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Carbon Regeneration Facility/TSD Permit: U.S. EPA Environmental Appeals Board Decision Addressing Petition for Review

06/19/2019

The United States Environmental Protection Agency ("EPA") Environmental Appeals Board ("EAB") issued a June 13 decision addressing a Petition for Review of a Resource Conservation and Recovery Act ("RCRA") permit related to a carbon regeneration facility near Parker, Arizona. See RCRA Appeal No. 18-01.

EPA issued to Evoqua Water Technologies, LLC ("Evoqua") and the Colorado River Indian Tribes ("Tribes") a RCRA hazardous waste treatment, storage and disposal permit for the facility.

The facility is stated to be capable of processing over five thousand tons of spent carbon annually. Some of the material is classified as a hazardous waste. It is operated by Evoqua on land beneficially owned by the Tribes.

Region 9 of EPA issued the hazardous waste TSD permit to the facility on September 25, 2018. Evoqua filed an appeal of the permit before EAB on October 25, 2018. The company challenged the permit on nine separate grounds.

The issues raised on appeal include:

- Co-Permittees: Did the Region clearly err or abuse its discretion by issuing the Permit to Evoqua and the Tribes jointly as co-permittees?
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- Application of the National Emission Standards for Hazardous Waste Combustors: Did the Region clearly err or abuse its discretion by including in the Permit certain requirements derived from 40 C.F.R. part 63, subpart EEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors)?
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- Performance Demonstration Tests: Did the Region clearly err or abuse its discretion by requiring periodic Performance Demonstration Tests?
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- Human Health Ecological Risk Assessment: Did the Region clearly err or abuse its discretion by requiring an updated Human Health and Ecological Risk Assessment?
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- Automated Waste Feed Cutoff System: Did the Region clearly err or abuse its discretion by requiring that the Automated Waste Feed Cutoff system shut off the feed of spent carbon under specified conditions?
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- Quality Assurance/Quality Control for the Continuous Emissions Monitoring System: Did the Region clearly err or abuse its discretion by requiring that Quality Assurance/Quality Control for the Continuous Emissions Monitoring System be conducted in accordance with Appendix F of 40 C.F.R. part 60?
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- National Response Center: Did the Region clearly err or abuse its discretion by adding a requirement to report certain instances of noncompliance to the National Response Center?
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- Dispute Resolution: Do the Permit's dispute resolution provisions violate Evoqua's due process right by not specifying that a final decision on dispute resolution is subject to judicial review?
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- Tank T-11: Did the Region clearly err or abuse its discretion by concluding that Tank T-11 is only partially exempt from RCRA regulation?

EAB held that Evoqua did not establish and EPA clearly erred or abused its discretion by issuing a TSD permit jointly to the company and the Tribes as co-permittees or by declining to specify the co-permittees's respective obligations over the permit. Similarly, the company was deemed to have failed in a similar manner in its challenge to the permit provisions requiring periodic Performance Demonstration Testing, and update to the Human Health and Ecological Risk Assessment, and Quality Assurance/Quality Control Procedures for the Continuous Emissions Monitoring System. Its challenge to a dispute resolution was also rejected. Several issues were deemed not preserved for review.

EAB does remand at EPA's request the issue of the appropriate regulation of Tank T-11 to allow further consideration of the issue. Further EAB remands certain permit provisions governing the use of the Automated Waste Feed Cutoff system to allow EPA to fully consider and respond to comments regarding the technical feasibility of complying with these provisions. Finally, EAB remands the permit provision that requires reporting of certain instances of non-compliance to allow EPA to explain why adding the language regarding reporting to the National Response Center.

[A copy of the EAB decision can be downloaded below.](#)