

COMMENTS REGARDING GENERAL PERMIT CONDITIONS

MODULE IV:

- IV-1. One commenter objected to the use of the phrase “tank-like systems” in draft Permit conditions IV.A.1 and IV.B.2 as vague and ambiguous and suggested its deletion.

RESPONSE: The Region agrees that the phrase “tank-like systems” is unnecessary and has deleted it from Permit conditions IV.A.1. and IV.B.2.

- IV-2. One commenter objected to the reference to the Benzene NESHAP requirements set forth in 40 CFR Part 61, Subpart FF as beyond the scope of RCRA’s permitting authority and duplicative of the NESHAP requirements which apply independently of the RCRA permit.

RESPONSE: The Region agrees that the Benzene NESHAP applies independently of the RCRA permit and has deleted 40 CFR Part 61, Subpart FF from the requirements of the Permit. The Region notes however, that there are ambiguities in the commenter’s invocation of the RCRA regulations that authorize permittees to defer, under certain circumstances, compliance with RCRA’s air emission standards to compliance with CAA requirements. The commenter states that the permittees may “elect to determine compliance” between both 40 CFR Part 264 Subparts BB and CC by documenting compliance or complying with CAA air emissions requirements. In fact, while 40 CFR § 264.1064(m) does provide for such an election with respect to equipment subject to Subpart BB standards, as explained previously in these responses to comments, Permit Attachment Appendix XIX currently includes no such election for the equipment at the Facility. Furthermore, the Subpart CC deferral to the CAA at 40 CFR § 264.1080(b)(7), for tanks and containers subject to RCRA air emission standards, requires a certification that CAA-mandated air emission controls are installed and operating in compliance with the CAA. More specific information about the Subpart BB compliance plan requirements can be found in the Region’s Response to Public Comment I-36. More specific information about the Subpart CC compliance plan requirements can be found in the Region’s Response to Public Comment III-7.

- IV-3. One commenter suggested the deletion of draft Permit condition IV.B.3., which it claimed as duplicative of the requirements set forth in draft Permit condition IV.A.2 to comply with 40 CFR Part 264 Subpart J. The commenter incorporated the same arguments made with respect to Draft Permit Module III conditions, which were addressed previously in the Region’s Response to Public Comment III-2.

RESPONSE: The Region disagrees with the commenter regarding the inclusion of permit provisions that describe how Subpart J applies to the tank systems at the Facility. A simple recitation of an obligation to comply with a subpart, with a broad set of regulations contained therein, does nothing to assist the Permittees, regulators, or the public in understanding the specific compliance requirements that are applicable to the regulated hazardous waste units.

However, the Region agrees that one violation of one provision of the tank system standards set forth in 40 CFR Part 264, Subpart J, which are referred to throughout Permit Module IV, should not result in citations for multiple violations of the Permit. However, conversely, the Region does not think that multiple violations of Subpart J should only be met with a citation to one violation of Module IV, which could be the result if the Agency were to accept the commenter's recommended deletions.

Therefore, the Region has added language in Permit condition IV.B.3. to clarify that compliance with the requirements set forth in this Permit provision is part of the obligation to comply with Permit condition IV.A.2.'s broad reference to Subpart J. The Region believes that this language will protect the Permittees if any future enforcement action seeks to cite multiple violations of Permit conditions arising from a one-time failure to comply with only one of Subpart J's many requirements. At the same time, the added language will give the Region appropriate levels of flexibility with which – in the exercise of its enforcement discretion – it may cite multiple and/or specific Permit conditions where there are multiple alleged violations, including alleged violations of more than one of Subpart J's requirements.

The Region has also separated the reference in draft Permit condition IV.A.2 to Subpart J standards from Subparts BB and CC standards. This revision clarifies that, while the Subpart J standards are applicable to each of the hazardous waste tank systems, the Subparts BB and CC standards apply separately to equipment and tanks/containers.

- IV-4. One commenter claimed that Tank T-11 is not subject to 40 CFR Part 264 Subpart CC because the annual testing demonstrates that no controls are required. This commenter appears to be suggesting the deletion of draft Permit condition IV.A.2's reference to Tank T-11. The commenter also recommended deleting T-11 from draft Permit condition IV.G.1.

RESPONSE: The partial exemption of tanks from the requirements of 40 CFR Part 264 Subpart CC is found at 40 CFR § 264.1082(c)(1). This provision provides an exemption from the requirements of 40 CFR §§ 264.1084 through 264.1087, "where all hazardous waste entering the unit has an average [volatile organic] concentration at the point of waste origination of less than 500 parts per million by weight (ppmw)." Thus, while Permit Attachment Appendix XX provides information regarding T-11's eligibility for this partial exemption, even tanks exempted under this provision must comply with the record keeping and reporting requirements of 40 CFR §§ 264.1089 and 264.1090. For this reason, Table IV-2 lists the exemption, record keeping and reporting provisions applicable to T-11 and the Region declines to delete language indicating that Tank T-11 is "subject to" Subpart CC.

The Region declines to incorporate the commenter's recommended changes to the description of T-11 in Table IV-2, since the description proposed in the draft Permit matches the description included in the permit application. To the extent the operator desires to modify the description of this unit in the Table, a Permit modification will be required. In addition, the Region declines to delete the reference to T-11 from Permit condition IV.G.1. for similar reasons

as explained with respect to Table IV-2. Record keeping and reporting provisions remain applicable to T-11. See 40 CFR §§ 264.1089(f) and 264.1090.

In reviewing the foregoing Response to this Comment, the Region also identified and corrected an error in Permit condition IV.G.6., which had referred to Subpart CC air emissions standards as referring to the “point of waste generation.” While the two terms may be similar,²⁸ Permit condition IV.G.6. has been corrected to reflect the correct regulatory language, “point of waste origination.” See also 40 CFR §§ 264.1082 and 264.1083.

- IV-5. One commenter recommended revisions to Table IV-1 in the draft Permit with regard to hoppers H-1 and H-2’s descriptions. The recommended revisions were based on the operator of the Facility’s intention to replace the hoppers in accordance with design materials that EPA approved on March 20, 2015.

RESPONSE: The Region has revised Permit condition IV.A.4 to explain the inclusion of both the existing and the anticipated new hopper descriptions in Table IV-1. In addition, the Region deleted draft Permit condition I.K.7. -- requiring the submittal of the Work Plan to replace the hoppers -- and instead added the requirement to Permit condition IV.E.6.

The timing of the Permit applicants’ intended replacements of the hoppers is uncertain. Given these unknowns, the Region has done its best to anticipate expected changes of which it has been made aware, but for which no Permit application revisions were received or even, potentially required. For example, the Permittees have the option of whether to include changes to hopper H-2 in the work plan required under Permit condition IV.E.6.a.

- IV-6. One commenter objected to draft Permit condition IV.B.3 by incorporating some portion of its comments on draft Permit condition IV.A.2, and on the basis that the draft Permit condition is duplicative of draft Permit condition IV.A.2 insofar as it requires compliance with 40 CFR Part 264, Subpart J.

RESPONSE: The Region has retained Permit condition IV.B.3 with only minor changes despite the arguable duplication of the obligation to comply with 40 CFR Part 264, Subpart J. The status of hoppers H-1 and H-2 at the Facility is somewhat complicated because the hoppers are ancillary equipment to the tanks regulated under Subpart J, while simultaneously constituting equipment within the meaning of Subpart BB and individual drain systems under 40 CFR Part 61, Subpart FF. Because of the complexity, the Region has chosen to include hopper-specific Permit conditions that, while potentially redundant, it hopes will provide clarity to the Permittees, regulators, and the public.

With respect to the Agency’s authority to regulate the hoppers, the Region maintains that these hoppers are considered ancillary equipment to the feed tanks under 40 CFR Part 264,

²⁸ See the note to the first part of the two-part definition of “point of waste origination” at 40 CFR § 265.1081. But note as well that the second part of the definition would apply to the spent carbon that the Facility receives from off-site.

Subpart J and as “equipment” within the meaning of 40 CFR Part 264, Subpart BB. Please also see the Region’s responses to public comments I-36 and V-13.

With respect to the commenter’s argument that Permit condition IV.B.3 is somehow improper because 40 CFR Part 264 Subpart BB allows the Permittees to elect to comply with CAA standards in lieu of the Subpart BB standards, the Region notes that such an election was not made, even though there is nothing in the draft Permit or the Permit that would foreclose such an election. Moreover, as Permit condition IV.B.3 merely requires compliance with 40 CFR Part 264 Subpart J, the comment with respect to regulating air emissions from these hoppers is misplaced. However, see also the Region’s Response to Public Comment I-36 regarding the revisions being required for the Facility’s Subpart BB Compliance Plan and the reasons behind them.

- IV-7. One commenter objected to draft Permit condition IV.B.4, which requires a written structural integrity assessment of the spent carbon feed hoppers, which are ancillary equipment to hazardous waste management tanks at the Facility.

RESPONSE: The Region disagrees with the commenter’s contention that no written assessment of the integrity of the hoppers is required by the applicable regulations. 40 CFR § 264.192(a) specifically requires the “written assessment reviewed and certified by a qualified Professional Engineer.” This section applies to tank systems, with specific reference to “ancillary equipment.”

The Region has revised Permit condition IV.B.4 to delete references to the leak test and the compliance schedule in draft Permit condition I.K as these references were made in error in the draft Permit. The Region has also added to Permit conditions IV.B.4.a and b: (1) specific references to the standards for ancillary equipment set forth in 40 CFR § 264.192(e); and (2) specific references to a future replacement of the hoppers (as envisioned by Permit Condition IV.E.6.) in order to make clear that these Permit conditions will continue to apply after any hoppers are replaced.

- IV-8. One commenter objected to draft Permit condition IV.C.1 as an inappropriate imposition of the standards applicable to containers on the Facility’s tank systems.

RESPONSE: The Region agrees and has deleted draft Permit condition IV.C.1. Tank management standards are dealt with in other Permit conditions such as Permit condition IV.A.2.

- IV-9. One commenter suggested revisions to draft Permit conditions IV.E.1 and IV.E.2, which pertain to appropriate controls and practices to prevent spills and overflows from tank systems or containment systems. The commenter suggested revisions it asserted would more accurately reflect the regulatory requirements.

RESPONSE: The commenter’s suggested revision to the introduction to draft Permit condition IV.E.2., has been incorporated and draft Permit conditions IV.E.1. and IV.E.2. have

been merged to more accurately reflect the regulatory language at 40 CFR § 264.194. See Permit condition IV.D.1.

- IV-10. One commenter recommended narrowing the scope of draft Permit conditions IV.E.1 and IV.E.3 such that they would apply to the tank systems and containment systems only when managing hazardous waste.

RESPONSE: The Region is rejecting these recommended changes to draft Permit conditions IV.E.1 and IV.E.3, renumbered as Permit conditions IV.D.1. and IV.D.2. The tank systems and containment systems are used to manage hazardous waste as part of the operator's carbon regeneration process. As a result, the tank systems and containment systems are subject to management standards that remain constant even when the Facility is processing non-hazardous spent carbon. And, these systems must not be subjected to fluctuations in applicable standards depending on the variations of generator waste streams. Moreover, the regulatory language, which the commenter requested be tracked by the Region, is not limited in this way. See also the Region's Response to Public Comment V-8.

- IV-11. One commenter recommended adding the term "hazardous waste" to draft Permit condition IV.F.2 to reflect EPA's prior clarification that, where secondary containment systems are provided for multiple tanks, such systems need be sized based on the largest hazardous waste tank within the containment.

RESPONSE: The Region has incorporated the recommended change by adding the qualifier "hazardous waste" in draft Permit condition IV.F.2., renumbered as Permit condition IV.E.2. While the regulatory language refers only to "tanks," the Region agrees that the capacity of the secondary containment should be based on the largest tank in which hazardous wastes are managed within the containment.

- IV-12. One commenter recommended editorial changes to draft Permit condition IV.F.4 in order to clarify descriptions of the manner in which the secondary containment and tank capacities are addressed.

RESPONSE: The Region has accepted the changes and revised draft Permit condition IV.F.4 as recommended. The Permit condition has also been renumbered as Permit condition IV.E.4.

- IV-13. One commenter objected to and recommended deletion of draft Permit conditions IV.F.6 and IV.F.7 and claimed that there is no regulatory requirement that hoppers H-1 and H-2 must undergo any leak testing or other integrity assessment, either on a one-time basis or annually as proposed. The commenter also asserted that hoppers H-1 and H-2 would be replaced prior to the effective date of any final Permit decision.

RESPONSE: The Region disagrees with the commenter's contention that no written assessment of the hopper containment is required by the applicable regulations. 40 CFR § 264.193(i)(3) requires such assessments annually for ancillary equipment until such time as

secondary containment that meets the requirement of 40 CFR § 264.193 is provided. In addition, 40 CFR § 264.193(i)(4) requires the maintenance of the results of the assessments in the Facility records. Hopper H-1 and its associated piping do not currently have secondary containment.

Tank system ancillary equipment is subject to standards that differ depending on whether secondary containment is provided for such equipment. See, for example, 40 CFR § 264.193(i)(3). Where secondary containment has been provided, such as in the case of H-2, an aboveground hopper on top of a concrete bermed pad, 40 CFR § 264.193(e)(1) applies. There are also exceptions to the requirements that ancillary equipment have secondary containment at 40 CFR § 264.193(f). None of the exceptions apply to hopper H-1.

Draft Permit condition IV.F.7., renumbered as IV.E.7., has been revised slightly to clarify the foregoing requirements.

This commenter has argued that, under 40 CFR 264.193(f), aboveground piping that is visually inspected for leaks on a daily basis is specifically excluded from secondary containment requirements. The commenter further argued that an open-ended line that is visually inspected daily would not be required to have secondary containment. The Region disagrees with the commenter since hopper H-1 and some of its piping is underground. Therefore, the Region has retained the Permit conditions.

Where secondary containment has not been provided for tank system ancillary equipment, as required by 40 CFR § 264.193(i), 40 CFR § 264.193(i)(3) requires an assessment for the ancillary equipment “as approved by” the Region. The Region has determined that the ancillary equipment assessment it is requiring for hopper H-1 must meet the requirements of 40 CFR § 264.191(b)(5)(ii). Draft Permit condition IV.F.6, renumbered as Permit condition IV.E.6., has been clarified accordingly.

The Region removed the draft Permit condition requiring the submittal of the Work Plan from the compliance schedule in draft Permit condition I.K. and inserted it into Permit condition IV.E.6. The Region also added language to Permit condition IV.E.6. giving the Permittees the option of including changes to hopper H-2 in the work plan to be submitted in accordance with Permit condition IV.E.6.a. Revised Permit condition IV.E.7 and new Permit condition IV.F.8 have been written with this option in mind. See also the Region’s Response to Public Comment IV-5, regarding Permit Table IV-1.

Permit condition IV.E.6.a. requires implementation of the secondary containment work plan for H-1 to comply with 40 CFR § 264.193(f). Permit conditions IV.E.6.b.i and ii. require the leak test or other integrity assessment -- until secondary containment for hopper H-1 has been provided -- in accordance with 40 CFR § 264.193(i)(3). Permit condition IV.E.6.b.iii. requires implementation of contingent Permit conditions if secondary containment is not provided for H-1 within the year specified. Such contingent Permit conditions, which pertain to contingent closure plan and proof of financial responsibility requirements, are required in accordance with 40 CFR § 264.197.

Permit condition IV.E.7 requires the Permittees to continue to maintain spent carbon unloading hopper H-2 in accordance with the rules governing secondary containment for ancillary equipment under 40 CFR § 264.193.

Finally, new Permit condition IV.E.8. applies to spent carbon unloading hopper H-1 after it has been provided secondary containment in accordance with Permit condition IV.E.6.a. Once the secondary containment has been provided for hopper H-1, the annual leak test or other integrity assessment and contingent conditions required in accordance with 40 CFR §§ 264.193(i), 264.197, and Permit condition IV.E.6.b will be unnecessary. For this reason, Permit condition IV.E.8 requires only that hopper H-1 meets the standards set forth at 40 CFR § 264.193.

- IV-14. One commenter objected to the inclusion in draft Permit conditions IV.G.1 and IV.G.2 requirements that are based on 40 CFR Part 61 Subpart FF Benzene standards.

RESPONSE: As noted above with respect to comments received on the draft Permit definitions, the requirements of 40 CFR Part 61, Subpart FF apply to operations at the Facility independent of the Permit. The Region has deleted the unnecessary references to Subpart FF standards.

- IV-15. One commenter suggested revisions to draft Permit condition IV.G.1 in order to clarify the applicability of RCRA air emission standards in light of deferrals to the CAA requirements found at 40 CFR §§ 264.1064(m) and 264.1080(b)(7).

RESPONSE: The Region has revised Permit condition IV.G.1 and, in order to clarify the Permit requirements, added language to track the different regulatory provisions found at 40 CFR §§ 264.1064(m) and 264.1080(b)(7).

- IV-16. One commenter recommended revisions to draft Permit conditions IV.G.2.b and IV.G.2.c in order to clarify the regulatory status of the spent carbon feed hoppers and carbon adsorption systems.

RESPONSE: The Region revised Permit conditions IV.G.2.b and IV.G.2.c with slight modifications to the commenter's suggested revisions. The revised language repeats the Permittees' option for electing to comply with 40 CFR Part 264 Subpart BB requirements applicable to the hoppers and the carbon adsorption systems by demonstrating compliance with the CAA requirements at 40 CFR Part 61 Subpart FF. The revisions also make clear that the hoppers may be opened for feed operations, maintenance and repairs.

- IV-17. One commenter suggested deleting draft Permit condition IV.G.4 as ambiguous and duplicative.

RESPONSE: The Region acknowledges that some of the ambiguity in the draft Permit condition was the result of the overly long description of Tank T-11, which the Region has

shortened. The Region declines to delete the remainder of Permit condition IV.G.4. The Region continues to believe that the explanations as to the applicability of specific conditions to the units at the Facility is more helpful to the Permittees, regulators, and the public than would be broad reference to regulatory requirements without explanations. The Region agrees that, where requirements may be repeated in separate provisions of the Permit, a Permittee's failure to perform a required action or performance of one prohibited action should not result in allegations of multiple Permit violations.

- IV-18. One commenter suggested deletion of draft Permit condition IV.G.5 as an impermissible attempt to impose CAA standards in a RCRA Permit.

RESPONSE: The Region deleted draft Permit condition IV.G.5 because Permit condition II.B.1. already requires the Permittees to operate the Facility to avoid unpermitted air releases from hazardous waste operations.

- IV-19. One commenter recommended deletion of draft Permit condition IV.G.7 as duplicative of Permit Attachment Appendix XX, the RCRA Subpart CC Compliance Plan for the Facility.

RESPONSE: The Region has deleted draft Permit condition IV.G.7 from the Permit. However, as explained above in the Region's Response to Public Comment III-7 regarding draft Permit conditions III.G.2 through III.G.6, the Region is requiring the submittal of a revised Permit Attachment Appendix XX and, if necessary, Permit Attachment Section O, by the Permittees, as described in more detail in the Region's Response to Public Comment III-7.

- IV-20. One commenter suggested deleting draft Permit condition IV.G.8 arguing that it was inapplicable to any hazardous waste tanks at the Facility.

RESPONSE: The Region is retaining Permit condition IV.G.8.a, which was renumbered as Permit condition IV.G.7.a. The Permittees may opt to comply with RCRA air emissions standards through a demonstration of equipping hazardous waste tanks with and operating air emission control equipment in accordance with applicable CAA requirements. The Permittees indicated their intention – for all hazardous waste tanks except T-11 -- to invoke the deferral to the CAA found at 40 CFR § 264.1080(b)(7) in the Permit application. Permit condition IV.G.7.a. only applies if the Permittees opt to comply with RCRA air emission standards for these tanks instead of CAA standards.

The Region deleted draft Permit condition IV.G.8.b since it was based on a CAA requirement that applies to the Facility independent of the RCRA permit, as explained previously in these responses to comments. See the Region's Response to Public Comment IV-2.

- IV-21. One commenter recommended the deletion of draft Permit conditions IV.H.2 through IV.H.6 (pertaining to tank inspections and schedules) as a duplicative attempt to paraphrase individual rule requirements. The commenter further recommended that the

rules simply be incorporated by reference and that these summary provisions be deleted in their entirety.

RESPONSE: The Region has reviewed draft Permit conditions IV.H.2 through IV.H.6 and has addressed the commenter's concerns as follows:

Permit conditions IV.H.2 and IV.H.2.b have been revised to track more closely the regulatory language at 40 CFR §§ 264.193 and 264.195 with respect to tank inspections.

Permit conditions IV.H.2.a., IV.H.2.c. and draft Permit condition IV.H.4., which was renumbered as Permit condition IV.H.3., have not been changed, because these Permit conditions track the regulatory language already.

Draft Permit condition IV.H.2.d has been deleted as duplicative of provisions contained in Permit condition IV.E.

Draft Permit conditions IV.H.3 through IV.H.3.d and IV.H.5 have been deleted. These requirements are sufficiently addressed in Permit Attachment Section F.

Draft Permit condition IV.H.6, renumbered as Permit condition IV.H.4., has been revised to clarify that it only applies to hazardous waste tanks for which the Permittees elect to comply with 40 CFR Part 264, Subpart CC rather than 40 CFR Part 61, Subpart FF. Permit condition IV.H.4. has also been revised to incorporate, rather than attempt to paraphrase, the regulatory requirement at 40 CFR § 264.1084(c).

- IV-22. One commenter recommended a revision to draft Permit condition IV.H.7.a to clarify that any new hazardous waste tanks installed at the Facility would not be subject to the requirement to have an annual ultrasonic thickness test.

RESPONSE: The Region declines to revise draft Permit condition IV.H.7.a., which was renumbered as Permit condition IV.H.5.a. The Region agrees that a new hazardous waste tank is not required to have an annual ultrasonic thickness test because this requirement is based on the recommendations in Permit Attachment Appendix IX in the "Assessment of Tank Systems T-1, T-2, T-5, and T-6." Any new tank installation would require a new tank assessment prior to the tank being put into use and any new hazardous waste tank installation would require a Permit modification. Any recommendations from any such assessment should be evaluated for inclusion as Permit conditions when and if a permit modification request is submitted.

- IV-23. One commenter recommended revisions to draft Permit condition IV.H.7.d on the basis that the activities required by the draft Permit condition had already been performed.

RESPONSE: The Region revised draft Permit condition IV.H.7.d., renumbered as Permit condition IV.H.5.d., to account for the circumstance where all carbon steel components and fittings of the tank systems that are in direct contact with the spent carbon and recycle water slurry have already been replaced with 300 series stainless steel components and fittings.

While this information was not documented in the Facility's Permit application, to the extent that the work has already been performed, this Permit will not require it be done again.

- IV-24. One commenter objected to draft Permit condition IV.H.8., claiming that it was duplicative of the requirement already in the Permit in Section II.E.1, to comply with the inspection schedule in Section F and Appendix XII.

RESPONSE: The Region has revised draft Permit condition IV.H.8., renumbered as Permit condition IV.H.6., to clarify the relationship between Permit condition IV.H.6 and draft Permit condition II.E.1., itself renumbered as Permit Condition II.F.1. The Region agrees that one violation of one provision of the inspection requirements set forth in the inspection schedule in Permit Attachment Section F and Permit Attachment Appendix XII, which are referred to in Permit condition II.F.1, should not result in citations for multiple violations of the Permit. On the other hand, the Region declines to make the commenter's recommended deletions for the same reasons as set forth above in the Region's Response to Public Comment IV-3, and others. A simple recitation of an obligation to comply with a subpart, with a broad set of regulations contained therein lacks the kind of specificity that aids Permittees, regulators and the public.

Therefore, the Region has added language in Permit condition IV.H.6, (similar to the language added to Permit conditions III.C., III.D.1, III.D.2, III.E.1, III.E.2, III.E.3.a., III.E.3.b. and IV.B.3.), to clarify that compliance with the requirements set forth in these provisions is part of the obligation to comply with revised Permit condition II.F.1.'s broad reference to the inspection schedule. Thus, the Region believes that this language will protect the Permittees if any future enforcement action alleges multiple violations of Permit conditions arising from a one-time failure to comply with only one of the inspection schedule's numerous requirements. At the same time, the added language clarifies the Region's authority to use its enforcement discretion in appropriately alleging multiple Permit violations where there are multiple requirements at issue, including alleged violations of more than one of the requirements set forth in Attachment Section F and/or Permit Attachment Appendix XII. See also the Region's Responses to Public Comments III-2 and IV-6.

- IV-25. One commenter objected to draft Permit condition IV.H.10 claiming that it was an inaccurate paraphrasing of the requirement set forth in 40 CFR § 264.193(i)(5). This regulation requires compliance with 40 CFR § 264.196, when a leak test or other integrity assessment indicates a tank system or component is leaking or otherwise unfit for use.

RESPONSE: The Region deleted draft Permit condition IV.H.10 and included additional requirements in draft Permit condition IV.I.1. Permit condition IV.I.1 tracks the requirements of 40 CFR § 264.196. In addition, the Region also deleted, in response to other comments, draft Permit condition IV.C, which was also referenced in draft Permit condition IV.H.10. In Permit condition IV.I.1, the Region has endeavored to track the regulatory language set forth in 40 CFR § 264.193(i)(5), while recognizing that the Permit itself, as opposed to the regulations, is the source for the Permittees' obligation to perform the referenced leak test or other integrity assessment.

- IV-26. One commenter objected to the language in draft Permit condition IV.I.1. that required compliance with the Permit's provisions pertaining to responses to leaks, spills or defects when "a defect in a carbon adsorber is detected."

RESPONSE: The Region deleted the language regarding adsorbers from Permit condition IV.I.1 as it is not reflected in the regulatory language at 40 CFR § 264.196.

- IV-27. One commenter suggested revisions to draft Permit condition IV.I.1.b. and recommended deletion of draft Permit condition IV.I.1.b.i.

RESPONSE: The Region declines to delete Permit condition IV.I.1.b.i., but has made some revisions to Permit condition IV.I.1.b.i. In addition to a minor grammatical revision to Permit condition IV.I.1.b., the Region is removing the requirement from Permit condition IV.I.1.b.i. that the Director approve additional time that may be needed when removal of waste and accumulated precipitation is not possible within 24 hours of the detection of a release. However, the Region is retaining the requirement that notice be provided to the Director when removal is not possible within such timeframe. This notice allows for the demonstration of the circumstances that make removal impossible in accordance with 40 CFR § 264.196(b), while allowing the Permittees to continue focusing their efforts on completing removal of waste and accumulated precipitation.

- IV-28. One commenter objected to draft Permit condition IV.I.1.d. as inaccurately rephrasing and attempting to paraphrase 40 CFR § 264.196(e). The commenter argued that the language creates a presumption that a tank system must be closed, reversing the meaning of the language in the rule.

RESPONSE: The Region has revised Permit condition IV.I.1.d as recommended. This Permit condition pertains to tank system closure after a release or spill and the Permit condition was revised to better track the applicable regulatory language.

- IV-29. One commenter objected to draft Permit condition IV.I.1.e, which pertains to major repairs to eliminate leaks or restore the integrity of the tank systems. The commenter argued that the draft Permit condition substantively changed the requirements imposed by 40 CFR § 264.196(f) and substantially increased the stringency of the rule requirements.

RESPONSE: The Region has incorporated the suggested revisions to Permit condition IV.I.1.e. While there is now no reference in this Permit condition to the certification that must be placed in the Operating Record and maintained until closure of the Facility in accordance with 40 CFR § 264.196(f), this requirement is found at Permit condition IV.J.4. In addition, the references to the notification requirements of 40 CFR § 264.196(d), which were removed from Permit condition IV.I.1.e., are at Permit conditions IV.J.2. and IV.J.3.

- IV-30. One commenter suggested revisions to draft Permit condition IV.I.2 to clarify the applicability of 40 CFR Part 264, Subpart CC's requirements for repairing fixed roof tanks.

RESPONSE: The Region has incorporated and modified the suggested changes to Permit condition IV.I.2 to clarify its applicability to any tanks that need repairs, for which the Permittees elect to comply with 40 CFR Part 264, Subpart CC.

- IV-31. One commenter suggested deleting draft Permit condition IV.J.1 since, according to the commenter, the Facility does not have any existing tank systems without secondary containment.

RESPONSE: The Region deleted the word "existing" from Permit condition IV.J.1, because the regulatory definition of "existing tanks" applies to tanks for which installation has commenced on or prior to July 14, 1986. The Evoqua Facility does not have existing tanks as per the definition. The Facility, however, does have "tank systems," specifically, ancillary equipment, that are without secondary containment. For this reason, the Region has retained draft Permit condition IV.J.1 with some minor clarifications.

- IV-32. One commenter suggested modifying draft Permit condition IV.J.2, because, according to the commenter, the release reporting requirement from 40 CFR Part 264, Subpart J, (40 CFR § 264.196(d)), is limited to releases from tank systems. The commenter also claimed that the reporting requirement is summarized incorrectly in draft Permit condition IV.J.2, as it does not specify that it relates to releases from tank systems, or that a report made under 40 CFR Part 302 will satisfy this requirement.

RESPONSE: The Region revised Permit condition IV.J.2. to include the suggested revisions. The requirements of 40 CFR Part 264 Subpart J apply generally to owners and operators of facilities that use tank systems for storing or treating hazardous waste. Thus, the notification of releases of hazardous waste to the environment is limited to releases from such tank systems.

In addition, in its review of the draft and revised Permit conditions and this comment, the Region determined that there could be confusion regarding the requirements for following up after a release or spill from a tank system if, after 30 days, the release or spill has not been adequately addressed. The Region believes that, under such circumstances, there is a process to be followed that is already set forth in Module VI. However, the Region has clarified the relationship between the tank systems release and spill provisions in Module IV and the requirements to undertake responses to releases and spills, generally, in Module VI. Specifically, the Region revised draft Permit condition IV.J.3. to clarify that spills or releases that are not fully addressed within the time frame for the submittal of the 30-day report required by this revised Permit condition, may not thereafter remain unaddressed. The revised language requires that the 30-day report be submitted to the Director for approval and that it include an assessment as to whether any corrective measures may be appropriate as a result of the release or spill from the tank system. An approved submittal that concludes further measures

are appropriate may then trigger additional obligations to follow the processes set forth in Module VI for responding to releases and spills in accordance with a new Permit condition, IV.J.9. If, on the other hand, the approved 30-day report concluded that no further measures were appropriate, these obligations would not be triggered. This is similar to the approach taken with respect to the endangerment report required in accordance with Permit condition I.E.13., as explained above in the responses to comments pertaining to Module I. See the Region's Responses to Public Comments I-23 and I-28.

- IV-33. One commenter suggested that the phrase "tank system or secondary containment system" be revised in draft Permit condition IV.J.3. because the phrase "tank system" includes the tank's secondary containment. As a result, the commenter argued, the phrase was redundant.

RESPONSE: The Region has rejected this suggested change, since the language in Permit condition IV.J.3 tracks the regulatory language in 40 CFR § 264.196.

- IV-34. One commenter suggested modifying draft Permit conditions IV.K.1 and IV.L.1, stating that it is redundant to state "tank system or secondary containment system" as the definition of tank system at 40 CFR § 260.10 includes the containment system.

RESPONSE: The Region has incorporated the recommended changes in Permit conditions IV.K.1 and IV.L.1, since these revisions more accurately reflect the regulatory language in 40 CFR § 264.198.

- IV-35. One commenter suggested deleting draft Permit condition IV.M.3, which includes contingent requirements that only apply if the secondary containment for hopper H-1 is not installed within one year of the effective date of the Permit. The commenter anticipates that H-1 will be replaced prior to the issuance of any final Permit and argued that, for this reason, the provision is unnecessary.

RESPONSE: The Region deleted draft Permit condition IV.M.3, since it was duplicative of Permit condition IV.E.6.b.iii. See also the Region's Responses to Public Comments IV-5 and IV-13.