

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

****FILED****
30 SEP 2021
U.S. EPA - REGION IX

In the matter of:)	U.S. EPA Docket No.
)	
)	RCRA-09-2021-0069
)	
CLEAN HARBORS)	PROCEEDING TO COMMENCE AND
SAN JOSE, L.L.C.,)	CONCLUDE AN ACTION TO
)	ASSESS A CIVIL PENALTY UNDER
EPA Identification No.)	RCRA SECTION 3008 PURSUANT TO
CAD 059 494 310)	40 CFR SECTIONS 22.13 AND 22.18
)	
)	
)	
Respondent.)	
)	

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008 of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, Title 40 of the Code of Federal Regulations (“40 CFR”) Part 22, (“Consolidated Rules”).
2. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”).
3. Respondent is Clean Harbors San Jose, L.L.C, the owner/operator of the facility located at 1021 Berryessa Road, San Jose, CA 95133 (the “Facility” or the “San Jose Facility”).
4. This Consent Agreement and Final Order (“CA/FO”), pursuant to 40 CFR §§ 22.13(b) and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated state regulations adopted pursuant to the approved California hazardous waste management program.
5. The Parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their respective interest and in the public interest.

B. STATUTORY AND REGULATORY FRAMEWORK

6. Subtitle C of RCRA requires the EPA Administrator to promulgate regulations establishing a hazardous waste management program. Section 3006 of RCRA, 42 U.S.C. § 6926, provides, *inter alia*, that authorized state hazardous waste management 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.
7. The State of California (“State”) 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 CFR Part 271 on or about August 1, 1992. This authorization was updated on September 26, 2001, (*see* 66 FR 49118, September 26, 2001), on October 7, 2011, (*see* 76 FR 62303, October 7, 2011) and again on January 14, 2020 (*see* 85 FR 2038, as corrected [*see* 86 FR 29207, June 1, 2021]).
8. The authorized hazardous waste program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code (“H&SC”), and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 CCR §§ 66001 *et seq.* The State of California has been authorized for all the relevant portions of the hazardous waste management regulations referenced in this CA/FO. However, the inspection and violations alleged all occurred prior to the most recent, January 14, 2020 (as corrected June 1, 2021) State program authorization update and the authorized regulations are cited herein as they existed when they were approved by EPA on October 7, 2011.

C. EPA’S GENERAL ALLEGATIONS

9. Respondent owns and operates the San Jose Facility. The Facility’s EPA RCRA ID number is CAD 059 494 310. Respondent operates the San Jose Facility as a RCRA hazardous waste storage, treatment, and transfer facility. The Facility operations also include the consolidation, reclamation, and volume reduction of industrial and household hazardous waste.
10. On or about September 19 and 20, 2019, EPA conducted compliance evaluation inspections (“CEP”) at the San Jose Facility. The purpose of the inspection was to determine the Facility’s compliance with its State-issued hazardous waste permit and applicable federal environmental statutes and regulations, in particular RCRA, as amended, and the regulations in 40 CFR Parts 260 through 279, and the authorized statutory and regulatory requirements adopted by the State of California as part of its authorized hazardous waste program in the California Health and Safety Code, Division 20 and the California Code of Regulations, Title 22, Division 4.5.

11. Respondent currently operates the San Jose Facility pursuant to a RCRA permit issued by the California Department of Toxic Substances Control (“DTSC”) effective June 18, 2021 (“the 2021 RCRA Permit”). At the time of the inspections in September of 2019, Respondent operated the San Jose Facility pursuant to a permit that had become effective on or about February 10, 2003 with an expiration date of February 9, 2013 (“the 2003 RCRA Permit”). The 2003 RCRA Permit, which was modified on or about May 22, 2013, was continued administratively prior to the issuance of the 2021 RCRA Permit. Thus, at the time of the CEI, the 2003 RCRA Permit, as modified, applied to the San Jose Facility’s management of hazardous waste.
12. The 2003 RCRA Permit allowed the San Jose Facility to operate as a RCRA hazardous waste storage, treatment, and transfer facility and, among other things, to accept solid, semi-solid, and liquid hazardous waste for consolidation, treatment and volume reduction. These operations include, but are not limited to, phase separation, fuel blending, neutralization, aqueous metal precipitation, oxidation and reduction, and solidification.
13. Respondent is a “person” as defined in H&SC Section 25118 (*see also* Section 1004(15) of RCRA, 42 U.S.C. § 6903(15)), and 22 CCR §§ 66260.10 and 66270.2 (*see also* 40 CFR §§ 260.10 and 270.2).¹
14. Respondent is the “operator” of a facility as defined in 22 CCR § 66260.10 (*see also* 40 CFR § 260.10).
15. Respondent is the “owner” of a facility as defined in 22 CCR § 66260.10 (*see also* 40 CFR § 260.10).
16. Respondent is a “generator” of hazardous waste as defined in 22 CCR § 66260.10 [*see also* 40 CFR § 260.10].
17. Respondent is or has been engaged in “treatment,” and “storage,” of “hazardous waste” as defined in 22 CCR §§ 66260.10 and 66261.3 [*see also* 40 CFR §§ 260.10 and 261.3]. These hazardous wastes include, but are not limited to, the following hazardous waste codes: D001, D002, and other characteristic wastes, and “F” and “U” listed wastes.
18. The San Jose Facility is a “hazardous waste facility” as defined in H&SC Section 25117.1 and 22 CCR § 66260.10 (*see also* the definitions of “facility” and “facility or activity” at 40 CFR §§ 260.10 and 270.2).
19. Based upon the findings EPA made during the inspections, and additional information

¹ All citations to the “CCR” refer to Division 4.5 of Title 22 of the current California Code of Regulations. EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States. As a convenience, corresponding Federal citations are provided in brackets.

obtained subsequent to the inspections, EPA determined that Respondent violated its hazardous waste permit, the California Health & Safety Code § 25100 *et seq.*, and the regulations adopted pursuant thereto, as approved and authorized by the United States.

20. 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. A violation of California's authorized hazardous waste program, found at H&SC §§ 25100 *et seq.*, constitutes a violation of Subtitle C of RCRA. Therefore, a person who violates California'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.
21. 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.* The Administrator has delegated enforcement authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrators, with delegation 8-9-A, last revised February 4, 2016. The Regional Administrator, EPA Region IX, in turn, redelegated that authority to the EPA signatory below.

D. ALLEGED VIOLATIONS

COUNT I

**Failure to Comply with Marking Requirements of
2003 RCRA Permit's Air Emissions Standards for Equipment Leaks**

22. Paragraphs 1 through 21 above, are incorporated herein by this reference as if they were set forth here in their entirety.
23. The San Jose Facility's 2003 RCRA Permit required compliance with 22 CCR § 66264.1050(d) insofar as it required that each piece of equipment subject to regulation under Article 28 (Air Emission Standards for Equipment Leaks) be marked in such a manner that it can be distinguished readily from other pieces of equipment.² Part B Permit Application dated October 23, 2002, incorporated into the 2003 RCRA Permit, by reference.
24. Failure to replace missing markings or tags on equipment that is in contact with organic

² California is authorized to administer the Federal RCRA program under the State regulations at 22 CCR § 66264.1050(d) and for the relevant definitions at 22 CCR § 66260.10 (definitions applicable to the federal requirements of 40 CFR Part 264 Subpart BB are found in 40 CFR Part 264 Subpart AA at § 264.1031). However, although the definitions that are relevant to the allegations contained herein have been authorized, changes made to these definitions as a result of the federal rule changes promulgated at 64 FR 3389, (Jan. 21, 1999), have not been authorized.

hazardous waste at a concentration equal to or greater than ten percent by weight constitutes a violation of the San Jose Facility's 2003 RCRA Permit and 22 CCR § 66264.1050(d) [40 CFR § 264.1050(d)] (*see also* 22 CCR § 66270.30(a) [40 CFR § 270.30(a)]).

25. At the time of the CEI, the EPA inspectors noted that equipment used to transfer RCRA hazardous waste were not marked as required. This equipment was not in vacuum service, but rather under pressure, and in contact with organic hazardous waste at a concentration equal to or greater than ten percent by weight. Thus, the equipment was subject to RCRA's air emissions marking requirements at 22 CCR § 66264.1050(d) [40 CFR § 264.1050(d)]. This equipment included flanges connected to a diaphragm pump that is used to transfer RCRA hazardous waste to one of six above-ground storage tanks. This equipment also included flanges associated with the San Jose Facility's knock-out pot.
26. None of this equipment noted above was marked using the metal tags the Respondent uses to identify the equipment to be monitored in accordance with the Facility's Leak Detection and Repair Program, which required that each piece of equipment subject to regulation be marked in such a manner that it can be distinguished readily from other pieces of equipment. *See* the Part B Permit Application dated October 23, 2002, incorporated into the 2003 RCRA Permit by reference, at Part V Air Emissions Standards, Sections F through O.
27. Therefore, EPA alleges that Respondent has violated the Facility's 2003 RCRA Permit and 22 CCR § 66264.1050(d) [40 CFR § 264.1050(d)] (*see also* 22 CCR § 66270.30(a) [40 CFR § 270.30(a)]).

COUNT II
Failure to Separate Containers of Incompatible Hazardous Waste
During Storage

28. Paragraphs 1 through 27, above, are incorporated herein by this reference as if they were set forth here in their entirety.
29. The San Jose Facility's 2003 RCRA Permit included requirements applicable to Unit #26. These permit conditions make no allowance for the storage of incompatible hazardous wastes in this area of the San Jose Facility, as this area lacks any means of separation of such wastes through the use of a dike, berm, wall, or other device. *See* the 2003 RCRA Permit. *See also* the 2002 Operations Plan, p. I-3 and Figure I.3, incorporated by reference into the 2003 RCRA Permit.
30. State regulations at 22 CCR § 66264.177(c) [*see also* 40 CFR § 264.177(c)] require that any container "holding a hazardous waste that is incompatible with any waste or other

materials transferred or stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.”

31. According to the State’s definition at 22 CCR § 66260.10, [*see also* 40 CFR § 260.10], “incompatible waste” means “a hazardous waste which is unsuitable for . . . commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases or flammable fumes or gases.” Acids and bases are among the materials which are identified in the examples of such incompatible materials found in Appendix V to chapter 15 of 22 CCR Division 4.5 (*see also* Appendix V to 40 CFR Part 264—Examples of Potentially Incompatible Waste).
32. At the time of the CEI, the EPA inspectors noted that, adjacent to and in a covered area of Unit #26, containers of hazardous waste constituting acids and containers of hazardous waste constituting bases were being stored next to and atop one another, without being separated as required by the 2003 RCRA Permit and the regulations.
33. Therefore, EPA alleges that, by failing to separate incompatible RCRA hazardous waste during storage, Respondent violated the 2003 RCRA Permit and the regulatory requirement at 22 CCR § 66264.177(c) [40 C.F.R. § 264.177(c)] (*see also* 22 CCR § 66270.30(a) [40 C.F.R. § 270.30(a)]).

E. **CIVIL PENALTY**

34. The Complainant proposes that Respondent be assessed, and Respondent agrees to pay TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) as the civil penalty for the violations alleged herein.
35. The civil penalty is based upon EPA’s consideration of a number of factors, including the penalty criteria set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), including the following: the seriousness of the violation and any good faith efforts to comply with applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s “June 2003 RCRA Civil Penalty Policy,” and adjusted for inflation in accordance with the Civil Monetary Inflation Adjustment Rule, 40 CFR Part 19.

F. ADMISSIONS AND WAIVERS OF RIGHTS

36. In accordance with 40 CFR § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CA/FO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in this CA/FO; (iii) consents to any and all conditions specified in this CA/FO and to the assessment of the civil administrative penalty under Section E of this CA/FO; (iv) waives any right to contest the allegations contained in Sections C or D of the CA/FO; and (v) waives the right to appeal the proposed final order attached to this Consent Agreement and made part of this CA/FO.

G. PARTIES BOUND

37. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until the civil penalty required under Section E has been paid in accordance with Section H. At that time, this CA/FO shall terminate and constitute full settlement of civil penalty liability for the violations alleged herein.
38. No change in ownership relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
39. 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.

H. PAYMENT OF CIVIL PENALTY

40. Respondent consents to the assessment of and agrees to pay a civil penalty of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) in full settlement of the federal civil penalty claims set forth in this CA/FO.
41. Respondent shall submit payment of TWENTY-FIVE THOUSAND DOLLARS within thirty (30) calendar days of the Effective Date of this CA/FO, in accordance with one of the options set forth below. 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, the Respondent's name and address, and the EPA docket number of this action.

Regular Mail:

Payment shall be made by certified or cashier's check payable to "Treasurer, United States of America," and sent as follows:

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

Overnight Mail:

Payment shall be made by certified or cashier's check payable to "Treasurer, United States of America," and sent as follows:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Craig Steffen (513) 487-2091

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

Beneficiary: US Environmental Protection Agency

*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the US EPA.

ACH (also known as REX or remittance express):

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
Remittance Express (REX): 1-866-234-5681

On Line Payment:

Payers can use their credit or debit cards (Visa, MasterCard, American Express &

Discover) as well as checking account information to make payments.

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

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

42. At the time payment is made, Respondent shall send a PDF copy of the notification that the payment has been made by one of the methods listed above including proof of the date payment was made, to the following email addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 9
R9HearingClerk@epa.gov

And to:

John Schofield
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 9
Schofield.John@epa.gov

43. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, 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 CFR § 13.11. In addition, a 6% per annum penalty assessed monthly will further apply on any principal amount not paid within ninety (90) calendar days of its due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.
44. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

I. DELAY IN PERFORMANCE/STIPULATED PENALTIES

45. In the event Respondent fails to submit payment of the civil penalty to EPA by the time required in this CA/FO, Respondent shall pay stipulated penalties up to: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay; ONE

THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay; and ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) per day for each day of delay thereafter.

46. All stipulated penalties owed to EPA under this Section shall be due within thirty (30) days of receipt by Respondent 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 CFR §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
47. All stipulated penalties shall be made payable by certified or cashier's check to "Treasurer of the United States" and shall be remitted as described in Paragraph 41, with notice as described in Paragraph 42.
48. The payment of stipulated penalties shall not alter in any way Respondent's obligation to submit the civil penalty required in accordance with Sections E and H, hereunder.
49. 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 CA/FO.

J. CERTIFICATION OF COMPLIANCE

50. In executing this CA/FO, Respondent certifies under penalty of law to EPA that it has fully complied with Section 3008 of RCRA, 42 U.S.C. § 6928, and its implementing regulations, as well as the applicable permit requirements pertaining to the alleged violations set forth in Section D of this CA/FO.
51. 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.

K. RESERVATION OF RIGHTS

52. 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. 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, including without limitation, the assessment of penalties under Section 3008 of RCRA, 42 U.S.C. § 6928. 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, 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. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

53. 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.
54. 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 alleged violations set forth in Section D of this CA/FO.
55. 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 required local, State or federal permits.

L. OTHER CLAIMS

56. Nothing in this CA/FO shall constitute or be construed as a release from 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.

M. MISCELLANEOUS

57. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
58. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
59. Each party to this action shall bear its own costs and attorneys’ fees.
60. EPA and Respondent consent to entry of this CA/FO without further notice.

N. EFFECTIVE DATE

61. In accordance with 40 CFR §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on

the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

FOR RESPONDENT CLEAN HARBORS SAN JOSE, L.L.C.:



William Connors
Senior Vice President

FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 9:

**AMY MILLER-
BOWEN**

Digitally signed by AMY MILLER-
BOWEN
Date: 2021.09.29 07:09:37 -07'00'

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

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 CFR Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-09-2021-0069) be entered and that Respondent shall pay a civil penalty of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) in accordance with the terms of this CA/FO.

A notice of payment and a copy of the check or other form of payment shall be sent to the EPA Region IX addresses specified in Section H of this Consent Agreement and Final Order at the time payment is made.

This Final Order, once signed, shall be effective upon filing by the Regional Hearing Clerk.

September 29, 2021

Date

Wong, Beatrice

Digitally signed by Wong,
Beatrice
Date: 2021.09.29 14:25:45 -07'00'

Beatrice Wong
Regional Judicial Officer
United States Environmental Protection Agency,
Region 9

CERTIFICATE OF SERVICE

This is to certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of Clean Harbors San Jose L.L.C. (RCRA-09-2021-0069) has been filed with the Regional Hearing Clerk, and a copy was served on Respondent and on Complainant as indicated below:

RESPONDENT:
(via electronic mail)

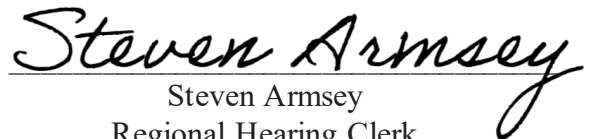
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COMPLAINANT:
(via electronic mail)

Mimi Newton
Assistant Regional Counsel
U. S. EPA – Region 9
San Francisco, CA 94105
newton.mimi@epa.gov

Date: _____



Steven Armsey
Regional Hearing Clerk
U.S. EPA - Region 9