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2015 FEB 11 AM 11:16

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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CALIFORNIA 94105

In the Matter of:	)	Docket No. TSCA-09-2015-00 <u>02</u>
	)	
Imperial Irrigation District,	)	CONSENT AGREEMENT
	)	AND FINAL ORDER PURSUANT TO
	)	40 C.F.R. §§ 22.13 and 22.18
Respondent.	)	
	)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA") and Imperial Irrigation District ("IID" or "Respondent") agree to settle this case initiated under the Toxic Substances Control Act ("TSCA" or the "Act"), 15 U.S.C. §§ 2601 *et seq.*, and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously commences and concludes this matter pursuant to 40 C.F.R. §§ 22.13 and 22.18.

#### A. AUTHORITY AND PARTIES

1. This is a civil administrative action brought against Respondent pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. Part 22 for violation of Section 15 of TSCA, 15 U.S.C. § 2614, by failing to comply with implementing regulations governing polychlorinated biphenyls ("PCBs") at 40 C.F.R. Part 761.
2. Complainant is the Chief of the Waste and Chemical Section of the Air, Waste and Toxics Branch, Enforcement Division, EPA Region IX. The Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority to bring this action under TSCA. In turn, the Regional Administrator of EPA Region IX further delegated the authority to bring this action under TSCA to the Chief of the Waste and Chemical Section of the Air, Waste and Toxics Branch, Enforcement Division.
3. Respondent is a California public agency, organized under the California Irrigation District Act, whose principal offices are located at 333 E. Barioni Boulevard in Imperial, California.

#### B. STATUTORY AND REGULATORY BASIS

4. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), EPA promulgated regulations at 40 C.F.R. Part 761 that govern the manufacturing, processing, distribution in commerce, marking, storage and disposal of PCBs.
5. "PCB" and "PCBs" mean any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substances. 40 C.F.R. § 761.3.
6. "PCB Item" means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs. 40 C.F.R. § 761.3.

7. "PCB-Contaminated Electrical Equipment" means any electrical equipment including, but not limited to, transformers . . . capacitors, circuit breakers, reclosers, voltage regulators, switches . . . electromagnets, and cable that contains PCBs at concentrations of  $\geq 50$  parts per million ("ppm") and  $< 500$  ppm in the contaminating fluid.
8. "Person" means any natural or judicial person including any individual, corporation, partnership, or association; any State or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government. 40 C.F.R. § 761.3.
9. "Disposal" means intentionally or accidentally to discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB Items. Disposal includes spills, leaks, and other uncontrolled discharges of PCBs as well as actions related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs and PCB Items. 40 C.F.R. § 761.3.
10. Any person storing or disposing of PCB waste must do so in accordance with Subpart D of 40 C.F.R. Part 761. 40 C.F.R. § 761.50(a).
11. Spills and other uncontrolled discharges of PCBs at concentrations of  $\geq 50$  ppm constitute the disposal of PCBs. 40 C.F.R. § 761.50(a)(4).
12. Section 15 of TSCA, 15 U.S.C. § 2614, provides that "[i]t shall be unlawful for any person to (1) fail or refuse to comply with . . . (B) any requirement prescribed by section 2604 or 2605 [Section 6 of TSCA] of this title, (C) any rule promulgated or order issued under section 2604 or 2605 of this title. . . ."

### C. ALLEGED VIOLATIONS

13. Respondent is a "person" as that term is defined by 40 C.F.R. § 761.3.
14. From about 1957 to about 2002, Respondent owned and operated an electricity substation located at W. River Drive and N. Western Avenue in Brawley, California (the "Facility").
15. From about 1957 to about 2002, the Facility included "PCB-contaminated electrical equipment," as that term is defined by 40 C.F.R. § 761.3, in the form of an electrical

transformer, three voltage regulators, and ten circuit breakers, each mounted on concrete slabs-on-grade.

16. In or about February 2002, Respondent ceased operations at the Facility and removed the PCB-contaminated electrical equipment, structures and concrete flatwork at the Facility.
17. From or about February 2002 to August 2011, Respondent continued to own and maintain the Facility, which consisted of bare ground surrounded by chain-link fencing.
18. In or about December 2010 and February 2011, Geocon Consultants, Inc. ("Geocon"), a consultant that Respondent hired to conduct an environmental assessment of the Facility, collected numerous soil samples at the Facility.
19. On or about April 15, 2011, Geocon issued a report to Respondent showing that at least three of the soil samples that Geocon collected from the Facility had PCB concentrations of > 50 ppm.
20. The presence of PCBs at concentrations of  $\geq$  50 ppm at the Facility constitutes "disposal" of PCBs, as that term is defined at 40 C.F.R. § 761.3 and 40 C.F.R. § 761.50(a)(4).
21. The disposal of PCBs at the Facility was not in accordance with Subpart D of 40 C.F.R. Part 761.
22. From or about August 22, 2011 to August 26, 2011, Respondent began and completed a clean-up of the PCBs found at the Facility.
23. Respondent's disposal of PCBs at concentrations of  $\geq$  50 ppm at the Facility from on or about April 15, 2011 to on or about August 22, 2011 constitutes a violation of 40 C.F.R. § 761.50(a) and Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), lasting 129 days.

#### D. RESPONDENT'S ADMISSIONS

24. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO;

(iv) waives any right to contest the allegations contained in the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

25. Respondent hereby consents to the assessment of a civil penalty in the amount of THREE HUNDRED, SEVENTY-NINE THOUSAND, SEVEN HUNDRED AND SIXTY-EIGHT DOLLARS (\$379,768), in conjunction with performance of the tasks set forth in Sections I.F and I.G of this CAFO, as full, final, and complete settlement of the civil claims alleged in Section I.C of the CAFO. The civil penalty shall be paid within thirty (30) days of the effective date of this CAFO and according to the terms of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or 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  
P.O. 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

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
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](http://www.pay.gov)

Enter "sfol.1" in the search field

Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

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

David H. Kim  
Office of Regional Counsel (ORC-3)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

26. Payment of the above civil administrative penalty and any monies used to perform the tasks set forth in Sections I.F and I.G of this CAFO shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
27. If Respondent fails to pay the civil administrative penalty specified in Paragraph 25 of this CAFO within 30 days after the effective date of this CAFO, then Respondent shall pay to EPA a stipulated penalty in the amount of ONE THOUSAND DOLLARS (\$1,000.00) for each day the default continues, upon written demand by EPA.
28. In addition, failure to pay the civil administrative penalty may lead to any or all of the following actions:
  - a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
  - b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
  - c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
  - d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty within the deadline specified in Paragraph 25.

Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

#### F. SUPPLEMENTAL ENVIRONMENTAL PROJECT

29. Within three hundred and sixty (360) calendar days of the effective date of this CAFO, Respondent shall perform a supplemental environmental project ("SEP") by replacing PCB-containing regulators and transformers listed in Appendix A of this CAFO (the "Equipment") with non-PCB-containing equipment. Respondent shall ensure that all PCB-containing oil removed from the Equipment be incinerated within the timeframe provided by 40 C.F.R. § 761.65 by shipping the PCBs to an approved TSCA incinerator within 270 days of removal from service of each Equipment. Respondent shall also ensure compliance with all requirements of local, state, and federal law, including but not limited to the requirements contained in 40 C.F.R. Part 761, when replacing the Equipment. EPA and Respondent intend that the SEP secure environmental and/or public health protection and improvements.
30. Respondent shall incur a minimum of FIVE HUNDRED, FORTY-TWO THOUSAND AND EIGHT HUNDRED AND TWELVE DOLLARS (\$542,812) for the SEP.



31. Within ninety (90) calendar days of the effective date of this CAFO and every ninety (90) calendar days thereafter until all of the Equipment listed in Appendix A has been replaced, Respondent shall submit to EPA a report that shall describe the status of the SEP from the time of the immediate prior report and shall include:
  - a. a brief description of the work undertaken during the reporting period;
  - b. compliance with the schedules and milestones set forth in Section F of this CAFO;
  - c. copies of all documents regarding the work provided by Respondent's staff and/or the contractor/consultant performing the work; and
  - d. a summary of costs incurred since the previous report.
32. Not later than thirty (30) calendar days after the completion of the SEP, Respondent shall submit to EPA a SEP Completion Report. The SEP Completion Report shall contain:
  - a. a detailed description of the SEP as implemented;
  - b. a detailed description of how Respondent complied with all regulatory requirements in completing the SEP, including the requirements of 40 C.F.R. Part 761; and
  - c. an itemized list of all SEP costs and supporting documentation verifying Respondent's expenditures for the SEP (including copies of receipts, invoices, purchase orders and/or contracts).
33. Within thirty (30) calendar days after receiving a SEP Completion Report, EPA shall notify Respondent regarding its determination of whether Respondent has satisfactorily completed the SEP.
34. The determination of whether the tasks have been completed in satisfactory manner and whether Respondent has made good faith, timely efforts to complete the tasks shall be within the sole discretion of EPA.

35. Any report submitted to EPA under Section F of this CAFO shall be signed by a responsible official of Respondent, as defined below, and shall include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared under my direction in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained herein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that to the best of my knowledge the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowingly and willfully submitting a material false statement.

36. A responsible official is defined for purposes of Section F of this CAFO as the General Manager or General Counsel of Respondent.
37. If Respondent fails to meet, or has reason to believe that it will fail to meet, any requirement of Section F of this CAFO, Respondent shall notify EPA of such failure and its likely duration in writing within ten (10) business days of the day Respondent first becomes aware of the failure, with an explanation of the failure's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such failure. If the cause of a failure cannot be fully explained at the time the report is due, Respondent shall so state in the status report. Respondent shall investigate the cause of the failure and shall then submit a report that includes a full explanation of the cause of the failure, within thirty (30) calendar days of the day Respondent becomes aware of the cause of the failure.
38. In executing the SEP, Respondent certifies that, as of the date of executing this CAFO:
- a. Respondent is not required to perform or develop the SEP by any federal, state, international or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

- b. Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP; and
  - c. the SEP is not a project that Respondent was planning or intending to perform or implement other than in settlement of the claims resolved in this CAFO.
39. All submittals required to be made pursuant to Section F of this CAFO shall be sent by certified mail, with return receipt requested, to:

Daniel Fernandez (ENF-2-2)  
Enforcement Division  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
Phone: (415) 972-3299  
Fax: (415) 947-3517  
Email: [fernandez.daniel@epa.gov](mailto:fernandez.daniel@epa.gov)

With a copy to:

David H. Kim (ORC-3)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
Phone: (415) 972-3882  
Email: [kim.david@epa.gov](mailto:kim.david@epa.gov)

40. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this CAFO shall include the following language:  
"This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency under the Toxic Substance Control Act."
41. Respondent may use contractors or consultants in implementing the SEP but Respondent remains entirely responsible for the satisfactory completion of the SEP.

### G. PCB COMPLIANCE AUDIT

42. Respondent shall perform a PCB Compliance Audit (the "Audit") of the Facilities (individually the "Facility"; collectively the "Facilities") described in Appendix B of this CAFO.
- a. EPA and Respondent agree that violations reported or otherwise disclosed to EPA under, and in accordance with, this CAFO and the applicable provisions of EPA's Audit Policy (the "Audit Policy"), 65 Fed. Reg. 19,618 (Apr. 11, 2000), shall be eligible for 100 percent mitigation of gravity-based penalties. The parties further agree that this CAFO is intended to serve the objectives of, and be interpreted in harmony with, the Audit Policy. In the event of an actual or perceived conflict between the terms of this CAFO and of the Audit Policy, the parties agree that the terms of this CAFO shall prevail and govern.
  - b. This CAFO and an appropriate final determination in this matter ("Final Determination") shall be the complete settlement of all civil administrative claims and causes of action alleged or which could have been alleged under TSCA for all violations identified in the Final Audit Report described in Paragraph 43(e)(vi) ("Audit Violations"), provided that compliance with this CAFO and the Final Determination shall not be a defense to any action subsequently commenced by EPA pursuant to federal law or regulation with respect to any violations that are not Audit Violations. Nothing in this CAFO and the Final Determination is intended to, nor shall be construed to, operate in any way to resolve Respondent of any criminal liability.

- c. Respondent waives its right to request an administrative hearing under TSCA Section 16(a)(2)(A) on any issue of law or fact that has arisen or may arise regarding application of TSCA to any violations that Respondent reports or mitigates pursuant to Paragraph 43 and which are covered by the Final Determination in this matter.
43. The Audit shall comply with the following requirements:
- a. Scope of Audit
- i. Sections Covered: The Audit shall cover TSCA Section 6(e).
- ii. Time Period Covered: The time period for activities and violations to be covered by the Audit shall start on the Audit Commencement Date, as specified in Paragraph 43(c), and shall terminate on the Audit Completion Date, as specified in Paragraph 43(d).
- iii. Chemicals Covered: The Audit shall cover PCBs as that term is defined at 40 C.F.R. § 761.3.
- b. Independent Third Party Auditor
- i. Third Party Auditor: The Audit shall be directed by an independent third party auditor (the "Auditor"). Respondent agrees to hire the Auditor, expert in the performance of PCB sampling, evaluation and remediation, to plan, supervise, and assist in the conduct of the Audit, in consultation with and through Respondent's counsel. Respondent shall have the Auditor: (a) supervise the preparation of and (b) sign all Audit reports required under Paragraph 43 of this CAFO.

- ii. Recordkeeping: Respondent shall include in its written agreement with the Auditor a provision requiring the Auditor to prepare and maintain contemporaneous records when supervising or assisting in the conduct of the Audit.
- iii. Approval of Auditor: No later than thirty (30) calendar days following the effective date of this CAFO, Respondent shall notify EPA in writing of Respondent's choice of the Auditor. Respondent agrees to provide EPA with sufficient information to allow EPA to judge the adequacy of the Auditor's expertise in the performance of PCB sampling, evaluation and remediation. At its sole discretion, EPA may approve or disapprove Respondent's choice of the Auditor, but such approval shall not be unreasonably withheld. Within fifteen (15) calendar days of EPA's receipt of Respondent's notice of its choice of an Auditor, EPA will respond in writing to Respondent's nomination. If EPA notifies Respondent that Respondent's choice of an Auditor is unacceptable, Respondent shall have additional thirty (30) calendar days in which to nominate a different Auditor, and to provide the information required by this Paragraph.
- c. Audit Commencement Date: The Audit Commencement Date shall be within thirty (30) calendar days after the date on which Respondent receives EPA's written approval of the Auditor.
- d. Audit Completion Date: The Audit Completion Date shall be 16 months from the Audit Commencement Date.

e. Audit Submissions: Respondent shall submit to EPA (to the persons and addresses specified in Paragraph 39) the following reports during the course of the Audit:

i. Audit Report: Within forty-five (45) calendar days after the Audit Commencement Date, Respondent shall submit an Audit Report for three of the Facilities. Every one hundred and twenty (120) calendar days thereafter, Respondent shall submit an Audit Report for another three Facilities until all nine Facilities have been investigated under this Paragraph 43 within two hundred and eighty-five (285) days within the Audit Commencement Date. Each Audit Report will address the complete findings of the Audit including, but not limited to, records review, interviews, and sampling at each Facility for presence of PCBs, in compliance with any applicable regulations at 40 C.F.R. Part 761.

ii. Forty-Eight Hour Notification of Any Uncontrolled Release of PCBs: If Respondent discovers any uncontrolled discharges of PCBs at concentrations of  $\geq 50$  parts per million at any Facility in violation of 40 C.F.R. § 761.50(a)(4) during the course of the Audit, Respondent shall submit a written notification of the violation to EPA within forty-eight (48) hours of the discovery.

iii. PCB Clean-up Plan: If the Audit identifies any uncontrolled discharges of PCBs at concentrations of  $\geq 50$  parts per million at any Facility in violation of 40 C.F.R. § 761.50(a)(4), Respondent shall submit a PCB Clean-up Plan for the Facility within thirty (30) calendar days after submission of the Audit

Report. Each PCB Clean-up Plan shall address remediation or removal of PCBs at the Facility in compliance with any applicable regulations at 40 C.F.R. Part 761 and shall include:

- (a) Certifications required under 40 C.F.R. § 761.3 and § 761.61(a)(3)(i)(E);
- (b) Demonstration under 40 C.F.R. § 761.61(a)(2) that site characterization is complete and data is of sufficient quality and quantity to move forward with cleanup. In addition, and, if applicable, identification of any data gaps;
- (c) Additional site characterization if determined to be necessary and to be conducted consistent with a Sampling and Analysis Plan approved by EPA;
- (d) Project schedule;
- (e) A Sampling and Analysis Plan that includes: (1) laboratory methods for sampling extraction; (2) extract sample cleanup; (3) extract analysis; (4) sample collection methods for additional site characterization and cleanup verification samples; (5) laboratory quality control ("QC") samples; (6) tables summarizing the number and types of samples (including QC samples), sample identification numbers, and sample locations; (7) figures and maps depicting sampling locations and cross referencing the sample identification numbers included in the tables; (8) laboratory standard operating



procedures; and (9) PCB clean-up levels for each PCB remediation waste and the laboratory detection and quantitation limits;

- (f) Applicable PCB clean-up or action levels for the Facility and justification for those levels;
- (g) Discussion of human and ecological receptors and habitats that may be impacted by any identified PCB contamination;
- (h) Options for clean-up and the preferred approach (e.g., excavation, on-site disposal) with justification;
- (i) Methods for clean-up of PCB remediation waste in compliance with 40 C.F.R. § 761.61(a)(5) and waste disposal;
- (j) Methods for clean-up verification; and
- (k) Decontamination of sampling equipment, tools, and moveable equipment used during site characterization and clean-up in compliance with 40 C.F.R. § 761.79(c)(2), (e), (f)(2), and (g).

Within fifteen (15) calendar days after receiving such a PCB Clean-up Plan, EPA shall approve and/or submit comments to Respondent. If EPA disapproves a PCB Clean-up Plan, Respondent shall submit a revised PCB Clean-up Plan within fifteen (15) calendar days after EPA's disapproval.

- iv. Implementation of Remediation: Within sixty (60) calendar days after EPA approval of the PCB Clean-up Plan for any Facility, Respondent shall fully implement the remedies identified in the PCB Clean-up Plan at the Facility.
- v. PCB Clean-up Report: Within one hundred and twenty (120) calendar days after EPA approval of the PCB Clean-up Plan for any Facility, Respondent

shall submit a PCB Clean-up Report that documents remediation or removal of PCBs at the Facility in compliance with any applicable TSCA regulations at 40 C.F.R. Part 761.

- vi. Final Audit Report: The Final Audit Report shall be submitted no later than sixty (60) days after the Audit Completion Date. The Final Audit Report shall provide a list of the sites and equipment reviewed for PCB compliance, a summary of all violations discovered (if any), and the actions taken to mitigate the violations, including an itemized statement of the cost of such actions. The Final Audit Report shall also include a statement signed by a responsible IID official certifying that the Audit has been conducted and is complete. A "responsible IID official" means the General Manager or General Counsel of IID.
- vii. Certification: All reports to EPA under this Paragraph 43(e) shall be certified in compliance with Paragraphs 35 and 36 of this CAFO.
- f. Mitigation of Non-Disposal Violations: For any violation of 40 C.F.R. Part 761 other than that involving 40 C.F.R. § 761.50(a)(4) mitigated under Paragraph 43(e)(iii) and 43(e)(iv) of this CAFO, Respondent shall take steps to enter into PCB compliance and to ensure future PCB compliance within thirty (30) calendar days of discovery of the violation. When mitigating violations, Respondent shall submit required documents and information to the appropriate EPA office (as defined in applicable EPA regulations or guidance) and shall submit a written notice of such activity to the person and address listed in Paragraph 39.

- g. Stipulated Penalties: The stipulated penalties set forth in Paragraph 44, subject to the limitations of Paragraph 48, shall apply to violations that Respondent reports under this Audit. Once Respondent reports and mitigates a particular violation, the stipulated penalty shall establish the limit of Respondent's liability for all civil administrative claims and causes of action that arise or could arise for that particular violation.
- h. Other Enforcement Actions: EPA reserves the right to take appropriate enforcement actions for those PCB violations that Respondent does not properly report or mitigate under the Audit.
- i. Actionable Violations: Any particular violation that Respondent could have identified but did not identify pursuant to this Audit shall not be considered a violation of either this CAFO or the Final Determination but will be an actionable violation of TSCA for which EPA may bring a claim or cause of action in accordance with TSCA Sections 15 and 16. In any action regarding such a particular violation, however, EPA may not use Respondent's failure to identify the particular violation during the Audit as a factor in determining the appropriate penalty for the particular violation.
- j. Extensions of Audit Completion Date: If Respondent believes that it will be unable to complete the Audit before the Audit Completion Date as specified in Paragraph 43(d), Respondent shall promptly notify EPA in writing of such fact and the reasons therefore no later than thirty (30) calendar days before the Audit Completion Date. If EPA determines that Respondent cannot reasonably complete

the Audit before the Audit Completion Date, EPA, in its discretion, may allow an extension.

44. Except as provided in Paragraph 48, Respondent agrees to pay a stipulated penalty of \$3,200 for each Audit Violation that fails to meet the applicable conditions of the Audit Policy and the terms of this CAFO.
45. Following completion of the Audit and Respondent's submittal of the Final Audit Report required by Paragraph 43(e)(vi), the parties shall consult in good faith regarding the Audit Violations, and EPA shall allow Respondent an opportunity to explain its entitlement to penalty mitigation under the Audit Policy. Following such good-faith consultation,
  - a. EPA shall present Respondent with a draft civil Consent Agreement and Final Order (the "Audit CAFO") covering those Audit violations for which no penalty has been assessed, Audit Violations for which an economic benefit has been assessed, and/or Audit Violations for which Respondent must pay stipulated penalties.
  - b. Respondent shall sign and return the Audit CAFO to EPA within thirty (30) calendar days. If Respondent does not sign the Audit CAFO within thirty (30) calendar days, EPA reserves its rights under TSCA Section 16 to take enforcement action for violations reported by Respondent during the Audit.
  - c. Upon receipt of the signed Audit CAFO, EPA shall file the Audit CAFO with the Regional Hearing Clerk of EPA, Region IX, and will send a copy of the completed Audit CAFO to Respondent.

46. The settlement of civil claims and civil causes of action under the Audit shall include only those violations of 40 C.F.R. Part 761 that Respondent properly, in accordance with Paragraphs 43 and 44: (1) reports to EPA; (2) mitigates; and (3) pays the stipulated penalty due, if any.
47. Respondent's failure, without good cause, to submit any report or notification required by Section I.G of this CAFO shall (notwithstanding Paragraph 46) result in an additional stipulated penalty of \$500 per day per report or notification due, unless EPA excuses or mitigates the stipulated penalty. EPA will submit to Respondent a demand letter that specifies the stipulated penalties required to be paid under this paragraph. Within thirty (30) calendar days following Respondent's receipt of such demand letter, Respondent shall pay the stipulated penalties in the manner specified in the demand letter.
48. Notwithstanding Paragraph 44, Respondent shall not pay any gravity-based penalty for any violation of TSCA that meets all of the applicable conditions of the Audit Policy. The "applicable conditions of the Audit Policy" are conditions D(1) through D(9) of the Audit Policy.<sup>1</sup> However, subject to Paragraph 44, for any particular violation that meets all of the applicable conditions of the Audit Policy, EPA may require Respondent to pay a penalty for any "economic benefit" it received, provided such penalty is calculated in accordance with EPA policies and procedures for calculating the economic benefit of that type of TSCA violation. For purposes of future PCB violations, any submissions made pursuant to this CAFO will be "prior such violations" under and within the meaning of TSCA Section 16.

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<sup>1</sup> Condition D(2) of the Audit Policy requires the violation to be discovered voluntarily and not through a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement. EPA and Respondent acknowledge that Respondent is voluntarily undertaking the Audit to comprehensively address TSCA compliance at the Facilities in satisfaction of this condition.

- 49. The Audit shall not affect EPA's right to bring a claim or cause of action for a PCB violation that is not settled by Section I.G of this CAFO and the Final Determination, including a claim or cause of action for a PCB violation that could have been, but was not, reported, mitigated, and paid pursuant to this CAFO and the Final Determination.
- 50. Respondent may assert claims of confidentiality under TSCA Section 14 for submissions under Section I.G of this CAFO. All such assertions must be made in strict accordance with TSCA Section 14 and applicable EPA regulations.
- 51. Respondent shall bear all costs associated with the Audit.

**H. STIPULATED PENALTIES**

- 52. In the event that Respondent fails to satisfactorily complete the SEP within three hundred and sixty (360) days of the effective date of this CAFO, or otherwise fails to comply with any requirement of the SEP, Respondent agrees to pay Complainant a stipulated penalty in the following amounts for each day the default continues, up to but not to exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000):

<b>VIOLATION</b>	<b>STIPULATED PENALTY</b>
a. Failure to timely remove and properly dispose of the PCB Equipment identified for replacement	\$1,000 per calendar day after 360 days from the effective date for this CAFO
b. Failure to timely submit a complete and adequate report, such as the SEP Completion Report	\$250 per day for the first thirty (30) calendar days that report is late, then \$500 per day thereafter

- 53. All penalties shall begin to accrue on the date that performance is due or a violation of this CAFO 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.
- 54. All penalties owed to EPA under this Section shall be due within thirty (30) calendar days of Respondent's receipt of a notification of noncompliance and request for payment from EPA. 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.
55. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of the penalty in Section E of this CAFO.
  56. All payments shall indicate Respondent's name and address, and the EPA docket number assigned to this action.
  57. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required by this CAFO.
  58. 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 CAFO.
  59. 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 CAFO.
  60. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

#### I. FORCE MAJEURE

61. If any event occurs which impedes, delays or makes impossible Respondent's performance under Sections I.F (SEP) and I.G (Audit) of this CAFO, Respondent shall notify EPA in writing not more than ten (10) calendar days after the event or Respondent's knowledge of the anticipated or actual event, whichever is earlier, to the persons in Paragraph 39 above. For purposes of this section, events giving rise to *force majeure* include any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this CAFO despite Respondent's best efforts to fulfill the obligation and includes Acts of God (including fire, flood, earthquake, storm,

hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service. The notice shall describe in detail the event, the precise cause or causes of the event, the measures taken and to be taken by Respondent to prevent or minimize delayed performance or non-performance caused by the event, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any delayed performance or non-performance caused by the event. Failure by Respondent to comply with the notice requirements of this Paragraph shall render this Paragraph void and of no effect as to the particular incident involved and constitute a waiver of Respondent's right to request an extension of its obligation under this CAFO based on such incident.

62. If an event causing delayed performance or non-performance under Sections I.F (SEP) and I.G (Audit) of this CAFO has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall agree to such extension of time, during which period Respondent shall not be deemed to be in violation of this CAFO.
63. In the event that the parties dispute whether an event causing delayed performance or non-performance under Sections I.F (SEP) and I.G (Audit) of this CAFO has been or will be caused by circumstances beyond the control of Respondent, such dispute shall be submitted to the Director of Enforcement Division of EPA, Region IX (the "Director") to determine whether the delayed performance or non-performance was caused by circumstances beyond Respondent's control. The Director will notify Respondent in writing of his/her decision.



64. The burden of proving that any delayed or non-performance is caused by circumstances entirely beyond the control of Respondent shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this CAFO shall not, in any event, be a basis for changes in this CAFO or extensions of time under Paragraph 62. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps; it is Respondent's burden to establish that a delay in achievement of one interim step justifies or excuses delay in achievement of subsequent steps.

#### J. RETENTION OF RIGHTS

65. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in the CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in the CAFO.
66. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

#### K. ATTORNEYS' FEES AND COSTS

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

L. EFFECTIVE DATE

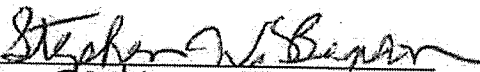
68. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

M. BINDING EFFECT

69. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
70. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

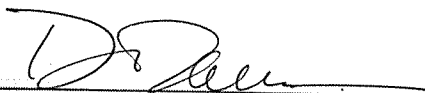
FOR RESPONDENT IMPERIAL IRRIGATION DISTRICT:

2-3-15  
DATE

  
By: Stephen W. Benson  
Title: Board President  
Address: P.O. Box 937  
Imperial, CA 92251

FOR COMPLAINANT EPA REGION IX:

2-9-15  
DATE



Douglas McDaniel


Chief  
Waste and Chemical Section  
Air, Waste and Toxics Branch  
Enforcement Division  
United States Environmental  
Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

II. FINAL ORDER

EPA Region IX and Imperial Irrigation District having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2015-0002) be entered, and Respondent shall pay a civil administrative penalty in the amount of THREE HUNDRED, SEVENTY-NINE THOUSAND, SEVEN HUNDRED AND SIXTY-EIGHT DOLLARS (\$379,768), perform the tasks set forth in Section I.F and I.G of the Consent Agreement, and otherwise comply with the terms set forth in the Consent Agreement.

02/10/15  
DATE

  
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 Irrigation District (**Docket No: TSCA-09-2015-<sup>0002</sup>**) was filed with the 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 sent to the following parties:

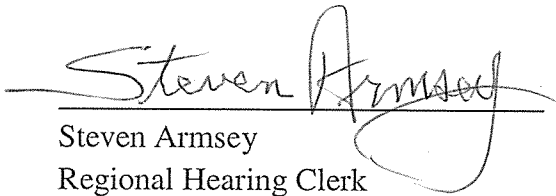
A copy was mailed via CERTIFIED MAIL to:

Kevin Kelley  
General Manager  
Imperial Irrigation District  
P.O. Box 937  
Imperial, CA 92251

**CERTIFIED MAIL NUMBER:** 77000 0320 0002 0254 2321

And an additional copy was hand-delivered to the following U.S. EPA case attorney:

David Kim  
Office of Regional Counsel  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105



Steven Armsey  
Regional Hearing Clerk  
U.S. EPA, Region IX

Feb. 11, 2015  
Date

**APPENDIX A**

Removal of PCB Oil from IID Service Area

Type of Equipment	Equipment Detail	Manufactured Date	Location	KVA	Volume of PCBs	PCB Content	Estimated Remaining Life	History of Leaks and Remediation	Proximity to Sensitive Factors *	Replacement Equipment Cost	Replacement Labor Cost	Equipment Disposal Cost	Total
Regulator	Serial #D585807 Brand-GE, Phase C	1/29/1965	Imperial Valley, Imperial Dam	250	100 gal	151 ppm	1 yr	None, In Service	N/A - Shop Area	\$ 13,957.53	\$ 4,005.00	\$ 2,502.50	\$ 20,465.03
Regulator	Serial #337380148368 Brand-AC, Phase C	10/1/1970	Imperial Valley, Winterhaven, No Man's Land	167	100 gal	147 ppm	6-9 yrs	None, In Service	A	\$ 11,834.53	\$ 4,005.00	\$ 2,502.50	\$ 18,342.03
Regulator	Serial #337380177346 Brand-AC, Phase B	1/1/1973	Coachella Valley, No Man's Land	167	100 gal	131 ppm	9-12 yrs	None, In Service	A	\$ 11,834.53	\$ 4,005.00	\$ 2,502.50	\$ 18,342.03
Regulator	Serial #D585481 Brand-GE, Phase A	4/16/1965	Imperial Valley, Imperial Dam	250	100 gal	92 ppm	1-4 yrs	None, In Service	N/A - Shop Area	\$ 13,957.53	\$ 4,005.00	\$ 2,502.50	\$ 20,465.03
Regulator	Serial #D571304 Brand-GE, Phase B	1/29/1965	Imperial Valley, Imperial Dam	250	150 gal	74 ppm	1-4 yrs	None, In Service	N/A - Shop Area	\$ 13,957.53	\$ 4,005.00	\$ 2,502.50	\$ 20,465.03
Regulator	Serial #33738014307 Brand-AC, Phase C	10/5/1970	Imperial Valley, Westmorland	333	150 gal	63 ppm	6-9 yrs	None, In Service	Approx. 1050' to SC	\$ 15,245.53	\$ 4,005.00	\$ 2,502.50	\$ 21,753.03
Regulator	Serial #337560279234 Brand-AC, Phase C	5/1/1978	Imperial Valley, Heber, Imperial	333	150 gal	58 ppm	14-19 yrs	None, In Service	A Approx. 2100' to SC	\$ 15,245.53	\$ 4,005.00	\$ 2,502.50	\$ 21,753.03
Regulator	Serial #L195501 Brand-GE, Phase C	8/1/1974	Coachella Valley, North Shore	333	150 gal	54 ppm	10-13 yrs	None, In Service	N/A - Open Desert	\$ 15,245.53	\$ 4,005.00	\$ 2,502.50	\$ 21,753.03
Regulator	Serial #33738013314 Brand-AC, Phase A	10/5/1970	Imperial Valley, Westmorland	333	150 gal	47 ppm	6-9 yrs	None, In Service	Approx. 1050' to SC	\$ 15,245.53	\$ 4,005.00	\$ 2,502.50	\$ 21,753.03
Regulator	Serial #33738014306 Brand-AC, Phase B	10/5/1970	Imperial Valley, Westmorland	333	150 gal	43 ppm	6-9 years	None, In Service	Approx. 1050' to SC	\$ 15,245.53	\$ 4,005.00	\$ 2,502.50	\$ 21,753.03
Regulator	Serial #M583099PCT Brand-GE Phase B	6/1/1981	Imperial Valley, Bard	333	150 gal	26 ppm	17-20 yrs	None, In Service	A Approx. 2100' to SC	\$ 15,245.53	\$ 4,005.00	\$ 2,502.50	\$ 21,753.03
Regulator	Serial #337560258633 Brand-AC Phase A	1/1/1995	Imperial Valley, Winterhaven, No Mans Land	167	100 gal	26 ppm	31-34 yrs	None, In Service	A Approx. 2100' to SC	\$ 11,834.53	\$ 4,005.00	\$ 2,502.50	\$ 18,342.03

Removal of PCB Oil from IID Service Area

Type of Equipment	Equipment Detail	Manufactured Date	Location	KVA	Volume of PCBs	PCB Content	Estimated Remaining Life	History of Leaks and Remediation	Proximity to Sensitive Factors *	Replacement Equipment Cost	Replacement Labor Cost	Equipment Disposal Cost	Total
Regulator	Serial #337560279236 Brand-AC Phase A	5/1/1978	Imperial Valley, Heber, Imperial	333	150 gal	25 ppm	14-17 yrs	None, In Service	A Approx. 2100' to SC	\$ 15,245.53	\$ 4,005.00	\$ 2,502.50	\$ 21,753.03
Generation													
Neutral Grounding Transformer	Serial #8660999 Brand-GE Phase - Single	1956	Imperial Valley, El Centro Generation Station	50	43 gal	44 ppm	1-2 yrs	None, In Service	N/A In Plant	\$ 15,674.00	\$ 2,970.00	\$ 860.00	\$ 19,504.00
Distribution													
Distribution Transformers	72D10-D Serial # D27796858P	2/1/1959	Coachella Valley, Sky Valley	167	50 gal	113 ppm	1-4 yrs	None, In Service	N/A - Open Desert	\$ 5,000.00	\$ 2,970.00	\$ 860.00	\$ 8,830.00
Distribution Transformers	72D8-D Serial # D2779458P	2/1/1959	Coachella Valley, Sky Valley	167	50 gal	130 ppm	1-4 yrs	None, In Service	N/A - Open Desert	\$ 5,000.00	\$ 2,970.00	\$ 860.00	\$ 8,830.00
Oil Circuit Breaker (OCB)	Serial # 432962 Brand SIE Breaker A	1988	Indio Jefferson Substation	1600 amps	657 gal	78 ppm	6-9 yrs	None, In Service	Approx. 100' to SC	\$ 25,346.00	\$ 13,374.00	\$ 19,800.00	\$ 58,520.00
Oil Circuit Breaker (OCB)	Serial # 432962 Brand SIE Breaker B	1988	Indio Jefferson Substation	1600 amps	657 gal	82 ppm	6-9 yrs	None, In Service	Approx. 150' to SC	\$ 25,346.00	\$ 13,374.00	\$ 19,800.00	\$ 58,520.00
Oil Circuit Breaker (OCB)	Serial # 432962 Brand SIE Breaker C	1988	Indio Jefferson Substation	1600 amps	657 gal	78 ppm	6-9 yrs	None, In Service	Approx. 150' to SC	\$ 25,346.00	\$ 13,374.00	\$ 19,800.00	\$ 58,520.00
Regulator	Serial # DS79425 Brand AC	1964	Desert Shores	250	100 gal	323 ppm	2-4 yrs	None, In Service	N/A - Open Desert	\$ 13,957.53	\$ 4,005.00	\$ 2,502.50	\$ 20,465.03
Regulator	Serial # DS79452 Brand AC	1964	Desert Shores	250	100 gal	352 ppm	2-4 yrs	None, In Service	N/A - Open Desert	\$ 13,957.53	\$ 4,005.00	\$ 2,502.50	\$ 20,465.03
Regulator	Serial # DS79448 Brand AC	1964	Desert Shores	250	100 gal	342 ppm	2-4 yrs	None, In Service	N/A - Open Desert	\$ 13,957.53	\$ 4,005.00	\$ 2,502.50	\$ 20,465.03
<b>Total Cost:</b>													\$ 542,811.48

**APPENDIX B**



Substation	Location	Latitude	Longitude	Comments
Oakley	SE corner of River Drive and Ceasar Chavez, Brawley	32.986358 32 59' 10.9" N	-115.526334 115 31' 34.8" W	958 N Cesar Chavez St, Brawley
Border	Ist st. and Encinas, Calexico	32.665655 32 39' 56.36 N	-115.487539 115 29' 15.14" W	801 E. 1st St, Calexico
Coachella	NE corner of Ninth and Vine, Indio	33.677259 33 40' 38.13" N	-116.173135 116 10' 23.28" W	1319 9th St, Coachella
Old Mecca	200 ft. So. of Johnson Rd. on Westside of Hammond Rd., Mecca	N 33	W 116	90287 Johnson St, Thermal
Jackson	NW corner of Jackson & Ave 50, Indio	33.685627 33 41' 8.26" N	-116.217050 116 13' 1.38" W	49995 Jackson St, 82987 Avenue 50, Indio
Indio	NE corner of Hwy 111 & King St., Indio	33.715213 33 42' 54.72" N	-116.221994 116 13' 19.18" W	82666 CA-111 and 45940 King St, Indio
Bermuda Dunes	End of Dune Palms Rd. at Fred Waring Drive, Indio	33.729299 33 43' 45.48" N	-116.277558 116 16' 39.21" W	79440 Fred Waring Dr, Bermuda Dunes
Valley	North side of Danenberg Rd. between Dogwood Rd. & Farnsworth Rd., El Centro	32.767073 32 46; 1.46" N	-115.538097 115 32' 17.15" W	302 E. Danenberg Rd., El Centro
Diesel Plant	475 Dogwood Rd. , Brawley	32.968603 32 58' 6.97" N	-115.534999 115 32' 5.99" W	475 Dogwood Rd, Brawley