

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX**

**IN THE MATTER OF:**

**Imperial County, CA  
Department of Public Works**

**Respondent**

**Proceeding under  
Sections 6945(c)(2) and 3008(a) of  
the Resource Conservation and  
Recovery Act**

**Docket No. RCRA-09-2025-0044**

**ADMINISTRATIVE ORDER  
ON CONSENT**



**I. INTRODUCTION**

1. This Administrative Order on Consent (“AOC” or “Order”) is entered into upon mutual agreement by the parties, EPA Region IX and the Department of Public Works of Imperial County, CA (“Respondent”). Accordingly, although Respondent neither admits nor denies EPA’s specific factual allegations herein, Respondent admits to and agrees not to contest EPA’s jurisdiction to issue this Order or enforce its terms. Further, Respondent will not contest EPA’s jurisdiction to: compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial; require Respondent’s full compliance with the terms of this Order; or impose sanctions for violations of this Order.

2. EPA makes the following Findings for violations of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (hereinafter, “RCRA”), Sections 4004 and 4005(a), 42 U.S.C. §§ 6944 and 6945(a), as well as 40 C.F.R. Part 258. EPA is issuing this Order pursuant to Sections 4005(c)(2) and 3008(a) of RCRA, 42 U.S.C. §§ 6945(c)(2) and 6928(a), and the

Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Part 22”).

3. This Order shall apply to and be binding upon Respondent, its agents, successors and assigns, and upon all persons, contractors, and consultants acting under or for Respondent.

## **II. STATUTORY AND REGULATORY AUTHORITY**

4. Section 4005(a) of RCRA, 42 U.S.C. § 6945(a) prohibits any solid waste management practice or disposal of solid waste that constitutes open dumping. Section 1003(14), 42 U.S.C. § 6903(14), of RCRA defines an “open dump” as “any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 6944 of this title [42 U.S.C. § 6944, or Section 4004 of RCRA] and which is not a facility for disposal of hazardous waste.”

5. On October 9, 1991, EPA issued federal regulations, found at 40 C.F.R. Part 258 (“Part 258”), defining minimum national criteria for municipal solid waste landfills. 56 Fed. Reg. 50978 (October 9, 1991). EPA issued the regulations under the authority of section 6944 of RCRA, 42 U.S.C. § 6944, in addition to other statutory provisions of RCRA and the Clean Water Act. 56 Fed. Reg. at 50979.

6. Under 40 C.F.R. § 258.1(h), municipal solid waste landfill units failing to satisfy the Part 258 criteria “are considered open dumps, which are prohibited under section 4005 [42 U.S.C. § 6945] of RCRA.”

7. On October 7, 1993, EPA granted the State of California a determination of adequacy for its Municipal Solid Waste Landfill (“MSWLF”) permit program. In approving California’s program, EPA stated that “California’s MSWLF permit program has the authority to issue

permits that incorporate the requirements in the revised Federal MSWLF Criteria [Part 258] to all MSWLFs in the State, with the exception of those located on Tribal lands.” 58 Fed Reg. 52300, 52301 (October 7, 1993). Therefore, EPA’s adequacy determination did not extend to tribal lands in California.

8. The criteria in Part 258 are self-implementing pursuant to 40 C.F.R. § 258.1(b). Landfill owners and operators must comply with each element of the revised Part 258 criteria with or without the oversight of a regulatory authority. Accordingly, MSWLFs on tribal lands in California must comply with Part 258, even without regulatory oversight from the State of California.

9. Section 4005(c)(2) of RCRA, 42 U.S.C. § 6945(c)(2), authorizes the Administrator to use the authorities available under sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927-6928, to enforce the prohibition on open dumping contained in Section 4005(a) of RCRA, 42 U.S.C. § 6945(a), in any state that has not adopted an adequate program for such facilities. Because EPA’s determination of adequacy for California’s MSWLF permit program does not extend to tribal lands, the Administrator is authorized to use sections 3007 and 3008 of RCRA to enforce the prohibition on open dumping on tribal lands in California.

10. Section 3008(a) of RCRA, 42 U.S.C. § 6928, provides that whenever on the basis of any information the Administrator determines that any person has violated or is in violation of any requirement of Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, the Administrator may issue an order requiring compliance immediately or within a specified time period.

11. Together, Sections 4005(c)(2) and 3008(a) of RCRA, 42 U.S.C. § 6945(c)(2) and 42 U.S.C. § 6928, grant the Administrator authority to enforce the prohibition on open dumping on tribal lands in California by issuing a Section 3008(a) compliance order.

12. The EPA Administrator has delegated enforcement authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrators, pursuant to EPA Delegation No. 8-9A (Administrative Enforcement: Issuance of Complaints, Signing of Consent Agreements, etc., May 11, 1994). The Regional Administrator of EPA Region IX has redelegated that enforcement authority to the Director of the Enforcement and Compliance Assurance Division in Region IX, pursuant to Delegation No. R9-8-9A (Administrative Enforcement: Issuance of Complaints, Signing of Consent Agreements, etc., January 22, 2016). The Regional Administrator of EPA Region IX has also redelegated the authority to issue consent orders under Section 3008 of RCRA, 42 U.S.C. § 6928, to the Regional Judicial Officer in EPA Region IX, pursuant to Delegation No. R9 1280.15 (SWDA Administrative Enforcement: Issuance of Consent Orders, Subtitle C, Section 3008a, September 17, 1997).

### **III. GENERAL ALLEGATIONS AND FINDINGS OF VIOLATIONS**

13. Respondent is the operator of the Picacho Solid Waste Landfill (“Picacho Landfill” or “Landfill”), a MSWLF located on Quechan tribal lands on the Fort Yuma Indian Reservation (“Reservation”), approximately four miles from Winterhaven in Imperial County, CA.

14. Respondent began operating the Picacho Landfill in 1977 under a lease from the Fort Yuma Quechan Tribe (“Tribe”). The Landfill site is approximately 12.5 acres. Respondent stopped accepting waste at the Landfill in December 2011.

15. The State of California’s MSWLF permit program, administered by the State of California’s Department of Resources Recycling and Recovery, does not have regulatory authority over the Picacho Landfill because the Landfill is located on the Reservation. Nevertheless, Respondent is required to comply with Part 258 because the criteria for MSWLFs are self-implementing, pursuant to 40 C.F.R. § 258.1(b).



16. Beginning in 2016, EPA worked with the Tribe and Respondent to develop a closure plan for the Landfill and a plan for post-closure maintenance. A plan completed in October 2010 estimated that the cost of closing the Landfill, in 2010 dollars, was \$529,458, and that the 30-year cost for monitoring and maintenance, in 2010 dollars, would be \$1,242,256.

17. In 2012, EPA received two site specific flexibility requests from Respondent that had previously received review and approval from the Tribe. In the site-specific flexibility requests, Respondent sought permission from EPA to use an alternative final cover that varies from the final closure requirements in 40 C.F.R. § 258.60(a), but that meets alternative criteria at 40 C.F.R. § 258.60(b). 81 Fed Reg. 69407 (October 6, 2016). Respondent also requested permission to use alternative groundwater monitoring parameters for post-closure monitoring, pursuant to 40 C.F.R. § 258.54(a). *Id.*

18. On October 6, 2016, EPA approved Respondent's site-specific flexibility requests. EPA's approval of the requests resulted in the amendment of Part 258 to create a site-specific rule for the Picacho Landfill, set forth at 40 C.F.R. § 258.62(b).

19. Under 40 C.F.R. § 258.60(f), operators of MSWLF units must begin closure activities no later than 30 days after the date on which the MSWLF unit receives the known final receipt of wastes, or, in certain circumstances, no later than one year after the most recent receipt of wastes. Under 40 C.F.R. § 258.60(g), operators of MSWLFs must complete closure activities within 180 days following the initiation of closure activities. Consequently, under Part 258, closure of MSWLF units must occur no later than 1.5 years after the unit last receives waste.

20. Although the Picacho Landfill last accepted waste in 2011, and although EPA completed review of Respondent's site-specific flexibility requests in 2016, Respondent has

not initiated or completed closure activities at the Landfill, in violation of 40 C.F.R. §§ 258.60(f) and (g).

21. Under 40 C.F.R. § 258.71, operators of MSLF units must maintain a detailed written cost estimate, in current dollars, of certain closure costs and must establish financial assurance for closure in accordance with 40 C.F.R. § 258.74. Similarly, under 40 C.F.R. § 258.72, operators of MSLF units must maintain a detailed written estimate, in current dollars, of certain post-closure costs and must establish financial assurance for post-closure care in accordance with 40 C.F.R. § 258.74.

22. Respondent has not maintained a detailed written estimate, in current dollars, of applicable closure and post closure costs and has not established financial assurance for closure and post-closure care, in violation of 40 C.F.R. §§ 258.71 and 258.72.

23. Because Respondent failed to initiate or complete closure activities at the Picacho Landfill in accordance with the timeline required by 40 C.F.R. §§ 258.60(f) and (g), and because Respondent has not maintained a current estimate of closure and post-closure costs and provided financial assurance for closure and post-closure care, in violation of 40 C.F.R. §§ 258.71 and 258.72, Respondent has failed to satisfy the criteria for MSWLFs found in Part 258. As a result, the Picacho Landfill is an open dump, pursuant to 40 C.F.R. § 258.1(g) and Section 1003(14), 42 U.S.C. § 6903(14), of RCRA.

24. Respondent has communicated to EPA that it has not initiated or completed closure activities, or satisfied financial requirements related to closure and post-closure care, due to a lack of available funding and because it has been using available funds to close, in accordance with Part 258, other MSWLFs that it previously operated.

#### IV. COMPLIANCE ORDER

25. Pursuant to Sections 4005(c)(2) and 3008(a) of RCRA, 42 U.S.C. §§ 6945(c)(2) and 6928, it is hereby ordered that upon the Effective Date, Respondent, which has consented to the terms of this Order, shall complete the compliance tasks by the deadlines specified in the following table:

| Compliance Task # | Due Date   | Description   |
|-------------------|--|---|
| 1                 | Within 60 days of the Effective Date   | <ul style="list-style-type: none"><li>• Inform EPA in writing of selected borrow source for constructing a final cover.</li><li>• Provide all necessary submissions to the Tribe for approval of the borrow source.</li></ul>   |
| 2                 | Within 150 days of the Tribe's final approval of the selected borrow source and the completion of any necessary National Environmental Policy Act review of the removal of soil from the borrow source, and no sooner than 150 days after the Effective Date | Submit a draft engineering design document.   |
| 3                 | Within 60 days of receipt of comments from EPA on draft engineering design document  | Submit a revised engineering design document, if requested by EPA.  |
| 4                 | Within 90 days of EPA approval of engineering design document  | <ul style="list-style-type: none"><li>• Submit an updated closure plan in accordance with 40 C.F.R. §§ 258.60(c) and 258.62(b).</li><li>• Submit an updated post-closure plan in accordance with 40 C.F.R. §§ 258.61(c) and 258.62(b).</li><li>• Submit a detailed written estimate of closure costs and provide financial assurance for closure in accordance with 40 C.F.R. §§ 258.71 and 258.74.</li><li>• Submit a detailed written estimate of post-closure care costs and provide financial assurance for</li></ul> |

|         |  |  |
|---------|--|--|
|         |  | post-closure care in accordance with 40 C.F.R. §§ 258.72 and 258.74.   |
| 5       | Within 30 days of receipt of comments from EPA on submissions under Compliance Task #4   | Submit revisions to submissions produced under Compliance Task #4, if requested by EPA.  |
| 6       | Within 180 days of EPA final approval of submissions under Compliance Task #4  | Begin mobilization for closure activities.   |
| 7       | Within 90 days of beginning mobilization for closure activities (Compliance Task #6) and at least 30 days prior to completion of closure activities (Compliance Task #8) | Submit an updated post-closure plan that meets the requirements of 40 C.F.R. §§ 258.61(c) and 258.62(b).   |
| 8       | Within 180 days of beginning mobilization for closure activities (Compliance Task #6)  | Complete closure activities in accordance with closure plan and 40 C.F.R. §§ 258.60(a) and 258.62(b).  |
| 9       | Within 30 days of completing closure activities (Compliance Task #8)   | Submit certification of closure from an independent registered professional engineer in accordance with 40 C.F.R. § 258.60(h).   |
| 10      | Within 30 days of submitting certification of closure (Compliance Task #9)   | Submit a boundary survey to the Tribe to assist the Tribe in recording a deed notation, in accordance with 40 C.F.R. § 258.60(i).  |
| Ongoing | Within 30 days of the Effective Date and monthly thereafter  | Submit a progress report containing the following information: <ul style="list-style-type: none"> <li>• Description of work performed;</li> <li>• Description of upcoming work;</li> <li>• Financial information related to funding for closure and post-closure care, including funds set aside, funds used, and balance</li> </ul> |

26. If a due date in Paragraph 25 falls on a weekend or federal holiday, the due date shall be the next working day.

27. If Respondent is unable to complete any of the compliance tasks in Paragraph 25 by the specified deadline, Respondent shall submit a written request for a modification, including the basis for the request, to EPA. Respondent shall submit this request no later than fourteen (14) days prior to the specified deadline. Based on this request, EPA shall in its discretion grant or deny, in full or in part, the request for modification.

28. Where any compliance obligation under this Section requires Respondent to obtain a federal, state, local, or tribal permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

29. Within fifteen (15) days of completion of the compliance tasks described in Paragraph 25, Respondent shall submit the following certification to EPA:

By signing this Certification, Respondent without admitting or denying any allegation of fact or law, certifies that Respondent is in full compliance with all of the statutory and regulatory requirements that formed the basis for the violations alleged in this Order. This certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

## **V. NOTIFICATIONS**

30. Submissions required by this Order under Paragraph 25 shall be in writing and shall be sent by email to the following individual.

Daniel Fernandez  
Enforcement and Compliance Assurance Division  
EPA Region IX  
Fernandez.Daniel@epa.gov

All submissions to EPA should be copied to the following representative of the Tribe:

Chase Choate  
Environmental Director  
Quechan Indian Tribe  
c.choate@quechantribe.com

EPA will send all written communications to the following representative for Respondent:

John Gay  
Director, Department of Public Works  
Imperial County  
JohnGay@co.imperial.us

31. All documents submitted to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. Part 2, Subpart B and determined by EPA to merit treatment as confidential business information in accordance with applicable law.

## **VI. GENERAL PROVISIONS**

32. Nothing contained in this Order shall affect the responsibility of Respondent to comply with all applicable federal, state, local, or tribal laws or regulations.

33. By signing this AOC, Respondent acknowledges that this AOC will be available to the public and agrees that this AOC does not contain any confidential business information or personally identifiable information.

34. Any and all information required to be maintained or submitted pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501 et seq., because it seeks to collect information from specific individuals or entities to assure compliance with this administrative action.

35. This Order is not intended to be nor shall it be construed to be a permit. Further, the parties acknowledge and agree that EPA's approval of this Order does not constitute a warranty or representation that requirements provided hereunder will meet the requirements of RCRA. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA or other applicable local, state, or federal laws and regulations.

36. EPA 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 Order.

37. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which EPA has under any statutory, regulatory, or common law authority of the United States.

38. This Order does not resolve any civil or criminal claims of the United States for the violations alleged in this Order; nor does it limit the rights of the United States to obtain penalties or injunctive relief under the RCRA or other applicable federal law or regulation.

39. Respondent waives its right to contest and consent to the terms of this Order. Respondent has entered into this Order in good faith without trial or adjudication of any issue of fact or law.

40. Respondent waives any right to judicial review of this Order and waives any right to a RCRA hearing under Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. § 22.37(b).

41. The parties shall bear their own costs and fees in this action, including attorney's fees.

42. Failure to comply with this Order may result in an enforcement action for appropriate injunctive relief and civil penalties pursuant to Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), or, in appropriate cases, criminal penalties.

## **VII. ENFORCEMENT**

43. This Order does not in any way impair EPA's rights to enforce RCRA.

44. The issuance of this Order does not preclude EPA from electing to pursue any other remedies or sanctions authorized by law.

## **VIII. STIPULATED PENALTIES**

45. Respondent shall be liable to EPA for stipulated penalties up to the amounts set forth in Paragraph 46 for failure to comply with the requirements of Paragraph 25. "Comply" as used in

the previous sentence, includes compliance by Respondent with all applicable requirements and deadlines established in Paragraph 25.

46. Stipulated Penalty Amounts: The following stipulated penalties shall accrue per violation per day for any noncompliance with the requirements in Paragraph 25:

| Period of Noncompliance                       | Penalty Per Violation Per Day |
|---|-------------------------------|
| 1 <sup>st</sup> through 30 <sup>th</sup> day  | Up to \$500                   |
| 31 <sup>st</sup> through 60 <sup>th</sup> day | Up to \$1,500                 |
| 61 <sup>st</sup> day and beyond               | Up to \$3,000                 |

47. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the completion of the activity. Penalties shall continue to accrue during any dispute resolution period and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order.

48. Following EPA's determination that Respondent has failed to comply with a requirement of this AOC, EPA may give Respondent written notification of such noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in this Paragraph 46 regardless of whether EPA has notified Respondent of a violation.

49. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties.

50. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the 31<sup>st</sup> day after Respondent's receipt of EPA's demand. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. Pursuant to 31 U.S.C. § 3717, an additional penalty of 6% per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for 90 or more days. In



addition, a handling fee of \$15 per month shall be assessed beginning on the thirty-first day after Respondent's receipt of EPA's demand.

51. Respondent shall pay the Stipulated Penalties and any interest, fees, and other changes due using any method, or combination of appropriate methods, as provided on the EPA website:

<https://www.epa.gov/financial/makepayment>. For additional instructions see:

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

52. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this AOC, Docket No. RCRA-09-2025-0044.
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons via email:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region IX  
[R9HearingClerk@epa.gov](mailto:R9HearingClerk@epa.gov)

Daniel Fernandez  
Enforcement and Compliance Assurance Division  
EPA Region IX  
[Fernandez.Daniel@epa.gov](mailto:Fernandez.Daniel@epa.gov)

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

53. If Respondent fails to timely pay any portion of the stipulated penalties, interest, or other charges per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

54. The payment of penalties and interest, if any, shall not alter in any way Respondent's obligation to complete the performance of Work required under this AOC.

55. Nothing in this AOC shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this AOC or of the statutes and regulations upon which it is based.

56. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this AOC.

#### **IX. EFFECTIVE DATE**

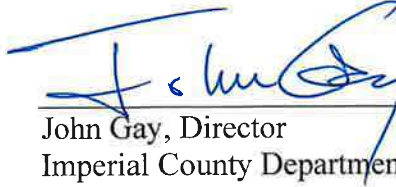
57. This Order shall become effective upon filing by the Regional Hearing Clerk pursuant to 40 C.F.R. § 22.31(b).

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS  
ADMINISTRATIVE ORDER ON CONSENT:**

FOR RESPONDENT:

COUNTY OF IMPERIAL

Date: 5/23/25

  
\_\_\_\_\_  
John Gay, Director  
Imperial County Department of Public Works

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

AMY MILLER-  
BOWEN

Digitally signed by AMY  
MILLER-BOWEN  
Date: 2025.06.23  
15:51:53 -07'00'

Amy C. Miller -Bowen  
Director, Enforcement and Compliance Assurance Division

**FINAL ORDER**

IT IS HEREBY ORDERED that this Administrative Order on Consent pursuant to 40 CFR Parts 22 and 24 be entered (Dkt. RCRA 09-2025-0044). The Respondent is ordered to comply with the terms set forth in this Order.

\_\_\_\_\_  
Steven Jawgiel  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region IX

**CERTIFICATE OF SERVICE**

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of Imperial County Department of Public Works (Docket No. RCRA-09-2025-0044) was filed with Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was served on the parties, via electronic mail, as indicated below:

**RESPONDENT:**

John Gay  
Director  
Imperial County Department of Public Works  
155 South 11th Street  
El Centro, CA 92243  
Johngay@co.imperial.ca.us

**COMPLAINANT:**

Gregory Krauss  
Assistant Regional Counsel  
U.S. EPA – Region IX  
Hazardous Waste Section I (ORC-3-4)  
75 Hawthorne Street  
San Francisco, CA 94105  
Krauss.Gregory@epa.gov

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Ponly Tu  
Regional Hearing Clerk  
U.S. EPA – Region IX