

**Final 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)**



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

January 2020

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**U.S. Environmental Protection Agency
Resource Conservation and Recovery Act
Final Remand Decision
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

Pursuant to the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 USC Sections 6901 *et seq.*, and the Hazardous and Solid Waste Amendments 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 Final Decision to Revise Remanded Permit Conditions (Final Remand Decision) will, when effective, hereby 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 Final Remand Decision shall preclude the review and/or modification of the Permit by EPA or the Permittees as described in 40 CFR §§ 270.41 and 270.42.

The Facility operator, Evoqua Water Technologies, LLC (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 – including the remanded permit conditions -- will not go into effect until the conclusion of these remand proceedings. Upon the conclusion of the remand proceedings, which would include any administrative or judicial appeal of this Final Remand Decision, the Region will issue a final permit decision putting into effect all the specified conditions that were appealed and previously stayed.

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.

The revisions that are the subject of this Final Remand Decision were previously the subject of an EPA Environmental Appeals Board (EAB) decision dated June 13, 2019. That decision was the result of an appeal of EPA Region 9's (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 for further consideration. In the fall of 2019, the Region sought public comment on specific changes it proposed to the remanded provisions.

The Public Comment Period for the proposed Remand Decision ran from October 7, 2019 through November 21, 2019. Three public comments were received by the Region during the public comment period, one for each of the three remanded issues. Today's Final Remand Decision is accompanied by the Region's Responses to Public Comments.

Any person who filed comments on the Proposed Remand Decision or participated in the Public Hearing on the Proposed Remand Decision may challenge the Final Remand Decision. See 40 CFR § 124.19(a)(2). And, pursuant to the EAB's June 13, 2019 Order, a petition seeking the EAB's review is required in order to exhaust administrative remedies under 40 CFR § 124.19(l). If no review of the Final Remand Decision is requested within the prescribed time period for seeking the EAB's review, the Region will subsequently issue a Final Permit Decision, which will constitute a "final agency action," which will put into effect each of the Permit conditions that were appealed and stayed, including the remanded Permit conditions that are the subject of this Final Remand Decision.

01/23/2020
Date Issued

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

Appendix A

Final Changes to Remanded Permit Conditions



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APPENDIX A

FINAL REVISIONS 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. Final 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 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. Final 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. [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 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 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

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associated closed vent systems (e.g. hoses/piping and connections).

* * * *

IV.G.2.a.[DELETED]

* * * *

IV.G.4. [DELETED]

* * * *

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 (DELETED)	DELETED	DELETED
****	****	****

* * * *

#3. Final 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

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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. [DELETED]

V.C.5.b.iv. [DELETED]

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Appendix B

Responses to Public Comments

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COMMENTS REGARDING PROPOSED REMANDED PERMIT CONDITIONS

The Evoqua Water Technologies LLC (Evoqua) facility is located on the Colorado River Indian Tribes' Reservation near Parker, Arizona, (the Facility), and houses a thermal treatment system used to regenerate spent carbon for reuse. The Resource Conservation and Recovery Act (RCRA) hazardous waste management Permit issued for the Facility in September 2018 allows 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 the Facility operator, Evoqua, appealed specified conditions in the Region's Permit, those specified conditions were stayed. 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 Environmental Appeals Board (EAB) denied review of Evoqua's challenge on all but three issues raised in the appeal. Those three issues were "remanded" to the Region and were the subject of a Proposed Decision to Revise Remanded Permit Conditions (Proposed Remand Decision) for which the Region opened a Public Comment Period that ran from October 7, 2019 to November 21, 2019.

The Region held a Public Meeting and Public Hearing to discuss the Proposed Remand Decision and to collect verbal and written comments. The meeting was held on November 7, 2019, in the Mohave Conference Room at the Bluewater Resort and Casino, located at 11300 Resort Drive, Parker, Arizona, 85344. During the Public Hearing, one commenter provided three comments, one for each of the three remanded issues. No other comments on the Proposed Remand Decision were received by the Agency during the public comment period. What follows is a summary of the three comments received and the Region's responses to them.

The three remanded 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.

SUMMARIES AND RESPONSES TO COMMENTS REGARDING PROPOSED REMANDED PERMIT CONDITIONS

1. One commenter provided comment on the first item identified in the Region's Proposed Remand Decision, namely the proposed change to the telephone number to which the Permittees are required to report any non-compliance that may endanger human health or the environment. The commenter objected to the idea that the Permittees are allowed to report instances of non-compliance,

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indicating, “that's like having a bank robber tell you when they're gonna rob the bank. It just doesn't happen...”

RESPONSE:

The Region proposed to revise Permit condition I.E.13.a, pertaining to the requirement that the Permittees (the Facility's owner and operator) orally report any non-compliance that 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.

This requirement is based on 40 CFR § 270.30(l)(6)(i), which requires that that “[t]he permittee shall report any noncompliance which may endanger health or the environment orally within 24 hours from the time the permittee becomes aware of the circumstances . . .”

The Region had previously designated the NRC phone number for this reporting requirement because the NRC was the best “equipped to respond” on such an urgent basis. However, upon reflection, the Region determined that the regulation at 40 CFR § 270.30(l)(6)(i) is focused on the Permittees *reporting* non-compliance as opposed to EPA *responding* on an “urgent” basis to the report. As a result, the Region proposed using the Region's main phone number instead of the NRC's phone number. Other Contingency Plan and reporting requirements in the Permit provide for appropriate responses to urgent or emergency situations, including releases from tanks, by appropriate Facility personnel and by local, Tribal, and federal agencies.

The bank robber analogy used by the commenter does not apply to this Facility. The operations performed at the Facility are legitimate business activities, lawfully performed under the RCRA Permit. Moreover, the activities performed are overseen by numerous regulatory bodies -- as well as the public -- in an open and transparent manner. Reporting noncompliance in accordance with Permit Condition I.E.13.a. is just one requirement that fits within an overall framework.

The RCRA Permit's framework includes inspections as well as record-keeping and reporting obligations, including the obligation at Permit Condition I.E.13.a., which is the subject of the remand. This permit condition is mandated by the regulation at 40 CFR § 270.30(l)(6), which states “[t]he permittee shall report any noncompliance which may endanger health or the environment orally within 24 hours from the time the permittee becomes aware of the circumstances....” In addition to reporting such non-compliance, the Permittees are also required to report any instances of non-compliance where no

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endangerment occurs (see Permit Condition I.E.15.) as well as reporting any anticipated non-compliance (see Permit Condition I.E.11.)

The Permittees are required to conduct inspections pursuant to Permit Condition II.F, entitled “General Inspection Requirements.” Permit Condition IV.H, entitled “Inspection Schedule and Procedures,” includes specific inspection requirements for the Tank Systems. All inspections performed in accordance with the Permit are required to be documented in the operating record pursuant to Permit Condition II.M.1, entitled “Operating Record.”

RCRA also requires that EPA perform periodic inspections of permitted facilities to ensure that the facilities comply with the Statute, the regulations, and facility-specific permits. RCRA § 3007(e). EPA conducts inspections of the Facility on average every two years. During that time, the inspectors thoroughly examine the Facility and review the operating record.

The Colorado River Indian Tribes (CRIT) has their own Environmental Protection Office that also periodically inspects the Facility. RCRA also has a citizen suit authority under Section 7002 that provides additional recourse to the public if the Permittees or EPA fall short.

All these inspection, reporting and record keeping programs, along with oversight, work together to make sure the Facility is operated in a safe manner and, if there are any issues, that they are discovered and addressed in a timely manner.

No additional technical information was presented by this comment. Therefore, the Region has determined that its proposal to revise Permit condition I.E.13.a. to replace the previously listed phone number with the Region’s main phone number should be made final. Callers can reach the Director’s phone line through an automated system to orally report any non-compliance that may endanger health or the environment. The RCRA Permit continues to include all the conditions “necessary to protect human health and the environment” in accordance with RCRA Section 3005(c)(3).

2. The same commenter also provided a comment on the second item identified in the Region’s Proposed Remand Decision, relating to tank T-11. The commenter referenced the fact that tanks holding hazardous material are required to have secondary containment. The commenter also stated that, as far as the commenter knew, there is no secondary containment for the tanks at the referenced Facility.

RESPONSE: As an initial matter, the commenter used the term “hazardous material” in the comment. It is important to point out that RCRA Subtitle C does not regulate hazardous materials. RCRA Subtitle C regulates hazardous materials only when they

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are also hazardous wastes.

In addition, secondary containment is required under RCRA Subtitle C in order to prevent releases --from hazardous waste management units -- of hazardous waste or hazardous constituents to the environment. The secondary containment must be designed, installed, and operated to prevent any migration of hazardous wastes or hazardous constituents to the environment. See 40 CFR § 264.193.

40 CFR § 264.193(d) defines secondary containment as follows: "Secondary containment for [hazardous waste] tanks must include one or more of the following devices: (1) A liner (external to the tanks); (2) A vault; (3) A double-walled tank; or (4) An equivalent device as approved by the Regional Administrator."

The hazardous waste management tanks at the Evoqua Facility have secondary containment in accordance with the regulations and the Permit. They are either double walled, like tank T-18, (which is a form of secondary containment), or are placed in an external liner, (which is another form of secondary containment). Tanks T-1, T-2, T-5, & T-6 at the Evoqua Facility are surrounded by a curbed concrete pad which is an external liner providing secondary containment. The concrete pad is impervious to spent carbon spills from the tank systems. The secondary containment must be designed or operated to contain 100 percent of the capacity of the largest hazardous waste tank within its boundary. In addition, the secondary containment is required to be maintained as described in Permit condition IV.E of the RCRA Permit.

Units that are part of a wastewater treatment system are exempt from the requirements of 40 CFR Part 264. This includes the requirements at 40 CFR § 264.193 pertaining to secondary containment for hazardous waste management tanks. And, solid waste management units -- including exempt wastewater treatment systems -- are not subject to the Part 264 secondary containment requirements.

As part of a wastewater treatment system, pursuant to 40 CFR § 264.1(g)(6), a wastewater treatment tank would be exempt from permitting under 40 CFR Part 264. Therefore, if it is determined to be part of the wastewater treatment system, T-11 would not be required to have secondary containment in order to comply with RCRA. However, T-11 sits inside a concrete pad that has a six-inch concrete berm around it. This is further described in Section 6.2.6 of the RCRA Facility Assessment, which is Appendix G of the Revised Statement of Basis dated November 2016. Although this berm doesn't meet the requirements for secondary containment for hazardous waste tanks under RCRA, it would, as a practical matter, contain a significant volume of T-11's wastewater, if there was a leak.

As mentioned in response to the previous comment, all tank systems at the Facility, whether hazardous waste management units (HWMUs) or solid waste management units (SWMUs) -- including T-11 -- are inspected daily as per Permit Attachment

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Appendix XII of the Permit. These required daily inspections will help prevent or minimize the occurrence of releases from tanks at the Facility.

As part of the Region's preparation of these responses to the public comments, the Region has evaluated whether T-11 is required to have secondary containment. As part of the wastewater treatment system, and a SWMU, secondary containment would not be required for T-11. However, the Region's analysis regarding T-11's status as either an HWMU or SWMU -- the question about which EPA sought public comment -- has not changed as a result of this evaluation. Rather, the Region continues to characterize T-11 as a SWMU, exempt from the requirements of 40 CFR Part 264, *because* it is part of the wastewater treatment system. As explained in the Region's Proposed Remand Decision, the Region "considers T-11 to be 'part of an on-site wastewater treatment facility....'" See the Region's Proposed Remand Decision at Section 4.2. The Region's analysis, which followed the logical application of RCRA's wastewater treatment unit exemption, has not changed as a result of this comment or the Region's analysis of T-11's secondary containment.

No additional technical information was presented by the comment. Therefore, the Region has determined that the Region's proposal to designate T-11 as a solid waste management unit continues to be appropriate. With this modification, the Permit continues to include all the conditions "necessary to protect human health and the environment" in accordance with RCRA Section 3005(c)(3).

3. The same commenter raised questions about the third item identified in the Region's Proposed Remand Decision, regarding proposed changes to Permit conditions pertaining to the Automatic Waste Feed Cutoff system. The commenter asked why the system's capabilities were not appropriately addressed before the Permit was issued in 2018.

RESPONSE: The Automatic Waste Feed Cutoff (AWFCO) system is an integral part of the carbon reactivation system. It has the ability to stop the waste being fed into the furnace anytime any of the parameters listed in the Permit's Table V-2, ("OPERATING LIMITS AND PARAMETERS"), goes outside of its acceptable range.

Section V.C.5 of the Permit, ("Automated Waste Feed Cutoff Requirements") includes Permit conditions that specify in detail the operation of the AWFCO.

The reactivation furnace at the Facility (RF-2) is considered a Miscellaneous Unit under the RCRA regulations.¹ The Region has regulated the emissions from RF-2 under the

¹ See the definition of "Miscellaneous Unit" in 40 CFR § 260.10. Permit terms and provisions for a Miscellaneous Unit *must* include appropriate requirements from 40 CFR Part 63, Subpart EEE, which are Clean Air Act (CAA) regulations. See 40 CFR § 264.601. See also the definition of "hazardous waste incinerator," at 40 CFR Part 63,

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Permit to include many provisions applicable to hazardous waste incinerators as outlined in Clean Air Act regulations. Even though RF-2 is not an incinerator, the Region determined that RF-2 is enough like an incinerator to warrant application of these regulations to this unit.

The Region therefore selected AWFCO requirements from 40 CFR § 63.1206 that the Region had determined were appropriate requirements to include for this unit, based on the Region's understanding of this unit's operation. However, some of the details of the technical capabilities of this complex AWFCO system became clearer to the Region during the appeal process. During the appeal's oral argument, the Facility operator, Evoqua, clarified its concern with the Permit requirements pertaining to the possible malfunction of the unit's continuous monitoring systems. See the EAB's Docket² at #43 - 05/10/2019 - Oral Argument Transcript Held on April 9 2019, at page 41, line 9 through page 47, line 22.

After the oral argument and all briefings were concluded, the EAB issued its decision regarding the appeal on June 13, 2019. In its decision, the EAB found that the Facility's Startup Shutdown Malfunction Plan (SSMP) "speaks only to what the Permittees must do if the Automated Waste Feed Cutoff system were to fail." *In Re Evoqua Water Technologies LLC*, Order Remanding In Part And Denying Review In Part, 17 E.A.D. 795 at 835, June 13, 2019. 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 waste carbon flow into the furnace "whenever there is a [continuous monitoring system] malfunction or a [Automated Waste Feed Cutoff] system failure." *Id.*, emphasis added. As a result, the EAB remanded Permit conditions V.C.5.b.iii and iv to the Region for reconsideration. *Id.*

On remand, the Region reconsidered the operator/appellant's comments regarding the AWFCO system's limitations and proposed the revisions in accordance with its improved understanding. According to the operator, and as previously acknowledged by EPA, the AWFCO system is not capable of cutting off the waste feed whenever a component of the AWFCO system fails. 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. That is why the Region proposed to delete from Permit Condition V.C.5.b both references to these two situations.

Subpart EEE as further defined in 40 CFR § 260.10.

² The EAB Docket is available online at:

https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/77355bee1a56a5aa8525711400542d23/6c71e3c454ff7fe585258331006adbe2!OpenDocument.

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Since the AWFCO system doesn't have the capabilities to cutoff the feed whenever there is a CMS malfunction or a failure of a component of the AWFCO, then the operator will rely on human intervention (e.g., the system operator, technicians) to cut off the feed when they notice the effects of the malfunction on the unit's operations. The operator conducts calibrations and testing of the AWFCO system, its instrumentation, and the CMS instrumentation on a periodic basis. Some calibrations are done daily, as in the case of the carbon monoxide and oxygen sensors. Other calibrations are performed weekly, monthly, semi-annually, or annually. The calibrations' frequencies are based on the recommendations of the specific instrument's manufacturer.

In addition, the system operator monitors instrumentation on the computerized system's control screen. The system operator, using this computerized system, monitors pressures, temperatures, flows, and voltages for several of the system parameters. Some of the parameters automatically alarm when outside the acceptable ranges with audible and visible alarms. Other parameters show only the value of the parameter and the system operator is trained to look for abnormal values and investigate them. The system operator is also trained to manually cut off the waste feed, if it is not automatically cut off, when there is a failure of one of the components, including any AWFCO or CMS system components.

Based on all the foregoing information, the Region's Proposed Remand Decision to delete Permit Conditions V.C.5.b.iii. (pertaining to CMS malfunctions) and iv (pertaining to AWFCO component failures), was appropriate. The Region acknowledges that it would have been preferable if the decision had been made before the initial Permit was issued. However, this fact does not alter the Region's decision to delete these specific permit conditions.

No additional technical information was presented by the commenter's question. Therefore, the Region has determined that the deletion of Permit Conditions V.C.5.b.iii. (pertaining to CMS malfunctions) and iv (pertaining to AWFCO component failures), is appropriate. The RCRA Permit continues to include all the conditions "necessary to protect human health and the environment" in accordance with RCRA Section 3005(c)(3).

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Appendix C1

Final Remand Administrative Record Index

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5	2019 02 28 Notification of Closure Activity_RF_1.pdf
6	2019 02 28 Permit Mod003_Class_1_Appendix IX_MODULE_IV_Hoppers.pdf
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Appendix C2

Proposed Remand Decision Administrative Record Index

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10. 2019 02 28 Final RCRA Permit Module_IV_REDLINE_FINAL_02_22_2019.pdf
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27. 2019 04 12 Email Reply RE_ Evoqua Repository Notification and Notice of Permit Modifications 001, 002, 003 and 004.pdf
28. 2019 04 12 Email RevisedEvoqua Repository Notification and Notice of Permit Modifications 001, 002, 003 and 004.pdf
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