

**Proposed Decision to
Revise Remanded Permit Conditions**

**Colorado River Indian Tribes
and Evoqua Water Technologies LLC
for Carbon Regeneration Facility Located at:
2523 Mutahar Street
Parker, Arizona 85344
(EPA ID # AZD982441263)**



**Proposed by
U.S. Environmental Protection Agency, Region 9
San Francisco, California**

October 2019



**U.S. Environmental Protection Agency
Resource Conservation & Recovery Act Permit
Proposed Decision to Revise Remanded Permit Conditions
EPA RCRA I.D. Number: AZD982441263**

BENEFICIAL LANDOWNER:	COLORADO RIVER INDIAN TRIBES 26600 Mohave Road Parker, Arizona 85344	OPERATOR:	EVOQUA WATER TECHNOLOGIES, LLC 2523 Mutahar Street Parker, Arizona 85344
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Pursuant to the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976, 42 USC Sections 6901 *et seq.*, and the Hazardous and Solid Waste Amendments (HSWA) of 1984, P.L. 98-616 (collectively, hereafter, "RCRA"), and regulations promulgated thereunder by the U.S. Environmental Protection Agency (EPA) (codified and to be codified in Title 40 of the Code of Federal Regulations), this Proposed Decision to Revise Remanded Permit Conditions (Proposed Remand) would modify the RCRA Permit previously issued to Evoqua Water Technologies, LLC and the Colorado River Indian Tribes (collectively, hereafter, the "Permittees"), for the facility located at 2523 Mutahar Street, Parker, Arizona 85344 with the EPA RCRA ID # AZD982441263.

Nothing in this Proposed Remand shall preclude the Regional Administrator from reviewing and modifying the Permit at any time during its term in accordance with 40 CFR § 270.41. Nor shall anything in this Proposed Remand preclude the Permittees from modifying the Permit at any time during its term in accordance with 40 CFR § 270.42.

The Facility operator, Evoqua, appealed specified conditions in its Permit and those specified conditions were stayed as a result. The rest of the Permit went into effect on December 1, 2018. The conditions that were appealed and stayed will not go into effect until the conclusion of the remand proceedings. The following provisions of the Permit have been stayed: I.A.6. (only as to the status of the tribal government landowner as a co-permittee), I.E.13.a., I.L.1.c. (only as to the last sentence of that permit condition), II.M.1.b. (only as to: [1] Module V, with respect to the first sentence of that permit condition; and [2] the last sentence, before the brackets, of that permit condition), II.M.1.c., IV.G.1. (only as to Tank T-11), V.C.1.b., Table V-1, V.C.4.a., Table V-3., V.C.5., V.C.6.c., V.E., V.G.2., and V.I.

EPA Region 9 (the Region) is requesting public comment on this Proposed Remand. The proposed revisions for which the Region is requesting public comment were the subject of an EPA Environmental Appeals Board (EAB) decision dated June 13, 2019. That decision was the result of an appeal of the Region's September 25, 2018 hazardous waste Permit, in which the EAB denied review on all but three issues raised in the appeal. Those three issues were "remanded" to the Region and are the subjects of today's Proposed Remand.

The Public Comment Period for this Proposed Remand opens on October 7, 2019 through 11:59 pm (PST) on November 21, 2019. If no public comments request a change in the Proposed Remand, the Region will subsequently issue a final remand decision. Pursuant to the EAB's June 13, 2019 Order, anyone dissatisfied with the Region's decision on remand must file a petition seeking the EAB's review in order to exhaust administrative remedies under 40 CFR § 124.19(I).

10/2/2019
Date Issued

/SIGNED/
Jeff Scott
Director
Land, Chemicals and Redevelopment Division

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1. Executive Summary

The United States Environmental Protection Agency (EPA), Region 9 (the Region) is requesting public comment on this Proposed Decision to Revise Remanded Permit Conditions. In accordance with the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6901 *et seq.* On September 25, 2018, the Region issued a RCRA hazardous waste management permit (Permit) to Evoqua Water Technologies LLC (Evoqua), as facility operator, and the Colorado River Indian Tribes (CRIT or the Tribe), as the beneficial land owner, of the Evoqua facility located on the CRIT Reservation near Parker, Arizona (Facility). The proposed revisions for which the Region is requesting public comment were the subject of an EPA Environmental Appeals Board (EAB) decision dated June 13, 2019.¹ That decision was the result of Evoqua's appeal of the Region's September 25, 2018 Permit, in which the EAB denied review on all but three issues raised in the appeal. Those three issues were "remanded" to the Region and are the subjects of today's Proposed Decision.

The Evoqua Facility houses a thermal treatment system used to regenerate spent carbon for reuse. The Permit allows the Facility operator to continue the regeneration of carbon contaminated with hazardous waste, subject to the conditions and the stipulations specified in the Permit and in the RCRA regulations.

Because specified conditions in the Region's Permit were appealed, those specified conditions were stayed. The remainder of the Permit went into effect on December 1, 2018. The conditions that were appealed and stayed will not go into effect until the conclusion of the remand proceedings.

The Region is requesting public comment on its proposed decision on the three issues that have been remanded to the Region by the EAB. These three issues involve: (1) the process by which the Permittees are required to report certain instances of non-compliance; (2) the appropriate regulation of Tank T-11; and (3) the technical feasibility of complying with certain Automatic Waste Feed Cutoff (AWFCO) requirements. The public comment period starts on October 7, 2019 and will close on November 21, 2019. During the public comment period, comments may only be made on the three remanded items. The remainder of the permit is not open for public comment.

The Region will also host both a Public Meeting and a Public Hearing in Parker, Arizona, during the public comment period. The purpose of the Public Meeting will be to provide information about the proposed Permit condition revisions and answer questions that members of the public may have. Immediately after the Public Meeting, there will be a Public Hearing, at which time, there will be an opportunity for anyone who wishes to provide comments to the Region regarding the proposal. Both the Public Meeting and the Public Hearing will be held on Thursday, November 7, 2019, at the Bluewater Resort and Casino, in Parker, AZ 85344. Further details are provided below in Section 3.3.

¹ Order Remanding in Part and Denying Review in Part, *In re: Evoqua Water Technologies, LLC*, RCRA Appeal No. 18-01, 17 E.A.D. 795, June 13, 2019.

2. Introduction

This Proposed Decision to Revise Remanded Permit Conditions provides an explanation of the basis for the Region's proposal with respect to those issues remanded to the Region by the EAB.

The Appendices to this document help support the Region's Proposed Decision to Revise Remanded Permit Conditions, as described herein.

3. Proposed Revised Permit Conditions

The Region is proposing and seeking public comment on the proposed revisions to the following conditions of the RCRA Permit issued to Evoqua and CRIT:

- (1) the process by which the Permittees are required to report certain instances of non-compliance (affecting Permit condition I.E.13.a);
- (2) the appropriate regulation of Tank T-11 (affecting Permit conditions IV.A.2, IV.G.1, IV.G.1.a, IV.G.2.a, IV.G.4, and Table IV-2); and
- (3) the technical feasibility of complying with certain AWFCO requirements (affecting Permit condition V.C.5.b.).

After the public comment period for this Proposed Decision closes, the Region will respond to significant public comments and make a decision on the remanded provisions. Pursuant to the EAB's June 13, 2019 Order, anyone dissatisfied with the Region's decision on remand must file a petition seeking the EAB's review in order to exhaust administrative remedies under 40 CFR § 124.19(l).² See also 40 CFR § 124.19(a).

3.1 Proposed Action

The Region is proposing changes to the RCRA Permit conditions as described below. See also the Redline of Proposed Changes to Remanded Permit Conditions at Appendix A, attached hereto.

3.1.1 Twenty-Four Hour Reporting of Non-Compliance

The Region is proposing to revise Permit condition I.E.13.a, pertaining to the requirement that the Permittees orally report any non-compliance which may endanger health or the environment within 24-hours from the time whichever Permittee first becomes aware of the circumstances. The EAB's June 13, 2019 Order required the Region to provide a more robust explanation as to why language was added to the Permit requiring this reporting be made to the National Response Center (NRC) instead of to the Director as is specified in the first sentence of the Permit condition.³

The Region has reevaluated the use of the NRC phone line for required reporting of the non-compliance and is proposing instead to provide the Region's main phone number. Callers to this number can reach the Director's phone line through an automated system.

² 17 E.A.D. 795, at 843.

³ 17 E.A.D. at 841.

The Region has prepared a redline version of Permit condition I.E.13.a to demonstrate the specific changes proposed on remand. [See Redline of Proposed Changes to Remanded Permit Conditions at Appendix A].

The justification for the Region's proposed changes is set forth below in Section 4.1.

3.1.2 Tank T-11

The Region is proposing to revise Permit conditions in Module IV that purport to regulate Tank T-11 as a hazardous waste tank, potentially subject to RCRA air emission requirements at 40 CFR Part 264, Subpart CC. The Region is proposing to retain the designation of Tank T-11 as a solid waste management unit (SWMU) in Module VI, at Table VI-2.

The Region has prepared a redline version of each of the following Permit conditions in order to demonstrate the specific changes proposed on remand: IV.A.2, IV.G.1, IV.G.1.a, IV.G.2.a, IV.G.4, and Table IV-2. [See Redline of Proposed Changes to Remanded Permit Conditions at Appendix A].

The justification for the Region's proposed changes is set forth below in Section 4.2.

3.1.3 Automatic Waste Feed Cutoff

The Region is proposing to revise Permit conditions in Module V that pertain to the operation of the AWFCO system during malfunction events. These revisions relate to circumstances where the AWFCO system fails to immediately cut off the waste feed when it should otherwise do so, due to either the failure of an AWFCO system component or a Continuous Monitoring System (CMS) malfunction. The Region is requesting public comment regarding the proposed changes to Permit conditions V.C.5.b.i, V.C.5.b.ii, V.C.5.b.iii, and V.C.5.b.iv because the facility's AWFCO system is not technically capable of immediately cutting off the waste feed due to either a CMS malfunction or any failure in a component of the AWFCO system. See, *e.g.*, Evoqua's Petition for Review at p. 15.

The Region is proposing to delete Permit conditions V.C.5.b.iii and iv. However, the operation of RF-2 during malfunctions continues to be controlled by other Permit conditions (such as Permit Conditions V.C.1.b. and the remainder of V.C.5.) as well as the Startup, Shutdown, and Malfunction Plan (SSMP) at Permit Attachment Appendix XXII. Upon remand, the Region has concluded that these provisions provide sufficient protection of human health and the environment to warrant the proposed deletion of Permit conditions V.C.5.b.iii and iv.

The Region has prepared a redline version of each of the following Permit conditions to demonstrate the specific changes proposed on remand: V.C.5.b.i, V.C.5.b.ii, V.C.5.b.iii, and V.C.5.b.iv. [See Redline of Proposed Changes to Remanded Permit Conditions at Appendix A].

The justification for the Region's proposed changes is set forth below in Section 4.3.

3.2 Administrative Record

The public may review the Administrative Record for the Proposed Decision to Revise Remanded Permit Conditions (the Proposed Remand AR), which contains the documents and

information upon which the Region is basing this proposed action. A list of the records contained within the Proposed Remand AR, (the Proposed Remand Decision Administrative Record File List), is attached hereto as Appendix B. The Proposed Remand AR incorporates both the “Administrative Record” for the Region’s September 2016 draft permit decision and the “Supplemental Administrative Record” for the Region’s September 2018 final permit decision by reference.

The Proposed Remand AR is physically located at the EPA Region 9 Office, 75 Hawthorne Street, San Francisco, CA 94105.

There are two satellite information repositories containing key documents and a file list of the Proposed Remand AR. The first information repository is located at the CRIT Museum and Library located at the CRIT Administrative Complex, 26600 Mohave Road, Parker, Arizona, 85344, (at the intersection of 2nd Avenue and Mohave Road). The second information repository is located at the Parker Public Library, 1001 South Navaho Ave., Parker, Arizona, 85344.

Key documents used in the decision making process can also be found on the Region’s website at: <http://www.epa.gov/region09//waste/evoqua/index.html>.

3.3 Public Participation

The Region is providing notice to the public that proposed revisions to a RCRA Permit have been prepared and a hearing has been scheduled.

3.3.1 Request for Public Comment

The Region is requesting public comment on the Proposed Decision to Revise Remanded Permit Conditions over a 45-day public comment period covering the period October 7, 2019 through November 21, 2019. The Region is requesting that the public submit any comments on the proposed revisions to the RCRA Permit that the Region has announced today, by no later than November 21, 2019, in the following manner.

Comments on the Proposed Decision to Revise Remanded Permit Conditions may be submitted to the Region via mail, email and/or in person during the public comment period, including at the Public Hearing. Written comments must be emailed or postmarked on or before November 21, 2019, and sent to:

“Mike” Mahfouz Zabaneh, P.E., Project Manager Phone number: 415-972-3348
US Environmental Protection Agency (LND-4-2) Email: zabaneh.mahfouz@epa.gov
75 Hawthorne Street, San Francisco, CA 94105

3.3.2 Public Meeting/Public Hearing

The Public Meeting and Public Hearing will be held on Thursday, November 7, 2019, in the **Mohave Conference Room** at the **Bluewater Resort and Casino, located at 11300 Resort Drive, Parker, AZ 85344. Phone number: 928-669-7000.** The Public Meeting/Public Hearing time is at **7:00 pm**. If you need reasonable accommodation, please contact Mike Zabaneh by email or phone.

During the Public Meeting, representatives from the Region will provide information about the Facility and the proposed Permit conditions revisions. The public will have an opportunity to ask questions during the Public Meeting. Immediately after the Public Meeting, the Region will hold a Public Hearing, which will be recorded. The public may comment on the Region's Proposed Decision to Revise Remanded Permit Conditions during the Public Hearing. The Region will respond to all significant public comments received during the public comment period, including during the Public Hearing, in a written Response to Comments document at the time the Region finalizes any Permit revisions.

3.4 How the Region Will Make a Final Decision Regarding the Proposed Revisions

After the public comment period closes, the Region will review and evaluate all the comments received. The Region will then make a final decision about revisions to the Permit conditions. The Region will notify the Permittees and each person who submitted written comments or requested notice of the final Permit decision. The notice will include a reference to the procedures for appealing the Region's remand decision under 40 CFR § 124.19 and the EAB's June 13, 2019 Order.

The revised Permit conditions and all the other Permit conditions that were challenged previously will become effective 30 days after the notice of the decision unless a later effective date is specified in the decision or review is requested on the remand proceedings under 40 CFR § 124.19 and the EAB's June 13, 2019 Order. The previously challenged and stayed Permit conditions are identified in the Region's November 1, 2018 "Notification Regarding Effect of Petition for Review on Effective Date of Final RCRA Permit for Evoqua Water Technologies, LLC and the Colorado River Indian Tribes, Parker, AZ," which may be found on the EAB's website for the docket in the appeal of the initial RCRA Permit decision at: https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/f22b4b245fab46c6852570e6004df1bd/6c71e3c454ff7fe585258331006adbe2!OpenDocument.

If there are no comments opposing the proposed revisions or requesting a change to the proposed revisions, the final Permit conditions set forth in the Region's Proposed Decision to Revise Remanded Permit Conditions and all the other Permit conditions that were challenged previously will become effective immediately upon issuance of the Region's notice of the decision, unless a later effective date is specified in the decision.

4. Basis for the Proposed Revised Permit Conditions

4.1 Basis for the Proposed Revisions for 24-Hour Reporting of Non-compliance

The Region is proposing to revise Permit condition I.E.13.a, pertaining to the requirement that the Permittees orally report any non-compliance, which may endanger health or the environment, within 24-hours from the time whichever Permittee first becomes aware of the circumstances. The EAB's June 13, 2019 Order required the Region to provide a more robust explanation as to why language was added to the Permit requiring this reporting be made to the NRC instead of to the Director as is specified in the first sentence of the Permit condition.⁴

⁴ 17 E.A.D. at 841.

Experience demonstrates that, when appropriate and possible, reconsideration of previous positions and actions may allow for their correction or improvement. Here, at the direction of the EAB to provide better justification for Permit condition I.E.13.a.'s reference to the NRC, the Region reexamined the necessity of providing a phone number in the Permit that has the capabilities of "respond[ing] to this type of urgent call that could come in at any time." See Permit Issuer Response to Evoqua Water Technologies LLC Petition for Review, dated Dec. 3, 2018, at p. 41/54, at the link set forth above for the EAB's docket in the appeal of the initial RCRA Permit decision. The Region had previously designated the NRC number because it was the most appropriate entity "within the Federal government family" and was the best "equipped to respond" on such an urgent basis. *Id.* However, upon reflection, the Region has determined that the regulation at 40 CFR § 270.30(l)(6)(i), upon which this requirement is based, is focused on the Permittees reporting non-compliance as opposed to EPA responding on an "urgent" basis to the report.

The Permit's other reporting and emergency notification requirements, including those set forth in the Contingency Plan (Permit Attachment Appendix XIII) and Modules IV (Tanks) and VI (Corrective Action), provide for appropriate responses to urgent or emergency situations, including releases from tanks, by appropriate Facility personnel and by local, Tribal, and federal agencies. See, *e.g.*, Permit conditions IV.J.2., and VI.E.1.a. See also Sections 7, 8 and 9 of the Contingency Plan.

As a result, the Region has determined that the 24-hour oral reporting requirement imposed by 40 CFR § 270.30(l)(6)(i) does not necessitate a 24-hour *staffed* phone number and the remand of this provision by the EAB has given the Region the opportunity to improve this Permit condition by re-proposing it.

The Region proposes a revised Permit condition I.E.13.a. to identify the Region's main phone number as the phone number which the Permittees shall call in order to orally report non-compliance that may endanger human health or the environment. During both regular business hours and after hours, the Permittees would be required to call (415) 947-8000 and they will be directed through an automated system to the Director's phone line by searching for his (or her) name.

The Region emphasizes that the Permittees' obligations under the Permit's Contingency Plan continue regardless of whether or not Permit Condition I.E.13.a. is triggered.

The Region has prepared a redline version of Permit condition I.E.13.a to demonstrate the specific changes proposed on remand. [See Redline of Proposed Changes to Remanded Permit Conditions at Appendix A].

4.2 Basis for the Proposed Revisions for Tank T-11

The Region is proposing to revise Permit conditions in Module IV that purport to regulate Tank T-11 as a hazardous waste tank, potentially subject to RCRA air emission requirements at 40 CFR Part 264, Subpart CC. The Region is proposing to retain the designation of Tank T-11 as a SWMU in Module VI, at Table VI-2.

Section V.J. of Evoqua's Petition for Review, which was filed on October 25, 2018, related to the regulation of Tank T-11. The Region reviewed the issues raised in and the materials attached

to the Petition and reexamined its own assessment of the regulation of T-11 under RCRA. As a result, when the Region filed its Response to the Petition for Review, the Region requested that the EAB remand the Permit conditions that would apply to T-11 and that the EAB allow the Region to reevaluate whether T-11 is subject to RCRA's permitting requirements, including the air emissions requirements of 40 CFR Part 264, Subpart CC, or if T-11 is exempt from regulation as part of a wastewater treatment unit (WWTU) under 40 CFR § 264.1(g)(6).

The EAB's June 13, 2019 Order remanded the issue of the regulation of T-11 under RCRA for further consideration by the Region.⁵

Today's proposal reflects the Region's agreement with Evoqua's analysis of the status of T-11 in its Petition for Review. The Region is today proposing to revise the Permit to treat T-11 as a solid waste management unit instead of a hazardous waste tank because the Region agrees that T-11 is exempt from regulation since it is part of a WWTU under 40 CFR § 264.1(g)(6).

In September of 1988, EPA clarified the scope of its WWTU exemption under RCRA. See 53 FR 34079 (Sept. 2, 1988). In the preamble to this federal register notice, EPA explained that, in order to qualify as a WWTU, "the unit must be part of a wastewater treatment facility that is subject to regulation under either section 402 or section 307(b) of the Clean Water Act." *Id.* at 34080. The preamble goes on to explain that the unit also "must be part of an on-site wastewater treatment facility." *Id.* According to the preamble, this would include any hazardous waste tank system that is used to store or treat a wastewater that is discharged to a Publicly Owned Treatment Works (POTW) pursuant to a National Pollutant Discharge Elimination System (NPDES) permit. *Id.*

Further, according to the preamble, whether the wastewater is conveyed from the tank system directly to the treatment unit or indirectly by way of intermediate sumps, tanks or holding ponds does not affect the applicability of the exemption. *Id.* One of the examples provided in the preamble is similar to the way in which T-11 is employed at the Facility. The example is that the WWTU exemption "would apply if a sump is used to collect the rinse from periodic cleaning of utility boilers and this wastewater is then conveyed to a wastewater treatment unit at the same facility."

In this case, Evoqua explained in an attachment to its Petition for Review as follows:

The WWTU at the [] facility consists of the equipment used to distribute, meter, or control the flow of hazardous wastewater from its point of generation to storage and treatment tank(s), where it is treated to meet effluent discharge limits required by the Colorado River Sewer System Joint Venture [POTW] in accordance with federal and local regulations and an industrial discharge [NPDES] permit issued by the POTW, and then discharged to the public sewer system. The WWTU commences at Tank T-11, which collects process wastewater from several plant operations, and includes the piping from T-11 to a heat exchanger, the heat exchanger, which treats the wastewater to remove heat consistent with POTW discharge requirements, the piping from the heat exchanger to the wastewater treatment plant, which treats the wastewater to remove various

⁵ 17 E.A.D. at 843.

constituents consistent with POTW and regulatory discharge requirements, and then the piping from the treatment plant to the public sewer.

See Attachment 1 to the Petition for Review (3-30-09 Email from M. McCue to J. Moody) at p. 4, at the link set forth above for EAB's docket in the appeal of the initial RCRA Permit decision.⁶

The Region accordingly considers T-11 to be "part of an on-site wastewater treatment facility." And, because this tank is used to store a wastewater that is discharged to a POTW pursuant to a NPDES permit, it is subject to the WWTU exemption. The Region is, therefore, proposing to modify certain Module IV permit conditions that purported to apply RCRA Air Emissions requirements under 40 CFR Part 264, Subpart CC to T-11.

The Region has prepared a redline version of each of the following Permit conditions in order to demonstrate the specific changes proposed on remand: IV.A.2, IV.G.1, IV.G.1.a, IV.G.2.a, IV.G.4, and Table IV-2. [See Redline of Proposed Changes to Remanded Permit Conditions at Appendix A].

4.3 Basis for the Proposed Revisions for the AWFCO

The EAB found that the Facility's SSMP "speaks only to what the Permittees must do if the Automated Waste Feed Cutoff system were to fail." 17 E.A.D. at 835.⁷ The EAB also found that the Region did not sufficiently address the operator/appellant's public comments about the limits of the installed technology, namely that the waste feed cutoff system is not able to automatically shut off flow "whenever there is a [continuous monitoring system] malfunction or a [Automated Waste Feed Cutoff] system failure." *Id.* As a result, the EAB remanded Permit conditions V.C.5.b.iii and iv to the Region for reconsideration. *Id.*

The Region has reconsidered the operator/appellant's comments regarding the AWFCO system's limitations during CMS malfunctions or a failure of the AWFCO and is proposing revisions in accordance with its improved understanding. See Appendix A.

According to the operator, and previously acknowledged by the Region, the AWFCO system is not capable of cutting off the waste feed whenever a component of the AWFCO system fails. However, the Region now acknowledges that, according to the operator, the AWFCO system is *also* not able to automatically shut off the waste feed whenever there is a continuous monitoring system (CMS) malfunction. Thus, the Region is proposing to delete from Permit Condition V.C.5.b both references to these two situations, while retaining references to other situations, as explained below.

⁶ The Colorado River Sewage System Joint Venture (CRSSJV) was issued a NPDES permit (No. AZ0021415, dated May 2015) to authorize the discharge of the treated effluent from the existing CRSSJV wastewater treatment plant to the Irrigation Return Canal which flows to the Colorado River in Arizona. See p. 12 of the Region's Revised Statement of Basis, at 2016 11 10 Evoqua-CRIT Revised Statement of Basis.pdf, in the Supplemental Administrative Record.

⁷ The Board's June 13, 2019 decision is available on the EAB's website for the docket in the initial appeal of this matter at the link set forth above in Section 3.4. It is also available on the EAB's website at: https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/dac76d2b073d9f75852573da006e9fc9/f6e092b586f10a2c8525841800576786!OpenDocument.

Of the four references in Permit Condition V.C.5.b. to the circumstances under which the AWFCO system must be set to automatically cut off the waste feed, Permit conditions V.C.5.b.iii. (pertaining to CMS malfunctions) and iv. (pertaining to AWFCO component failures) are both proposed for deletion. (See Appendix A.)

The Region emphasizes that it is retaining the requirement in Permit Condition V.C.5.b for the Permittees to set the AWFCO system to automatically cut off the waste feed under the following circumstances: (i) exceedances of either the emission limit for Carbon Monoxide listed in Table V-1, the limit for the maximum spent carbon feed rate, or the maximum stack gas flow rate listed in Table V-2, or when any of the other Group A-1 or Group A-2 parameters specified in Table V-2 are not met (see Appendix A, proposed revised Permit Condition V.C.5.b.i); or (ii) when the span value of any CMS detector, except a continuous emissions monitoring system (CEMS), is met or exceeded (see Appendix A, proposed revised Permit Condition V.C.5.b.ii). The circumstances reflected in Permit Conditions V.C.5.b.i. and ii. were not the subject of the EAB's June 13, 2019 Order regarding the remand.

The Permit requires that the Permittees follow the requirement in the SSMP to cut off the waste feed "as quickly as possible" when the AWFCO system fails to detect a malfunction in an interlocked operating parameter. See the SSMP at p. 4-3. This requirement ensures that waste processing is halted as soon as possible during malfunctions.

The Region has prepared a redline version of each of the following Permit conditions to demonstrate the specific changes proposed on remand: V.C.5.b.i, V.C.5.b.ii, V.C.5.b.iii, and V.C.5.b.iv. [See Appendix A].

5. Miscellaneous

5.1 General Authority

RCRA authorizes EPA to issue Permits to persons owning or operating hazardous waste treatment, storage, or disposal facilities. [See RCRA Sections 3004, 3005, 42 U.S.C. §§ 6924 and 6925.] RCRA requires EPA to promulgate regulations establishing standards applicable to owners and operators of hazardous waste storage, treatment, and disposal facilities (42 U.S.C. § 6924). EPA promulgated regulations implementing a federal and state Permitting program for such facilities. [See, *e.g.*, 40 CFR Parts 260-279.]

5.2 Permit Status

The Facility is currently operating under the provisions of the RCRA Permit issued to the Permittees on September 25, 2018 that have not been stayed. Some Permit conditions were stayed as a result of the appeal of the Region's Permit decision. The rest of the Permit went into effect on December 1, 2018. The EAB issued a decision in the appeal on June 13, 2019, published at 17 E.A.D. 795. The EAB denied review on all but three issues raised in the appeal. Those three issues were "remanded" to the Region and are the subjects of today's Proposed Remand Decision. None of the conditions that were appealed and stayed will go into effect until the conclusion of the remand proceedings.

5.3 Other Authorities

In addition to RCRA, a permitted facility may be subject to other environmental statutes. However, the Region has determined that nothing in these remand proceedings necessitates additional review under any of the following statutes:

The National Historic Preservation Act of 1966. 16 U.S.C. 470 *et seq.*

The Endangered Species Act. 16 U.S.C. §§ 1531, *et seq.*

The Wild and Scenic Rivers Act. 16 U.S.C. § 1273, *et seq.*

The Coastal Zone Management Act. 16 U.S.C. § 1451, *et seq.*

The Fish and Wildlife Coordination Act. 16 U.S.C. §§ 661, *et seq.*

5.4 The Clean Air Act

The Clean Air Act (CAA) requires any major source of criteria or hazardous air pollutants (HAP) to obtain a title V Permit. For criteria air pollutants, the title V major source threshold is 100 tons per year (tpy); for HAPs, the title V major source threshold is 10 tpy for any individual HAP and 25 tpy for any combination of HAPs.

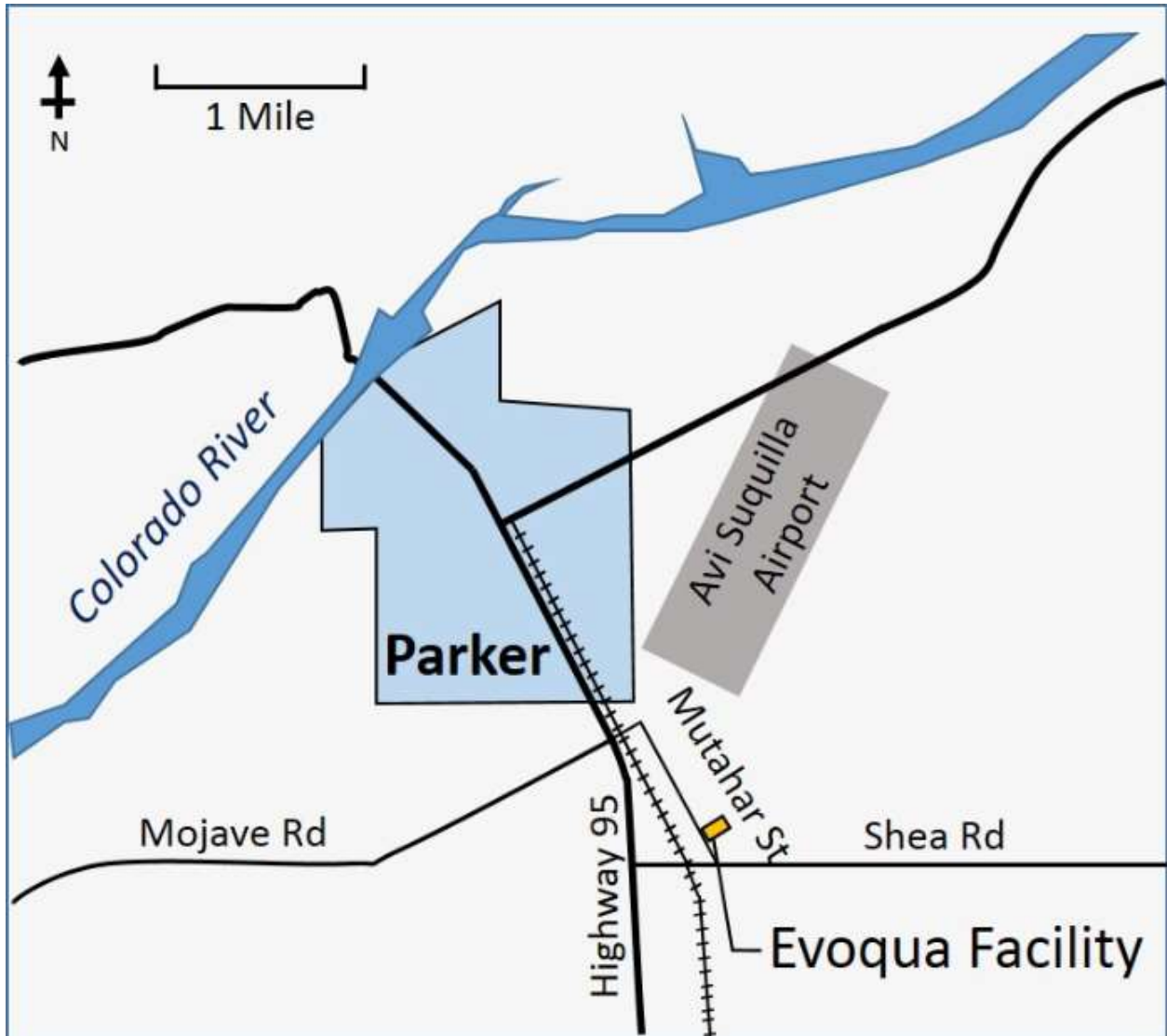
Prior to the effective date of the Permit, the Facility's uncontrolled potential to emit criteria and HAP pollutants was below applicable major source thresholds, apart from the criteria air pollutants sulfur dioxide (SO₂) and oxides of nitrogen (NO_x). The Permit imposed practically enforceable, synthetic minor limits on SO₂ and NO_x. The Facility will be subject to a Performance Demonstration Test (PDT), also known as a "trial burn", at least once every five years, after the conclusion of these remand proceedings. See 40 CFR § 124.19(l) and the EAB's June 13, 2019 Order.⁸

The Permit's Facility-wide synthetic minor limits, in conjunction with the monitoring, recordkeeping, and reporting required in Permit Condition I.E.9. and elsewhere in the Permit, are sufficient to limit the Facility's emissions below the title V major source threshold of 100 tpy for criteria air pollutants. Because these limits on the Facility's air emissions are practically and federally enforceable, the Facility is not required to obtain a separate title V Permit. The Region's Responses to Public Comments, at V-17,⁹ as well as Permit Condition V.C.1.b, make clear that the Permit's limits apply during startup, shutdown and malfunction events. As a result, if the revised permit language is adopted as proposed, the Facility's Permit will continue to operate as a practically and federally enforceable mechanism, which governs in lieu of a CAA title V permit.

⁸ 17 E.A.D. at 829.

⁹ See "x_2018 09 Responses to Public Comments _005_V-1 to V-41.pdf," in the Supplemental Administrative Record.

Figure 1 – Site Location Map



Appendix A
Redline of Proposed Remanded Permit Conditions

APPENDIX A

**REDLINE OF PROPOSED CHANGES TO REMANDED PERMIT CONDITIONS FOR
EVOQUA WATER TECHNOLOGIES, LLP AND COLORADO RIVER INDIAN TRIBES
HAZARDOUS WASTE FACILITY AT 2523 MUTAHAR ST., PARKER, AZ 85344**

#1. Proposed Revision to Permit Condition I.E.13.a. Regarding Twenty-Four Hour Reporting:

I.E.13.a. The Permittees shall report to the Director any noncompliance which may endanger human health or the environment. Any such information shall be reported orally ~~to the National Response Center (800-424-8802)~~ within 24 hours from the time whichever Permittee first becomes aware of the circumstances ~~-- using the Region's main phone number (415-947-8000). Callers to this number can reach the Director's phone line through an automated system.~~ The report shall include the following:

* * * *

#2. Proposed Revisions to Permit Conditions IV.A.2., IV.G.1., IV.G.1.a., IV.G.2., IV.G.4. and Table IV-2 regarding Tank T-11:

IV.A.2. Except as otherwise specifically set forth in this Permit, the requirements of 40 CFR Part 264, Subpart J, are applicable to the hazardous waste tanks systems (T-1, T-2, T-5, T-6, and T-18) that are used to store or treat hazardous waste at the Facility. A map of the Tanks Systems' locations can be found in the Permit Attachment Appendix III. In addition, the requirements of 40 CFR Part 264, Subpart BB (Subpart BB) or Subpart CC (Subpart CC) are applicable to various tanks, containers, and equipment located at the Facility. ~~Certain air emission control requirements also apply to Tank T-11, as indicated in Permit Condition IV.G.1. and Table IV-2.~~ [See Permit Attachment Section D, Permit Attachment Appendix XIX, Permit Attachment Appendix XX, and 40 CFR Part 264, Subpart J, Subpart BB and Subpart CC.]

* * * *

IV.G.1. Tank Systems T-1, T-2, T-5, T-6, ~~T-11~~ and T-18 are subject to air emission control requirements pursuant to this Permit. Tanks T-1, T-2, T-5, T-6 and T-18 and Hoppers H-1 and H-2 are equipped with closed vent systems leading to air pollution control devices. [See Permit Attachment Sections N and O, Permit Attachment Appendices XIX and XX, Permit Attachments Subpart BB Compliance Plan and Subpart FF Compliance Plan and 40 CFR Part 61 and §§ 264.1050 et seq., 264.1087, 264.1088, 264.1089, and 264.1090.]

IV.G.1.a. The Permittees must comply with the RCRA regulations that are identified in the column labeled "Air Emission Control Regulations Applicable to this Unit" in Table IV-2 and that relate to the emissions standards, monitoring records, reporting and management requirements for the correlating units, i.e., Tanks T-1, T-2, T-5, T-6, ~~T-11~~ and T-18, their

associated ancillary equipment, (H-1 and H-2), and the carbon adsorbers WS-1, WS-2, and WS-3, and their associated closed vent systems (e.g. hoses/piping and connections).

* * * *

IV.G.2.a. ~~[DELETED] If sampling and analysis or operator knowledge of the waste entering Tank T-11 demonstrates that the average annual Volatile Organic concentration of the waste entering the unit is greater than or equal to 500 parts per million by weight, the Permittees shall ensure that tank T-11 complies with the “Air Emission Control Regulations Applicable to this Unit” in Table IV-2.~~

* * * *

IV.G.4. ~~[DELETED] In accordance with Permit Attachment Section O and Permit Attachment Appendix XX, the Permittees must comply with the record keeping and reporting requirements of 40 CFR §§ 264.1089(f)(1) and 264.1090(a) when operating Tank T-11. [See Permit Attachment Section O, Permit Attachment Appendix XX, and 40 CFR §§ 264.1089(f)(1) and 264.1090(a).]~~

* * * *

TABLE IV-2
MANAGEMENT OF EACH TANK SYSTEM, HOPPERS
AND THE AIR POLLUTION CONTROL DEVICES

Tank or Unit No.	Description	Air Emission Control Requirements Applicable to this Unit
T-11	Scrubber/ Recycle/ Boiler and Cooling Tower Blow Down Water Storage Tank	40 CFR §§ 264.1082(c)(1), 264.1089(f)(1) and 264.1090(a). Tank T-11 is subject to monitoring and recordkeeping requirements of 40 CFR Part 264, Subpart CC. If sampling and analysis or operator knowledge of the waste entering Tank T-11 demonstrates that the average annual Volatile Organic concentration of the hazardous waste entering the unit is greater than or equal to 500 parts per million by weight, the Permittees shall at such time ensure that tank T-11 meets the additional requirements of 40 CFR §§ 264.13(b)(8), 264.1082, 264.1084 and 264.1087.

* * * *

#3. Proposed Revisions to Permit Conditions V.C.5.b., V.C.5.b.ii., iii., and iv. Regarding Automatic Waste Feed Cutoff Requirements During Malfunctions:

V.C.5.b. The Permittees shall set the automatic waste feed cutoff system to stop the feed to RF-2 if any of the following occurs:

V.C.5.b.i. The emission limit for Carbon Monoxide listed in Table V-1, the limit for the maximum spent carbon feed rate, or the maximum stack gas flow rate listed in Table V-2 are exceeded, or any of the other Group A-1 or Group A-2 parameters specified in Table V-2 are not met; ~~or~~

V.C.5.b.ii. When the span value of any continuous monitoring system (CMS) detector, except a continuous emissions monitoring system (CEMS), is met or exceeded; [See 40 CFR § 63.1206(c)(3)(i)(B).]

[Note: Parameter CMSs are process instruments that continuously monitor and record parameter data from the operation of the carbon reactivation process. The instruments consist of weigh belts, flow meters, pressure transducers, thermocouples and other devices that collect process information on key regulatory parameters.]

V.C.5.b.iii. ~~Upon malfunction of a CMS; [See 40 CFR § 63.1206(c)(3)(i)(C).] or [DELETED]~~

V.C.5.b.iv. ~~When any component of the AWFCO system fails. [See 40 CFR § 63.1206(c)(3)(i)(D).] [DELETED]~~

Appendix B
Proposed Remand Decision Administrative Record File List

Proposed Remand Decision

US EPA Region IX, Sept. 30, 2019

Appendix B – Proposed Remand Decision Administrative Record File List

	Name
1.	2018 09 27 email checking availability for conference call.pdf
2.	2018 10 03 email checking availability for conference call.pdf
3.	2018 10 03 email topics for conference call.pdf
4.	2018 10 11 email checking availability for conference call.pdf
5.	2019 01 29 Permit Mod Request_001_Class_1_Mod_Appendix_IV.pdf
6.	2019 01 29 Permit Mod Request_002_Class_1_Mod_Section D_Appendix_XXI.pdf
7.	2019 02 19 Email Notice of Closure Activities RF-1.pdf
8.	2019 02 19 Email Notice of Closure Activities.pdf
9.	2019 02 28 Email Submittals for Hopper Certification and RF-1 Notification of Closure Activity.pdf
10.	2019 02 28 Final RCRA Permit Module_IV_REDLINE_FINAL_02_22_2019.pdf
11.	2019 02 28 Notification of Closure Activity RF-1_FINAL.pdf
12.	2019 02 28 Permit Mod Request_003_Appendix IX_MODULE_IV.pdf
13.	2019 02 28 RCRA Permit Module_IV_REDLINE_FINAL.pdf
14.	2019 03 29 Email Mod Request 004 Subpart BB, Subpart CC and Subpart FF Compliance Plans.pdf
15.	2019 03 29 Email2 Mod Request 004 Subpart BB, Subpart CC and Subpart FF Compliance Plans.pdf
16.	2019 03 29 Permit Mod Request_004_Class_1_Mod_Appendix_XIX_Appendix_XX_Appendix_XXIII.pdf
17.	2019 04 03 DRAFT_Notice to Facility Mailing List_Permit_Modifications_001_002_003_004.pdf
18.	2019 04 03 Email DRAFT Notifications.pdf
19.	2019 04 03 Email RE_ Facility Mailing List.pdf
20.	2019 04 03 Email Reply RE_ Facility Mailing List.pdf
21.	2019 04 03 Email Reply2 RE_ Facility Mailing List.pdf
22.	2019 04 03 Respository Letter - Final Draft.pdf
23.	2019 04 11 Email Evoqua Respository Notification and Notice of Permit Modifications 001, 002, 003 and 004.pdf
24.	2019 04 11 Notice to Facility Mailing List_Permit_Modifications_001_002_003_004_FINAL.pdf
25.	2019 04 11 Respository Letter - Final_Signed.pdf
26.	2019 04 12 Email RE_ Evoqua Respository Notification and Notice of Permit Modifications 001, 002, 003 and 004.pdf
27.	2019 04 12 Email Reply RE_ Evoqua Respository Notification and Notice of Permit Modifications 001, 002, 003 and 004.pdf

Proposed Remand Decision

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28.	2019 04 12 Email RevisedEvoqua Repository Notification and Notice of Permit Modifications 001, 002, 003 and 004.pdf
29.	2019 04 12 Email2 RE_ Evoqua Repository Notification and Notice of Permit Modifications 001, 002, 003 and 004.pdf
30.	2019 04 12 RE_ Evoqua Repository Notification and Notice of Permit Modifications 001, 002, 003 and 004.pdf
31.	2019 04 12 Revised Notice to Facility Mailing List_Permit_Modifications_002_003_FINAL_04122019.pdf
32.	2019 04 12 Revised Notice to Facility Mailing List_Permit_Modifications_002_003_FINAL_04122019_002.pdf
33.	2019 05 01 Email Module IV redline in Word document.pdf
34.	2019 05 01 Email RE_ Module IV redline in Word document.pdf
35.	2019 05 01 Email2 RE_ Module IV redline in Word document.pdf
36.	2019 05 01 Final RCRA Permit Module_IV_REDLINE_FINAL_02_22_2019 (002).pdf
37.	2019 05 24 Permit Mod Request 005 adding Permit Condition IG9.pdf
38.	2019 05 28 Email Permit Mod Request_005 - Class 1 - Addition of Permit Condition I.G.9.pdf
39.	2019 05 29 Email RE_ Permit Modification_005 - Class 1 - Addition of Permit Condition I.G.9.pdf
40.	2019 05 30 Email Comment Letter for Permit Mod Requests.pdf
41.	2019 05 30 Email Facility Mailing List for Evoqua's use.pdf
42.	2019 05 30 Email RE_ Comment Letter for Permit Mod Requests.pdf
43.	2019 05 30 Email Reply RE_ Comment Letter for Permit Mod Requests.pdf
44.	2019 05 30 Email2 RE_ Comment Letter for Permit Mod Requests.pdf
45.	2019 05 30 EPA Cmnt Letter on Evoqua Mod Requests 001-0055.pdf
46.	2019 05 30 FINAL SIGNED Cmnt Letter Evoqua Mod Requests 30May2019.pdf
47.	2019 05 30 RE_ Comment Letter for Permit Mod Requests.pdf
48.	2019 06 25 Email RE Call.pdf
49.	2019 07 08 Email RE Evoqua Metal Analyses.pdf
50.	2019 07 08 Metals Analysis w QAQC J244041-1 UDS Level 2 Report Final Report.pdf
51.	2019 07 09 Email Subpart CC Appendix.pdf
52.	2019 07 09 Subpart CC Sampling Plan.pdf
53.	2019 07 10 BART ORIGINAL Evoqua Subpart CC Compliance Plan.version 8.July.2019 - Redline_MM (002).pdf
54.	2019 07 10 Email RE Revised Subpart CC Plan.pdf
55.	2019 07 10 Email RE Word Document - Subpart CC.pdf
56.	2019 07 11 Email RE Subpart BB Plan Revision.pdf

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57.	2019 07 11 Evoqua Subpart BB Compliance Plan.version 1.July.2019 - Redline COMPLETE.pdf
58.	2019 07 15 Email RE SOP for Sulfur Analysis on GAC.pdf
59.	2019 07 15 Email Reply RE_ SOP for Sulfur Analysis on GAC.pdf
60.	2019 07 15 Standard Operating Procedure for Sulfur as sulfate - EPA Submittal 07152019.pdf
61.	2019 07 18 Email RE Subpart FF Plan Revision.pdf
62.	2019 07 18 Evoqua Subpart FF Compliance Plan.version 17.July.2019 - Redline FULL PACKAGE.pdf
63.	2019 07 18 FINAL SIGNED Cmnt Letter Evoqua Mod Requests 30May2019.pdf
64.	2019 08 05 Email Delegation due to Realignment.pdf
65.	2019 08 05 Email FW Message from the RA on Regional Realignment.pdf
66.	2019 08 05 Table of Revised Delegations Signed May 1, 2019.pdf
67.	2019 08 05 TEMPORARY General Delegation due to Realignment 20190515.pdf
68.	2019 08 12 Attch to Email Standard Operating Procedure for Sulfur as sulfate.pdf
69.	2019 08 12 Email RE_ Informal review of preliminary Evoqua Waste Analysis Plan 2.pdf
70.	2019 08 12 Email RE_ Informal review of preliminary Evoqua Waste Analysis Plan.pdf
71.	2019 08 13 Email RE_ Informal review of preliminary Evoqua Waste Analysis Plan.pdf
72.	2019 08 14 Email RE_ Informal review of preliminary Evoqua Waste Analysis Plan 2.pdf
73.	2019 08 14 Email RE_ Informal review of preliminary Evoqua Waste Analysis Plan.pdf
74.	2019 08 22 Attch to Email Notice to Facility Mailing List_Permit_Modifications_005.pdf
75.	2019 08 22 Attch to Email Standard Operating Procedure for Sulfur as sulfate Rev 1_08-2019.pdf
76.	2019 08 22 Email Evoqua Sulfur SOP Revision 1_08-2019.pdf
77.	2019 08 22 Email Notice of Permit Modification_005.pdf
78.	2019 08 23 Email Subpart CC Plan Methods.pdf
79.	2019 08 29 Attch to Email Facility Mailing List Returns.pdf
80.	2019 08 29 Email Facility Mailing List Returns.pdf
81.	2019 09 03 Attch to Email Facility Mailing List Returns.pdf
82.	2019 09 03 Email Facility Mailing List Returns.pdf
83.	2019 09 04 Attch to Email Facility Mailing List Returns.pdf
84.	2019 09 04 Email Facility Mailing List Returns.pdf
85.	2019 09 30 Supplemental Remand Administrative Record Addendum.pdf