



REGION 9

SAN FRANCISCO, CA 94105

Russell Smith
Desotec US LLC
Sent Via Email: russell.smith@desotec.com

Jared Hammond
Evoqua Water Technologies LLC
Sent Via Email: jared.hammond@xylem.com

Subject: EPA Region 9 Land, Chemicals and Redevelopment Division Director’s Decision on Desotec’s and Evoqua’s Written Dispute Resolution Statement dated January 16, 2024 Arising from EPA’s Deliverable Deficiency Notice on the January 19, 2023 Performance Demonstration Test Report for the Parker, Arizona Facility [USEPA ID No: AZD 982 441 263].

Dear Russell Smith and Jared Hammond,

As the United States Environmental Protection Agency (EPA), Region 9 Land, Chemicals and Redevelopment Division Director, I have considered the points raised by Desotec US LLC’s (Desotec’s) and Evoqua Water Technologies LLC (Evoqua’s) Written Dispute Resolution Statement dated January 16, 2024 arising from the EPA’s Deliverable Deficiency Notice dated January 19, 2023 to the Performance Demonstration Test Report (PDTR) for the facility located on the Colorado River Indian Tribes (CRIT) land in Parker, Arizona.

As an initial matter, I want to assure you that the EPA has carefully considered the arguments presented by Desotec and Evoqua within the January 16, 2024, Statement. As you are aware, the EPA has withheld portions of documents pertaining to this matter that were requested under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, because the portions of documents were exempt from disclosure under FOIA’s Exemption 5 and the deliberative process privilege. See 5 U.S.C. § 552(b)(5). As explained in the Agency’s recent decisions under FOIA, including the Office of General Counsel’s April 5, 2024, appeal determination, the EPA found that releasing certain portions of the requested documents that included internal, deliberative material “would discourage open, frank discussions on matters of policy between EPA staff and managers and EPA consultants and would likely cause public confusion resulting from disclosure of reasons and rationales that may not in fact have ultimately been the grounds for the Agency’s action.” See April 5, 2024, EPA Appeal Determination Letter. For these reasons, the unredacted records covered by the EPA Office of General Counsel’s final determination are exempt from public disclosure and will not be incorporated into the Administrative Record for this Decision.

Based on the Attachment and Enclosures to this letter, and the materials cited therein, I have determined that, despite the evidence and arguments provided by Desotec and Evoqua, a complete retest will be required rather than the partial retest as proposed by the operators. Pursuant to Desotec's RCRA Permit, Permit Condition V.I.3, the PDT Report (PDTR) is subject to my approval as the Director of the Region's Land, Chemicals, and Redevelopment Division. Desotec is hereby required to submit a new Performance Demonstration Test Plan (PDTP) for a complete retest of the unit in accordance with this Decision.

Attached to this letter are an attachment and three enclosures. Attachment A contains my Decision regarding this dispute. Enclosure 1 contains the Statement of Basis for my Decision on each issue. Enclosure 2 contains the changes required to be made to the new PDTP before the next full retest of the facility. Enclosure 3 contains the Declaration by Mahfouz (Mike) Zabaneh, of my staff, supporting my Decision.

The PDT was performed in a manner which deviated in a variety of ways from the approved PDTP such that the PDTR conclusions were not reliable. The deviations from the approved PDTP and the component failures that occurred during the test warrant a complete retest for all the parameters set forth in the approved test plan.

Desotec is required to submit a new PDTP addressing each of the items identified in Enclosure 2 no later than 60 days from the date of this letter.

If you have questions about this letter, please feel free to contact Mike Zabaneh, the Region's Project Manager for the Desotec RCRA Permit, at (415) 972-3348 or via email at zabaneh.mike@epa.gov, or have your attorney contact the Regional Attorney assigned to this matter, Mimi Newton, at 415-972-3941 or at newton.mimi@epa.gov.

Sincerely,

CLAIRE
TROMBADORE

Digitally signed by
CLAIRE TROMBADORE
Date: 2024.07.15

Claire Trombadore
Director
Land, Chemicals and Redevelopment Division

Attachment A
Enclosures 1-3

cc: Amelia Flores, Chairwoman, CRIT Tribal Council (via email)
Dwight Lomayesva, Vice Chairman, CRIT Tribal Council(via email)
Josephine Tahbo, Treasurer, CRIT Tribal Council (via email)
Johnson Fisher, Secretary, CRIT Tribal Council (via email)
Robert "Bobby" Page, Council Member, CRIT Tribal Council (viaemail)
Jaymee Moore, Council Member, CRIT Tribal Council (via email)

Anisa Patch, Council Member, CRIT Tribal Council (via email)
Billy Beeson, Council Member, CRIT Tribal Council (via email)
Vanessa Oliveras, Council Member, CRIT Tribal Council (via email)
Guthrie Dick, Director, CRIT Environmental Protection Office (via email)
Rebecca Loudbear, Esq. Attorney General, CRIT (via email)
Tashina Harper, Executive Secretary to CRIT Chairwoman (via email)
Josephina Rivera, CRIT Environmental Protection Office (via email)
Stephen Richmond, Esq., Beveridge and Diamond, PC (via email)
Sara A. Clark, Esq., Shute, Mihaly & Weinberger LLP (via email)