

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

**** FILED ****
25SEP2018 - 03:30PM
U.S.EPA - Region 09

In the matter of)	U.S. EPA Docket No.
)	RCRA-09-2018- 0004
Chevron Products Company)	
)	
)	
RCRA EPA ID No. HIT160010005)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
Respondent.)	22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1) and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 Code of Federal Regulations ("C.F.R.") Part 22.
2. Complainant is the United States Environmental Protection Agency, Region 9 ("EPA"). Respondent is Chevron Products Company ("Respondent" or "Chevron").
3. Respondent owned and operated a facility located at 91-480 Malakole St, Kapolei, HI 96707 (the "Facility"). Respondent's Facility RCRA EPA Identification Number was HIT160010005. At the Facility, Respondent performed oil refining operations.
4. U.S. Environmental Protection Agency Region 9 Enforcement Division inspectors conducted a Compliance Evaluation Inspection ("CEI") at the Facility on February 24 through March 2, 2016. The purpose of the inspection was to evaluate the refinery's compliance with the RCRA's hazardous waste management requirements, 42 U.S.C. §§ 6921-6939, and Chapter 342J of the Hawaii Revised Statutes ("H.R.S."); and the Hawaii Administrative Rules ("H.A.R."), Title 11, Chapters 260-265, 268, 270, 273, and 279. Based upon the findings EPA made during the inspection, and additional information obtained subsequent to the inspection, EPA determined that Respondent had violated Section 3001 *et seq.* of RCRA, 42 U.S.C. § 6921 *et seq.*, and state regulations adopted pursuant thereto, as authorized by the United States.
5. EPA and Respondent agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CA/FO"). This CA/FO, which contains

the elements of a complaint required by 40 C.F.R. Sections 22.14(a)(1)-(3) and (8), simultaneously commences and concludes this matter in accordance with 40 C.F.R. Sections 22.13 and 22.18.

6. This action is based on EPA's allegation that Respondent failed to: (1) make a waste determination, in violation of H.A.R. 11-262-11 [40 C.F.R. § 262.11]; (2) comply with the manifest regulations, in violation of H.A.R. 11-262-20(a) [C.F.R. § 262.20(a)(1)]; and (3) have LDR notifications on-site, in violation of H.A.R. 11-268-7(a)(2) [40 C.F.R. § 268.7(a)(2)]. EPA maintains Respondent thereby violated Section 3001 *et seq.* of RCRA, 42 U.S.C. § 6921 *et seq.*, and state regulations authorized pursuant thereto.¹ The CEI Report, dated November 2016, prepared by the National Enforcement Investigations Center for EPA Region IX, identified additional alleged violations. Following further evaluation (including additional material provided by Respondent), this CA/FO only resolves the allegations set forth herein.

B. JURISDICTION

7. On November 13, 2001, the State of Hawaii received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271. The authorized program is established pursuant to H.R.S. Chapter 342, and the regulations promulgated thereunder at Hawaii Administrative Rules, Title 11, Chapters 11-260 through 11-279. The State of Hawaii has been authorized for all the regulations referenced in this CA/FO.
8. Respondent is a "person" as defined in H.A.R. 11-260-10 [*see also* 40 C.F.R. § 260.10].
9. Respondent was an "owner" of a "facility" as defined in H.A.R. 11-260-10 at the time of the inspection [*see also* 40 C.F.R. § 260.10]. The Facility was sold after the inspection, and is now owned and operated by another entity.
10. Respondent was the "operator" of a facility as defined in H.A.R. 11-260-10 [*see also* 40 C.F.R. § 260.10].
11. Respondent was a "generator" of hazardous waste at the Facility as defined in H.A.R. 11-260-10 [*see also* definition of "large quantity generator" at 40 C.F.R. § 260.10].
12. At the Facility, Respondent generated and accumulated, "hazardous waste" as defined in H.A.R. 11-260-10 and 11-261-3 [*see also* RCRA § 1004(5), and 40 C.F.R. §§ 260.10 and 261.3]. These hazardous wastes included but are not limited, to ignitable solvents/ toluene (D001/U239), sodium hypochlorite/ caustics

¹ All citations to the H.A.R. refer to Title 11 of the current Hawaii Administrative Rules. EPA is enforcing Hawaii hazardous waste management program requirements as approved and authorized by the United States on November 13, 2001 (*see* 66 Fed. Reg. 55115, November 1, 2001). Corresponding federal citations are provided in brackets.

(D002), sludge with arsenic (D004), filters with lead (D008), mercury recovered during refining (D009), benzene (D019), lab packs (D011), sand blast with arsenic (D004), silver nitrate, sludge with mercury from heat exchange bundle cleaning (D009/K050), sludge from cleaning crude tanks (D009/K169), and sludge generated from heat exchange cleaning (K050).

13. Section 3006 of RCRA, 42 U.S.C. § 6926, provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.
14. A violation of Hawaii's authorized hazardous waste program constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates Hawaii's authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.
15. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders assessing a civil penalty and/or requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*
16. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA Regional Administrator for Region 9, who has redelegated this authority to the EPA signatory below.

C. ALLEGED VIOLATIONS

COUNT I

Failure to make a hazardous waste determination

17. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
18. H.A.R. 11-262-11 [40 C.F.R. § 262.11] provides that a person who generates a solid waste, as defined in Section 11-261-2, must determine if that waste is a hazardous waste by using the following method: (a) first determine if the waste is excluded from regulation under section 11-261- 4; and then (b) then determine if the waste is listed as a hazardous waste in Subchapter D of Chapter 11-261.
19. Storm water and multiple waste water streams were produced at the Facility during the time that Respondent owned and operated the Facility. These waste streams were collected and discharged at various points in the Facility.
20. Process area storm water from throughout the Facility was collected in the storm water sewer, which flowed to the storm bay sump. The sump had three pumps, two of which pumped the water to the storm water API oil/water separator. Oil from the storm water API oil/water separator discharged through a skim tank to recovered oil tank 302, and the remaining storm water discharged to Ox Pond 1.

When the storm bay sump received a large amount of storm water, the third pump activated, sending the wastewater to the South Ocean Pond.

21. After routing through Ox Pond 1 and the South Ocean Pond, all storm water was discharged through the Facility's Outfall 001 in accordance with National Pollutant Discharge Elimination System ("NPDES") permit requirements.
22. Respondent sampled the storm water from the process area in October of 2004, for benzene concentrations. Respondent was unable to produce the analytical results of this test, which relied on three samples collected at the same time. Respondent reported that the average of the three samples was below the characteristic limit for benzene, but was unable to state whether any of the samples showed a result above the characteristic limit.
23. Respondent identified no other analytical tests to determine whether the storm water from the process area qualified as exempt, non-hazardous material.
24. Therefore, EPA alleges that Respondent treated storm water from the process area as non-hazardous without sufficient evidence to demonstrate that the waste was excluded from regulation under Section 11-261-4 or hazardous pursuant to Subchapter D of Chapter 11-261.

COUNT II

Failure to make a hazardous waste determination

25. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.
26. H.A.R. 11-262-11 [40 C.F.R. § 262.11] provides that a person who generates a solid waste, as defined in Section 11-261-2, must determine if that waste is a hazardous waste by using the following method: (a) first determine if the waste is excluded from regulation under Section 11-261-4; and then (b) then determine if the waste is listed as a hazardous waste in Subchapter D of Chapter 11-261.
27. During the time that Respondent operated the Facility, the Facility generated heat exchanger bundle cleaning sludge at the blast pad. The Facility operated heat exchangers that use cooling water as the cooling medium.
28. The sludge that was generated from these exchangers met the definition of EPA hazardous waste code K050, heat exchanger bundle cleaning sludge ("K050 Waste"). H.A.R. 11-261.1-6 [40 C.F.R. § 261.32].
29. Respondent erroneously determined that sludge generated from the cleaning of exchangers that use hydrocarbon-to-hydrocarbon heat transfer, or that use steam as the heat transfer fluid, did not generate K050 Waste.
30. Respondent conducted an unplanned shutdown of the crude unit during the second quarter of 2015, and heat exchanger E-5118A was cleaned.

31. The sludge generated from cleaning heat exchanger E- 5118A was shipped off-site to Veolia Technical Solutions, located in Port Arthur, Texas, as hazardous waste solids containing chromium (D009) on June 22, 2015.
32. Therefore, EPA alleges that Respondent treated heat exchanger bundle cleaning sludge as characteristically hazardous instead of as a listed hazardous waste.

COUNT III

Failure to comply with the manifest regulations

33. Paragraphs 1 through 31 above are incorporated herein by this reference as if they were set forth here in their entirety.
34. H.A.R. 11-262-20(a) [40 C.F.R. § 262.20(a)(1)] requires a generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal must prepare a Manifest (OMB control number 2050-0039) on EPA form 8700-22, and, if necessary, EPA form 8700-22A, according to the instructions included in the Appendix to that Chapter.
35. Item 13 of the H.A.R. Appendix to Part 262 requires generators to enter up to six federal and state waste codes to describe each waste stream identified in the manifest. In addition to the appropriate federal waste codes, the state waste codes most representative of the properties of the waste must be entered on the manifest which are.
36. While it operated the Facility, Respondent did not include all of the waste codes most representative of the properties of the wastes on identified hazardous waste manifests.
37. Specifically, Respondent did not include all necessary waste codes on the following four hazardous waste manifests: (a) 001777253 GBF, dated August 2, 2013; (b) 002080501 GBF, dated October 16, 2013; (c) 000652767 VES, dated September 9, 2014; and (d) 000652936 VES, dated June 22, 2015.
38. Respondent failed to include EPA waste code D011 on manifest number 001777253 GBF, dated August 2, 2013, which included a shipment of hazardous waste containing silver nitrate.
39. Respondent failed to include EPA hazardous waste code D009 on manifest number 002080501 GBF, dated October 16, 2013, which included a shipment of hazardous waste containing mercury solid.
40. Respondent failed to include EPA hazardous waste code K050 on manifest number 000652767 VES, dated September 9, 2014, which included a shipment of hazardous waste containing scale with mercury.

41. Respondent failed to include EPA hazardous waste code K050 on manifest number 000652936 VES, dated June 22, 2015, which included a shipment of hazardous waste containing heat exchanger sludge with mercury.
42. Therefore, EPA alleges that Respondent failed to include all waste codes most representative of the properties of the wastes on hazardous waste manifests, in violation of H.A.R. 11-262-20(a) [C.F.R. § 262.20(a)(1)] and H.A.R. Appendix to Part 262, Item

COUNT IV

Failure to have Land Disposal Requirement notifications on-site

43. Paragraphs 1 through 41 above are incorporated herein by this reference as if they were set forth here in their entirety.
44. H.A.R. 11-268-7(a)(2) [40 C.F.R. § 268.7(a)(2)] provides that with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in the column labelled “11-268- 7(a)(2)” of the Generator Paperwork Requirements Table in Subsection (a)(4).
45. Respondent did not have copies of the Land Disposal Requirement (“LDR”) notifications on-site at the time of the inspection, nor were Respondent’s personnel able to provide the LDR notifications following the inspection for the following manifests: (1) 001777254 GBF, dated August 2, 2013; and (2) 477872 001777220 GBF, dated June 12, 2013.
46. Therefore, EPA alleges that Respondent failed to place a copy in its files of the initial, one-time written notice to the facility to which Respondent sent a shipment of waste for treatment or storage and thereby violated H.A.R. 11-268-7(a)(2) [40 C.F.R. § 268.7(a)(2)].

D. CIVIL PENALTY

47. EPA proposes that Respondent be assessed, and Respondent agrees to pay, a total of FORTY EIGHT THOUSAND AND TWO HUNDRED AND THIRTY FIVE DOLLARS (\$48,235.00) as the civil penalty for the violations alleged herein. The proposed penalty was calculated in accordance with Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996 and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

E. ADMISSIONS AND WAIVERS OF RIGHTS

48. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO and agrees not to contest EPA’s jurisdiction and authority to enter into and issue this CA/FO and to enforce its

terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

49. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

F. PARTIES BOUND

50. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until the civil penalty required under Section D has been paid in accordance with Section G, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
51. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
52. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute it, and to legally bind Respondent to it.

G. PAYMENT OF CIVIL PENALTY

53. Respondent consents to the assessment of and agrees to pay a civil penalty of FORTY- EIGHT THOUSAND TWO HUNDRED AND THIRTY-FIVE DOLLARS (\$48,235.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.
54. Respondent shall submit payment of the FORTY-EIGHT THOUSAND TWO HUNDRED AND THIRTY-FIVE DOLLARS (\$48,235.00) civil penalty within thirty (30) calendar days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action. The civil penalty shall be paid by remitting a certified or cashier's check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of

America,” (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson (314-418-4087)

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White (301-887-6548)
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:
www.pay.gov
Enter “sfo1.1” in the search field
Open form and complete required fields

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to both:

Steve Armsey
Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Dan Fernandez
Enforcement Division (ENF-2-2)
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105.

55. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received within thirty (30) calendar days of the Effective Date of this CA/FO to avoid additional charges. If payment is not received within thirty (30) calendar days, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. §13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional \$15.00 charge for each subsequent 30-day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of the due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

56. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: for failure to submit a payment to EPA by the time required in this CA/FO, FIVE HUNDRED DOLLARS (\$500) per day for first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for sixteenth to thirtieth day of delay, and FIFTEEN HUNDRED DOLLARS (\$1,500) per day for each day of delay thereafter.
57. All penalties shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.
58. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the

current rate published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.

59. All penalties shall be made payable by certified or cashier's check to the U.S. Environmental Protection Agency shall be remitted as described in Paragraph 54.
60. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
61. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

I. RESERVATION OF RIGHTS

62. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO, except as to those civil penalties for the violations and facts alleged herein. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA or EPCRA (except as to those civil penalties for the violations and facts alleged herein); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); or any other statutory, regulatory or common law enforcement authority of the United States.
63. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA, or any other applicable local, State or federal laws and regulations.
64. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this CA/FO.
65. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.

J. OTHER CLAIMS

66. Nothing in this CA/FO shall constitute or be construed as a release from nor an admission by Respondents of any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

K. MISCELLANEOUS

67. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

68. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

69. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

70. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date the Final Order, having been approved by the Regional Judicial Officer, is filed by the Regional Hearing Clerk.

IT IS SO AGREED.

8/24/2018

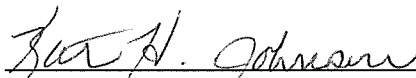
Date



Name, Title: Chris Adams, Manufacturing Advisor
Chevron Products Company

9/24/2018

Date



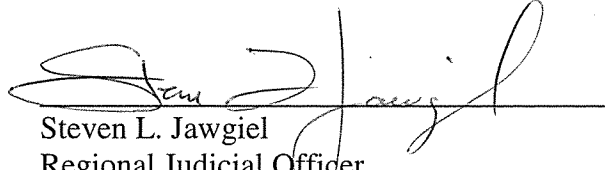
Kathleen H. Johnson, Director
Enforcement Division
U.S. Environmental Protection Agency, Region 9

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (U.S. EPA Docket No. RCRA-09-2018-⁸⁰⁰⁷) be entered and that the Chevron Products Company shall pay a civil penalty of FORTY-EIGHT THOUSAND AND TWO HUNDRED AND THIRTY-FIVE DOLLARS (\$48,235.00) in accordance with the terms of this Consent Agreement and Final Order. Respondent shall pay civil penalty within thirty (30) days after the Effective Date of this CA/FO. Evidence of payment shall be sent to the EPA Region 9 addresses specified in Paragraph 54 of this Consent Agreement and Final Order within such 30-day period.

This Final Order shall be effective upon filing with the Regional Hearing Clerk.

09/25/18
Date


Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I hereby certify the attached Consent Agreement and Final Order in the matter of Chevron Products Company, U.S. EPA Docket No. RCRA-09-2018-⁰⁰⁰⁴ has been filed by the Regional Hearing Clerk, and was served on the following parties as indicated below:

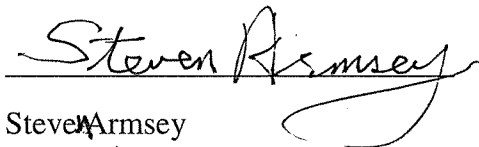
Certified U.S. Mail

Respondent(s): Diana Martin
Hunton & Williams LLP
550 South Hope Street
Suite 2000
Los Angeles, CA 90071

Inter-office Mail

Complainant: Brianna Fairbanks
ORC 3
(415) 972-3907

Dated at San Francisco, California, this ²⁵ of September, 2018



Steven Armsey
Regional Hearing Clerk
U.S. EPA, Region IX
75 Hawthorne Street, 12th Floor (ORC)
San Francisco, CA 94105