding the effects of the electrostatic precipitator do not appear on the transcript of the public hearing except in the context of this comment. Statements by Regional representatives would likely have been made during the meeting part of the evening event, and would not have been transcribed. See, "2016 11 01 hearing transcript Draft RCRA Permit Public Mtg Evoqua.pdf."

informed comments on the Region's proposed Permit decision. However, the Region is skeptical that the referenced ad was responsible for significantly influencing public opinion regarding this matter.

Wheelabrator Clean Air Systems, Inc. was a prior parent company of the Facility operator's parent company, when the operator was known as Westates Carbon, Inc. and Westates Carbon-Arizona, Inc. See, *e.g.,* "1993 05 11 Westates Diagram Tree.pdf" and "1993 09 24 Intended Change Sole Shareholder.pdf." Since that time, the operator and its successors have undergone numerous corporate changes that have not altered the operator of the Facility's status as a private corporation, leasing the Facility land from the Tribe.[125] Many EPA Fact Sheets over the years have included information indicating that the Facility is located on the Tribe's land.[126] Moreover, in reviewing the various public meeting materials and meeting and hearing transcripts provided in the Administrative Record, the accurate information regarding the Tribe's status as beneficial trust landowner, and co-permit applicant, of which many in the community are well aware, did not appear to unduly influence community members' support or opposition regarding the Region's anticipated decision.[127]

With these circumstances in mind, it is hard to see how the operator's status as a private versus Tribal entity would have had a significant impact on individual community members' reactions to the proposed Permit. In addition, the Region has engaged in a robust outreach campaign over the years to provide information about the Facility and the Permit applicants to the local community, including Tribal members. See, *e.g.,* footnote 52, above, in the Region's Response to Public Comment C-2. And, the commenter's reference to a 1993 ad is not, in the Region's view, significant in terms of whether the public has had sufficient information upon which to form opinions and provide informed comments on the Region's proposed Permit decision.

C-21. One commenter objected to the presence of the Facility on Tribal land, indicating that Tribal members had been opposed when the Facility was allowed to be located by the Bureau of Indian Affairs and the CRIT Tribal Council. The commenter also indicated that the bases for these objections were concerns that the Facility is contaminating both the land and the water in the area.

RESPONSE: The CRIT Tribal Government is entitled, as a sovereign entity, to make decisions, through the Bureau of Indian Affairs, about leasing Tribal land. The Region's decision-making with respect to the RCRA permit application, on the other hand, is limited by the scope of RCRA's statutory and regulatory provisions. See the Region's Response to Public Comment C-11. In consideration of the commenter's concerns that the Facility's operations might pose unacceptable risks to land and water in the area, the Region notes that the HHERA

[125] See, *e.g.*, "1993 08 30 Request of Documents.pdf."

[126] See, *e.g.*, Fact Sheets noting that the Facility is located on the Colorado River Indian Reservation at: "2000 09 26 Email Westates Publications 2000.pdf," at p.4/9; "2001 04 Westates In Depth Look Fact Sheets.pdf," at pp. 1, 3, 5, and 7/10; and "2002 08 07 Westates Public Workshop Documents.pdf," at pp. 8, 12, 14, 16, 18, 20, 22, 24, 26 and 28/29.

[127] See, *e.g.*, "1994 10 04 Public Comments Meeting Oct 1994 w o addresses of attendees.pdf"; "2004 02 11 Public Workshop Hearing.pdf"; and "2016 11 01 Public Hearing Transcript.pdf."

-- an excerpt of which is included in the Permit as Permit Attachment Appendix XI -- was required to ensure that Facility operations do not pose an unacceptable risk to human health and the environment. The Permit also requires an update to the HHERA to continue to ensure there are no unacceptable risks – including risks to land or water -- because of the Facility's operations. See Permit Condition V.I. See, also, the Region's Response to Public Comment C-5, Permit Attachment Appendix XI, and "2016 04 RCRA Application_Appendix XI_Rev 1.pdf."

C-22. One commenter expressed concerns that financial benefits from Facility operations were not accruing to the local community, and that Tribal members are not working at the Facility. This commenter also questioned why the Region was not proposing a permit denial.

RESPONSE: The RCRA permitting process involves a decision to either issue a permit or deny a permit. A permit may only be denied in accordance with the applicable regulations. In this case, there are insufficient reasons to justify a permit denial based on the criteria established by the applicable federal regulations. For example, whether financial benefits accrue to the local community or not is not a basis for granting or denying a RCRA permit. In addition, while the Region is aware of provisions in the original lease requiring the operator to provide an employment preference to Tribal members, financial arrangements between the Facility and the Tribe are outside of the Region's purview. See, *e.g.,* "1993 08 30 Request of Documents.pdf."

C-23. One commenter asked for clarification about the two types of wastes managed at the Facility and which type had the potential to contaminate the reservation more. This commenter also asked about the trial burn and whether it evaluated the most contaminated waste. The commenter also asked whether there is a difference between emissions from the two types of wastes.

RESPONSE: As an initial matter, the Region's presentation prior to the public hearing at which this comment was made included information about both the differences between vapor carbon and liquid carbon and the differences between hazardous waste carbon and non-hazardous waste carbon. It is unclear to the Region whether the commenter's request for clarification pertained to the differences between vapor and liquid carbon or between hazardous waste and non-hazardous waste carbon.

Vapor carbon is made from crushed coconut shells and is generally larger than liquid carbon, which is made with charcoal similar to what one uses to barbecue. The differences between vapor carbon and liquid carbon pertain to the materials they are made from as virgin carbon and their use in the industry. These differences are not related to the toxicity of the material, so it is unlikely that this is what the commenter was asking about. The rest of this response, therefore, focuses on the differences between the hazardous waste carbon treated at the Facility and the non-hazardous waste carbon treated at the Facility.

The Facility operator estimates that about 11% of the waste carbon treated at the Facility is regulated as RCRA hazardous waste. The other estimated 89% of the spent carbon being treated is considered non-hazardous and is not regulated by RCRA as hazardous waste. The

HHERA has demonstrated that Facility operations at the levels tested in the trial burn – which are worst case levels[128] – do not pose an unacceptable risk to human health or the environment. This conclusion holds true for whichever carbon is being treated in the carbon regeneration unit, whether it is considered hazardous waste carbon or not, because the trial burn test simulated operations in which the unit would be operated at its highest treatment capacity for a variety of contaminants. This means that, regardless of the differences between hazardous waste carbon and non-hazardous waste carbon, emissions from the carbon waste being treated will themselves be treated to levels within acceptable limits. See also the Region's Responses to Public Comments C-4, C-5, C-6, C-7, C-8, C-10, C-11, and C-12, above.

C-24. One commenter stated that there was a rumor about illegal dumping taking place south of where the plant is now, some years back. She did not know if it was still going on, but she claimed that whoever it was did not have a permit or lease from the Tribe, but dumped the waste anyway. Another commenter, similarly, wanted to know what the risk factors were regarding the waste created from illegal dumping, if it was taking place.

RESPONSE: The Region has previously heard public concern about possible illegal dumping in the area of the Facility, but has never found specific evidence to corroborate these concerns. The Region is not aware of any evidence of illegal dumping associated with the operation of the Facility or associated with any specific locations in the vicinity south of the Facility.

In February 2018, the Region performed a RCRA inspection of the Facility, the first since the Public Hearing during which this comment was made. After finishing the RCRA Inspection, the Inspector walked the area south of the Facility and found no evidence of illegal dumping. See "2018 06 12 Memo to File Regarding Tip on Abandoned or Disposed Waste.pdf."[129]

However, the Region works cooperatively with CRIT EPO regarding a variety of environmental issues and, to the extent that any such evidence is uncovered, the Region fully expects that the Region and CRIT EPO would continue to work together as regulatory partners to address any potential illegal dumping on CRIT Tribal lands.

C-25. One commenter asked about the PowerPoint presentation at the November 2016 public meeting after the draft Permit was issued. During EPA's presentation, two types of contaminated loads were mentioned; a lighter load and a more contaminated load. The commenter wanted to know how often are the more contaminated loads delivered to the Facility, and is that something that contributes to increased levels of pollution in air in the reservation. Also, was the lighter load or more contaminated load used during the test burn.

RESPONSE: As explained in the Region's Response to Public Comment C-23, above, it is estimated that about 11% of the waste carbon treated at the Facility is regulated as RCRA hazardous waste. The other estimated 89% of the spent carbon being treated is considered

[128] See, *e.g.*, the PDT Report at p. 13/120, Permit Attachment Appendix V.
[129] See also "2018 04 05 Inspection Report.pdf."

non-hazardous and is not regulated by RCRA as hazardous waste. This does not necessarily mean that the non-hazardous waste carbon is "lighter" or less contaminated than the hazardous waste carbon. However, the HHERA has demonstrated that Facility operations at the levels tested in the trial burn – which are worst case levels – do not pose an unacceptable risk to human health or the environment, whichever carbon is being treated in the carbon regeneration unit. So, whether hazardous waste carbon or not, because the trial burn test simulated operations in which the unit would be operated at its highest treatment capacity and at worst case levels for a variety of contaminants, emissions from the carbon waste being treated will be treated to levels within acceptable limits. See also the Region's Responses to Public Comments C-4, C-5, C-6, C-7, C-8, C-10, C-11, C-12 and C-24, above.

C-26. One commenter wanted to know how many gallons of water were used to cool down the scrubbers, from the year the Facility first began operations to present-day. The commenter also stated that it understood there were about 154 square miles that were studied for the HHERA. The commenter questioned whether there was any information found since this HHERA was performed and if there is a current risk. It also requested testing but was not clear about the nature of the testing requested. Another commenter asked about the amount of water used at the Facility, whether the water is contaminated and how it is treated.

RESPONSE: The Facility's wastewater treatment permit demonstrates that it is the sole industrial wastewater discharger to the Colorado Sewage System Joint Venture, which is a publicly owned treatment works that has been in operation since approximately 1974. In a June 23, 2015 Report entitled "40 CFR 403.1(e) – Periodic Reports on Continued Compliance," the Joint Venture estimated that the Facility discharges approximately 140,000 gallons of wastewater per day. See the RCRA Facility Assessment (RFA) at Appendix L, at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf," at pp. 907-935/1064. Much of this water is treated onsite in the Facility's wastewater treatment process. The wastewater treatment system is not included in the RCRA hazardous waste permitting decision, as these wastewater treatment units are not regulated under RCRA. See, *e.g.*, the RFA at Section 3.3. Processes and Waste Management at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf," at pp. 533-535/1064. However, the Region's Clean Water Act program, along with CRIT EPO, oversees compliance by the Joint Venture with its CWA NPDES waste water discharge permit.[130]

In terms of the commenter's question about the area that was included in the HHERA performed as part of the permit application process, 170 chemical categories were evaluated and low levels of metals, volatile and semi-volatile organics, pesticides, and dioxins and furans were evaluated. The HHERA examined the potential for adverse health impacts to occur from Facility releases over a 154-square mile study area. The dimensions of the study area were determined by results of the air dispersion and deposition modeling.

[130] See, *e.g.*, https://www.epa.gov/sites/production/files/2017-07/documents/az0021415-crssjv-factsheet-2015-05-01.pdf and https://www.epa.gov/sites/production/files/2017-07/documents/az0021415-crssjv-permit-2015-05-01.pdf.

The HHERA was completed in 2008 and updated in 2014 and was included in the RCRA permit application. The final Permit requires the Permittees to update the HHERA after the initial trial burn test is performed. Based on the results of the 2014 updated HHERA, Facility operations do not currently pose an unacceptable human health or ecological risk. An updated HHERA will be necessary after the first trial burn test that is performed after the Permit is issued. This is because there are updated toxicity criteria and fate and transport models that support the quantitative analysis of human health and ecological risks. See also, *e.g.*, the Region's Responses to Public Comments C-5, C-6, C-7, C-8, C-9, C-11, C-13, and C-14, above. In addition, trial burn tests will be required on a 5-year periodic basis. To the extent that the commenter's remarks about testing pertain to soil or water sampling, please see the Region's Response to Public Comment C-37.

C-27. One commenter indicated that he had a brother that worked at the Facility that had respiratory problems when he got older. The commenter also knew several young men that went to school with the commenter's son that died of cancer, and several other people that worked at the Facility said they did not have the proper clothing that protected them from chemicals at the Facility. The commenter was concerned about the most toxic shipments arriving at the Facility late at night, and processing and burning of the most toxic waste also taking place at night rather than during the day. The toxic waste is what the Tribal members are breathing in on the reservation. The commenter indicated that the wind carries the toxic chemicals into the air as far out as Quartzsite, Blythe, and Havasu. The commenter indicated that as a result, a lot of people in town have died of cancer.

RESPONSE: Please see the Region's Response to Public Comment C-14, above, regarding the concern that Facility operations may be causing cancer among members of the community or Facility employees.

The Facility is subject to stringent OSHA requirements for worker protection, which are not part of the RCRA hazardous waste permit. However, the hazardous waste permit requires that the Facility be operated in such a manner as to minimize the possibility of a release of hazardous waste constituents that could threaten human health, including the health of workers at the Facility.[131]

As to the concern that the most contaminated deliveries of spent carbon are occurring late at night or that the operator is burning the most contaminated waste at night, the Region notes that Permit requires that Facility emissions be controlled 24 hours per day, 7 days per week. Monitoring and recording systems for the hearth and its associated pollution control equipment are always in operation, regardless of the nature of the material being treated in the system, its level of contamination, or the time of day. The trial burn that was performed as part of the permit application process demonstrated that the Facility meets the emissions limits that have been established in the Permit. These systems and their methods of monitoring and

[131] Permit Condition II.B.1.: "The Permittees shall maintain and operate the Facility to minimize the possibility of a fire, explosion, or any unplanned, sudden or non-sudden release of hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment."

recording critical parameters associated with the operation of the hearth ensure that the Facility is always operating within acceptable limits.

C-28. One commenter said that he was unsure of how the contract was written in the past, but wanted assurance from the EPA that, if a Permit is issued to the Facility, the CRIT Tribal government would be able to have its own appropriate testing done at the expense of the operator, to ensure the Facility is meeting regulatory limits.

RESPONSE: The Region does not dictate or even play a role in the contractual relationship between the Facility operator and the Tribal landowner, CRIT, regarding costs that the operator may agree to pay for or reimburse to the Tribe in connection with Facility monitoring or testing. However, the Region oversees certain monitoring and testing performed by the Permittees as part of its role in ensuring that operations are in conformance with applicable limits.

To the extent that the Tribal Government, through CRIT EPO or otherwise, intends to perform its own monitoring and testing at the Facility, there is some EPA funding available for the Tribe, through the General Assistance Program (GAP), to develop its own capacity to do air monitoring. The Tribe's work on that effort is ongoing with current funding through FY19.

C-29. One commenter wanted to know if soil and water sampling would be conducted because of concerns that no bugs or other signs of life lived in the "dead" zone within the Facility.

RESPONSE: The Region has no evidence that there is an absence of animal life or that the land or environment within the Facility in fact represents any kind of "dead" zone, as was the commenter's concern.

The Region has included in the Statement of Basis its evaluation of a variety of Federal standards required of the Region as part of the RCRA permit-decision-making process. See 40 CFR § 270.3 (Considerations Under Federal Law). See also, USEPA Statement of Basis, at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf." These "considerations" include the Endangered Species Act. See 40 CFR § 270.3(c). In evaluating the potential impacts of the proposed decision on listed species or critical habitat, the Region concluded that the HHERA submitted with the Part B Permit Application demonstrated that the issuance of a RCRA permit for the Facility would not be expected to jeopardize the continued existence of any such listed species or result in the destruction or adverse modification of any such designated critical habitat. See, USEPA Statement of Basis, Appendix D at "2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf." In addition, the HHERA also demonstrated, and the Region has found that, neither the environment nor human health is expected to be put at unacceptable levels of risk because of Facility operations.

In addition, the Permit calls for investigations into releases of hazardous waste or its constituents from solid or hazardous waste management units or areas of concern at or from the Facility during its operational life. See, *e.g.*, Permit Conditions I.E., IV.J., VI.B., VI.D., VI.E., VI.F., VI.G. and VI.L.

Finally, at closure, additional Facility investigations are required in accordance with Permit Attachment Appendix XV. These investigations are required to be performed before closure of the Facility will be deemed complete. See Permit Conditions II.N. and V.H.

C-30. Two commenters indicated that they protested out at the Facility and Evoqua called the police. The commenters objected to having been accused by the Facility of invading their own land, while having a ceremony.

RESPONSE: Although the Region understands the concern raised by the commenters, it is unclear how the experiences of these commenters might influence the Region's final Permit decision. The Region has no control over the private or local Tribal or municipal government's policing of activities on the reservation, whether these activities are undertaken by Tribal members or not, or regardless of whether such individuals are lawfully exercising their constitutional rights. The Region is focused on the impacts that its decision may have on the community, the environment and historic and cultural resources with respect to the issuance of this hazardous waste permit. The Region continues to appropriately engage with the CRIT government on a government-to-government basis regarding matters within EPA's jurisdiction. It also continues to consider the potential impacts of its decisions on vulnerable populations, including low-income and minority populations – including Tribal members – who may be affected by Facility operations. The Region has undertaken an extensive NHPA analysis into the potential impacts of this decision on cultural or historic resources, including the potential impacts of this decision on the religious and spiritual practices of tribal members.

C-31. One commenter indicated that many Elders were not in support of construction of the Facility in the beginning because of the chemicals and toxins that would be burned at the plant. The commenter indicated that the Elders' concerns were not taken into account. The same commenter opined that the Tribal Council was also opposed to the Facility's continuing operations.

RESPONSE: The Region has explained its role in making a RCRA permitting decision and how limited is that role in the siting of an existing interim status facility. See the Region's Response to Public Comment C-11, above.

The Region has also explained the process it undertook in evaluating the Permit decision's potential impacts on the cultural and religious practices of Tribal members within the community surrounding the Facility, including the Mohave Elders. See, *e.g.*, the Region's Responses to Public Comments C-1 and C-16, above. Additionally, the Region has taken into account the rights of the Permit applicants to obtain a permit, based on parameters outlined in applicable Federal statutes and EPA regulations. The Region has endeavored to address all the concerns about the Facility's hazardous waste management operations that have been brought to the Region's attention and that are within its purview.

Finally, the Region notes that, if the Tribal Council were opposed to the issuance of the RCRA permit to the Facility, it could withdraw its signature as the landowner on the permit application. The Region would not issue the Permit if the Tribal landowner opposed it.

C-32. One commenter stated that the Facility was supposed to give $30,000 to CRIT Fire Department for management of hazardous material in the event of an emergency so that any potential fire caused as a result of hazardous materials could be controlled properly. The Facility was supposed to issue that money to the Tribe every year, however, the CRIT Fire Department or other Tribal entities were never provided with any funding for this type of effort.

RESPONSE: Emergency and release response, notification and reporting requirements included in the Permit require a variety of immediate and short-term responses to local, State, Tribal and National emergency and release response entities, including the CRIT Fire Department. See, *e.g.*, the Facility's Contingency Plan at Permit Attachment Appendix XIII, at p. 32/59. The Contingency Plan includes specific arrangements that the Facility operator has made with the CRIT Fire Department in accordance with Permit Condition II.J.5. See also 40 CFR § 264.37.

These Contingency Plan provisions are the only regulatory provisions that apply to the Region's RCRA permit decision with respect to the relationship between the Facility operator, Tribal landowner and the CRIT Fire Department. Private financial agreements made between the Facility operator and CRIT or any Tribal entities are outside the legal scope of the Region's RCRA permit decision-making process.