

**RESPONSE TO COMMENTS
REGARDING
FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT PERMIT
ISSUED TO HERITAGE-WTI, INC.
COVERING HAZARDOUS WASTE INCINERATOR
FACILITY AT 1250 ST. GEORGE STREET, EAST LIVERPOOL, OHIO
(AKA "WTI FACILITY" OR "FACILITY")**

A. INTRODUCTION

This response is issued pursuant to Title 40 of the Code of Federal Regulations (40 CFR), Section 124.17, which requires that any changes of draft permit conditions be specified along with the reason for the change; that all significant comments be described and responded to; and that any documents cited in the response be included in the administrative record. Comments were requested regarding the United States Environmental Protection Agency's (U.S. EPA) tentative determination to reissue a RCRA permit to the Permittee.

A public notice was published in the Morning Journal and the Review Newspaper and a radio announcement was aired on WOGF 104.3 Country Radio on April 21, 2008. A 45-day public comment period commenced on April 22, 2008 and ended on June 6, 2008. Due to great public interest, the public comment period was extended to August 27, 2008. Public meetings were held on May 6 and August 6, 2008, respectively, at the Port Authority for Columbiana County, 1250 Saint George Street, East Liverpool, Ohio.

Additionally, pertinent information and materials were available at the East Liverpool Public Library, located at 219 E. Fourth Street, East Liverpool, Ohio.

Comments on the draft federal RCRA permit were received from Heritage-WTI, Inc.

B. RESPONSE TO COMMENTS

COMMENTS SUBMITTED BY HERITAGE-WTI, INC. (WTI)

1. **Expiration Date, page i**

WTI's Comments: (1) The draft permit includes a termination date of March 23, 2015, which will be less than 7 years from the effective date of the permit; (2) 40 CFR § 270.50(a) allows the U.S. EPA to issue a permit for a duration as long as 10 years; (3) the shorter duration for the permit was chosen to correspond with the termination date of the Ohio RCRA permit; (4) however, the Ohio RCRA permit that was issued in March 2005 is being appealed and the resolution of that appeal could impact the permit expiration date of that permit; (5) in addition, requiring WTI to apply to renew both the federal RCRA permit and the Ohio RCRA permit at the same time would be unnecessary and burdensome. The comment requests that EPA issue the final Federal RCRA permit for a period of ten years.

EPA's Response: The permit expiration date in the draft federal RCRA permit, which is the same as the Ohio EPA's permit expiration date (i.e., March 23, 2015), was originally intended to facilitate the permit reapplication process for the federal RCRA permit and the Ohio RCRA permit. The request by WTI, however, is reasonable and therefore approved. The expiration date of the final permit will be ten (10) years from the effective date of the final permit.

2. **Authorized Activities, pages i and ii, and Condition I.A, page 1 of 28**

WTI's Comments: There is a potential ambiguity that "permit" implies both the federal and Ohio RCRA permit. To avoid possible confusion regarding the permit subject to appeal action, WTI requests that the second paragraph on page ii be modified to read:

Page ii, 2nd paragraph: "This permit contains the effective federal RCRA permit conditions. The Permittee also has an effective state RCRA permit which contains permit conditions issued by the State of Ohio's RCRA program authorized under 40 CFR Part 271. Any hazardous waste activity which requires a RCRA permit and is not included either in this permit or the state RCRA permit is prohibited."

Condition I.A, 1st paragraph: "This permit contains the effective federal RCRA permit conditions. The Permittee also has an effective state RCRA permit. . . . Any hazardous waste activity which requires a RCRA permit and is not included either in this permit or the state RCRA permit is prohibited."

EPA's Response: The proposed changes provide further clarification of the original intent. Therefore, EPA accepts the proposed changes and will include language in the final permit that is similar to that proposed in the comment.

3. **Permit Approval, page ii, and Condition I.J.2, page 9 of 28**

WTI's Comments: WTI commented that they must comply with an unspecified universe of documents, attachments, submittals, regulations, and statutory provisions that are significantly greater than the permit document itself and that the permit language cited in the comment appears to nullify 40 CFR § 270(a).

EPA's Response: The permit language cited in the comment is long-standing boilerplate language and EPA declines to delete such language. EPA disagrees with the statement that the permit requires WTI to comply with an unspecified universe of documents, attachments, submittals, regulations, and statutory provisions, if the use of the word "unspecified" is intended to suggest that it is not possible to ascertain which documents, attachments, submittals, regulations and statutory provisions fall within the scope of the permit language. While EPA agrees that there won't be any attachments to the final permit, EPA disagrees with the statement that citing regulatory provisions with which WTI must comply, rather than reproducing the language of the regulatory provisions in the permit in their entirety, somehow nullifies 40 CFR § 270(a).

4. **Condition I.A, 2nd paragraph, 4th line, page 1 of 28**

WTI's Comments: The word "part" between "promulgated under" and "40 CFR Part 268" should be deleted.

EPA's Response: EPA agrees with WTI's comment. It is a typographic error and has been corrected in the final permit.

5. **Condition I.E.10 through 16, page 5 of 28 through 7 of 28**

WTI's Comments: The Ohio Part B permit contains conditions that are similar to conditions contained in Conditions I.E 10 through 16. Since the draft permit defines the "RCRA permit" to include both the federal RCRA permit conditions and the Ohio RCRA permit conditions, WTI is concerned that an appeal of these conditions in the federal RCRA permit could also bring into question the status of these conditions in the Ohio RCRA permit.

EPA's Response: While EPA does not agree that the potential for an appeal of these conditions in this federal RCRA permit would somehow call into question the analogous provisions in the Ohio RCRA permit, EPA has incorporated the change proposed by WTI as described in item 2 above to clarify that references to the phrase "this permit" means the federal RCRA permit.

6. **Condition I.E.12b, page 5 of 28**

WTI's Comments: The language used in Condition I.E.12b should be revised to be consistent with 40 CFR § 270.30(l)(2)(i) and WTI requested this condition be modified.

EPA's Response: EPA agrees with WTI's comment and will modify Condition I.E.12b for consistency with the cited regulation.

7. **Condition I.E.14.b, page 6 of 28**

WTI's Comments: WTI requested that this condition be modified to be consistent with the underlying regulation of 40 CFR § 270.30(l)(6)(i)(B). WTI requested addition of "which could threaten the environment or human health outside the facility" at the end of Items (2) and (3).

EPA's Response: WTI's request is reasonable and accepted. EPA will modify this Condition for consistency with the underlying regulation, as proposed by WTI.

8. **Condition I.K, page 10 of 28**

WTI's Comments: WTI contends that (1) the RCRA program does not have authority to enforce CAA requirements or permit conditions, (2) By incorporating a general provision requiring compliance with CAA permit limits into a RCRA permit, violations of a CAA permit limit could result in enforcement actions by both the CAA and RCRA programs, (3) This condition could be read as requiring the Permittee to comply with both CAA and RCRA requirements, although some RCRA regulations could be exempted when the Permittee elects to comply with applicable CAA regulations in lieu of 40 CFR Part 264, Subparts AA, BB, and CC, and (4) this condition as currently drafted appears to violate 42 U.S.C. 6905(b). WTI, therefore, requested this condition be deleted and replaced with:

"You must fully comply with the RCRA requirements contained in this permit unless such requirements are deemed satisfied or not applicable due to compliance with Clean Air Act requirements.

EPA's Response: EPA disagrees with the comment's broad interpretation of this condition. The authority of the RCRA program or any other organization within Region 5 is dependent on organizational and management decisions that may not be fully reflected in the names of such Region 5 organizations and it would be impossible to state categorically based on organizational name alone that the RCRA program does not have authority to enforce CAA requirements. In addition, decisions about whether to combine permit conditions based different statutes like RCRA and the CAA in a single permit document are largely within the discretion of the Agency.

EPA disagrees that Condition I.K violates the requirements of 42 U.S.C. § 6905(b), which is generally implemented at the level of Agency regulations, not individual permits. For example, when 40 CFR Part 264, Subparts AA, BB, and CC were promulgated, EPA attempted to eliminate overlap in between CAA/RCRA provisions. Thus, Subparts AA, BB and CC include provisions that allow the Permittee the option in certain circumstances to claim an exemption from the requirements of Subpart AA, BB, and CC where the Permittee is subject to and complying with analogous requirements under the CAA.

However, because the provision could be misinterpreted, EPA proposes to revise the language of I.K to clarify that this permit does not include permit requirements under the Clean Air Act.

9. **Section III, pages 10 of 28 through 15 of 28**

WTI's Comments: WTI requests the deletion of entire Section III in the draft permit. According to conditions III.A.1 and 2, WTI is not required to comply with the Subpart BB requirements in Section III if the equipment is also subject to a regulation in 40 CFR Parts 60, 81, or 63 and WTI elects to document compliance pursuant to that regulation.

EPA's Response: Conditions III.A.1 and III.A.2 provide the Permittee the option of demonstrating compliance with Subpart BB either by documentation of compliance with the RCRA regulations or by documentation of compliance with certain CAA regulations. The language of III.A reflects the language and intent of the exemption in 40 CFR 264.1064(m). EPA does not agree that Section III should be deleted, even when WTI elects to document compliance with 40 CFR Parts 60, 61, or 63.

For the reason stated above, EPA declines to accept WTI's request for removing the entire Section III

10. **Condition III.A.1, 4th line, page 10 of 28**

WTI's Comments: Condition III.A.1, "264" should be inserted between § and 1064 for clarity of regulatory citation.

EPA's Response: EPA agrees with WTI. Change will be made to the draft permit accordingly.

11. **Conditions III.A.2 and II.A.3, pages 10 - 11 of 28**

WTI's Comments: WTI understands that Condition to say that if WTI elects to determine compliance pursuant to the relevant provisions of the regulations in 40 CFR Parts 60, 61, or 63, WTI is not subject to any of the requirements in Section III.

EPA's Response: WTI's interpretation of Condition III.A.2 is correct, subject to the terms in Conditions III.A.3 and III.A.4. EPA has made clarifying revisions to the language in conditions III.A.2 and III.A.3.

12. **Condition III.B.3.b, 1st line, page 12 of 28**

WTI's Comments: The word "valve" should be replaced with "device" for consistency with the cited regulation. "264" should be inserted between § and 1054(b)(1) for clarity.

EPA's Response: EPA agrees with WTI's comments. Changes will be made in the final permit.

13. **Condition III.B.6.a, page 13 of 28**

WTI's Comments: To be consistent with 40 CFR § 264.1057(a), WTI requests that "264.1061, and 264.1062" be added to the end of the sentence.

EPA's Response: EPA agrees with WTI's comments and accepts the proposed changes to the draft permit.

14. **Condition III.B.7.d, page 14 of 28**

WTI's Comments: WTI requests "and recordkeeping" be inserted after "monitoring" for consistency with 40 CFR § 264.1058(e).

EPA's Response: EPA agrees with WIT's comment and the proposed change will be made in the final permit. In addition, EPA has added the phrase "as specified in 40 CFR § 264.1058(e)" at the end of the sentence to improve clarity.

15. **Condition III.B.10, page 14 of 28**

WTI's Comments: WTI believes that "hazardous waste management unit" applies to the entire tank farm and not to an individual tank in the tank farm.

EPA's Response: The phrase "(e.g., all interconnected tanks in a tank farm or other hazardous waste management unit)" will be added after "hazardous waste management unit" for clarification.

16. **Section IV, page 15 of 28 to 27 of 28**

WTI's Comments: According to WTI's Title V permit, the tanks and containers that would be subject to 40 CFR Part 264, Subpart CC, are subject to the requirements in 40 CFR Part 61, Subpart FF, National Emission Standards for Benzene Waste Operation. Therefore, pursuant to this provision and 40 CFR § 264.1080(b)(7), the requirements in Section IV do not apply to WTI. WTI requests that Section IV be revised by deleting all

the requirements in Section IV except for the requirements in Conditions IV.A.1 through IV.A.3.b.

EPA's Response: There may be circumstances in which the Benzene Waste Operation NESHAP does not apply to a hazardous waste management unit or units at WTI and circumstances in which, although the NESHAP applies to a unit or units, it doesn't require that air emissions be controlled from that unit or units. In these circumstances, WTI must comply with the requirements of Section IV for the unit or units, as specified in Section IV.A.3. Therefore, EPA does not agree with WTI's request to delete most of Section IV.

In addition, EPA has included clarifying language in Condition IV.A.1 and in IV.A.1.b, which deals with the application of the exemption in 40 CFR §264.1080(b)(7) to tanks within enclosures, to better specify the intent of those provisions.

Please note that Section IV also contains site-specific conditions that are necessary to ensure the safe design, construction, maintenance and operation of equipment subject to Section IV of the permit (40 CFR § 264.31) and for protecting human health and the environment (40 CFR §270.32(b)(2)).

17. **Condition IV.A.1, page 15 of 28**

WTI's Comments: WTI requests confirmation from EPA that if WTI elects to determine compliance pursuant to the relevant provisions of the regulations in 40 CFR Parts 60, 61, or 63, WTI is not subject to any of the requirements in Section IV.

EPA's Response: The election available to the permittee in Section IV.A (which is based on the provisions of 40 CFR § 264.1080(b)(7)) allows the permittee to elect to exempt a hazardous waste management unit from the requirements of 40 CFR Part 264, Subpart CC under certain circumstances. For each unit for which the election is to be made, the permittee must be able to demonstrate that the permittee is entitled to make the election for the unit and that the permittee has followed the procedure in the Section IV.A for making the election. Each hazardous waste management unit for which the permittee successfully makes this election is no longer subject to the requirements of Section IV of the permit, except as otherwise specified in Section IV.A.

Please note that Section IV.E applies to closed-vent systems and control devices, which are not in themselves hazardous waste management units, but rather air emission control devices. The permittee must fully comply with all requirements of Section IV. E if there are any hazardous waste management units for which the election in IV.A is not in effect and which rely on these air emission control devices to meet the requirements of Section IV .

18. **Condition IV.A.1.a, last line, page 16 of 28**

WTI's Comments: "40 CFR § 264.10089(a)" should be revised to read: "40 CFR § 264.1089(a)"

EPA's Response: The final permit will be revised to reflect this change.

19. **Condition IV.C.2.b(4), last sentence, page 19 of 28**

WTI's Comments: To clarify the applicability of this Condition, WTI proposes to revise the first sentence of Condition IV.C.2.b(4) by clearly specifying that the tanks to which the Condition applies are the tanks "identified in Condition IV.C.2."

In addition, WTI states that the nitrogen blanketing system is not for the purpose of reducing the organic vapors, but instead it is for displacing oxygen in the tank head space. WTI proposes to replace the phrase "reduce organic vapors" with "displace oxygen."

EPA's Response: WTI's interpretation of the tanks to which the Condition applies is correct. The proposed language will be added to the final permit.

The nitrogen blanketing system serves to reduce the oxygen concentration in the head spaces in tanks, thereby reducing the potential of fire/explosion. It is a general industry practice for flammable/combustible liquids. When oxygen concentration is reduced by nitrogen blanketing, it also potentially reduces the organic vapors in the head spaces, which also depends on factors such as tank turnovers and associated piping design.

Once oxygen enters into a tank, nitrogen would only dilute - not replace - the oxygen. Since Section IV addresses basically organic vapor emissions, EPA determines that there is no need for changing from "reduce organic vapors" to "replace organic vapors."

20. **Condition IV.D.1.c, page 21 of 28**

WTI's Comments: In accordance with 40 CFR § 264.1086(c)(2), "closure" should be used in lieu of "enclosure" to be consistent with the citation.

EPA's Response: EPA agrees with WTI's comment and it will be changed in the final permit.

21. **Condition IV.D.2.a(2), page 22 of 28**

WTI's Comments: WTI believes the second "organic" is unnecessary in ".... organic organic emissions as...."

EPA's Response: The final permit will be revised to reflect this change.

22. **Condition IV.E.3.c, 1st line, page 24 of 28**

WTI's Comments: WTI proposes to delete "fresh" from the first sentence and add "Prior to placing a carbon box back in service after the spent carbon has been removed, the Permittee shall ensure the carbon box contains fresh carbon in the quantity or volume identified in this Condition."

EPA's Response: WTI's proposed revision is consistent with the intent and provides additional clarity of this Condition. Therefore, EPA agrees with WTI's recommendation. This Condition will be modified accordingly in the final permit.

23. **Condition IV.E.3.f(2), page 25 of 28**

WTI's Comments: On March 9, 2007, WTI notified EPA of a nonmaterial modification to its Routine Maintenance Procedure pursuant to paragraph 30 of the Consent Decree and provided EPA with a copy of the revised Routine Maintenance Procedure. In order to avoid inconsistency with this Condition in the future, WTI proposed to replace the first sentence in this Condition with the following:

"Whenever breakthrough between a primary and a secondary carbon box occurs, you must change out the primary box within the 12 hour and 48 hour time limitations set forth in the applicable paragraphs of the current version of the Routine Maintenance Procedure submitted to EPA or approved by EPA and the court as required by the Consent Decree; which paragraphs are incorporated herein by reference."

EPA's Response: Due to the possibility of future modifications to the Routine Maintenance Procedure, EPA agrees with WTI's proposed change to this Condition. The final permit will be modified by revising the first sentence to read as follows:

"Whenever breakthrough between a primary and a secondary carbon box occurs, you must change out the primary box within the 12 hour and 48 hour time limitations set forth in the applicable paragraphs of the current or most recent version of the Routine Maintenance Procedure that became effective under the terms of the Consent Decree; which paragraphs are incorporated herein by reference."

24. **Condition IV.E.3.h, page 25 of 28**

WTI's Comments: This Condition conflicts with the requirements contained in the Consent Decree. WTI proposed to replace "40 CFR Part 266, Appendix IX" with "paragraphs 33 and 34 of the Consent Decree which are incorporated herein by reference."

EPA's Response: EPA agrees with WTI's comments and this Condition will be modified in the final permit as proposed.

25. **Condition IV.E.5, page 26 of 28**

WTI's Comments: The Consent Decree contains requirements that are required or inappropriate under this RCRA permit. WTI will continue to comply with the Consent Decree and proposed to add "After the Consent Decree is terminated, the Permittee may submit a Class I permit modification request to delete this Condition."

EPA's Response: EPA agrees with WTI and the proposed language will be added to the final permit.

26. **Condition IV.F, page 26 of 28**

WTI's Comments: The citation in the heading appears to be misquoted. It should have been 40 CFR 264.1082(c)(1).

EPA's Response: The final permit will be revised to reflect this change.

27. **Condition V.B.2, page 28 of 28**

WTI's Comments: WTI commented that: (1) the extruder is provided with nitrogen blanketing and not operated under negative pressure, (2) the extruder is subject to 40 CFR Part 61, Subpart FF. WTI, therefore, proposed this Condition be modified to read as follows:

"The process chamber (extruder/crusher) unit shall be provided with a nitrogen blanket and vented through a closed-vent system that meets the requirements of Condition IV.E.1 and IV.E.2 of this permit to a control device(s) that meets the requirements of Condition IV.E.3 through IV.E.5 of this permit unless the requirements of Condition IV.A are satisfied."

EPA's Response: If the extruder/crusher unit is operated under positive pressure, WTI must make sure that there are no leaks to the atmosphere while the unit is operating under a positive pressure. Nitrogen blanketing would reduce only the oxygen concentration for preventing fire/explosion. The phrase "negative pressure" will be removed from the final permit, but a requirement to ensure that there are no emissions to the atmosphere when the unit is operating under a positive pressure will be added.

EPA disagrees with WTI's claim that Condition IV.E.1 through IV.E.5 are not applicable if WTI elects to exempt the unit because it is equipped with and operating emission controls in accordance with the requirements of a applicable Clean Air Act regulation under 40 CFR Parts 60, 61, or 63. The Subpart CC exemption in 40 CFR 264.1080(b)(7) applies only to hazardous waste in tanks, surface impoundments, or containers subject to either subpart I, J, or K of 40 CFR Part 264. Since the extruder/crusher unit is regulated under 40 CFR Part 264, Subpart X, it is not qualified for exemption under the CC Rule.

The Permittee may submit a request for a permit modification pursuant to the provisions of 40 CFR § 264.601 and 40 CFR §270.42(d) to exempt the unit from Condition V.B.2, and should submit along with the request documentation that the unit is regulated under 40 CFR Part 61, Subpart FF under terms that are comparable to the terms and conditions that are applicable to the unit under this permit. Since the application of 40 CFR § 264.601 requires judgments about which terms and conditions are appropriate for the miscellaneous unit, Permittee may not submit such a request as a Class I Modification Request without prior Agency approval,

28. **Condition V.B.4, 1st sentence, page 28 of 28**

WTI's Comments: WTI has not found any basis for this requirement in the underlying regulations.

EPA's Response: The basis of the LEL requirement is to prevent potential fire/explosion of the unit under 40 CFR § 264.31 and 40 CFR § 270.32(b)(2). If WTI purges the processing chamber with nitrogen and maintains the oxygen levels in the chamber at or below 5%, the intended results of this Condition have been achieved. The final permit will be revised to include a reference to the oxygen level in lieu of the LEL.

29. **Condition V.B.6, page 28 of 28**

WTI's Comments: This Condition is not based on any regulatory requirements and ignores the fact that the drum extruder pulper unit was modified by WTI after receipt from the manufacturer to allow the unit to satisfy WTI's operational needs. WTI requested that Condition V.B.6 be deleted entirely.

EPA's Response: This Condition was intended to ensure that WTI operates the unit in a safe manner, as required by 40 CFR §§ 264.31 and 270.32(b)(2). In lieu of requiring that WTI operate the unit in accordance with the manufacturer's operating instructions, the final permit will be modified to require that the unit must meet all applicable industrial standards.

30. **Environmental Justice Demographic Analysis memorandum**

WTI's Comments: WTI received a copy of Environmental Justice Demographic Analysis memorandum and requested that EPA not include or attached the Environmental Justice Demographic Analysis memorandum to the final Federal Part B permit because that memorandum adds nothing to permit.

EPA's Response: In the May 6, 2008 meeting, EPA stated that the memorandum is not part of the federal permit, and therefore, it will not be included in the final permit as an attachment.

C. CHANGES TO THE DRAFT PERMIT

1. **First page, Expiration Date**

The expiration date was changed from March 23, 2015 to 10 years from the effective date of this permit (i.e., May 1, 2019). The reasons for the change are described under B.1 above.

2. **Page ii of signature page, 2nd paragraph, first sentence**

This paragraph was modified to read:

"This permit contains the federal RCRA permit conditions. The Permittee also has a state RCRA permit which contains conditions issued by the State of Ohio's RCRA program authorized under 40 CFR Part 271. Any hazardous waste activity which requires a RCRA permit and is not included either in this permit or the state RCRA permit is prohibited."

The reasons for this change are described in B.2 above.

3. **Condition I.A- Effect of Permit, 1st paragraph, Page 1 of 28**

The first two sentences were revised to read: "This permit contains the federal permit conditions. The Permittee also has a state RCRA permit." The last sentence was revised to read: "Any hazardous waste activity which requires a RCRA permit and is not included either in this permit or the state RCRA permit is prohibited."

The reasons for this change are described in B.2 above.

4. **Condition I.A, 2nd paragraph, 4th line, page 1 of 28**

The word "part" before 40 CFR Part 268 was deleted to correct a typographic error.

5. **Condition I.E.12, page 5 of 28**

This Condition was revised by adding the phrase "or any hazardous waste management units that rely on such devices to meet the requirements of this permit" in the first sentence after the word "permit" and by adding the same phrase in the final sentence before condition 1.E.12.a after the word "devices."

Condition I.E.12.b was revised to read: "The Director waives prior inspection and the Permittee may commence treatment, storage, or disposal of hazardous waste if the Permittee has not received notice from the Director of his or her intent to inspect within 15 days of the date of submission of the letter discussed in I.E.12 above, as specified in 40 CFR § 270.30(l)(2)(ii)(B)."

The reasons for these revisions are described under B.6 above.

6. **Condition I.E.14.b, 1st paragraph, 4th and 5th lines**

The phrase "which could threaten the environment or human health outside the facility" was added after "waste" and "facility."

The reasons for this revision are described under B.7 above.

7. **Condition I.K, page 9 of 28**

This condition has been revised to read as follows: "You must fully comply with the requirements contained in this permit. This permit does not include the requirements imposed by the Clean Air Act. See B.8 for the reasons of this change.

8. **Condition III.A.1, 4th line, page 10 of 28**

"40 CFR § 1064" was revised to read: "40 CFR 264.1064" to correct a typographic error.

9. **Condition III.A.2, page 10 of 28**

This condition was revised to read: "If the Permittee elects to determine compliance with the regulations at 40 CFR Part 264 Subpart BB by documentation of compliance with the regulations at 40 CFR Part 60,61, or 63, as specified in 40 CFR § 264.1064(m), the air emission standards for equipment leaks specified hereinafter shall not apply, except as specified in III.A.3 and III.A.4." This change was made to more closely track the language of the regulation, as explained in B.11 above.

10. **Condition III.A.3, page 10 – 11 of 28**

The first sentence was revised by substituting the phrase "The election in III.A.1-2" for the original phrase "The exemption in III.A.2" for consistency of terminology and to

emphasize that the referenced election is described both in III.A.1 and III.A.2. The second sentence was revised to eliminate the word “of” (a typographical error) after “any period” and to substitute the phrase “would otherwise be” for the word “is” after the phrase “any piece of equipment in your facility”. The substitution of the phrase “would otherwise be” is intended to clarify that the subject of the second sentence is any piece of equipment at your facility that would be subject to the requirements of 40 CFR Part 264 Subpart BB if the election in Conditions III.A.1-2 were not taken into account. The final portion of this condition was revised by inserting “40 CFR Part 264” in front of “Subpart BB” to clarify the regulation being referenced.

11. **Condition III.B.3.b, 1st line, page 12 of 28**

The word "valve" was replaced with "device" and "264" was inserted between § and 1054(b)(1).

The reasons for this revision are described in B.12.

12. **Condition III.B.6.a, page 13 of 28**

The phrase "264.1061 and 1062" was added to the end of the sentence.

The reasons for the revision are described in B.13.

13. **Condition III.B.7.d, page 14 of 28**

The phrase "and recordkeeping" was added between "monitoring" and "requirements." and the phrase "as specified in 40 CFR § 264.1058(e)" was added at the end of the sentence.

The reasons for these revisions are described in B.14.

14. **Condition III.B.10, 1st sentence, page 14 of 28**

The phrase "(e.g., all interconnected tanks in a tank farm or other hazardous waste management unit)" was added after "waste management unit."

The reasons for this change are described under B.15

15. **Condition IV.A.1, page 15 of 28**

The phrase "(except as specified in this Section IV.A)" was added after the phrase "Section IV of this permit," and the phrase "satisfying the requirements of 40 CFR § 264.1080(b)(7)" was added after the word "certification." The reasons for these changes are described under B.16

16. **Condition IV.A.1.a, last line, page 16 of 28**

The phrase "§ 264.10089(a)" was revised to read: "§ 264.1089(a)" to correct a typographic error.

17. **Condition IV.A.1.b, page 16 of 28**

The phrase "hazardous waste management unit to be exempted under IV.A.1 is a" was inserted before the word "tank." The phrase "as required by 40 CFR § 264.1080(b)(7)" was added at the end of the sentence. The reason for these changes are described under B.16.

18. **Condition IV.C.2.b.(4), first line, page 19 of 28**

The phrase "identified in Condition IV.C.2" was added between "tanks" and "must."

The reasons for this revision are described in B.19.

19. **Condition IV.D.1.c, second line, last paragraph, page 21 of 28**

The word "enclosure" was replaced with "closure."

The reasons for this revision are described in B.20.

20. **Condition IV.D.2.a(2), page 22 of 28**

The word "organic" in first line was deleted to correct a typographic error.

21. **Condition IV.E.3.c, page 24 of 28**

The word "fresh" in the first line was deleted. The following sentence was added to the end of the paragraph:

"Prior to placing a carbon box back in service after the spent carbon has been removed, the Permittee shall ensure the carbon box contains fresh carbon in the quantity or volume identified in this Condition."

The reasons for this revision are described in B.22.

22. **Condition IV.E.3.f(2), first sentence, page 25 of 28**

The first sentence was revised to read: "Whenever breakthrough between a primary and a secondary carbon box occurs, you must change out the primary box within the 12 hour and 48 hour time limitations set forth in the applicable paragraphs of the current or most recent version of the Routine Maintenance Procedure that became effective under the terms of the Consent Decree; which paragraphs are incorporated herein by reference."

The reasons for this revision are described in B.23.

23. **Condition IV.E.3.h, page 25 of 28**

The phrase "40 CFR Part 266, Appendix IX" was replaced with "paragraphs 33 and 34 of the Consent Decree which are incorporated herein by reference."

The reasons for this revision are described in B.24.

24. **Condition IV.E.5, page 26 of 28**

The following sentence was added at the end of this paragraph: "After the Consent Decree is terminated, the Permittee may submit a Class I permit modification request to delete this Condition."

The reasons for this revision are described in B.25.

25. **Condition IV.F heading, page 26 of 28**

The citation 40 CFR § 264.1082(c)(2) was revised to read: "40 CFR § 264.1082(c)(1)" to correct a typographic error.

26. **Condition V.B.2, page 28 of 28**

This Condition was revised to read: "The process chamber (extruder/crusher) unit shall be provided with a nitrogen blanket and vented through a closed-vent system that meets the requirements of Condition IV.E.1 and IV.E.2 of this permit to a control device(s) that meets the requirements of Conditions IV.E.3 through IV.E.5 of this permit. The Permittee must ensure that there is no leak to the atmosphere when the unit is operating under a positive pressure."

The reasons for this revision are described in B.27.

27. **Condition V.B.4, page 28 of 28**

This Condition was revised to read: "The processing chamber and the pulping tank shall be provided with nitrogen to reduce the oxygen concentration in the chamber at or below 5 %. Oxygen sensors, or equivalent monitoring equipment, must be operated and maintained."

The reasons for this revision are described in B.28.

28. **Condition V.B.6, page 28 of 28**

This Condition was revised to read: "The drum extruder pulper unit must meet all applicable industrial safety standards."

The reasons for this revision are described in B.29.

D. DETERMINATION

Base on a full review of all relevant data provided to the U.S. EPA, the U.S. EPA has determined that the final permit contains such terms and conditions necessary to protect human health and the environment.

APPENDIX A

OTHER DOCUMENTS RECEIVED BY EPA DURING THE PUBLIC COMMENT PERIOD

The provisions of 40 CFR § 124.17(a)(2) require EPA to briefly describe and respond to all significant comments on the draft permit that are raised during the public comment period, or during any public hearing.

The public comment period enables interested members of the community to submit information pertaining to the permit decision process for review by EPA before it makes a permit determination. As the Environmental Appeals Board (EAB) has explained, “[t]he effective, efficient and predictable administration of the permitting process demands that the permit issuer be given the opportunity to address potential problems with draft permits before they become final.” In re: Indeck-Elwood, LLC, PSD Appeal No. 03-04, 2006 EPA App. LEXIS 44 (EAB September 27, 2006) (quoting In re Teck Cominco, 11 E.A.D. 457, 479 (EAB 2004) and In re Encogen Cogeneration Facility, 9 E.A.D. 244, 249-50 (EAB 1999)). “In this manner, the permit issuer can make timely and appropriate adjustments to the permit determination, or, if no adjustments are made, the permit issuer can include an explanation of why none are necessary.” Indeck-Elwood, LLC (quoting In re Essex County (N.J.) Res. Recovery Facility, 5 E.A.D. 218, 244 (EAB 1994)).

Comments submitted by the public during a comment period, however, must be sufficiently specific. Indeck-Elwood, LLC (quoting In re Arcibo & Aquadilla Regional Wastewater Treatment Plants, NPDES Appeal Nos. 02-09 & 03-05, slip op. at 28-29 (EAB, March 1, 2005)). “[T]he ‘dialogue’ between administrative agencies and the public ‘is a two-way street.’ Just as ‘the opportunity to comment is meaningless unless the agency responds to significant points raised by the public,’ so too is the agency’s opportunity to respond to those comments meaningless unless the interested party clearly states its position.” Indeck-Elwood, LLC (quoting In re Spokane Reg’l Waste-to-Energy Applicant, 2 E.A.D. 809, 816 (Adm’r 1989) and Northside Sanitary Landfill, Inc. v. Lee M. Thomas, 849 F.2d 1516, 1520 (D.C. Cir. 1988)).

DOCUMENTS SUBMITTED BY SAVE OUR COUNTY, INC. (SOC)

Mr. Alonzo Spencer submitted several letters on behalf of Save Our County, Inc. (SOC) to EPA during the public comment period.

1. Letter Dated May 18, 2008

SOC’s Letter: SOC’s letter states that the true ownership of the hazardous waste facility located in East Liverpool, Ohio, over many years has caused a great deal of controversy, some believing that controversy has led to conspiracy. SOC’s letter attaches a number of questions about the ownership and operational control of and changes in top management for that facility in order to determine how far that conspiracy has traveled and who is involved.

Discussion: The letter is primarily a request for information and does not raise a specific objection to the draft federal RCRA permit or specific conditions in the draft permit that would permit EPA to adjust the permit determination or explain why no adjustments are necessary to the permit determination. EPA thus does not regard this

letter as a comment that requires a formal response under 40 CFR § 124.17(a)(2). EPA provided a separate response by letter dated June 10, 1998.

Nevertheless, because the permit must identify the owner and operator of the facility and because this letter requests information about the owner and operator of the facility, EPA has placed SOC's letter, EPA's response, and additional source materials regarding the identity of the owner and operator in the administrative record for the final permit decision. These documents indicate that Von Roll America, Inc., owns and has owned the property on which the WTI facility is located since 1998, and that Von Roll America, Inc., changed its name by amendment to its Certificate of Incorporation in early 2008 to Heritage-WTI, Inc.

2. Letter Dated June 10, 2008

SOC's Letter: SOC's letter states that they are aware that WTI has a crane installed scale used to calculate the predetermined amounts of a particular hazardous waste that can be charged to the incinerator at any given time and presents several questions.

Discussion: The comments and questions regarding the crane installed scale bear no relation to any condition of the draft federal RCRA permit. EPA thus does not regard this letter as a comment that requires a formal response under 40 CFR § 124.17(a)(2). EPA provided a separate response to SOC by letter dated June 10, 2008.

3. Letter Dated August 11, 2008

SOC's letter: SOC's letter requests U.S. EPA Region V to launch a full scale investigation to determine if the Ohio EPA has engaged in a conspiracy in their monitoring of the Von Roll of America Hazardous Facility located in East Liverpool. In addition, the letter states that the history of this facility provides ample evidence that [Heritage-WTI, Inc.] is not capable of running the facility safely and that a review of their history will support this conclusion. SOC asserts that the decision of the Ohio EPA to authorize the facility to handle anthrax makes the request urgent and ends with a request that – in order to reduce the likelihood that there may be an increase in respiratory and cancer illnesses in the area – that the facility be ordered to cease operations until the completion of the investigation and its conclusion are made public. The letter listed “ten references that provide documentation that this request has merit and should be accepted.”

The ten references were not originally included with the letter. EPA responded with a letter on August 14, 2008, requesting the documentation and an explanation of how each item is relevant to SOC's request. Mr. Alonzo responded on August 21, 2008, on behalf of SOC and enclosed the documentation described in his earlier letter. The August 21, 2008 letter, however, did not include any discussion about how the documents produced by SOC related to the request that the facility be ordered to cease operations.

Discussion:

EPA does not regard this letter as a comment that requires a response under 40 CFR § 124.17(a)(2). There is no reference in the letter to the draft federal RCRA permit or to any condition of the draft federal permit, as discussed below.

SOC's request that Region 5 initiate an investigation to determine whether Ohio EPA had engaged in a conspiracy in their monitoring of the facility and that the facility be ordered to cease operations until the investigation is complete are not matters that can be addressed in the context of this permitting decision. These aspects of the letter were referred for review and response to Region 5 staff that do not have responsibilities associated with the permitting decision for this facility.

SOC's letter does assert that "[t]he history of this facility provides ample evidence that they are not capable of running a facility safely. A review of their history will support this conclusion," basing this assertion on the following documents:

1. "Recommended Decision and Order Granting Relief," in the case of Donna L. Trueblood v. Von Roll America, Inc. D.B.A. WTI or Waste Technology, Inc. and Heritage Environmental Services, Inc., dated March 26, 2003. This appears to be the decision and order of an Administration Law Judge of the U.S. Department of Labor who concluded that Von Roll America, Inc., had an informal and unlawful policy under which employees were to first report environmental compliance issues to management or supervisors before reporting such issues to environmental agencies, and that VRA took adverse personnel action against the complainant for violating this policy. The ALJ found for the complainant, and among other things, required Von Roll America, Inc., to post notices at all facilities stating that policies like VRA's are unlawful and that VRA had been legally sanctioned for trying to enforce such a policy at their East Liverpool facility.

SOC's letter contains no discussion about the significance of this document for the permit decision regarding the federal RCRA permit for Heritage-WTI, Inc. In addition, there is no discussion about whether this decision in 2003 was appealed and no discussion about whether Von Roll America, Inc. has complied or has not complied with the order.

2. "Appellant's Proposed Findings of Facts And Conclusions of Law," in the case of Alonzo S. Spencer v. Joseph Koncelik, Director of Environmental Protection and Von Roll America, Inc., before the Environmental Review Appeals Commission, State of Ohio, accompanied by a Certificate of Service dated December 2007. This proceeding apparently pertains to an appeal of the RCRA permit granted to Von Roll America, Inc. by the State of Ohio for the WTI facility.

This 30-page document contains an extensive exposition of the theory of Mr. Spencer's appeal of a permit granted by the Ohio EPA for the WTI facility. This document alleges that the Ohio director is not authorized to renew such a permit unless the director has made a specific finding that there has been a history of compliance with environmental laws. The document further alleges that the director's finding in the case of the permit for the WTI facility that there had been a history of compliance was contrary to law, unreasonable and without factual foundation, and it challenged the decision of the Ohio EPA director to renew the permit as contrary to law, unreasonable and without factual foundation.

SOC's letter contains no discussion about the significance of this document for the permit decision regarding the issuance of a federal RCRA permit for

Heritage-WTI, Inc., at the WTI facility. There is no indication whether or to what extent the proposed findings of fact and conclusions of law may have been adopted by the Ohio Environmental Review Appeals Commission. In addition, even if the findings of fact and conclusions of law were adopted by ERAC, the letter does not explain how they would be significant for the permit decision regarding the federal RCRA permit for the WTI facility. Under the federal RCRA program, while a permit applicant must be in current compliance with the requirements of RCRA before a federal RCRA permit can be issued, RCRA Section 3005(c)(1), 42 U.S.C. § 6925(c)(1), there is no requirement for EPA to make an affirmative finding that a permit applicant has a *history* of compliance before permit issuance or renewal. Indeed, EPA's Environmental Appeals Board has stated that "the Board has no jurisdictional basis to review a permit based solely on a company's past compliance history." In re Envotech, L.P., 6 E.A.D. 260, 273 (EAB 1996). The Board has also stated that, "concerns regarding a permittee's past violations 'do not, without more, establish a link to a 'condition' of [a UIC permit], and thus do not provide a jurisdictional basis for the Board to grant review. See 40 C.F.R. § 124.19. . . . [citations omitted]. A permit will not be denied due to a permittee's past practices absent a showing that 'no matter what conditions or terms are put into the permit, compliance with the permit cannot ensure protection of USDWs.'" In re: Puna Geothermal Venture, UIC Appeal Nos. 99-2, 99-2A, 99-2B, 99-3, 99-4 & 99-5 (EAB June 27, 2000) (quoting Envotech, 6 E.A.D. at 274). Note that federal RCRA permits and federal UIC permits are both processed under 40 CFR Part 124.

EPA has inquired into the current compliance status of the WTI facility under the RCRA program. EPA is satisfied that its inquiries indicate that the WTI facility is in current compliance with the RCRA program as of December 31, 2008. See email from Michael Cunningham to James Blough, dated December 31, 2008, "Re: Question about the current compliance status at WTI;" see also email from Patricia Natali to James Blough, dated December 16, 2008, "Re: Question about the current compliance status at WTI."

3. Memorandum from Bryan Zima to Karen Haight, dated April 8, 2003; and memorandum from Karen Haight to Christopher Jones, dated June 12, 2003. These memorandums on Ohio EPA letterhead discuss allegations of wrongdoing by an employee of Ohio EPA, including among other allegations a failure to properly maintain air monitors in and around East Liverpool, OH. These documents do not appear to be relevant to the decision regarding a federal RCRA permit for Heritage-WTI, Inc., at the WTI facility, and SOC's letter contains no discussion about their significance. Redacted copies of these memorandums have been placed in the administrative record for the federal RCRA permit, and complete copies of the memorandums have been placed in a confidential section of the administrative record.
4. Summary of an industrial accident in which a WTI employee found the body of a trucker at the bottom of a tanker truck. This document does not appear to be relevant to the decision regarding a federal RCRA permit for Heritage-WTI, Inc., at the WTI facility, and SOC's letter contains no discussion about its significance.
5. Copy of an unsigned letter from Alonzo Spencer to the Franklin County Prosecuting Attorney alleging perjured testimony and a conspiracy to defraud by

an Ohio EPA employee about Von Roll's reporting regarding the Charter Oil spill cleanup and asserting that Von Roll/ WTI facility is a Significant Non Compliant (SNC) facility and has been for the past twelve (12) quarters. These allegations in an unsigned letter do not appear to be relevant to the decision regarding a federal RCRA permit for Heritage-WTI, Inc., at the WTI facility, and SOC's letter contains no discussion about their significance.

The unsigned letter from Mr. Spencer also questions the legitimacy of the ownership and operational control of the WTI hazardous waste incinerator, cites the necessity for new owners and operators to undergo the rigorous requirements of a C3 Permit Modification, and offers the opinion that "[a]bsent a definitive determination as to ownership and operational control, the distinct possibility exists" that responsibility and liability for the facility rests with the original owner of the property on which the facility stands, Columbiana County Port Authority. Please see the discussion above in connection with the description of SOC's letter dated May 18, 2008, about the identity of the owner and operator of the WTI facility. In addition, the federal RCRA regulations do not include provisions for "C3" permit modifications. EPA did, however, process a Class 1 permit modification on March 2, 1998, to approve Von Roll America, Inc., as the sole owner and operator listed on the federal RCRA permit for the WTI facility. As noted above, Von Roll America, Inc. (renamed Heritage-WTI, Inc.) remains the owner and operator of the WTI facility.

The unsigned letter also has attachments, including an OEPA memorandum, several emails, two unexplained excerpts from unidentified transcripts, and a letter from Ohio EPA addressed to the Charter Oil Facility Site Coordinator dated October 2, 2002, which makes a reference to an NOV issued by Ohio EPA on August 14, 2002. SOC's letter does not include any discussion about how these attachments are significant for the permit decision for the federal RCRA permit for Heritage-WTI, Inc. In addition, please see the copy of the NOV and the copy of a letter from OEPA to Von Roll America dated February 3, 2003 that indicates that the violations in the NOV had been resolved. Both of these documents have been placed in the administrative record for the federal RCRA permit.

6. Copy of Proposed Director's Final Findings and Orders – Von Roll America, Inc., d.b.a Waste Technologies Industries, dated November 16, 1999, alleging numerous violations discovered by Ohio EPA during a number of investigations conducted since 1996. SOC's letter does not include any discussion about how this document is significant for the permit decision for the federal RCRA permit for the WTI facility. However, see the discussion above with respect to document 2 that indicates that as of December 31, 2008, there are no enforcement actions pending against WTI under RCRA either by EPA or by Ohio EPA.
7. A copy of a request dated July 25, 2007, to the Fire Marshall of the Division of State Fire Marshall, requesting all Fire Reports for Von Roll America at the WTI facility from 2000 through the present. There are no copies of any fire reports at the WTI facility accompanying the copy of the request attached to SOC's letter. SOC's letter contains no discussion about the significance of this document for the permit decision regarding the federal RCRA permit for the WTI facility.

8. Cover page of a deposition transcript for Vincent R. Zumpano on February 23, 1999, accompanied by a Deposition Exhibit (Entry of Order) in the Court of Common Pleas of Jefferson County, Ohio in the case of State of Ohio v. Vincent R. Zumpano, denying Motion for Acquittal, granting Request for Merger of Offenses for Sentencing Purposes, discussing the State's Motion to Revoke Probation, and discussing the Court's offer of transactional immunity to the defendant in exchange for testimony "regarding the Jefferson County Jail and other investigations". SOC's letter does not include any information explaining the significance of this document for the permitting decision involving the draft federal RCRA permit for the WTI facility.
9. An excerpt titled "Environmental Background Investigation, Chapter 109:6-1, Background Investigation Requirements for Waste Treatment and Disposal Facilities," from an unidentified source. SOC's letter does not include any information explaining the significance of this document for the permitting decision involving the draft federal RCRA permit for the WTI facility.
10. Copy of correspondence from Julia R. Bates, Lucas County Prosecutor, to Marc Dann, Ohio Attorney General, dated January 4, 2008. The letter expresses concern about the Environsafe hazardous waste landfill and the application of "the New Jersey owners controlling this hazardous waste landfill" for a waiver of certain disclosure requirements under Ohio law and the failure of these owners to transfer the permit for the landfill into their names as required by Ohio law. Ms. Bates states that the waiver would create "a situation of unaccountable owners and is an important cause of other violations that I would like to discuss with you." SOC's letter does not include any information explaining the significance of this document for the permitting decision involving the draft federal RCRA permit for the WTI facility.