

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC**

In re: Final RCRA Permit for	)	
	)	
	)	
Evoqua Water Technologies, LLC and	)	
Colorado River Indian Tribes	)	Appeal No. RCRA 18-01
2523 Mutahar Street	)	
Parker, Arizona 85344	)	US ENVIRONMENTAL
	)	PROTECTION AGENCY
EPA RCRA ID No. AZD982441263	)	REGION 9's POST-HEARING
	)	BRIEF REGARDING THE
	)	ENVIRONMENTAL APPEALS
	)	BOARD's QUESTIONS

In accordance with the US ENVIRONMENTAL PROTECTION AGENCY ENVIRONMENTAL APPEALS BOARD'S (the Board's) instructions to the parties at the close of the April 9, 2019 hearing on this matter, the Permit Issuer, US ENVIRONMENTAL PROTECTION AGENCY REGION 9 (the Region), provides its responses to the following questions posed by the Board:

1. Does the Permit require both Permittees to sign requests for modifications of the Permit?
2. Which of the Permit conditions that were challenged by the Petitioner – due to the Region's application of requirements that were based on or refer to the 40 CFR Part 63, Subpart EEE (MACT EEE) standards to the facility's carbon regeneration unit – involved “no specific comment or objection [being] raised during the public comment period by the Petitioner”?<sup>1</sup>

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<sup>1</sup> See Appeal No. RCRA 18-01, EAB Docket # 14, dated 12/03/2018 - Permit Issuer Response to Evoqua Water Technologies LLC Petition For Review (R9 Response to Petition) at p. 18, and footnote 35.

3. Where in the Administrative Record<sup>2</sup> are references to the relevant updates to the toxicity criteria or air dispersion modeling for Risk Assessments?

The Region provides the following responses:

***1. Does the Permit require both Permittees to sign requests for modifications of the Permit?***

The Region is unable to identify any specific Permit conditions that require both Permittees to sign requests for permit modifications. And, it appears that the language in Permit condition I.A.6. would allow either Permittee to submit such a request without the other Permittee's signature.

\* \* \*

***2. Which of the Permit conditions that were challenged by the Petitioner – due to the Region's application of requirements that were based on or refer to the MACT EEE standards to the facility's carbon regeneration unit – involved "no specific comment or objection [being] raised during the public comment period by the Petitioner"?***

The Region has re-reviewed the ten specific Permit conditions that were challenged by the Petitioner on the basis of the Region's reference to or use of the MACT EEE standards, *i.e.*, Permit Conditions: (1) II.M.1.b., (2) II.M.1.c., (3) V.C.1.b., (4) Table V-1, (5) V.C.4.a., (6) Table

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<sup>2</sup> See Document number references as set forth in Appeal No. RCRA 18-01, EAB Docket # 7, dated 11/27/2018 - US EPA Region IX Notice 2018 [*sic*] of Filing Certified Index to the Administrative Record (the Administrative Record Index).

V-3, (7) V.C.5., (8) V.E., (9) V.G.2., and (10) V.I.<sup>3</sup> Of these ten challenged Permit conditions, other than its general objections to the use of or reference to the MACT EEE standards, the Petitioner failed to make any other relevant or specific substantive comments during the public comment period regarding five of these Permit conditions, as demonstrated below.

A. II.M.1.c.

Petitioner submitted both a Comment Memo and a Redline of the draft permit as part of its public comments.<sup>4</sup> The only suggested change to Permit condition II.M.1.c. in the Petitioner's Redline recommended merely that the word "Permittees" be changed to "Permittee."<sup>5</sup> Furthermore, the only reference to this provision in the Petitioner's Comment Memo pertained to Table D-2, in Appendix XXI, Section D, not to the MACT EEE requirements or the language of Permit condition II.M.1.c. itself.<sup>6</sup>

B. V.C.4.a.

The only suggested change to Permit condition V.C.4.a.<sup>7</sup> in the Petitioner's Redline recommended merely that the word "Permittees" be changed to "Permittee."<sup>8</sup> The only reference to this provision in the Petitioner's Comment Memo pertained to the Petitioner's

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<sup>3</sup> See Appeal No. RCRA 18-01, EAB Docket # 1, dated 10/25/2018 - Evoqua Water Technologies LLC's Petition for Review (Petition) at pp. 4, and 8-14. See, also, Petition at footnotes 11 and 20.

<sup>4</sup> See "2017 01 06 Comments of Evoqua Draft Permit Decision.pdf" at Document No. 1477 in the Administrative Record (Comment Memo), and "2017 01 06 Redline Edits to Draft RCRA Permit.pdf" at Document No. 1478, as set forth in the Administrative Record Index (Redline).

<sup>5</sup> See Redline at p. 52/147.

<sup>6</sup> See Comment Memo at p. 21.

<sup>7</sup> Permit condition V.C.4.a. was originally numbered V.C.4.i. in the Draft Permit. See "y\_2018 09 Redline Final RCRA Permit v Draft RCRA Permit.pdf" at Document No. 1608, as set forth in the Administrative Record Index (EPA Redline) at p. 114/168.

<sup>8</sup> See Redline at p. 103/147.

general objection to the Region's use of or reference to the MACT EEE requirements, rather than to any other specific or substantive objections to Permit condition V.C.4.a. itself.<sup>9</sup>

#### C. Table V-3

The only suggested change to Permit Table V-3 in the Petitioner's Redline and in the Petitioner's Comment Memo recommended changes to the first and last rows of the Table and the description of the weigh belt/weigh cell.<sup>10</sup> These recommended changes were incorporated into the Permit.<sup>11</sup>

#### D. V.E.

While the Petitioner's Redline recommended deleting draft Permit conditions V.E.1. and V.E.2. altogether,<sup>12</sup> the Comment Memo addressed: (1) the references in these conditions to 40 CFR Part 61; and (2) the Petitioner's general objections to application of the MACT EEE standards.<sup>13</sup> The recommended removal of the reference to 40 CFR Part 61 was made by the Region in revised Permit condition V.E.<sup>14</sup>

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<sup>9</sup> Comment Memo at p. 21. Please note that, in addition to the reference to Appendix F that was added to Permit condition V.C.4.a., the Region also added language to this Permit condition requiring that the Permittees document their activities with respect to this requirement in the Operating Record. *See* EPA Redline at p. 114/168. To the extent that the challenge to Permit Condition V.C.4.a. is focused on the added language, the Region notes that Evoqua submitted comments on record keeping requirements in connection with Draft Permit Conditions: I.I., Comment Memo at p. 12; II.M.1.b., Comment Memo at pp. 20-21; and V.F. and V.G., Comment Memo at pp. 41-42.

<sup>10</sup> Redline at pp. 103-105/147, and Comment Memo at p. 39.

<sup>11</sup> EPA Redline at pp. 114-117/168.

<sup>12</sup> Redline at p. 112/147.

<sup>13</sup> Comment Memo at p. 41.

<sup>14</sup> EPA Redline at p. 125/168.

E. V.G.2.

The only suggested changes to Permit condition V.G.2. in the Petitioner's Redline recommended: (1) changing the word "Permittees" to "Permittee"; and (2) correction of the spelling of the word "Permittees."<sup>15</sup> The only substantive objection to Permit condition V.G.2. in the Petitioner's Comment Memo focused solely on the Region's use of or reference to the MACT EEE requirements with respect to all of Permit condition V.G., rather than to any other specific or substantive objections to Permit condition V.G.2. itself.<sup>16</sup>

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***3. Where in the Administrative Record are references to the relevant updates to the toxicity criteria or air dispersion modeling for Risk Assessments?***

The Region provides the following references from the Administrative Record for this matter to the relevant updates to the toxicity criteria and the air dispersion modeling for Risk Assessments:

1. Part of the Administrative Record includes the Region's Administrative Record Addendum<sup>17</sup> and its Supplemental Administrative Record Addendum.<sup>18</sup> Page 1 of the Administrative Record Addendum refers to --

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<sup>15</sup> Redline at p. 113/147.

<sup>16</sup> Comment Memo at p. 21.

<sup>17</sup> See Document No. 1436, as reflected on the Administrative Record Index, "2016 09 26 Administrative Record Addendum.pdf."

<sup>18</sup> See Document No. 1515, as reflected on the Administrative Record Index, "2018 09 18 Supplemental Administrative Record Addendum.pdf."

- EPA Human Health Risk Assessment Guidelines, <https://www.epa.gov/risk/risk-assessmentguidelines#tab-1><sup>19</sup>
- EPA Ecological Risk Assessment Guidelines, <https://www.epa.gov/risk/risk-assessmentguidelines#tab-2>
- EPA Air Dispersion Modeling materials, <https://www3.epa.gov/scram001/dispersionindex.htm>.

2. In addition, the Administrative Record also includes “2007 10 09 Email-AERMOD vs ISCST3.pdf.”<sup>20</sup> This email message between Regional staff (Scott Bohning to Mary Blevins) dated October 9, 2007, includes a reference to the following link: [www.epa.gov/scram001/index.htm](http://www.epa.gov/scram001/index.htm). This was EPA’s Support Center for Regulatory Atmospheric Modeling (SCRAM) website. The website currently indicates that the SCRAM webpage has moved to the following weblink: <https://www.epa.gov/scram>. By clicking on the Air Dispersion Modeling Tab, one arrives at the following EPA website:

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<sup>19</sup> Tab 1 includes a link to the Integrated Risk Information System (IRIS) (referenced below) at <https://www.epa.gov/iris>.

<sup>20</sup> See Administrative Record Document No. 1023, “2007 10 09 Email-AERMOD vs ISCST3.pdf.” *See also*, the Region’s Response to Public Comment RTC V-41, in which the Region states:

“To continue to ensure appropriate protection of human health and the environment, it is imperative that the HHERA be updated to verify that the Facility’s emissions remain protective of human health and the environment. Permit conditions, V.I.4.a., V.I.4.b., and V.I.4.c., require the Permittees to update the site-specific risk analysis after approval of the initial PDT Report prepared after the Permit is effective. The Region notes that the 2008 risk assessment was conducted using methods and procedures that are no longer supported or have been updated by EPA. These include but are not limited to: updated air dispersion and deposition modeling analysis, updated toxicity criteria, and updated exposure assessment analysis. *See, e.g.*, Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities Final, 2005, <https://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=P10067PR.txt>. *See* Administrative Record Document No. 1603, “x\_2018 09 Responses to Public Comments\_005\_V-1 to V-41.pdf” at pp. 56-57/57.

<https://www.epa.gov/scram/air-quality-dispersion-modeling>. At that website, one clicks on Preferred/Recommended Models and arrives at: <https://www.epa.gov/scram/air-quality-dispersion-modeling-preferred-and-recommended-models>. This website indicates: “As of December 9, 2006, AERMOD is fully promulgated as a replacement to ISC3, in accordance with Appendix W (PDF).”

3. The updated AERMOD dispersion model also appears in the Administrative Record at: September 2005 Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, which is also referenced in the Administrative Record Addendum at p. 4/11. This 2005 Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities also has a link to the “SCRAM,” which is “Support Center for Regulatory Air Models.” See page 142/810. The SCRAM link connects to the link <https://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=P10067PR.txt>. This link directs the inquirer to the updated AERMOD dispersion model.
4. This EPA Guidance document “September 2005 Human Health Risk Assessment Protocol for Hazardous Waste Combustion” also provides the source of EPA’s peer-reviewed toxicity criteria at: <http://www.epa.gov/iris/>.<sup>21</sup> Following is the list of constituents and their Chemical Abstract Numbers (CAN) with toxicity criteria that have been updated, modified, reviewed (or scheduled for review) since the original 2007-2008 risk assessment by the IRIS national program:

1. Constituent & (Chemical Abstract Number [CAS])
2. Arsenic (7440-38-2)
3. Barium (7440-39-3)
4. Chrome +6 (7440-47-3)
5. Lead (7439-92-1)
6. Thallium (7440-28-0)

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<sup>21</sup> See also footnote 19, *supra*.

7. Zinc (7440-66-6)
8. 1-Hexane (110-54-3)
9. 1,1,1-Trichloroethane (71-55-6)
10. 1,1,2,2-Tetrachloroethane (79-34-5)
11. 1,2-Dibromomethane (106-93-4)
12. 1,2,3-Trichloropropane (96-18-4)
13. 1,2,4-Trimethylbenzene (95-63-6)
14. 1,2-Dichloroethene (cis) (156-59-2)
15. 1,2-Dichloroethene (trans) (156-60-5)
16. 2-butoxyethanol (111-76-2)
17. 2-Hexanone (591-78-6)
18. Benzo(a)pyrene (50-32-8)
19. Benzo(e)pyrene (192-97-2)
20. Carbon Tetrachloride (56-23-5)
21. Dibenzofuran (132-64-9)
22. Dioxane (123-91-1)
23. Hexachloroethane (67-72-1)
24. Methanol (67-56-1)
25. Methylene Chloride (75-09-2)
26. Nitrobenzene (98-95-3)
27. Pentachlorophenol (87-86-5)
28. PCBs (1336-36-3)
29. Tetrachloroethylene (127-18-4)
30. Tetrahydrofuran (109-99-9)
31. Trichloroethylene (79-01-6)
32. 2,3,7,8-TCDD Dioxin (1746-01-6)
33. OCDD (3268-87-9)
34. OCDF (39001-02-0)

See also references to the IRIS Database toxicity values in the Region's Responses to Comments V-12, "x\_2018 09 Responses to Public Comments\_005\_V-1 to V-41.pdf" at pp. 14-15, 17 and 27/57.<sup>22</sup>

5. In addition, the Human Health and Ecological Risk Assessment may include toxicity values for the ecological risk assessment that may have been updated, modified, reviewed (or scheduled for review) since the original 2007-2008 risk assessment. However, the

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<sup>22</sup> Document no. 1603, as reflected on the Administrative Record Index.

sources of eco-toxicity values are varied and there has been insufficient time for the Region to evaluate specific contaminants associated with the ecological portion of the Risk Assessment. See, for example, pp. 147-149/676 of the “2016 04 RCRA Application\_Vol II-Appendix XI\_Rev 1.”<sup>23</sup>

Date: April 16, 2019

Respectfully submitted,

/S/

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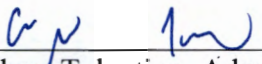
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<sup>23</sup> Document No. 1395, as reflected in the Administrative Record Index.

## CERTIFICATE OF SERVICE

I hereby certify that, on behalf of the United States Environmental Protection Agency, Region IX, a true and correct copy of the foregoing "US ENVIRONMENTAL PROTECTION AGENCY REGION 9's POST-HEARING BRIEF REGARDING THE ENVIRONMENTAL APPEALS BOARD's QUESTIONS," has been served on the following parties via the following methods on this 16th day of April, 2019:

  
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4/16/2019  
Date

*Clerk of the US EPA  
Environmental Appeals Board (EAB):*

Eurika Durr, Clerk  
US Environmental Protection Agency  
Environmental Appeals Board

Service on the Clerk of the EAB is made via the EAB's electronic filing system at [https://yosemite.epa.gov/OA/EAB/EAB-ALJ\\_Upload.nsf/HomePage?ReadForm](https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf/HomePage?ReadForm) [and via U.S. mail for documents over 50 pages] in accordance with 40 CFR § 124.19.

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Service on counsel for Permittee the Colorado River Indian Tribes is made via electronic mail in accordance with 40 CFR § 124.19.