RESPONSIVENESS SUMMARY
FOR
SHELL CHEMICAL YABUCOA, INC.

The purpose of the "Responsiveness Summary" is to allow the United States Environmental Protection Agency ("U.S. EPA" or "EPA") the opportunity to address comments submitted during a public comment period by interested parties concerning the Draft Resource Conservation and Recovery Act ("RCRA") Part B Permit (hereinafter "the Draft Permit") for Shell Chemical Yabucoa, Inc. ("SCYI"). As mandated in the Code of Federal Regulations ("CFR") Section 124.10 (a)(ii), a public notice is required whenever a draft permit has been prepared. On September 22, 2003, EPA provided public notice regarding the Draft Permit. Comments received during the public comment period (September 22, 2003 through August 31, 2004, have been addressed below and were taken into account by EPA in its preparation of the final RCRA Permit. EPA wishes to note that, with rare exceptions, specific comments were not received from the public in bullet-point format. Consequently, the comments listed below were summarized from the various letters and may only address repeated expressions of the same concern once. Nevertheless, EPA has tried to be as complete and thorough as possible in this Responsiveness Summary. Comments received concerning the Draft Permit were also submitted by SCYI. SCYI provided comments on each of the Modules in the Draft Permit. Set forth below are EPA's response to public comments, followed by EPA's response to SCYI's comments.

RESPONSIVENESS SUMMARY
FOR
PUBLIC COMMENTS

A. Transcript of Public Hearing on the Issuance of the Hazardous Waste Storage Permit to Shell Chemical Yabucoa, Inc. (Translation), October 21, 2003.

1. Comment: EPA did not provide the proper notification to the people of Yabucoa for the public hearing. [Commentor: Arturo Arroyo Fernández]

   Response: EPA has provided proper notification and ample opportunities to the community to inform EPA of any comment or concern they may have regarding the draft Permit. Specifically, pursuant to the provisions of 40 CFR §124.10, EPA published a formal Public Notice on page 80 of the newspaper "El Nuevo Día" on September 22, 2003. As stated in the transcript, the Public Notice was also printed in the San Juan Star on September 22, 2003, in both English and Spanish. The Public Notice stated that any interested person may submit comments on the draft Permit. It also provided the address of three locations where any interested person could review the Draft RCRA Part B Permit and other related documents. In addition, the Public Notice indicated that a public hearing (i.e., the first session) was scheduled for October 21, 2003 at the Reynaldo Alvarez Costa Public Library in Yabucoa to discuss the Permit and update community members about the permitting process. Furthermore, EPA informed the public of its

intent to issue the Permit and announced the public hearing schedule on local radio station WALO Radio.

2. Comment: The public hearing was not conducted in Spanish which is the primary language in Yabucoa. [Commentor: Arturo Arroyo Fernández]

   Response: The U.S. EPA normally conducts its business in English. The U.S. EPA representatives who worked on the proposed permit are based in the U.S. EPA Region 2 office located in New York, New York. These are the most knowledgeable representatives on the proposed permit, but they do not speak Spanish. Nevertheless, EPA provided and paid for simultaneous translation services. During the October 21, 2003 meeting, representatives of the public present at the hearing refused the translation services and walked out of the meeting.

3. Comment: A new date should be provided for the public hearing given the lack of notification. The public hearing should also be conducted in Spanish. [Commentor: Arturo Arroyo Fernández and Wanda Morales]

   Response: See the response to Comments A.1 and A. 2, above. As a follow-up to the formal public hearing on the permit held on October 21, 2003, EPA scheduled a public information session for August 17, 2004, in order to discuss the Draft Permit and to update the community members about the permitting process. On July 2, 2004, EPA directly notified most of the people in attendance at the public hearing (i.e., all persons who provided their mailing address) and several others identified by SCYI. EPA also made additional arrangements for public review of the Permit and other documents at the Yabucoa's public library. Regarding the language spoken at the public hearing and public information session, the U.S. EPA normally conducts its business in English. The EPA representatives involved with the proposed permit do not speak Spanish. Simultaneous translation services were provided at both the public hearing and the public information session.

B. Presentation on Shell Chemical Yabucoa, Inc.'s, Petition to Store Toxic Wastes for More than 90 Days. Dr. Carmelo García Ruiz. Dated October 21, 2003.

1. Comment: "How is it possible that for something so sensitive as toxic wastes, Sun Oil and now Shell have operated for over 20 years with a mere provisional license?"

   Response: SCYI acquired the Refinery on December 31, 2001, at which time it obtained the transfer of the RCRA Part A Permit. The Refinery has been operating since 1971. As former owner of the Refinery, Puerto Rico Sun Oil Company (PRSOC) filed a RCRA Part A Permit for its hazardous waste storage facility in November 1980. The RCRA Part A Permit allowed PRSOC to operate on an interim status. PRSOC subsequently filed revised RCRA Part B Permit applications in 1985, 1986, 1989, 1990, 1991, 1993, 1995,

1998, and 2000. On December 20, 2001, after entering into a letter of intent with PRSOC to acquire the Refinery, SCYI filed its RCRA Part A Permit application requesting the transfer of the permit pursuant to the provision in 40 CFR §270.72(a)(4). EPA approved the request. SCYI filed a revised RCRA Part B Permit application in May 2002 to ensure that the permit application accurately reflected current and planned operations. Based on the foregoing, SCYI is allowed to operate under interim status until EPA issues the RCRA Part B Permit.

2. Comment: "How is it possible that Shell has inherited, without any serious effort, a provisional license from the previous company?"

   Response: See the response to Comment B1.

3. Comment: "If these companies operated for over 20 years with said provisional license, who will guarantee us that the EPA will be so diligent that the actual license will operated for only 10 years?"

   Response: Pursuant to Section 3005(c)(3) of RCRA, 42 U.S.C. §6925(c)(3), any permit issued under this section will be issued for a period not to exceed ten years. The permittee may request the renewal of the permit issued. If the permittee submits a timely application to renew the permit, then the permit is extended until EPA acts on the application. The time at which the permit is acted upon will depend on Agency resources and what the priorities are at that time. When EPA acts on the permit renewal application, the terms and conditions of the permit may be modified to ensure that it contains the safeguards necessary to protect human health and the environment and ensure adequate operation of the storage facility. Permit modifications can also occur during the period of the permit.

4. Comment: "What toxic materials and in what quantities are present in the mud and the sediment generated at the Yabucoa plant?"

   Response: As indicated in the RCRA Part B Permit application and draft Permit, the wastes generated at the Refinery are those normally generated at a petroleum refining facility. These wastes include listed hazardous wastes F037, F038, K048, K049, K050, K051, K169, K171, K172, D001, D018, and U154. Individual waste sources are listed and explained in the draft Permit.

5. Comment: "Why does this material have to be stored for more than three months before it is disposed of? We notice the fact that if Shell has to expand its storage facilities, it is because it produces considerable amounts of wastes. What is the problem with transporting these wastes more frequently?"

Response: SCYI has informed EPA that the main reason SCYI has requested a Permit to store the hazardous waste it generates is that there is no adequate hazardous waste treatment or disposal facility for these wastes in Puerto Rico. SCYI's hazardous waste is disposed of in the continental United States. Because it is only practical to ship the hazardous wastes in bulk, rather than by individual small volume containers as they are generated, SCYI requires a Permit to store hazardous wastes on site until sufficient quantities have been generated for shipment.

Another reason for SCYI's request for permitted storage is that a significant portion of the hazardous waste generated at the Refinery is shipped for recycling. However, shipment of recycling materials is dependent upon the receiving schedule of the recycling facility. The receiving schedule varies according to the recycling facility's needs and capacity. Thus, to allow for continued recycling of hazardous wastes, SCYI must occasionally store hazardous wastes on site for longer periods than the 90-day generator accumulation period normally allowed for larger generators of hazardous waste. There is no absolute minimum period or limitation on length of storage of hazardous wastes, The period of storage depends on whether the storage is in a permitted unit (and if not, the generator status of the permittee), the type of waste and the purpose of accumulation of such waste. SCYI has indicated that it does not anticipate storing hazardous waste at the facility for more than one year.

SCYI has informed EPA that it does not expect the generation of hazardous wastes to increase at the Refinery as the result of the Permit issuance or the storage facility improvements. Even though a RCRA Part B Permit allows the owner or operator of a storage facility to store hazardous wastes for a period of more than 90 days, the request for such permit does not necessarily imply that the Facility (e.g., Refinery) will generate more hazardous waste.

Finally, it should be noted that SCYI's Part B Permit Application indicates that some of the hazardous wastes included in the Permit are generated only once every three to five years, and thus it is expected that, at times, the HWSA will be 90 percent empty.

6. Comment: "What are the details of the hydrocarbon spill accidents that took place in the past and how contaminated are the soil and underground waters near the plant?"

Response: All information pertaining to past incidents or spills that occurred at this facility are located within the facility's Administrative Record. These files are available for public review at both of the locations listed below:

U.S. EPA, Region 2
RCRA Records Center, Room 1538
290 Broadway, 15th Floor
New York, NY 10007-1866

Commonwealth of Puerto Rico
Environmental Quality Board (EQB)
National Plaza Building
431 Ponce De Leon Avenue
Hato Rey, PR 00917

The nature and extent of contamination at the facility is documented in the Draft Final RFI Report, dated March, 2005. EPA has recently completed its review of the Draft Final RFI Report and provided comments to SCYI, in a letter (including three attachments), dated August 17, 2005. Additional work requested by EPA in its August 17, 2005 letter to SCYI, will fully delineate all contamination at the Site.

7. Comment: "Why would the EPA grant a permit for toxic waste management in which the corporation is explicitly and prospectively exempted from the subsequently cleaning of other areas in the facilities?"

   Response: Although the Permit generally only applies to hazardous waste management activities (specifically storage), the Permit will also require SCYI to continue investigation and cleanup of specific environmental impact areas identified prior to SCYI's acquisition of the Refinery. As current owner and operator of the Refinery, SCYI is responsible to EPA for managing and implementing any required monitoring or corrective action in such areas. Management and remediation of these impacted area is currently being conducted by PRSOC and SCYI under EPA's supervision.

8. Comment: "If the history of Shell around the world for the last 100 years is full of violations to environmental regulations, what guarantees [the Yabucoan population] that it will be different here in Yabucoa?"

   Response: Several public participants mentioned incidents involving contamination and environmental impact at various other Shell facilities. EPA is not presently aware of any RCRA violations at this facility. Furthermore, EPA has no legal authority to deny a RCRA permit based on allegations of violations or misfeasance elsewhere.

9. Comment: "Can [the Yabucoan people] trust Shell's environmental protection policy?"

   Response: SCYI must follow all requirements of the Permit for both current and future management of hazardous waste, and must also meet Permit requirements with regard to cleanup of past releases that occurred at the site. EPA and the EQB will work with the facility to ensure that all appropriate environmental requirements are met. Appropriate enforcement actions will be implemented in the event that SCYI fails to meet Permit requirements.

10. Comment: "Who will guarantee [the Yabucoan population] that perfume will not be used to mitigate possible harm to the population?"

Response: The basis for this comment is unclear. EPA is not aware of any past incidents involving "perfume" at this facility, nor does EPA expect any such incidents to occur in the future. As previously mentioned, EPA and, we believe, SCYI, are committed to ensuring that SCYI's activities do not pose harm to the environment or the people of Yabucoa. In addition, the Permit includes provisions to protect public health and the environment. Appropriate enforcement actions will be implemented in the event that SCYI fails to meet Permit requirements.

11. Comment: What guarantees are there that accidents and mistakes will not occur at Shell Yabucoa, even though there are numerous documented accidents that have occurred at other Shell locations?

Response: See the response to Comment B.8.

C. Presentation Before the U.S. EPA on EPA's Intent to Grant SCYI a Permit to Store Hazardous Wastes in its Facilities. Luz M. Vega Orozco. October 21, 2003.

1. Comment: EPA has failed to provide the appropriate notice for the public hearings.

Response: See the responses to Comments A1 and A3, above.

2. Comment: SCYI failed to make information available to the public prior to the public hearing. This hindered the public's ability to become familiar with the pertinent issues prior to the hearing in order to participate effectively.

Response: See the responses to Comments A1 and A.3.

3. Comment: "The permit that Shell Chemical is requesting, like that granted to Union Carbide, is to dispose of its toxic wastes, that is, to contaminate and render useless [Yabucoa's] natural resources."

Response: In its RCRA Part B Permit Application, SCYI requested that EPA authorize the expansion of its hazardous waste storage area, in order to make several improvements, including upgrading the existing storage area—planned improvements include a new roof and concrete floor for the back courtyard area, and designating an isolated area for storage of liquid and flammable wastes. See also Response to Comment B.5.

SCYI has informed EPA that it has not treated and/or disposed of hazardous waste at its Facility, and does not anticipate such activity. Moreover, treatment and/or disposal at the

Facility will not be a permitted activity upon issuance of this Permit. All wastes generated at the Facility have been, and will continue to be, packed and transported off site for disposal and/or recycling as appropriate.

4. Comment: Why wasn't Sun Oil responsible for cleanup prior to their leaving? Didn't the permit require such action? Are Shell Chemical and Sun Oil one and the same? Is Shell operating under the same permit as Sun, and thus will continue to pollute the soil, water, and air and continue to disturb the peace with noise levels as Sun Oil did?

   Response: In June, 1994, EPA entered into a RCRA Section 3008(h) Corrective Action Order ("Order") with then owner/operator, Puerto Rico Sun Oil Company, LLC. ("PRSOC"), to investigate 17 Solid Waste Management Units ("SWMUs") at the Facility. Under the Order, PRSOC implemented a RCRA Facility Investigation ("RFI") at the 17 SWMUs. Ownership and operation of the Facility was transferred to Shell Chemical Yabucoa, Inc. ("SCYI") near the end of 2001. PRSOC and SCYI are separate corporate entities. Although SCYI is responsible to EPA for managing and implementing any required monitoring or corrective action for the 17 SWMUs plus any newly identified SWMUs, both PRSOC and SCYI, under EPA's supervision, are currently managing and remediating these impacted areas.

   Although the Permit generally only applies to hazardous waste management activities (specifically storage), the Permit will also require SCYI to continue investigation and cleanup of specific environmental impact areas identified prior to SCYI's acquisition of the Refinery. The Order contemplated that a RCRA Permit may be issued to the Facility incorporating requirements of the Order by reference into the permit. Specifically, work begun under the Order will be handled in a separate module (Module 3) under the Permit. The requirements of the Order will terminate upon EPA's approval after issuance of the Permit. At that time, PRSOC will no longer be responsible for corrective action at the Facility under the Permit. EPA has no legal or policy reason to deny this Permit request. The Permit includes provisions that are triggered if hazardous waste is released. Appropriate enforcement actions will be implemented in the event that SCYI fails to meet Permit requirements.

5. Comment: How long will Shell have hazardous wastes on site before sending them for treatment or elimination?

   Response: See Response to Comment B.5.

6. Comment: Where will Shell store the wastes and where will the wastes be sent?

   Response: Regarding the location of where SCYI will store its wastes, SCYI has informed EPA that it will use the permitted hazardous waste storage area for storage of all hazardous waste generated at the facility– for periods less than or greater than 90 days.

The unit has been designed to accommodate all hazardous waste expected to be generated at the facility.

SCYI operates hazardous waste "satellite accumulation areas" at the facility in accordance with the provisions 40 CFR 262.34(c)(1) at points at which hazardous waste is generated. SCYI has informed EPA that although these areas are operated in full compliance with applicable regulations, they are not considered storage areas. Furthermore, SCYI has stated that upon filling a container with hazardous waste at such a satellite accumulations area, the container is properly labeled and transferred to the hazardous waste storage area.

If SCYI determines that an additional temporary area is required for the storage of hazardous waste for periods less than 90 days (for example, due to non-routine waste generation processes), SCYI has informed EPA that the area will be operated and maintained in full conformance with 40 CFR 262.34(a)(1)(i) including, but not limited to, proper container management practices, inspection, and air emission standards.

SCYI has further informed EPA that the wastes that are stored outside the HSWA are non-hazardous waste placed there in preparation for shipment to an industrial non-hazardous waste approved facility.

Regarding where the wastes will be sent, see Response to Comment B. 5.

7. Comment: What health and environmental effects are associated with the following: benzene, methanol residues, sludge, and oil residues?

Response: EPA believes that it has included necessary protective conditions in this permit. Health effects of chemicals are generally evaluated under the Toxic Substance Control Act Information on health and environmental effects of specific chemicals is widely available to the public via the Internet. For example, the EPA's Integrated Risk Information System, a database of human health effects that may result from various substances found in the environment, can be accessed at: http://www.epa.gov/iris/.

8. Comment: EPA indicates that, "the permit would demand that Shell Chemical continue investigating and applying measures to correct spills of petroleum hydrocarbons and other wastes and hazardous components" on soil and groundwater that occurred in the past. Why is EPA demanding action from Shell Chemical and not Sun Oil?

Response: See the response to Comment C.4 above. Sun Oil no longer owns or operates the Facility.

9. Comment: How can the Yabucoan people be confident that the hazardous waste storage facilities at Shell will not pollute surrounding soil and groundwater?

Response: As previously mentioned, EPA and, we believe, SCYI, are committed to ensuring that SCYI's activities do not pose harm to the environment or the people of Yabucoa. In the event that a release occurs, the Permit has provisions to protect public health and the environment.

10. Comment: What benefits will the citizen of Yabucoa receive from the establishment of Shell Chemical in their town?

Response: The benefits that the citizens of Yabucoa may or may not receive from the establishment of SCYI in Yabucoa has no relevance to EPA's decision to issue a RCRA permit, which must be based on applicable RCRA requirements. Questions regarding the benefits of SCYI's facility are better directed to SCYI and the municipality.

D. Letter from Luz M. Vega Orozco, Committee Yabucoeño For Quality of Life, to Daniel Rodriguez, U.S. EPA. Dated October 26, 2003.

1. Comment: The public hearing conducted on October 21, 2003 was not acceptable for the following reasons:

- The hearing was conducted in English
- Minimal notification of the meeting was provided to the town
- Citizens did not have the necessary information for effective participation
- The location and/or size of the meeting location was not suitable
- Public participation was not coordinated with different public agencies (Natural Resources, Environmental Quality Group, The Municipality of Yabucoa).

Response: See the responses to Comments A1, A2, and A.3. With regard to the location and size of the meeting, EPA selected the Reynaldo Alvarez Costa Public Library in Yabucoa, Puerto Rico, because it is centrally located and easily accessible to members of the Yabucoa community. Moreover, the Library had large meeting facilities adequate to accommodate any interested community members who desired to attend the public hearing. With regard to the concern about coordination with other public agencies, EPA's radio announcement and publication of a formal Public Notice in two local newspapers provided adequate notification to any interested local public agencies in Yabucoa.

E. Letter from Mayor Angel S. García de Jesos, to U.S. EPA, re: Hazardous Wastes Shell Chemical Yabucoa, Inc. Dated November 6, 2003.

1. Comment: The citizens should have "plain knowledge of the environmental impact" that may result from issuance of the RCRA Permit B Permit for hazardous waste management at Shell. Different civic entities (e.g., environmental, educational, and cultural) should be listened to and addressed with respect.

Response: The citizens of Yabucoa have been afforded ample opportunities to learn about the potential implications of permitting at SCYI. See the responses to Comments A1, A2, and A3. Furthermore, EPA extended the comment period from November 3, 2003 until August 31, 2004, in order to allow any persons or civic entities to provide comments and be heard. Several community groups, leaders, and individuals attended the public information session on August 17, 2004, where EPA's Project Manager and other EPA employees discussed the Draft Permit and updated community members about the permitting process. The individuals present and participating in the public information session included Dr. Carmelo García Ruiz, Professor in the Chemistry Department of the University of Puerto Rico, Humacao Campus; Ms. Luz M. Vega Orozco, representative of "Comité Yabucoeño Pro Calidad de Vida"; Mr. Gil A. Burgos, representative of "Organización Cívica Yabucoeña Proyecto El Valle para el Pueblo"; Mr. Héctor Dávila, representative of the Yabucoa Mayor; Mr. Rafael A. Malavé Rodríguez, representative of "Junta de Comunidad para ek Irdenamiento Territorial del Municipio de Yabucoa"; Mr. José A. Román Gallardo; Ms. Luz Delia Sánchez; Ms. Lydia Ortiz; Mr. Arturo Arroyo Fernández; Reverend José E. Vargas; Architect Jorge Ortiz; Mr. Luis Ortiz; Mr. Víctor Tirado; Ms. Carmen D. Danjif; Mr. Francisco Espinosa; and Mr. Enrique Rodríguez. As evidenced by this Responsiveness Summary, EPA has listened and responded to the comments, to the extent permitted by federal law.

F. Letters from José Aníbal Román, BSChE, to Ernst Jabouin, U.S. EPA. Dated December 10, 2003 and May 12, 2004.

1. Comment: The public evaluation period should be extended given the volume of technical complexity of the information included in the draft permit.

   Response: The public evaluation period was extended due to a request for a second public session. The public was given from September 22, 2003 (initial public notification) through August 31, 2004 (two weeks after the second Public session) to review the information in the Draft Permit and to provide comments to EPA. In addition, due to the concerns raised by the public, local organizations, and government, the comment period was extended until August 31, 2004. EPA believes that the public was allowed more than sufficient time to review the draft Permit.

2. Comment: A fire occurred at a 125,000 square foot warehouse owned by SCYI on April 28, 2004. This fire resulted in fifteen children being sent to the hospital due to smoke inhalation. It is unclear how SCYI has assessed the damage and environmental impact of this incident.

   Response: EPA is not aware that the warehouse referred to in this comment was ever owned or leased by SCYI. Furthermore, EPA is not aware that SCYI has ever assessed the damage and environmental impact of this incident. On the contrary, SCYI has informed EPA that it has never owned or rented the warehouse facility or the property

upon which the warehouse is situated. EPA further understands that the fire did not affect anything on the Facility property. The only effects were the smoke.

3. Comment: SCYI does not have the moral integrity and capability to manage such an operation, ensuring the health and safety of the Yabucoa community.

   Response: See the response to Comments B9, C4 and C9.

4. Comment: The longer the time period that hazardous wastes are stored at the SCYI hazardous waste storage area (HWSA), the higher is the probability that a category 5 hurricane could strike the Yabucoa area. Such a hurricane strike could result in exposure of the community and ecology to hazardous constituents in the stored wastes.

   Response: Pertinent HWSA location standards were discussed in the RCRA Part B Permit application and were considered in development of the draft Permit. The selected location should not be subject to excessive or unusual hurricane threats, and precautionary measures have been implemented in design and operation to minimize such threats to the maximum extent practicable and/or foreseeable. Notwithstanding the above, the facility has a Contingency Plan (Permit Attachment II-7) that outlines the procedures that should be taken in the event of an emergency. Please refer to paragraph J.1 in Permit Module II (General Facility Conditions) for reference to this plan.

G. Presentation of the Speaker for the Yabucoan Civic Organization, Valley for the People Project. Gil A. Burgos. August 17, 2004.

1. Comment: The statement that public hearings were held in Yabucoa on October 21, 2003 is not true. It is the opinion the Yabucoan people that the required public hearing did not occur.

   Response: See the responses to Comment A1, A2, and A3. It should also be noted that during EPA's public hearing on October 21, 2003, members of the public attending the hearing (between 20-40 people) abandoned the meeting. At that time, EPA decided to end the session early, due to lack of participation.

2. Comment: "Upon the establishment of Shell, can EPA guarantee [the Yabucoan people] that they will not affect the safety of Yabucoans if they are granted the permanent permit that they are requesting, keeping Shell in operation for 10 years?"

   Response: As mentioned in the response to Comment C.4, each permit issued under the provisions of RCRA shall contain such terms and conditions as the EPA Administrator or his delegatee determines necessary to protect human health and the environment. The Permit will impose certain terms and conditions that are designed to ensure public safety and conservation of environmental quality. Appropriate enforcement actions will be

implemented in the event that SCYI fails to meet Permit requirements with regard to public safety and environmental protection.

3. Comment: "Can EPA guarantee us that local ecosystems and basic natural resources, such as our aquifer, will be preserved for present and future generations?"

   Response: See the response to Comment C.9 and G.2.

H. Presentation of the Yabucoa Municipal Administration before the U.S. EPA., Hector Davila, Dated August 17, 2004.

1. Comment: What is being proposed by Shell and U.S. EPA in the permit process already exists and occurred without consultation of the Yabucoan people. The Yabucoan people were never consulted on the transfer of Yabucoa Sun Oil to Shell Chemical. Yabucoa Sun Oil "was granted exemptions for millions of dollars, for which the Municipal Government did not receive."

   Response: See Response to Comment A.1, A.2, and A.3. Pursuant to the provisions in 40 CFR §124.10, EPA has followed legal requirements with regard to public notice and public participation associated with the permitting process. The public was afforded the opportunity to attend a public hearing (October 21, 2003 and a follow-up public information session (August 17, 2004) and was also provided the opportunity to submit written comments on the Draft Permit from September 22, 2003 through August 31, 2004. Public notification to and consultation with the community by SCYI or PRSOC is not required under RCRA for the transfer of property between them.

   With regard to exemptions, it is unclear what exemptions are being referred to in this Comment. EPA is unaware of any RCRA exemptions that have been granted to SCYI and the Facility. Any exemptions provided pursuant to other local or commonwealth authority are not part of this Permit. As, such, this Responsiveness Summary is not the appropriate forum for discussion of theses exemptions.

I. Letter from José Aníbal Román to Ernst Jabouin, U.S. EPA. Dated August 27, 2004.

1. Comment: What is the validity of the statements presented in the Informative Letter published by Shell Company in the August 11, 2004 issue of The Oriental Newspaper of Humacoa, Puerto Rico?

   Response: It is unclear what statements and responses the Commentor wants EPA to evaluate. The purpose of this Responsiveness Summary is for EPA to respond to comments about the EPA RCRA draft permit that were submitted during the public

comment period for that permit, not for EPA to respond to letters or opinions published in newspapers during this time period.

J. Letter from Julio I. Rodríquez, Puerto Rico Environmental Quality Board (EQB), to Ernst Jabouin, U.S. EPA, re: Summary of Informal Public Meeting. Dated September 13, 2004.

1. Comment: EPA has accepted and failed to act upon spills of petroleum hydrocarbons and other hazardous wastes into soil and groundwater in Yabucoa. [Commentor: Rafael Alberto Malavé]

   Response: The Refinery has been operating in Yabucoa since 1971. In 1980, a RCRA Part A Permit was filed by PRSOC in order to gain "interim status" for storing hazardous wastes. The facility maintains its interim status until after the filing and EPA approval of a RCRA Part B Permit application. Issuance of the Permit will finalize this process. Throughout the entire permitting process, EPA has been overseeing activities at the site to ensure compliance with RCRA. While spills have occurred, EPA has been actively involved in their identification, investigation, immediate response actions, and ongoing remediation. Management and remediation of any impacted locations at the Facility is currently being conducted by PRSOC and SCYI under EPA's supervision.

2. Comment: Permits continue to be issued without commitment and compliance with environmental laws. [Commentor: Rafael Alberto Malavé]

   Response: See the responses to Comments B.9 and J.1. All RCRA provisions have been followed with regard to the permitting process for the SCYI facility. EPA is committed to ensuring that the provisions in the permit are followed and that the safety and health of the Yabucaon people and surrounding environment are protected.

3. Comment: If EPA authorizes the enlargement of the HWSA at Shell, development in Yabucoa will be affected. [Commentor: Rafael Alberto Malavé]

   Response: In its RCRA Part B Permit Application, SCYI requested that EPA authorize the expansion of its hazardous waste storage area, in order to make several improvements, including upgrading the existing storage area—planned improvements include a new roof and concrete floor for the back courtyard area, and designating an isolated area for storage of liquid and flammable wastes. EPA has no legal basis for denying this request. See also Response to Comment B.5.

4. Comment: Yabucoa has been exposed to pollution by different companies, which has resulted in an increase in respiratory diseases and environmental damage. How can industries with smokestacks be installed within one mile upwind of a residential community? [Commentors: Héctor Dávila and José A. Román Gallargo]

Response: As previously mentioned, this Responsiveness Summary focuses on issues surrounding the Draft RCRA Part B Permit. Questions about the proper location of industrial facilities should be directed to local and Commonwealth officials, who may have authority over zoning and land use decisions.

5. Comment: The permit process has been invalidated due to the time chosen for the informal public meeting. [Commentor: Lydia Ortíz]

Response: Pursuant to the provisions in 40 CFR §124.10, EPA has followed the legal requirements with regard to public notice and public participation. The public was afforded the opportunity to attend the public hearing held at 7. P.M. on October 21, 2003 and the follow-up public information session at 7:30 P.M. on August 17, 2004. The time of the public information session (which was not required to be held at all) was set after normal work hours, in order to provide the opportunity for people who worked during the day to attend. If an individual could not attend this session, he or she could still have submitted comments to EPA.

6. Comment: Can SCYI store wastes for one year with a permit? [Commentor: Victor Tirado]

Response: Yes. There is no absolute minimum period or limitation on length of storage of hazardous wastes. The period of storage depends on the type of waste, and the purposes of accumulation of such waste as are necessary to facilitate proper recovery, treatment or disposal. See 40 CFR §268.50, concerning time period for storage of restricted (ie., land ban) wastes. SCYI has indicated that it does not anticipate storing hazardous waste at the facility for more than one year.

It should also be noted that, because some of the hazardous wastes included in the Permit are generated only once every three to five years, it is expected that the HWSA will be 90 percent empty at times. Furthermore, although it was previously stated that SCYI may store up to 144,000 gallons of hazardous waste within the unit, this volume includes both liquid and solid wastes combined (rather than 144,000 gallons of liquid wastes in addition to solid hazardous wastes). The pertinent table in Module 4 of the draft Permit is being clarified to reflect this maximum waste capacity without regard to physical state.

See also the Response to Comment B.5 and C.6.

7. Comment: The HWSA appears to have been constructed near a creek and may be damaged by flooding. Furthermore, the HSWA was constructed over a SWMU created by Sun Oil. [Commentor: Victor Tirado]

Response: Pertinent HWSA location standards were discussed in the RCRA Part B Permit application and were considered in development of the draft RCRA Permit. The

selected location should not be subject to excessive and uncontrolled flooding, nor does the area appear to be located in part or in whole over an SWMU still requiring investigation and/or corrective action.

8. Comment: Does SCYI have an emergency evacuation plan for the city? [Commentor: Carmen Sanjif]

   Response: The facility maintains a Contingency Plan (Permit Attachment II-7) that outlines the procedures that should be taken in the event of an emergency. Please refer to paragraph J.1 in Permit Module II (General Facility Conditions) for reference to this plan.

9. Comment:Yabucoa has been exposed to pollution by different companies established there. This pollution has caused an increase in respiratory diseases and environmental damage. The Mayor is opposed to the installation of highly pollutant industries on his town [Commentor: Hector Davila (representing the Mayor of Yabucoa)].

   Response: It is EPA's intention to make all appropriate efforts to minimize pollution, preserve human health, and protect the environment within the framework established by available law and regulation. EPA does not believe that issuance of this Permit, as written, to this Facility is contrary to the above referenced goal. Also, see Response to Comment J.4.

10. Comment: Do you have information about diseases and death caused by environmental pollution? [Commentor: Luz Delia Sanchez].

    Response: See the response to Comment C.7.

11. Comments: Opposed the approval of the permit [Commentors: Francisco Ortiz (Running for Mayor--Popular Democratic Party); Jorge Ortiz (Architect); and Rafi Uzeta (Mayoral Candidate–New Progress Party)].

    Response: See Response to Comment C.3. Conditions are included in the Permit to ensure that hazardous waste is stored in a safe manner and that cleanup efforts continue on previously contaminated areas.

12. Comment: How could SCYI store hazardous wastes without a permit for 90 days and how by special conditions this number of days could be change to 270 days [Commentor: Reverend Jose E Vargas]

    Response: The regulations describing the accumulation time periods for storage of hazardous waste for 90 days or 270 days without a permit are set forth at 40 C.F.R. Section 262.34(a) and (e) (Accumulation time). The period of storage without a permit depends on the generator status of the permittee, the type of waste, and the purposes of

accumulation of such waste as are necessary to facilitate proper recovery, treatment or disposal. See also 40 CFR Sections 268.50(b) and (c) concerning time period for storage of restricted (ie., land ban) wastes. See also Response to Comments C.5 and J.6.

13. Comment: If EPA issue the permit, would they come to live at the city of Yabucoa? [Commentor: Luis Ortiz– from Squibb]

    Response: The residence of EPA employees is not at issue in this Permit. This comment reflects concerns that cannot be appropriately addressed in this Permit.

14. Comment: Yabucoans need to have a healthy environment [Commentor: Francisco Espinosa– from the Department of Agriculture]

    Response: It is EPA's intention to make all appropriate efforts to minimize pollution, preserve human health, and protect the environment (including farm lands and associated resources) within the framework established by available law and regulation. EPA does not believe that issuance of this Permit, as written, to this facility is contrary to the above referenced goal.

15. Comment: A decision must be taken regarding the permit [Commentor: Enrique Rodriguez]

    Response: The requested decision is being delivered with issuance of the final permit and responsiveness summary.

GENERAL RESPONSE

Many of the above-noted comments, while reflecting sincere concern about past, present, and future actions of SCYI and the Facility, address matters outside the scope of this Permit. EPA has no legal authority under RCRA to address many of the more general concerns raised.

RESPONSIVENESS SUMMARY

FOR
COMMENTS FROM SHELL

MODULE 1 – STANDARD CONDITIONS

1. Page I-4, Condition F.9.b, Line 2

   Comment: Delete "including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation,"

   SCYI does not utilize such equipment as part of its monitoring system. This requirement applies to hazardous waste incinerators which are not operated by SCYI.

   Response: Because SCYI does not use such equipment as part of its monitoring system, references to "all original strip chart recordings for continuous monitoring instrumentation" have been deleted from the Permit. However, the Permit Condition continues to require retention of calibration and maintenance records for other types of monitoring conducted at SCYI.

2. Page I-5, Condition F.9.c(5)

   Comment: Delete condition.

   Information required under this condition is not required under 40 CFR §270.30(j)(3).

   Response: Pursuant to 40 C.F.R. Section 270.30(j)(3)(v), analytical techniques or methods used are required to be part of monitoring information records. As such, no change has been made in response to this request.

3. Page I-5, Condition F.9.d, Line 4

   Comment: Replace "Section 10" with "Chapter One"

   As drafted, the permit provides an incorrect reference.

   Response: The reference has been corrected as noted.

4. Page I-8, Condition F.15.c

   Comment: Edit the condition as follows:

"c. A written ~~submission~~ report shall also be provided to the Director within ~~five (5)~~ fifteen (15) calender days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance (including exact dates and times); whether the noncompliance has been corrected; and if the noncompliance has not been corrected, the anticipated time it is expected to continue and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. ~~The Permittee need not comply with the five day written notice requirement if the Director waives that requirement and the Permittee submits a written report within fifteen (15) calendar days of the time the Permittee becomes aware of the circumstances~~. [40 CFR §270.30(l)(6)(iii)]"

Five days is inadequate to gather and prepare the information requested for submission to EPA. A fifteen day notice period, which is the minimum required, is permissible under the referenced regulation.

Response: EPA considers threatened or actual releases of hazardous wastes or hazardous constituents (and attendant threats to human health and the environment) to be of serious concern. In the event of such a situation, SCYI should immediately commence efforts to eliminate the threat of release, contain any release that may have already occurred, mitigate human health and environmental risks, investigate the cause, and correct the situation. EPA does not believe that, in most cases, submission of written documentation on the situation and subsequent mitigating actions within five calendar days will create an undue burden on the Permittee. For noncompliance situations that cannot be adequately documented within this time frame, the Permit provides for an extension of the submittal schedule to 15 calendar days upon written approval from the EPA Director. Furthermore, it is important to note that the Permit condition does not require that the situation be completely addressed within five calendar days. Additional time may be needed to implement steps to reduce, eliminate, or prevent reoccurrences. Where actual or potential environmental contamination has occurred, EPA fully expects that additional time (and supplemental reporting) will be needed to properly investigate environmental impacts and implement any necessary corrective actions. These steps are not bound by the five-day time frame presented in the subject Permit Condition. No change has been made to the Permit based on this comment.

5. Page I-8, Condition F.19

Comment: Edit the condition as follows:

"Additional Noncompliance Reporting. The Permittee shall report all instances of noncompliance (including release of hazardous waste, fire, or explosion) not required to be reported under Permit Conditions I.F.9, I.F.14 or I.F.15. Such noncompliance shall be reported ~~for each calendar quarter (i.e., January through~~

~~March, and each subsequent quarter) by no later than 30 days after the end of the quarter~~ with the biennial reports as discussed in Permit Condition I.F.18. The reports shall contain the information listed in Permit Condition I.F.15.b ~~and all other relevant information~~. [40 CFR §270.30(l)(10)]"

As drafted, the permit condition is overly burdensome. Biennial reporting of additional instances of noncompliance is appropriate and consistent with other reporting requirements of the Permit.

Response: EPA does not believe that this Permit Condition is overly burdensome. As outlined in 40 CFR §270.30(l)(10), additional instances of noncompliance shall be reported when monitoring reports are submitted. Pursuant to Permit Condition III.B.9.b, progress reports are to be submitted quarterly. Furthermore, EPA does not believe that submission of noncompliance reports on a biennial basis will provide timely information and allow for review and/or modification of operations as needed to minimize instances of noncompliance. Consequently, the requirement for quarterly noncompliance reporting remains in the Permit. However, for consistency with quarterly progress reporting pursuant to Permit Condition III.B.9.b, the schedule for delivery is being extended from 30 days to 45 days after the end of the quarter.

6. Page I-9, Condition I.6

Comment: Edit the condition as follows:

"6. Records and results of inspections as required by 40 CFR §264.15(d) and §264.174 ~~§264.226 and §264.279.~~ except these data need be kept only three (3) years."

§264.226 and §264.279 apply to surface impoundments and land treatment units, respectively, which are not operated by SCYI. Revised language is consistent with the applicable regulations.

Response: The Permit Condition has been modified to remove references to requirements for surface impoundments and land treatment units, as these units are not operated by SCYI. EPA has modified the proposed language to require SCYI to keep records for at least three years from the date of inspection, unless EPA requests in writing that SCYI keep the records for a longer period of time.

Page I-9, Condition I.7

Comment: Edit the condition as follows:

"7. Personnel training documents and records that demonstrate continuous compliance with the requirements of 40 CFR §264.16(d) except these data need be kept only three (3) years."

Revised language is consistent with the applicable regulations.

Response: According to 40 CFR §264.16(e), training records for current employees must be kept until facility closure. Training records for former employees must be maintained at the facility for at least three years from the date the employee last worked at the facility. EPA has modified the proposed language to require SCYI to keep records of former employees at least three years from the date the employee last worked at the facility, unless EPA requests in writing that SCYI keep the records for a longer period of time.

7. Page I-11, Condition L.1, Line 1

Comment: Replace "30005(c)(3)" with "3005(c)(3)" and replace "§271.32(b)(2)" with "§270.32(b)(2)"

As drafted, the citations are incorrect.

Response: The Permit Condition has been revised to correct the noted errors.

8. General Revisions

Comment: In addition to the specific comments provided above, revisions have been made to permit language throughout Module I in order to conform to the general intent of applicable regulations. Revisions are indicated in the attached permit module.

Response: SCYI has provided a black-lined version of the Draft Permit Module 1, in which it merely references language it wants added or stricken in the text, without indicating the issue raised or providing any explanation or arguments supporting its position. Absent such specificity, EPA can only speculate as to the reasons for SCYI's proposed edits, and cannot meaningfully respond to such comments. It does not appear that all these proposed revisions to the text would conform to the "general intent of applicable regulations," as SCYI's comment suggests. Notwithstanding the above, EPA sets forth below, in "a" to "k," the proposed edits by SCYI and EPA's response to these edits.

a. Page I-2, Condition D.2, Line 10: SCYI added "but may not unreasonably deny the request," with respect to EPA's decision on the Permittee's request to extend the time frames for delivery of plans required by the Permit.

Response: EPA works closely with the Permittee and understands that established schedules may be difficult to achieve in certain instances. EPA does not intend to deny reasonable requests for due date extensions in those cases. Nevertheless, it is EPA's obligation to ensure that the environmental efforts outlined in this Permit continue to make forward progress. Consequently, SCYI will be expected to adhere as closely as possible to the Permit-established schedules. No change has been made to the wording of the Permit.

b. Page I-2, Condition D.2, Line 12: SCYI added "unless the Permittee and EPA agree otherwise as to such comment and/or modification sought by EPA," so that EPA comments would be incorporated into revised plans and reports unless an agreement is reached between the Permittee and EPA with regard to an alternate resolution.

Response: In some cases, it may be possible to address EPA comments (in part or as a whole) without revising the associated plans and reports. To allow for such instances, this comment has been incorporated into the Permit.

c. Page I-2, F.2: SCYI added "permit" and deleted "complete" and "for a new permit".

Response: EPA has modified SCYI's proposed language, in order to conform to the language in 40 C.F.R. Section 270.10(h).

d. Page I-3, F.3: SCYI substituted "40 C.F.R. Section 270.14" for "40 C.F.R. Section 270.13."

Response: EPA has included broader language, referencing 40 C.F.R. Part 270, in order to satisfy SCYI's apparent concern.

e. Page I-4, Condition F.9.b, Line 8: SCYI added "written."

Response: This clarification, which has been incorporated herein, would clarify that the records retention period may be extended at any time at the *written* request of the EPA Director. This clarification has been included in the Permit.

f. Page I-7, Condition F.15.a(1): SCYI deleted "or hazardous constituents," so that only information concerning release of any hazardous waste would be required to be included in the report.

Response: Because such reporting is not specifically required for hazardous constituents in 40 CFR §270.30(l)(6)(A), the reference to hazardous constituents has been deleted from this Permit Condition, as requested.

g. Page I-7, Condition F.15(a)(2): SCYI substituted "from" for "at."

Response: Because the use of the word "from" is included at 40 C.F.R. Section 270.30(l(6), EPA accepts this proposed change.

h. Page I-9, Condition F.20: SCYI substituted "Director" for "Regional Administrator or the"

Response: 40 C.F.R. Section 270.30(l)(11) refers to the Director, not the Regional Administrator. Thus, EPA accepts this proposed change.

i. Page I-9, Condition G: SCYI proposes language concerning the content of the certification.

Response: Specific wording to be used in signatory certifications, as required by 40 CFR §270.11(d), has been added to the Permit at SCYI's request.

j. Page I-11, Condition L.1: SCYI added "reasonably" in two places within this paragraph.

Response: SCYI has provided no explanation as to why it needs to modify the word "suspected". Inclusion of the word, "reasonably," could lead to frequent disagreement between the Permittee and EPA regarding whether contamination is "reasonably" suspected or not.

k. Page I-13, Condition M.2: SCYI adds "shall be EPA's final decision" and "unless the Permittee seeks judicial review."

Response: The existing language in this Dispute Resolution permit provision provide adequate due process in accordance with Environmental Appeals Board determinations. The language in this section is consistent with existing case law.

Other EPA Changes to Module 1

a. Page I-5, Condition F.9.b. EPA deleted the words "and for disposal facilities for the post-closure care period as well," because the hazardous waste management unit does not include any disposal facilities.

b. Page I-11, Condition L: EPA has made a few revisions to the definition of "Facility", in order to make the definition of this term clearer and more easily understandable. EPA does not believe that the revisions cause any change in meaning or substance to the term.

MODULE II – GENERAL FACILITY CONDITIONS

1. Page II-2, Condition C.3

Comment: Insert Condition C.3.e as follows:

e. The analysis may include data developed under Part 261 of 40 CFR, and existing published or documented data on the hazardous waste or on hazardous waste generated from similar process or that pertinent data developed at the Facility under Part 261, mentioned above.

The revised permit language is consistent with regulatory requirements at 40 CFR §264.13(a)(2).

Response: In accordance with regulatory requirements of 40 CFR §264.13(a)(2), the Permit has been revised to note that the waste analysis may include data developed under 40 CFR Part 261, and existing published or documented data on the hazardous waste type or hazardous waste generated from similar processes.

2. Page II-2, Condition C.5.b, Line 1

Comment: Edit the first sentence as follows:

"For each waste subject to sampling and analysis in accordance with the Waste Analysis Plan, the Permittee shall maintain records that provide a detailed chemical and physical analysis of a representative sample of each waste."

This Permit Condition is only applicable to wastes that are subject to sampling and analysis as per the Waste Analysis Plan.

Response: SCYI has requested that this Permit Condition be limited to those wastes subject to sampling and analysis in accordance with the Waste Analysis Plan. However, as indicated in the previous comment, the waste analysis may include existing published or documented data on the facility's hazardous waste or similar hazardous waste. Where such data are used in lieu of direct detailed chemical or physical analysis, SCYI could argue that the waste is not subject to sampling and analysis in accordance with the Waste Analysis Plan. It is EPA's belief that these records (including the existing data and reference to the data source) should be maintained at the facility in like manner as actual analytical results used in waste analysis determinations. To ensure that the Permittee maintains all appropriate information on each hazardous waste (or waste stream), the Permit has not been changed in response to this comment.

3. Page II-2, Condition D, First Paragraph

Comment: Edit the paragraph as follows:

" The Permittee shall comply with the security provisions of 40 CFR §264.14. ~~and shall follow the security plan outlined in Permit Attachment II-2.~~ Security procedures currently being implemented at the Facility are described in Permit Attachment II-2. Security procedures described in Attachment II-2 may be modified (subject to the provisions of 40 CFR §270.42, if applicable) by the Facility as long as modified procedures comply with the provisions of 40 CFR §264.14. At a minimum, the Permittee shall:"

Information included in Attachment II-2 was provided in the RCRA Part B Permit Application for informational purposes and was not intended to become an enforceable permit condition. The proposed language ensures that required performance standards will be achieved while providing SCYI with the flexibility needed to modify its security procedures when necessary.

Response: This Permit Condition has been modified as requested to remove reference to Permit Attachment II-2 as an enforceable Permit Condition. The revised Permit language will ensure that the required performance standards will be achieved, while providing SCYI the flexibility to modify security procedures if necessary.

4. Page II-4, Condition E.3, Line 8

Comment: Replace "weekly" with "monthly".

The proposed revision is consistent with Table 1 of Permit Attachment II-3. Weekly inspections on a routine basis are not necessary to ensure response preparedness of spill equipment. Monthly inspections suggested by SCYI are more appropriate.

Response: The schedule for routine inspections of spill control and response equipment listed in Permit Attachment II-5 has been changed from weekly to monthly. Such equipment must still be inspected daily when in use.

5. Page II-4, Condition F, First Paragraph

Comment: Edit the paragraph as follows:

> "PERSONNEL TRAINING. The Permittee shall conduct personnel training as required by 40 CFR §264.16(a), (b) and (c). ~~This training program shall follow the attached outline in Permit Attachment II-6.~~ The training program currently being implemented at the Facility is described in Permit Attachment II-6. The training program described in Attachment II-6 may be modified by the Facility as long as procedures comply with the provisions of 40 CFR 264.16(a), (b) and (c). The Permittee shall maintain training documents and records as required by 40 CFR §264.16(d) and (e). At a minimum, the training program must include the following:"

Information included in Attachment II-6 was provided in the RCRA Part B Permit Application for informational purposes and was not intended to become an enforceable permit condition. The proposed language ensures that required performance standards will be achieved while providing SCYI with the flexibility needed to modify its training procedures when necessary.

Response: This Permit Condition has been modified to remove reference to Permit Attachment II-6 as an enforceable Permit Condition. However, EPA has inserted a parenthetical indicating that the training program may be modified, subject to the provisions of 40 C.F.R. Section 270.42, if applicable. The revised Permit language will ensure that the required performance standards will be achieved, while providing SCYI the flexibility to modify personnel training procedures if necessary.

6. Page II-4, Condition F.2.b

Comment: Delete condition F.2.b.

The Permit Condition is not applicable to SCYI. This requirement applies to hazardous waste incinerators which are not operated by SCYI.

Response: The Permit Condition discussing training on automatic waste feed cut-off systems is not applicable to SCYI and has been deleted.

7. General Revisions

Comment: In addition to the specific comments provided above, revisions have been made to permit language throughout Module II in order to conform to the general intent of applicable regulations. Revisions are indicated in the attached permit module.

Response: SCYI has provided a black-lined version of the Draft Permit Module 2, in which it merely references some language it wants added or stricken in the text, without indicating the issue raised or providing any explanation or arguments supporting its position. Absent such specificity, EPA can only speculate as to the reasons for SCYI's proposed edits, and cannot meaningfully respond to such comments. It does not appear that all these proposed revisions to the text would conform to the "general intent of applicable regulations," as SCYI's comment suggests. Notwithstanding the above, EPA sets forth below, in "a" to "s," the proposed edits by SCYI and EPA's response to these edits.

a. Page II-1, Condition B: SCYI has added the words "not related to the operation and maintenance of the facility."

Response:
EPA is unaware of any plans by SCYI to accept hazardous wastes that *are* related to operation and maintenance of the Facility. Furthermore, waste materials being beneficially reused are often excluded from the definition of solid and/or hazardous wastes. Consequently, such a clarification in the Permit language would be unnecessary. No changes will be made to the Permit in response to this request.

b. Page II-1, Condition C.3.a.: SCYI deleted "to be analyzed" and added "which and "will be analyzed".

Response: EPA accepts this proposed change, because it conforms to the language set forth in 40 C.F.R. Section 264.13(b)(1).

c. Page II-3, Condition D.2.a.: SCYI has substituted a lower case "facility" for an upper case "Facility:

Response: The definition of the term "Facility" has been revised in the Definition section of Module 1, Condition L. Since the proposed change in this subparagraph is in the context of a barrier surrounding the active portions of the hazardous waste management unit (ie., the Container Storage Area, also known as the Hazardous Waste Storage Area, "HSWA")), EPA has substituted "hazardous waste management unit" for "Facility," to narrow the Permittee's obligation to the hazardous waste management unit instead of the entire refinery.

d. Page II-3, Condition D.3: SCYI has substituted "facility" for Facility.

Response: See Response to 7 c., above.

e. Page II-3, Condition E: SCYI has added "i.e., for at least three (3) years from the date of inspection."

Response: EPA has modified the proposed language to require SCYI to keep records for at least three (3) years from the date of inspection, unless EPA requests in writing that SCYI keep the records for a longer period of time.

f. Page II-3, Condition E.3: SCYI has added "should."

Response: This proposed addition conforms to the language at 40 CFR Section 264.15(b)(4). As such, this change has been incorporated.

g. Page II-4, Condition F: Although unclear, SCYI has added the following language in a parenthetical: "(i.e., current personnel until closure of the facility; on [sic, likely "records of"] former employees records must be kept for three (3) years from the date the former employee last worked at the facility)."

Response: The parenthetical proposed by SCYI apparently refers to 40 C.F.R. Section 264.16(e), not 264.16(d). EPA has modified the proposed language to conform to this section of the regulation as follows: "Pursuant to 40 C.F.R. Section 264.16(e), training records for current employees must be kept until hazardous waste management unit closure. Training records for former employees must be maintained at the facility for at least three (3) years from the date the employee last worked at the facility. Additionally, EPA added the words,"unless EPA requests in writing that SCYI keep the records for a longer period of time," to account for circumstances that might warrant retention of records for a longer period of time.

h. Page II-4, Condition F.1: SCYI has deleted the words, "who are" and "and emergency response procedures"

Response: EPA desires that SCYI's personnel training program be directed by individuals who are trained in emergency response procedures, as well as hazardous waste procedures. 40 C.F.R. Section 264.16(a)(3) requires that "[a]t a minimum, the training program must be designed to ensure that facility personnel are able to effectively respond to emergencies by familiarizing themselves with emergency procedures, emergency equipment, and emergency systems. . ." In order for SCYI's personnel training program to adequately address emergency

procedures, as required by 40 C.F.R. Section 264.16(a)(3), the Director of such training program should be well versed (ie., trained) in both emergency response procedures as well as hazardous waste procedures.

i. Page II-5, Condition I.1: SCYI has added the words, "unless Permittee can demonstrate to the Director that none or part of the hazardous waste handled at the Facility would not [sic, likely omit "not"]require the equipment mentioned thereunder."

Response: EPA has modified the proposed language to include a requirement that the Permittee demonstrate to the Director that none of the conditions that might arise at the facility would require the specified equipment.

j. Page II-5, Condition I..4: SCYI has substituted the word "facility" for "Facility"

Response: See Response to Comment 7.c., above.

k. Page II.5, Condition I.4: SCYI has added the words, "unless Permittee demonstrates that the aisle space is not needed for any of the mentioned purposes."

Response: Although SCYI has requested relief from the aisle space requirements, this Permit Condition has not been changed. EPA believes that the prescribed minimum aisle space (i.e., two feet between containers or rows of containers) is required to allow unobstructed movement of personnel, fire protection equipment, spill control equipment, or decontamination equipment to any area of the facility in an emergency. It is unclear under what circumstances such a requirement could be waived as unnecessary, and SCYI did not provide any.

l. Page II-5, Condition I.5: SCYI has deleted "shall" and substituted "should attempt to"

Response: This Permit Condition has been clarified to require the Facility to make all reasonable attempts to maintain preparedness and prevention arrangements with Commonwealth and local authorities.

m. Page II-6, Condition I..5: SCYI has added the words "as appropriate, for the type of waste handled and the potential need for their services."

Response: The proposed language conforms to the language in 40 C.F.R. Section 264.37(a). As such, EPA has incorporated this change.

n. Page II-6, Condition J.4: SCYI has deleted the words "The plan must be reviewed."

Response: The proposed language conforms to the language in 40 C.F.R. Section 264.54. As such, EPA has incorporated this change.

o. Page II-6, Condition J.4.c: SCYI added "its."

Response: See Response to Comment 7.n, above.

p. Page II.7, Condition J.6: SCYI has added the following language to this paragraph:"or alternate emergency coordinator," who must be available at all times, "(ie., at the Facility or on call)" "to respond to" an emergency. Also, SCYI added "the Contingency Plan". SCYI has deleted the words "in case of" and "this plan".

Response: EPA has incorporated the proposed changes, because they appear to be appropriate site-specific changes.

q. Page II-7, Condition J.7: SCYI added "or its designee"

Response: EPA has modified the proposed language to make clear that the designee of the emergency coordinator is the "alternate emergency coordinator."

r. Page II.7, Condition K.2: SCYI has added "at reasonable times for inspection, by any officer, employee or representative of" and "duly designated by the Administrator".

Response: In addition to the language proposed by SCYI, EPA has added the words "or his designee" following "Administrator", in order to be conform to the language at 40 C.F.R. 260.10 and 40 C.F.R. Section 264.74(a).

s. Page II-7, Condition K.5: SCYI has deleted "At a minimum" and substituted "The".

Response: The regulatory requirement for "Additional Reports," at 40 C.F.R. Section 264.77, requires the submission of additional reports that are not specified in Condition K.5.a-c of this Permit. Thus, the words "At a minimum" are important, because they would incorporate the requirement in 40 C.F.R. Section 264.77 for the submission of additional reports that are not listed in this Permit section. As such, no change has been made in response to this request.

MODULE III – CORRECTIVE ACTION REQUIREMENTS FOR SOLID WASTE MANAGEMENT UNITS (SWMUs) AND AREAS OF CONCERN (AOCs)

1. Page III-5, Condition A.2, Paragraph 3, Last Sentence

Comment: Edit the sentence as follows:

> "The owner or operator of the facility will be required to ~~demonstrate financial assurance~~ provide to EPA a certification that adequate funding will be available for completing the approved corrective measure(s), as specified in Section F.8.(b), below."

Such a certification will be sufficient to provide financial assurance for completion of corrective action activities.

Response: A signed certification is not a demonstration of Financial Assurance. Thus, EPA declines to accept this request. EPA has made a few additional changes to this paragraph, by adding reference to the statutory and regulatory sections requiring demonstration of financial assurance for corrective action. Moreover, the former cross-reference to Condition F.8.b. in this Module has been changed to Condition E.5.(b), as a result of a relettering or renumbering of other Conditions in this Module.

2. Page III-6, Condition A.3, Last Sentence

Comment: Delete the following sentence:

> "Additional supplemental investigation and other corrective action activities are still required as discussed in more detail in this Module."

The permit module is outdated and does not reflect the fact that supplemental RFI activities have been completed and all data has been submitted to EPA. As drafted, the sentence suggests that a determination has been made that additional investigation and other activities are required at the 17 SWMUs, which is not the case.

Response: Supplemental investigation and corrective action activities are discussed throughout Module III. To avoid suggesting that further investigation and corrective action is necessary for all 17 SWMUs, the last sentence in this Permit Condition has been deleted. However, additional sentences have been inserted to indicate that additional work has been performed and additional work remains. EPA inserted a cross-reference to Condition A.4.f, which provides an update on the status of the work at each of the remaining Group 2 SWMUs.

3. Page III-7, Condition 4.d

Comment: Edit the condition as follows:

"d. Group 2. The RFI for the Facility was initiated for 17 SWMUs in June 1996~~, and supplemental investigation and corrective action activities under the Supplemental RFI Work Plan are required as discussed in Condition E of this Module~~ (All 17 SWMUs are shown on attached figure # 3). According to the June 1997 RFI Draft Report, contamination has been reported in both soil and groundwater at the Facility. The following SWMUs were included in the RFI and/or Supplemental RFI Work Plan, ~~and require corrective action~~. Each is discussed in greater detail in Permit Attachments ~~I and III~~ III-1 and III-3 (June 1997 RFI Draft Report and subsequent revisions to the June 1997 RFI Draft Report and July 2003 Supplemental RFI ~~Work Plan~~ Report)."

As drafted, the condition suggests that a determination has been made that corrective measures are required at all 17 SWMUs, which is not the case. Also, the permit module is outdated and does not reflect the fact that supplemental RFI activities have been completed and all data has been submitted to EPA. Attachment III-2 should be deleted since it contains outdated and inaccurate information. The Supplemental RFI Work Plan should be replaced as an Attachment with the July 2003 Supplemental RFI Report.

Response: This Permit Condition has been updated to reflect all available RFI data, including the June 1997 RFI Draft Report and subsequent revisions, the June 30, 2003 Supplemental RFI Report and subsequent revisions, and the March, 2005 Draft RFI Final Report. This Condition has also been revised so as not to suggest that corrective action is necessary for all 17 SWMUs.

4. Page III-8, Condition 4.f

Comment: Edit the first paragraph as follows:

"f. Status of Remaining Group 2 SWMUs. Additional investigation and/or corrective action activities ~~are~~ may be necessary for the fifteen remaining Group 2 SWMUs. The paragraphs below provide a brief description and history for these SWMUs, a concise history of investigation and corrective action and the current status of environmental activity~~, and follow-up investigation and/or corrective action requirements. The Permittee shall implement work as described in Permit Attachments III-2 (RFI Summary Tables) and III-3 Supplemental RFI Work Plan (including Figure 7 Supplemental RFI Implementation Schedule) dated December 2000 and subsequent revisions to the Supplemental RFI Work Plan. See also III. E. for a description of the Supplemental RFI work being required.~~"

As drafted, the condition suggests that a determination has been made that further investigation and/or corrective measures are required at all 15 SWMUs, which is not the case. Also, the condition requires implementation of investigative work that has already been completed (i.e., the Supplemental RFI). Attachments II-2 and III-3, referenced in the existing paragraph, are also outdated and contain factual errors and should be deleted from the Permit.

Response: This Permit Condition has been updated to reflect the fact that Supplemental RFI field efforts have been completed, a Draft Final RFI Report has been submitted and that EPA has reviewed the Draft Final RFI Report and provided comments to the Permittee in an August 17, 2005 letter (including attachments). This Permit Condition has also been updated to provide a current overview of the status of work at the Facility. The number of remaining Group 2 SWMUs has ben revised from 15 to 16, in order to include SWMU 44A (Ballast Basin Leachate Collection Tank). This Condition has also been revised so as not to suggest that corrective action is necessary for all 16 Group 2 SWMUs that have not yet received a No Further Action determination.

5. Pages III-8 through III-17, Conditions 4.f(1) through 4.f(14)

Comment: Update the SWMU descriptions presented in the referenced section of the Module as per attached revised Permit Module.

SWMU descriptions are outdated and do not reflect completion of Supplemental RFI. Certain descriptions also contain factual errors and inaccurate representation of supplemental RFI activities. General comments concerning the SWMU description are as follows:

- References to additional investigative activities need to be modified since these activities have been completed as part of the work for the Supplemental RFI.

- References to elevated barium levels at SWMUs 2, 3, 34, 35, 36, 38, 39, 40, and 44 should be deleted. The references were made in the June 1997 RFI Report to a now-outdated migration to groundwater screening level of 64 mg/kg. The current screening level is 1600 mg/kg (Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites, 2002, OSWER 9355.4-24).

- References to elevated nickel levels at SWMU 39 should be deleted. The references were made in the June 1997 RFI Report to a now-outdated migration to groundwater screening level of 42 mg/kg. The current screening level is 130 mg/kg (Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites, 2002, OSWER 9355.4-24).

Response: Each of the Group 2 SWMUs in Condition A.4.f. of the Permit has been updated to reference available data, constituents of concern, and recommendations from RFI and Supplemental RFI field efforts, as presented in the March 2005 RFI Report and EPA's August 17, 2005 letter, including attachments. This Condition of the Permit has also been updated to include current requirements for additional activities for some of the SWMUs during the Corrective Measure Study phase, including continued groundwater monitoring and interim corrective measures, in order to close a limited number of remaining data gaps. Additionally, SWMU 44A (Ballast Basin Leachate Collection Tank) has been added to this Condition.

6. P. III-19, Condition B.6.a

Comment: Insert the following at the end of the paragraph: "With prior EPA approval, the frequency and/or method of FPH recovery may be modified at any SWMU due to changes in FPH levels at the SWMU."

SCYI requires flexibility in adjusting field activities based on changes in field conditions.

Response: This Permit Condition has been modified as requested to allow flexibility in the frequency and/or method of FPH recovery in response to changing field conditions over time.

7. P. III-19, Condition B.6.b, line 5

Comment: Delete "(See EPA August 16, 2001 letter in Permit Attachment III-4)" Also delete Attachment III-4.

Attachment III-4 contains outdated information as well as factual errors. EPA has adequate authority to require more aggressive FPH recovery where appropriate without inclusion of this attachment.

Response: The reference to Permit Attachment III-4 has been deleted from this Permit Condition. Nevertheless, EPA retains its authority to require more aggressive FPH recovery where appropriate.

8. P. III-19, Condition B.6.d

Comment: Edit condition as follows:

"d. In the event the Permittee identifies a release or potential release of hazardous waste and/or hazardous constituents that pose a threat or potential threat to human health or the environment and that warrants implementation of an interim corrective measure, or the Permittee becomes aware of a situation where it would

be appropriate to prevent or minimize the further spread of contamination while long-term remedies for the Facility are pursued, the Permittee shall ~~immediately~~ notify EPA orally within three (3) days of discovery and shall notify EPA in writing within ten (10) days of such identification, summarizing the condition and the ICM being considered."

As drafted, the condition could require an ICM if only a "potential" release was identified and only a "potential" threat occurred. This is too restrictive. Also, three days to orally report such a condition is reasonable and consistent with the terms of the current Consent Order.

Response: EPA wants to be notified of releases or potential releases of hazardous waste and/or hazardous constituents that pose a threat to human health or the environment and does not want the threshold for such notice to be contingent on SCYI's subjective determination as to whether such releases or potential releases "warrant implementation of an ICM.." Consequently, no change has been made in response to the first part of this request. However, notification schedules have been changed to require EPA notification orally within three days of discovery and in writing within ten days of discovery.

9. P. III-20, Condition B.6.e, line 4

Comment: Insert "that warrants an ICM" after "environment"

As drafted, the condition could require an ICM if only a "potential" release was identified and only a "potential" threat occurred. This is too restrictive.

Response: An ICM may or may not be required for a potential release or a potential threat. Since the permit language notes EPA's role in making such determination, this Permit Condition has been modified to refer to threats or potential threats *that warrant implementation of an ICM.*

10. P. III-21, Condition B.6.g, lines 1 and 2

Comment: Replace "thirty (30)" with "one hundred twenty (120)"

Thirty days is inadequate to conduct an interim corrective measure study, to select an interim measure alternative, to secure management approval and funding and to prepare an Interim Corrective Measure Work Plan. A minimum of 120 days is required.

Response: This Permit Condition has been modified to provide additional time for preparation, design, and submittal of an ICM Plan if one becomes necessary.

11. P. III-24, Condition B.9.b

Comment: Edit the condition as follows:

"b. The Permittee shall submit to EPA signed quarterly progress reports of all activities performed pursuant to Module III (i.e., SWMU Assessment, Interim Measures, RCRA Facility Investigation, Corrective Measures Study and Corrective Measures Implementation), beginning no later than ~~sixty (60)~~ ninety (90) calendar days following the effective date of this Permit, and every three months thereafter. The quarterly reports will be due to EPA within 45 days following the end of a quarter."

This will ensure that SCYI's quarterly progress reports can be based on calendar quarters rather than an arbitrary schedule based on the effective date of the permit. Also, the language is consistent with the terms of the current Consent Order.

Response: This Permit Condition has been modified as requested to allow the quarterly progress reports to be based on calendar quarters rather than dates based on the effective date of the Permit.

12. P. III-26, Condition B.9.g, Third 3rd sentence

Comment: Edit the sentence as follows:

"Extensions of the due dates for submittals may be granted by EPA ~~in accordance with the Permit modification processes under 40 CFR §270.41 and 270.42.~~ upon request by the Permittee. EPA shall not unreasonably withhold or deny any extension of time requested by the Permittee for any submittal under this Module."

As drafted, procedures for requesting and approving extensions of due dates for corrective action submittals are overly burdensome for SCYI as well as EPA. This condition does not appear administratively viable considering time frames associated with permit modifications under 40 CFR §270.41 and 270.42 versus time frames of typical corrective action submittal extension requests

Response: If permit modification regulations at 40 CFR Sections 270.41 and 270.42 are applicable, then they must apply, to the extent these regulations are applicable. As such, no change has been made in response to SCYI's request to delete reference to these regulations. However, the paragraph containing the above sentence has been modified to reference that, pursuant to Permit Condition E.6, modifications may be made without reissuance or formal modification of the permit. With regard to the last sentence in the Comment, above, SCYI proposes to add language that "EPA shall not unreasonably

withhold or deny extension of time requested by the Permittee for any submittal under this Module." Although EPA does not intend to deny reasonable requests for due date extensions, it is EPA's obligation to ensure that the environmental efforts outlined in this Permit continue to make forward progress. Consequently, SCYI will be expected to adhere as closely as possible to the Permit-established schedules, which are required to be included in this Permit. For this reason, no change has been made in response to the above-mentioned request.

13. P. III-26, Condition B.11.a

Comment: Edit the condition as follows:

"If at any time the Permittee discovers that hazardous wastes and/or constituents in groundwater have been released from any SWMU at the Facility, and have migrated, or are migrating, beyond the Facility boundary in concentrations that ~~exceed background levels~~ pose a significant or actual threat to human health or the environment, Permittee shall:"

As drafted, the permit condition would require that SCYI establish background levels for all constituents of concern in groundwater. Revised language is adequately protective of human health and the environment.

Response: Given the amount of sampling and groundwater investigation activities performed by SCYI during the RFI, EPA believes that background levels for many of the constituents of concern in the groundwater are readily available. Moreover, EPA prefers that the threshold for SCYI's notification to EPA of releases beyond Facility boundaries be contingent on objective criteria, such as "background levels," rather than the subjective criteria (ie., significant or actual threat) proposed by SCYI. For these reasons, EPA declines to make the requested changes. However, in order to address SCYI's concern about background levels, EPA has modified the language of this paragraph to require the Permittee to notify EPA if background levels are not readily available for contaminants that have migrated or are migrating beyond Facility boundaries. Accordingly, EPA has renumbered the subparagraphs of Paragraph B.11.a.

14. P. III-29, Condition C.2.j

Comment: Delete permit condition.

This provision requires submittal of information that can only be gathered during a RCRA Facility Investigation and cannot be gathered within 30 days as required by the permit condition. Submission of readily available information, including prior sampling and analysis results, will be conducted as per Condition C.2.h.

Response: This Permit Condition has been deleted because the requested information is unlikely to be available prior to detailed investigation of the newly identified SWMU, and therefore may not be suitable for inclusion in a SWMU Assessment Report.

15. P. III-29, Condition C.3

Comment: Replace "thirty (30)" with "ninety (90)"

Thirty days is inadequate to prepare a Sampling and Analysis Plan that satisfies all requirements of the permit condition. A minimum of 90 days is required.

Response: SCYI has requested that the time frame for submittal of the SWMU Sampling and Analysis Plan be extended to 90 calendar days after submittal of the SWMU Assessment Report. However, the requested revision has not been incorporated into this Permit Condition. As currently written, the SWMU Sampling and Analysis Plan must be submitted to EPA within 75 calendar days after discovery of the new SWMU. EPA believes that this provides SCYI with sufficient time to develop and submit the Sampling and Analysis Plan. Furthermore, if circumstances warrant, the Permittee can petition EPA for an extension of the scheduled due date.

16. P. III-30, Condition C.4.b

Comment: Edit the condition as follows:

"Submission of a revised Plan to EPA within ~~thirty (30)~~ sixty (60) calendar days of the above-referenced meeting or by another deadline reasonably established by EPA after consulting with the Permittee. If EPA reasonably determines that such a meeting is not necessary, the Permittee shall submit a revised Plan to EPA according to a schedule specified by the Agency not to exceed ~~forty-five (45)~~ sixty (60) calendar days after Permittee's receipt of ~~Plan comments from EPA~~ EPA's written meeting request denial, unless the period for submission is extended by EPA; and"

Thirty days is inadequate to revise the Plan. A minimum of 60 days is required. As drafted, the time frame for resubmission of the Plan in the event that a meeting request is denied is not reasonable.

Response: EPA believes that this Permit Condition, as currently written, provides sufficient time to revise the Sampling and Analysis Plan. The Condition also provides for extension of the submission deadline if EPA determines that an extension is necessary. No changes have been made to the Permit in response to this comment.

17. P. III-31, Condition E

Comment: Delete entire permit condition including attached Figure 7.

The work required under this Condition has been completed. Investigation results have been submitted to EPA. SCYI is currently awaiting EPA comment.

Response: This Permit Condition has been deleted, along with referenced Figure 7, because the specified Supplemental RFI has been completed, and data and information from the Supplemental RFI work has been submitted to EPA as part of the Draft RFI Final Report dated March 2005. EPA has recently completed its review of the Draft Final RFI Report and provided comments to SCYI in an August 17, 2005 letter, including three attachments. SCYI has recently submitted to EPA revised Environmental Indicator Determinations. Subsequent Permit sections have been renumbered as appropriate.

18. P. III-36, Condition C.9 (formerly referenced as Condition F.3)

Comment: Edit Condition F.3 as follows:

"3. RCRA Facility Investigation (RFI) ~~Final~~ Report.

a. Within ~~sixty (60)~~ ninety (90) calendar days of receipt by the Permittee of all validated analytical data generated under any approved RFI Work Plan ~~(including the current approved Supplemental RFI Work Plan)~~, the Permittee shall submit to EPA a RFI ~~Final~~ Report. ~~for Group 2 SWMUs (excluding any SWMU where a NFA determination has been made) and any newly identified SWMUs or AOCs. However, if EPA determines that a delay in completing the work at one or more SWMU(s) and/or AOC(s) will delay the preparation and submission of the RFI Final Report, EPA may require the Permittee to submit one RFI Final Report for the SWMU(s) and/or AOC(s) where the work has been completed, and a separate RFI Final Report(s) for the SWMU(s) and/or AOC(s) where work is delayed.~~

Any RFI ~~Final~~ Report must contain adequate information to support further corrective action decisions at the Facility, should such actions be necessary. Any RFI ~~Final~~ Report shall describe the procedures, methods, and results of all investigations of the subject SWMU and/or AOC and any releases therefrom, including information on the type and extent of contamination released, the sources, migration pathways, and actual or potential receptors. It shall also present all information gathered under the approved RFI Work Plan ~~and Supplemental RFI Work Plan~~ and revisions thereto. Any RFI ~~Final~~ Report shall also include a comparison of media-

specific hazardous constituents with their corresponding health based levels.

b. Following submission of the Report(s) set forth in subparagraph 3.a immediately above, EPA's review and approval shall proceed in accordance with the following schedule:

(1) EPA shall review the Report(s) and either approve it or issue written deficiency comments.

(2) A meeting between the Permittee and EPA, if desired by the Permittee to discuss the deficiency comments, must be requested by the Permittee within thirty (30) calendar days of the date of EPA's written deficiency comments, and reasonably approved by EPA. This meeting, if approved by EPA, may occur either prior to or after the 30-day period. The request, however, must be made within the specified 30-day period. EPA shall not unreasonably deny such a meeting request.

(3) The Permittee shall submit a revised Report to EPA within ~~forty-five (45)~~ sixty (60) calendar days of the date of EPA's written ~~deficiency comments~~ meeting denial, if no meeting is held pursuant to subparagraph (2) immediately above, or within ~~forty-five (45)~~ sixty (60) calendar days after the meeting if such a meeting is held, or by another deadline established by EPA after consulting with the Permittee.

~~c. After EPA approves any RFI Final Report the Permittee shall mail the approved RFI Final Report to all individuals on the Facility mailing list established pursuant to 40 CFR §124.10(c)(1), within thirty (30) calendar days of receipt of approval.~~

~~d.~~ c. If after EPA reviews any RFI ~~Final~~ Report it reasonably deems that additional data or information is needed to delineate the extent of groundwater contamination, EPA shall notify the Permittee in writing of the data and informational needs, which shall be implemented as a subsequent phase or phases, unless a request for a meeting to discuss and agree on the additional data or information requirement is submitted by Permittee within thirty (30) days of receipt of such a request from EPA.

~~e.~~ d.. Following notification of the additional data and informational needs, subsequent activities for the subsequent investigation phase (or phases) shall proceed in accordance with the following schedule:

i. EPA shall arrange a meeting between the Permittee and EPA to discuss and agree on the scope of work or work or schedules for the subsequent investigation phase or phases, as appropriate.

ii. EPA shall send written request with a schedule for submittal to Permittee to prepare and submit a work plan for implementing the scope of work for the subsequent investigation phase or phases.

iii. The Permittee shall submit a work plan for the subsequent investigation phase (or phases) conforming to the schedule accompanying the written request from EPA.

e. Within ninety (90) calendar days of receipt by the Permittee of EPA's approval of RFI Reports for Group 2 SWMUs (excluding any SWMU where a NFA determination has been made) and/or for all newly identified SWMUs or AOCs, the Permittee shall submit to EPA a RFI Final Report consolidating the EPA-approved RFI Reports for all Group 2 SWMUs (excluding any SWMU where a NFA determination has been made) and/or for all newly identified SWMUs or AOCs. After EPA approves the RFI Final Report, the Permittee shall provide notice to all individuals on the Facility mailing list established pursuant to 40 CFR §124.10(c)(1), within thirty (30) calendar days of receipt of approval, that the Final RFI Report has been completed and is available for review at the SCYI facility upon request."

As drafted, the permit condition does not reflect current conditions. All sampling and analysis activities have been completed in accordance with approved work plans and all data has been submitted to EPA for approval. Under the proposed language, SCYI will be required to prepare an RFI Report for any newly identified SWMUs or AOCs or to revise a previously submitted RFI Report if EPA determines that it is incomplete. The proposed language provides for the preparation and submission of a comprehensive Final RFI Report only after all RFI activities have been completed and all RFI Reports have been approved by EPA. Also, since distribution of the Final RFI report to the entire facility mailing list would be overly burdensome and costly, the proposed language will require that SCYI provide notification to the mailing list and make the report available for review. Finally, revised time frames for submission of documents reflect the minimum time necessary to adequately prepare such reports.

Response: This Permit Condition has been modified to reflect that all RFI Work, Work Plans and Reports for the Group 2 SWMUs have been completed. Additional work will be conducted under the Corrective Measure Study ("CMS") Phase. If newly identified SMWUs and/or AOCs are identified during the course of additional work performed by SCYI during the CMS, then an RFI Work Plan, RFI Work Plan Implementation, and RFI

Report shall be submitted to EPA for any newly identified SWMU and/or AOC. As such, Condition F.3, along with F.1 and F.2, have been relocated to Condition C. (Future Assessment of Newly Identified SWMUs and/or AOCs. Condition F.1, F.2 and F.3 have been renumbered as C.7, C.8 and C.9. Moreover, reference to "Corrective Action Requirements" in the title of Condition F. has been deleted.

The Permit Condition has not been modified to require another combined RFI Report in the event that additional SWMUs are identified. The RFI Final Report has already been submitted. EPA believes that a separate RFI Report, incorporating any necessary information from the March 2005 RFI Final Report, will be sufficient to document environmental conditions associated with any newly identified SWMUs

Regarding notification, the Permit Condition has been modified to allow SCYI to provide notification to the Facility mailing list that an RFI has been completed and that the associated report is available for review. SCYI will not be required to distribute the entire RFI Report to all mailing list recipients because such an effort would be extremely burdensome.

Regarding schedules, this Permit Condition has not been modified to extend submittal schedules. EPA believes that the schedules included in the Permit are reasonable and achievable in the majority of cases, and procedures have been included in the Permit for requesting an extension of the submittal schedules should this become necessary due to then-existing circumstances.

Finally, regarding the "agree on" language that SCYI proposed, it is EPA's desire (and presumably, SCYI's desire, too) that an agreement can be reached at a meeting with the company to discuss a scope of work or work or schedules for the subsequent phase or phases. However, should any of the above work items not meet EPA's satisfaction, an agreement at such meeting might not occur. As such, no change has been made in response to this request.

19. P. III-39, Condition E.1.d(3)(formerly referenced as Condition F.4.d(3))

Comment: Edit the condition as follows:

"(3) The Permittee shall submit a revised Plan(s) to EPA within ~~forty-five (45)~~ sixty (60) calendar days of the date of EPA's written ~~deficiency comments~~ denial of the meeting request, if no meeting is held pursuant to subparagraph (2) immediately above, or within forty-five (45) calendar days after the meeting if such a meeting is held, or by another deadline established by EPA after consulting with the Permittee."

Thirty days is inadequate to revise the Plan. A minimum of 60 days is required.

Response: This Permit Condition has not been modified as requested to extend the submission schedule for revisions to the CMS Work Plan based on EPA's comments. EPA believes that the Permit Condition provides sufficient time to make any requested revisions. Furthermore, procedures have been included in the Permit for requesting an extension of the submittal schedules should this become necessary due to then-existing circumstances.

20. P. III-40, Condition E.3.a (formerly referenced as Condition F.6.a)

Comment: Replace "forty five (45)" with "sixty (60)"

Forty five days is inadequate to complete a CMS Final Report. A minimum of 60 days is required.

Response: This Permit Condition has been revised to require submittal of the CMS Final Report within 60 days after completion of the CMS. This time frame will allow for receipt and validation of any laboratory data obtained during the CMS, evaluation of the corrective measures studied, and preparation of a detailed and supportable recommendation for corrective action.

21. P. III-42, Condition E.4.a (formerly referenced as Condition F.7.a)

Comment: Edit the permit condition as follows:

"a. Based on the results in the RFI Final Report submitted under Condition F.3 of this Module, and findings in any CMS Final Report submitted under Condition F.6 of this Module, and any further evaluations of additional corrective measures that may be necessary, EPA shall select, subject to public notice and comment, corrective measures that will, at a minimum:

(1) be protective of any significant or actual threat to human health and the environment;

(2) meet the concentration levels of hazardous constituents in each medium reasonably determined to be protective of any significant or actual threat to human health and the environment;

(3) control the source(s) of release(s) so as to reduce or eliminate, to the maximum extent practicable, further releases of hazardous waste, including hazardous constituents, that might pose a significant or actual threat to human health and the environment; and

(4) meet ~~all~~ applicable waste management requirements."

As drafted, the requirement for implementation of a corrective measure may be overly conservative. The revised language is adequately protective of human health and the environment.

Response: EPA does not believe that this Permit Condition is overly conservative as currently written. Furthermore, EPA shall select corrective action remedies consistent with statutory requirements and then-existing applicable regulations and guidance. As such, no changes have been made in response to this request.

22. P. III-45, Condition E.8.b (formerly referenced as Condition F.8.b)

Comment: Edit the permit condition as follows:

b. Within thirty (30) calendar days after this Permit has been modified (after public notice and comment) or as otherwise provided in the permit modification, the Permittee shall ~~demonstrate in writing to EPA financial assurance~~ provide to EPA a certification that adequate funding will be available for completing the approved corrective measure(s).

Such a certification will be sufficient to provide financial assurance for completion of corrective action activities.

Response: A signed certification is not a demonstration of Financial Assurance. Thus, EPA declines to accept this request. EPA has made a few additional changes to this paragraph, by adding reference to the statutory and regulatory sections requiring demonstration of financial assurance for corrective action. Moreover, the former cross-reference to Condition F.8.b. in this Module has been changed to Condition E.5.(b), as a result of a relettering or renumbering of other Conditions in this Module.

23. P. III-45, Condition E.9 (formerly referenced as Condition F.9)

Comment: Delete permit condition.

There is no "compliance schedule" included in the permit module. Provisions for requesting and granting extensions for date of submission of reports required under this module are addressed in Condition B.9.g.

Response: This Permit Condition has been clarified to refer simply to "schedules" rather than a specific and separate "compliance schedule". The Permit Condition outlines the

required procedure for requesting and granting extensions, particularly for submission of work plans and reports described within this Module.

24. General Revisions

Comment: In addition to the specific comments provided above, revisions have been made to permit language throughout Module III in order to conform to the general intent of applicable regulations. Revisions are indicated in the attached permit module.

Response: SCYI has provided a black-lined version of the Draft Permit Module 3, in which it merely references language it wants added or stricken in the text, without indicating the issue raised or providing any explanation or arguments supporting its position. Absent such specificity, EPA can only speculate as to the reasons for SCYI's proposed edits, and cannot meaningfully respond to such comments. It does not appear that all these proposed revisions to the text would conform to the "general intent of applicable regulations," as SCYI's comment suggests. Notwithstanding the above, EPA sets forth below, in "a" to "r," the proposed edits by SCYI and EPA's response to these edits.

a. Page III 1, Condition A. 1: SCYI deleted "Director" and substituted "Administrator".

Response: The authority in question has been delegated to EPA, Region 2's Director and EPA has modified the language in the permit to reference the regulation only, at 40 C.F.R. Section 270.32(b)(2).

b. Page III-6, Condition A.3: SCYI deleted "site" and substituted "Facility".

Response: EPA accepts this change, because the Corrective Action Order required PRSOC to investigate 17 SWMUs across the "Facility."

c. Page III-18, Condition B.4: SCYI added "to the extent applicable"

Response: EPA agrees to accept a modified version of this request, and will substitute "to the extent appropriate."

d. Page III-23, Condition B.8.a.: SCYI added "EPA shall not unreasonably withhold or deny the modification requested by Permittee."

Response: SCYI's edits here and in other places throughout this Module suggest that the Permit language should be amended to require that EPA's requirements will be "reasonable." RCRA has conferred authority for corrective action upon EPA, but consistent with the Administrative Procedure Act EPA does not intend to be unreasonable in its requests or requirements of SCYI. EPA does not believe that such changes to the

Permit are necessary. Furthermore, inclusion of the recommended language in the Permit could lead to frequent disagreement between SCYI and EPA regarding whether requests are "reasonable" or "unreasonable." For these reasons, no changes are made in response to this edit.

e. Page III-27, Condition B.11.c.: SCYI deleted "or potential"

Response: RCRA is mean to protect "potential" as well as "actual" threats to human health or the environment. As such, no change has been made in response to this edit.

f. Page III-28, Condition B.12: SCYI added "or obtaining such permission".

Response: EPA accepts this change, because this change is consistent with the intent of this paragraph.

g. Page III-30, Condition C.6: SCYI added "reasonably"

Response: See EPA's Response to Comment 24.d, above.

h. Page III-30, Condition D.2: SCYI added "reasonably"

Response: See EPA's Response to Comment 24 d., above.

i. Page III-34, Condition F.1 a. (now referenced as C.7.a. in the Final Permit): SCYI added "reasonably"

Response: See EPA's Response to Comment 24.d, above.

j. Page III-35, Condition F.1.b.(2) (now referenced as C.7.b.(2) in the Final Permit): SCYI added "EPA shall not unreasonably deny such a meeting request."

Response: SCYI's edit suggests a request for an extension of the Permit's schedules for submittal of revised documentation where meeting requests are denied by EPA. Under this proposed language, document revisions originally due 30 or 45 calendar days after receipt of EPA comments would be due 30 or 45 calendar days after receipt of EPA's meeting request denial. Given that meeting requests can be submitted up to 30 calendar days after receipt of comments and EPA would require additional time to evaluate the need for a meeting, such language could significantly delay submittal of revised documentation and impede the corrective action process. EPA does not foresee denying reasonable meeting requests from SCYI. Consequently, no change has been made in response to this edit. See also EPA's Response to Comment 24. d.

k. Page III-.36, Condition F.1.b.(3) (now referenced as C.7.b.(3) in the Final Permit): SCYI added "Permittee's receipt of EPA's meeting request denial." SCYI also added "reasonably"

Response: See EPA's Response to Comment 24 d. and 24 j., above

l. Page III-37, Condition F.3.b.(2) (now referenced as C.9.b.(2) in the Final Permit): SCYI added "reasonably". SCYI also added "EPA shall not unreasonably deny such a meeting request."

Response: See EPA's Response to Comment 24.d and 24 j., above.

m. Page III-37, Condition F.3.b.(3) (now referenced as C.9.b.(3) in the Final Permit): SCYI added "meeting denial"

Response: See EPA's Response to Comment 24 j. and 24. d, above.

n. Page III-37, Condition F.3.d. (now referenced as C.9.d. in the Final Permit): SCYI added "reasonably"

Response: See EPA's Response to Comment 24d and 24 j. above.

o. Page III-39, Condition F.4.d.(2) (now referenced as E.1.d.(2) in the Final Permit): SCYI added "reasonably". SCYI also added "EPA shall not unreasonably deny such a request for a meeting."

Response: See EPA's Response to Comment 24 d. and 24 j., above.

p. Page III-39, Condition F.4.d.(3) (now referenced as E.1.d.(3) in the Final Permit): SCYI added "denial of the meeting request."

Response: See EPA's Response to Comment 24 j. and 24 d., above.

q. Page III-41, Condition F.6.c.(2) (now referenced as E.3.c.(2) in the Final Permit): SCYI added "reasonably." SCYI also added "EPA shall not unreasonably deny such request for a meeting."

Response: See EPA's Response to Comment 24 d. and 24 j., above.

r. Page III-41, Condition F.6.c.(3) (now referenced as E.3.c.(3) in the Final Permit): SCYI added "denial of the meeting request."

Response: See EPA's Response to Comment 24 j. ad 24 d., above.

Other EPA Changes to Module 3

25. Although no additional comments to Module 3 were received from SCYI, EPA has made the following changes as a result of its further review of this Module:

a. Page III-6, Condition A.2: EPA deleted the No Further Action (NFA) reference to SWMU 44A.

b. Page III-8, Condition A.4.e: EPA deleted the NFA reference to SWMU 44A.

c. Page III-17, Condition A.4.f: EPA inserted new paragraphs describing SWMU 44A.

d. Page III-17, immediately preceding Condition A.5: EPA inserted new section entitled, "Recently Identified SWMU" and inserted paragraphs describing a new SWMU ("SWMU 52")—Crude Tank -003-002.

e. Page III-17, Condition A.5: EPA renumbered Areas of Concern to become Condition A.6.

f. Page III-22, Condition B.8: EPA deleted reference to a NFA for SWMU 44A.

g. Page III-26, Condition B.11.a(2) (now referenced as Condition B.11.a(3) in the Final Permit): EPA inserted "the release poses an immediate threat or if". This change will require the Permittee to notify EPA, without waiting for an EPA request, if the Permittee discovers that a release poses an immediate threat.

h. Page III-27, Condition B.11 b.(2): See EPA Response to Comment 25 g., above.

i. Moved Condition F.1 (Additional RFI Work Plan) , F.2 (RFI Work Plan Implementation) and F.3. (RFI Final Report) to Condition C (Future Assessment of Any Newly Identified SWMUs And/Or AOCs) as Condition C.7, C.8, and C.9.

j. Moved Condition F.4 (Corrective Measure Study (CMS) Work Plan), F.5 (CMS Implementation) and F.6. (CMS Final Report), F.7 (Corrective Measures Selection), F.8.(Permit Modification for Future Corrective Measures Implementation) and F.9 (Modification of Compliance Schedule (now "Modification of Schedules)) to Condition E. as Condition E.1 through E.6.

MODULE IV – CONTAINER STORAGE AREA

1. Page IV-1, Condition A, Paragraph 1, Last Sentence

Comment: Edit last sentence as follows:

> "~~Facility and process information for the storage and management of waste in containers is incorporated in Permit Attachment IV-1.~~ A description of the HWSA is presented in Attachment IV-1, Section 3.3."

The proposed language includes the correct reference for the detailed description of the HWSA. Much of the information included throughout Attachment IV-1 was provided in the RCRA Part B Permit Application for informational purposes and was not intended to become an enforceable permit condition. Accordingly, the entire Attachment should not be made an enforceable permit condition by reference.

Response: The reference to Permit Attachment IV-1 has been modified to refer to the Hazardous Waste Storage Area (HWSA) description.

2. Page IV-1, Condition A, Paragraph 2, Line 3

Comment: Delete "(Permit Condition VI.C.1)"

The referenced permit condition - which should be IV.C.1 - unduly limits SCYI's options for types of containers it can use for storage of hazardous waste. See comment 5 [sic, likely 6] for further discussion.

Response: The reference to Permit Condition IV.C.1 has been deleted.

3. Page IV-1, Condition A, Chart

Comment: Insert a footnote to the chart stating the following: "Container equivalents are provided for informational purposes only and are not intended to place limitations on Permittee's selection of containers to be used for the storage of hazardous waste."

The table should not limit SCYI's selection of containers to be used for the storage of hazardous waste. SCYI routinely uses other sized containers.

Response: The Table has been revised and footnotes have been added to the Permit language to clarify that the referenced container types are provided for informational purposes only and are not intended to limit SCYI's selection of containers. Refer to Comment 6 below for further discussion.

4. Page IV-2, Condition B.1, Line 2

Comment: Edit the condition as follows:

1. Permitted Waste. The Permittee may store only the specific hazardous waste listed below in containers at the HWSA for greater than 90 days. The maximum annual quantity indicated in the table below may be exceeded as long as the maximum storage capacities indicated under Condition IV.A are not exceeded. Storage of waste in containers is subject to the waste acceptance criteria in Permit Module II Condition C.1. and Attachment II-1, and other terms of this Permit.

Approximate maximum annual values presented in SCYI's Part A Permit Application (which is the source of the values in the referenced table) were not intended to limit the quantity of waste generated and stored by SCYI on an annual basis.

Response: As requested, a clarification has been added to the Permit language indicating that the approximate maximum annual quantities for specific hazardous wastes (i.e., as presented in the chart provided with this Permit Condition) may be exceeded as long as the maximum storage capacities listed in Condition IV.A are not exceeded.

5. Page IV-2, Condition B.2, Line 3

Comment: Insert "or §270.42" after "§270.41"

Permit modifications may also be granted at the request of the permittee.

Response: The requested insertion has been added, such that the Permit Condition also references permit modifications made at the request of the Permittee (40 CFR §270.42).

6. Page IV-3, Condition C

Comment: Delete conditions C.1 and C.2

These permit conditions unduly restrict SCYI's choice of containers to be used for storage of hazardous waste. EPA has not developed design standards for hazardous waste storage containers. Rather, EPA has established performance and management standards as set forth at 40 CFR 264 Subpart I. Subpart I does not limit a facility's selection of container storage types, nor does in specify that DOT-approved containers must be used. Although 55-gallon DOT-approved steel drums and 27 cy roll-offs are typically used by SCYI, containers of others sizes and construction materials may also be used depending on the waste type, volume, physical and chemical characteristics and other factors, as described in the RCRA Part B Permit Application. All such containers are managed in full compliance with Subpart I. The proposed permit language would prohibit SCYI from

using these containers, even if they meet all requirements of Subpart I. There is no technical or regulatory basis for such a prohibition. The permit module will be adequately protective of human health and the environment absent conditions IV.C.1 and IV.C.2.

Response: Language outlining acceptable container types for storage of hazardous waste has been removed from the Permit. Nevertheless, this Permit Condition continues to require that only containers meeting the performance standards and shipping container requirements of the United States Department of Transportation (DOT) be used for off-site transportation of hazardous waste, in accordance with the requirements of 40 CFR §262.30. Such containers must also comply with the requirements of 40 CFR §§264.173 and 264.1086. The Permittee must also assure that the ability of the container to contain waste is not impaired by any incompatibility with its contents. In addition, to minimize the transfer of hazardous waste from one container to another, EPA strongly encourages the use of DOT-approved containers for storage within the HWSA whenever possible.

7. Page IV-3, Condition E.1

Comment: Edit the condition as follows:

"1. The Permittee shall manage all containers ~~as specified in Permit Attachment IV-1 [Section 3.4]~~ in accordance with 40 CFR 264 Subpart I and shall keep all containers closed during storage, except when it is necessary to add or remove waste. The Permittee shall not open, handle, or store containers in a manner which may rupture the container or cause it to leak. [40 CFR §264.173]

The revised language is consistent with regulatory requirements. As discussed in Comment No.1, much of the information included throughout Attachment IV-1 was provided in the RCRA Part B Permit Application for informational purposes and was not intended to become an enforceable permit condition.

Response: The Permit Condition has been modified to require SCYI to comply with the container performance and management standards in 40 CFR Part 264, Subpart I.

8. Page IV-4, Condition E.3.a

Comment: Edit the condition as follows:

a. ~~DOT 55-gallon drums~~ Containers may be stacked three containers high, provided that pallets are placed between the stack layers.

The condition applies all containers, DOT-approved or otherwise.

Response: EPA has modified the proposed language to allow for stacking of various types of containers (with the exception of roll-off containers) as long as the performance and management standards in 40 CFR Part 264, subpart I, are appropriately maintained.

9. Page IV-5, Condition G.1, First Sentence

Comment: Edit the sentence as follows:

The Permittee shall inspect the HWSA in accordance with ~~the Inspection Schedule and Frequency Summary Table~~ Table I, Inspection Schedule, set forth in Permit Attachment II-3.

The proposed language is consistent with the contents of Attachment II-3.

Response: The reference to Table I in Permit Attachment II-3 has been corrected for consistency.

10. General Revisions

Comment: In addition to the specific comments provided above, revisions have been made to permit language throughout Module IV in order to conform to the general intent of applicable regulations. Revisions are indicated in the attached permit module.

Response: SCYI has provided a black-lined version of the Draft Permit Module 4, in which it merely references some language it wants added or stricken in the text, without indicating the issue raised or providing any explanation or arguments supporting its position. Absent such specificity, EPA can only speculate as to the reasons for SCYI's proposed edit, and cannot meaningfully respond to such comment. It does not appear that the proposed revision to the text would conform to the "general intent of applicable regulations," as SCYI's comment suggests. Notwithstanding the above, EPA sets forth below in "a" the proposed edit by SCYI and EPA's response to the this edit.

a. Page IV-6, Condition L.c: In the certification paragraph, SCYI deleted "and all applicable prohibitions set forth in 40 C.F.R. 268.32 and RCRA section 3004(d), 42 U.S.C. Section 6924(d)."

Response: SCYI has not provided any explanation for its deletion of the above language. As such, no change has been made in response to this request.

Other EPA Changes to Module IV

a. Page IV-1, Condition A: EPA changed the subtitle from "HAZARDOUS WASTE STORAGE AREA" TO "HAZARDOUS WASTE MANAGEMENT UNIT," in order to make clear that this section of the Module describes the hazardous waste management unit at the Facility. In the first sentence of this section, EPA also substituted the words "This hazardous waste management unit (ie., the Container Storage Area, also known as the Hazardous Waste Storage Area "HWSA")) for "the hazardous waste storage area," in order to make clear that the hazardous waste management unit at the Facility includes the Hazardous Waste Storage Area. This change was also made in order to be consistent with how these terms are used in other modules in this Permit.

MODULE V – ORGANIC AIR EMISSIONS STANDARDS FOR CONTAINERS

1. Page V-1, Condition A

Comment: Insert the following sentence at the end of the paragraph: "Containers with a design capacity less than or equal to 0.1 m^3 (26 gallons) are exempt from the permit conditions of this Module in accordance with 40 C.F.R.§264.1080(b)(2)."

The revised language proposed by SCYI is consistent with 40 CFR §264.1080.

Response: This Permit Condition has been revised as requested to note that containers with a design capacity less than or equal to 0.1 cubic meters (26 gallons) are exempt from the requirements of Module V in accordance with 40 CFR §264.1080(b)(2).

2. Page V-1, Condition B

Comment: Edit the condition as follows:

The Permittee shall control air pollutant emissions from containers in the HWSA unit ~~listed in Table I~~ in accordance with the applicable subpart CC General Standards (40 C.F.R. §§264.1082) and Standards for Containers (40 C.F.R. §264.1086). ~~Table I identifies the locations of the units, unit type/level and the applicable air emission controls for the unit.~~ Table I identifies the location of the unit, subpart CC status, emission control options and types of containers typically but not exclusively used by SCYI. ~~The Permittee shall ensure that the containers meet applicable U.S. Department of Transportation regulations on packaging hazardous materials for transportation in accordance with 40 C.F.R. §264.1086(f). The containers shall comply with 49 C.F.R. Part 178 or Part 179, as applicable, and be managed in accordance with 49 C.F.R. Parts 107, 172, 173, and 180.~~

The proposed language clarifies that Table I does not limit the selection of containers that may be used by SCYI. Also, requirement for containers to meet U.S. Department of Transportation regulations in accordance with 40 C.F.R. §264.1086(f) is one of the control options available under the Standards for Containers [40 C.F.R. §264.1086(c)] and is not a mandatory requirement.

Response: The Permit Condition has been modified to clarify that the referenced container types are provided as examples only and are not intended to limit SCYI's selection of containers. Additionally, the Permit Condition has been modified to make clear that Containers used for transporting hazardous waste off-site must meet the performance standards and shipping container requirements of the United States Department of Transportation and must comply with the requirements of 40 C.F.R. Sections 262.30, 264.173 and 264.1086. Additionally, the Permittee must assure that the ability of the container to contain waste is not impaired by any incompatibility with its contents.

3. Page V-1, Condition C, First Sentence

Comment: Edit the sentence as follows:

"The Permittee shall inspect, monitor and repair ~~air emission control equipment~~ containers and their covers and closure devices in accordance with 40 CFR. §264.1086."

The proposed language is consistent with the requirements as per 40 CFR §264.1086(c)(4).

Response: The permit language has been modified to require inspection, monitoring, and repair of containers, their cover devices, and any required air emissions control equipment in accordance with 40 CFR §264.1086. Although the comment indicates (by citation) that only containers requiring Level 1 controls will be used for hazardous waste storage under this Permit, a complete and binding list of container types has not been provided by SCYI. Consequently, it is possible that containers requiring Level 2 or Level 3 controls may be used in the future. Therefore, references to inspection, monitoring, and repair of air emissions control equipment will remain in this Permit Condition.

4. Page V-2, Condition E.1

Comment: Delete Condition E.(a).

The semiannual report requirement is not applicable since SCYI does not use any control device in accordance with the requirements of 40 C.F.R. §264.1087.

Response: Despite SCYI's request, this Permit Condition will remain in place. Although the comment indicates that Level 3 control devices will not be used for hazardous waste storage under this Permit, a complete and binding list of container types has not been provided by SCYI. Consequently, it is possible that containers requiring Level 2 or Level 3 controls may be used in the future. Therefore, the Permit will continue to require semiannual reporting in accordance with 40 CFR §264.1090(c), as applicable.

5. Page V-2, Condition E.2 [sic, likely E.(b)]

Comment: Edit the condition as follows:

"(b) In accordance with 40 C.F.R. § 264.1090(a), the Permittee shall submit a report to the Director for each occurrence when hazardous waste is placed in a ~~waste management unit (tank, surface impoundment, or container)~~ container which is exempted from using air emission controls under 40 C.F.R. § 264.1082(c), in noncompliance with the conditions specified in 40 C.F.R. § 264.1082(c)(1) or (2), as applicable."

SCYI is seeking a permit for a container storage area and not for hazardous waste storage tanks or surface impoundments.

Response: The requested clarification has been made, such that the Permit Condition references only containers for hazardous waste storage.

6. Page V-2, Condition E.3

Comment: Delete Condition E.(c).

There is no reporting requirement under 40 C.F.R. §264.1090 requiring SCYI to report changes in container management practices.

Response: This Permit Condition has been deleted because, as stated previously, Table I was provided to illustrate typical container types used by SCYI and not to define the entire scope of containers to be used pursuant to this Permit. While containers not included on this list may be used at SCYI, it is not expected that Table I will be updated to reflect such changes. Consequently, reporting of such changes is unnecessary.

7. Page V-2, Condition H

Comment: Edit the condition as follows:

"~~Tanks, surface impoundments and~~ Containers which are exempt from the Subpart CC control standards at 40 C.F.R.§264.1086 ~~40 C.F.R.§264.1084 through 40 C.F.R.~~

~~§264.1087~~ in accordance with 40 C.F.R. §264.1082(c), must meet the waste determination requirements of 40 C.F.R. §264.1083, the record keeping requirements of 40 C.F.R. §264.1089, and the reporting requirements of 40 C.F.R. §264.1090, as applicable."

SCYI is seeking a permit for a container storage area and not for hazardous waste storage tanks or surface impoundments.

Response: The requested clarification has been made, such that the Permit Condition references only containers for hazardous waste storage.

8. General Revisions

Comment: In addition to the specific comments provided above, revisions have been made to permit language throughout Module V in order to conform to the general intent of applicable regulations. Revisions are indicated in the attached permit module.

Response: SCYI has provided a black-lined version of the Draft Permit Module 5, in which it merely references some language it wants added or stricken in the text, without indicating the issue raised or providing any explanation or arguments supporting its position. Absent such specificity, EPA can only speculate as to the reasons for SCYI's proposed edit, and cannot meaningfully respond to such comment. It does not appear that this proposed revision to the text would conform to the "general intent of applicable regulations," as SCYI's comment suggests. Notwithstanding the above, EPA sets forth below in "a" the proposed edit by SCYI and EPA's response to this edit.

a. Page V-2, Condition G: SCYI has added "not unreasonably" and deleted "grant or", in the context of denying request for an extension of supporting documentation of compliance with all self-implementing provisions of any future air regulations promulgated under the provisions of Section 3004(n) of RCRA, as amended by HSWA.

   Response: EPA works closely with the Permittee and understands that established schedules may prove to be difficult to achieve in certain instances. RCRA has conferred authority for corrective action upon EPA, but consistent with the Administrative Procedure Act, EPA does not intend to be unreasonable in response to requests for due date extensions in certain instances where established schedules prove to be difficult to achieve. Nevertheless, it is EPA's obligation to ensure that the environmental efforts outlined in this Permit continue to make forward progress. Consequently, SCYI will be expected to adhere as closely as possible to the Permit-established schedules. No change has been made to the wording of the Permit in response to this comment.

MODULE VI – WASTE MINIMIZATION

1. Page VI-1, Conditions A and B

Comment: Delete Conditions A and B and replace with the following:

"A. WASTE MINIMIZATION.

Pursuant to 40 C.F.R. § 264.73(b)(9), and Section 3005(h) of RCRA, 42 U.S.C. § 6925(h), the Permittee must submit to the Director, on an annual basis, a certification that:

1. A program is in place to reduce the volume and toxicity of hazardous waste generated to the degree determined by the Permittee to be economically practicable; and

2. The proposed method of treatment, storage or disposal is that practicable method currently available to the Permittee which minimizes the present and future threat to human health and the environment.

The certification will be submitted by July 1 of each year after the effective date of this Permit.

The referenced regulation requires submission of a certification, not a report. Reporting requirements are established in other conditions within this module. Revised language is consistent with regulatory requirements.

Response: As requested, these Permit Conditions have been combined and clarified to indicate that only a waste minimization certification is required by 40 CFR §264.73(b)(9). Waste minimization reporting requirements are established in other conditions within this Module.

2. Page VI-2, Condition D (formerly referenced as Condition E)

Comment: Edit the condition as follows:

"As an alternative to Waste Minimization reporting, as required in Condition VI A. through VI D, above, the Permittee may submit to EPA a written request, subject to EPA's written approval, to perform and implement an Environmental Management System (EMS) in order to satisfy waste minimization requirements. The request shall be submitted to the Director by July 1 of the first year after the effective date of this Permit. As part of its request, the Permittee must include a report on EMS planning and

development (hereinafter referred to as "EMS Report") which shall contain equivalent information to that required to be included in the HWRP in VI C [sic, likely VI B.], above. EPA's approval of this EMS alternative will be based on the following:

(1) the Permittee demonstrates to EPA that an acceptable EMS is in place at the Facility.

(2) the Permittee's EMS Report provides equivalent information as that required to meet the minimum requirements for a HWRP submittal, as described in Condition VI..C. [sic, likely VI B.] of this Module, above; and

(3) the Permittee's EMS Report provides information on the implementation of feasible waste reduction techniques at the Facility, as described in Condition VI.D [sic, likely VI.C]., above.

If approved, the Permittee will remain subject to the requirement for annual certification, as described in Condition VIB. [sic, likely VI A.] above. ~~The annual certification will be due on July 1 of the year following the effective date of this Permit, or by another date approved in writing by EPA.~~ The initial annual certification will be due on July 1 of the year following EPA's approval of the EMS alternative, or by another date approved in writing by EPA.

If the EMS standards are not met, or the Permittee later decides that it will no longer implement an EMS at the Facility, or cannot or will not submit an EMS Report as described above, the Permittee will remain subject to the waste minimization requirements described in Conditions VI.A. through VI.D, above.

Information on EMS planning and implementation is available on the following websites:
http://www.epa.gov/ems/policy/fo_policy.pdf
http://www.epa.gov/opptintr/dfe/tools/iemsguide.htm"

As drafted, the schedule for submission of the request is unclear. The revised language is consistent with the remainder of the permit condition.

Response: This Permit Condition has been modified to clarify the schedule for submission of a request to perform and implement an Environmental Management System (EMS) in lieu of waste minimization reporting. The EMS request must be submitted to EPA by April 1 of the first year after the effective date of this Permit or 90 days after the effective date of this Permit, whichever is later. Submittal of the request by this date should allow EPA sufficient time to review the request and respond to the Permittee before the July 1 deadline for waste minimization certification and submittals pursuant to Permit Conditions VI.A and VI.B.

MODULE VII – CLOSURE

1. Page VII-1, Condition A.1, Line 1 and Other Places

Comment: Replace "Facility" with "facility." [Additionally, replace all occurrences of "Facility" throughout this Permit Module with "facility].

As defined in Permit Module I.L.4, "Facility" (initial upper case) means the entire refinery while "facility" (initial lower case) means hazardous waste management facility. This Permit Module applies to the hazardous waste management facility and not the entire refinery.

Response: The permit language throughout Module VII has been revised to clarify that this Permit Module applies to the hazardous waste management unit (ie., the Container Storage Area, also known as the Hazardous Waste Storage Area ("HWSA")) and not to the entire refinery. This was done, however, by using clearer wording to avoid unnecessary confusion. See also Responsiveness Summary for Module 1, under Other EPA Changes to Module 1. concerning Page I-11, Condition L., where EPA explains revisions it made to the definition of "Facility."

2. P. VII-2, Conditions 4.a and 4.b

Comment: Edit conditions as follows:

"4. Amendment to Closure Plan. The Permittee shall submit a written notification of or request for a Permit modification to authorize ~~any~~ a change in the closure plan in accordance with the procedures given at 40 CFR Parts 124 and 270. The written notification or request must include a copy of the amended closure plan for approval by the Director.

a. The Permittee may submit a written notification or request to the Director for a Permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the Facility.

b. The Permittee must submit a written notification of or request for a Permit modification to authorize a change in the closure plan whenever:"

The proposed language is consistent with applicable regulations. Class 1 permit modifications require only a notification of EPA rather than submittal of a request to EPA.

Response: Because the language is consistent with applicable regulations in 40 CFR Parts 124 and 270, this Permit Condition has been changed in response to SCYI comments.

3. P. VII-4, Condition A.7.a

Comment: Edit condition as follows:

"a. Within ninety (90) days after receiving the final volume of hazardous or non-hazardous waste at a hazardous waste management unit ~~or the Facility, treat~~, remove from the unit ~~and/or dispose of~~ all hazardous waste in accordance with the closure plan; and"

The proposed language is consistent with applicable regulations.

Response: The Permit Condition has been modified, as requested, to indicate that all hazardous wastes will be removed from the permitted container storage area within 90 days after receiving the final volume of hazardous or nonhazardous waste, in accordance with the approved closure plan.

4. P. VII-5, Condition C, line 5

Comment: Delete the following sentence:

> "Changes in financial assurance mechanisms must be approved by the Director pursuant to 40 CFR §264.143 and/or when applicable §264.145 and §264.149."

EPA approval of changes in financial assurance mechanisms is not required by the regulations as long as continuous coverage can be demonstrated.

Response: Because 40 CFR §264.143 does not require EPA approval of changes to financial assurance mechanisms, the associated portion of this Permit Condition has been deleted as requested.

5. General Revisions

Comment: In addition to the specific comments provided above, revisions have been made to permit language throughout Module VII in order to conform to the general intent of applicable regulations. Revisions are indicated in the attached permit module.

Response: SCYI has provided a black-lined version of the Draft Permit Module 7, in which it merely references some language it wants added or stricken in the text, without indicating the issue raised or providing any explanation or arguments supporting its

position. Absent such specificity, EPA can only speculate as to the reasons for SCYI's proposed edit, and cannot meaningfully respond to such comment. It does not appear that this proposed revision to the text would conform to the "general intent of applicable regulations," as SCYI's comment suggests. Notwithstanding the above, EPA sets forth below in "a" the proposed edit by SCYI and EPA's response to this edit.

a. Page VII-2, Condition A.4.d: SCYI added the word "reasonable" in the context of the Director requesting modifications to the Closure Plan.

Response: RCRA has conferred authority for corrective action upon EPA, but consistent with the Administrative Procedure Act, EPA does not intend to be unreasonable in its requests or requirements of the Permittee. Inclusion of the proposed language, however, could lead to disagreement between the Permittee and EPA over whether the modifications requested are "reasonable" or "unreasonable". In this case, EPA does not intend to request unreasonable modifications to the Closure Plan. EPA's obligation is to ensure that the Closure Plan is adequately protective of human health and the environment, and is responsive to unforeseen or changing conditions over time. Consequently, SCYI will be expected to implement any EPA-requested modifications to the Closure Plan in accordance with the provision of 40 C.F.R. Part 264, Subpart G, incorporated into the permit. For the aforementioned reasons, no change has been made in response to this edit.

Other EPA Changes to Module 7

6. Although no additional comments to Module 7 were received from SCYI, EPA has made the following changes as a result of its further review of this Module:

a. Page VII-1, Condition A.3:a. EPA deleted the word "each", because there is only one hazardous waste management unit (ie., the Container Storage Area (also known as the Hazardous Waste Storage Area "HSWA")) at the Facility.

b. Page VII-3 and 4, Condition A.7: EPA deleted the word "treat" and "and/or dispose of," because the Permittee has not, and will not, treat nor dispose of its wastes at the Facility. All hazardous wastes will be removed from the permitted container storage area and the Facility, as a whole, in accordance with the schedule specified in the closure plan. See also Response to 3, above.

c. Page VII-4, Condition A. 9: EPA deleted the word "each", because there is only one hazardous waste management unit (ie., the Container Storage Area (also known as the Hazardous Waste Storage Area "HWSA")) at the Facility.