



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

June 30, 2020

Shannon Broome, Esq.
Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, CA 94111

Dear Ms. Broome:

Enclosed are a Complaint and Notice of Opportunity for Hearing in the Matter of Borla Performance Industries, Inc., the Consolidated Rules of Practice at 40 C.F.R. Part 22, and the Region IX Regional Judicial Officer's Standing Order dated May 14, 2020.

If you have any questions concerning the Complaint or the other enclosed documents, please contact Allan Zabel of our Office of Regional Counsel at (415) 972-3902.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amy C. Miller-Bowen".

Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region IX

Enclosures

**** FILED ****
30 JUNE 2020
U.S.EPA - REGION IX

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

_____)	
In the Matter of:)	
)	Docket No. CAA-09-2020-0044
Borla Performance Industries, Inc.,)	
)	COMPLAINT AND NOTICE OF
Respondent)	OPPORTUNITY FOR HEARING
_____)	

COMPLAINT

Preliminary Statement

1. This Complaint and Notice of Opportunity for Hearing (“Complaint”) initiates a civil administrative penalty proceeding under Section 205(c)(1) of the Clean Air Act (CAA), 42 U.S.C. § 7524(c)(1), and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or

Suspension of Permits,” (“Consolidated Rules”) at 40 C.F.R. Part 22. 40 C.F.R. §§ 22.13-14.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 9, (“Complainant”), who is authorized by lawful delegation from the Administrator of the EPA to institute civil administrative penalty assessment proceedings under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1).
3. Respondent in this matter is Borla Performance Industries, Inc., a California corporation.
4. This Complaint serves as notice that Complainant has reason to believe that Respondent has violated section 203(a)(3)(B) of the CAA. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1), based on information provided by Respondent, information previously available on Respondent’s public website, and other information.

Jurisdiction

5. This action is brought under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), and the Consolidated Rules.
6. The EPA may administratively assess a civil penalty for violations of section 203(a)(3)(B) of the CAA. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1).
7. Where violations occurred after November 2, 2015, and a penalty is assessed on or after January 13, 2020, an administrative civil penalty may not exceed \$385,535 against a violator, unless the Administrator of the EPA and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1); 40 C.F.R. § 19.4 tbl. 1; Civil Monetary Penalty Inflation Adjustment Rule, 85 Fed. Reg. 1751 (Jan 13, 2020).

8. The Administrator and the Attorney General jointly determined that this matter, although it may involve a penalty amount greater than \$385,535, is appropriate for administrative penalty assessment. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1); 40 C.F.R. § 19.4

Governing Law

9. In creating the CAA, Congress found that “the increasing use of motor vehicles ... has resulted in mounting dangers to the public health and welfare.” CAA § 101(a)(2); 42 U.S.C. § 7401(a)(2). Congress’ purposes in creating the CAA were “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” CAA § 101(b)(1)-(2); 42 U.S.C. § 7401(b)(1)-(2).
10. “Motor vehicle” is defined as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” CAA § 216(2), 42 U.S.C. § 7550(2); 40 C.F.R. § 85.1703.
11. Motor vehicles are defined by their attributes and design, and not by how they are used. CAA § 216(2), 42 U.S.C. § 7550(2); 40 C.F.R. § 85.1703.
12. Title II of the CAA and the regulations promulgated thereunder establish stringent standards for the emissions of air pollutants from motor vehicles and motor vehicle engines that “cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.” CAA § 202(a), 42 U.S.C. § 7521(a). These pollutants include, but are not limited to, nitrogen oxides (NO_x), particulate matter (PM), non-methane hydrocarbons (NMHCs), and carbon monoxide (CO). CAA § 202(a)(3)(A), 42 U.S.C. § 7521(a)(3)(A).

13. The EPA has also established National Ambient Air Quality Standards for certain pollutants, including ozone, NO_x, PM, and CO. See 40 C.F.R. §§ 50.6 – 50.11, 50.13, 50.15, 50.18, and 50.19.
14. NO_x and NMHCs are reactive gasses that contribute to the formation of PM and ozone.
15. PM is a form of air pollution composed of microscopic solids and liquids suspended in air. PM is emitted directly from motor vehicles and is also formed in the atmosphere from the emission of other pollutants, including NO_x and NMHCs, emitted from motor vehicles.
16. Ozone is a highly reactive gas that is formed in the atmosphere, in part, from emissions of pollutants from motor vehicles.
17. Exposure to ozone and PM is linked to a number of health effects as well as premature death. Children, older adults, people who are active outdoors (including outdoor workers), and people with heart or lung disease are particularly at risk for health effects related to ozone or PM exposure.
18. CO is a toxic gas emitted from motor vehicles that can cause headaches, dizziness, vomiting, nausea, loss of consciousness, and death. Long-term exposure to CO has been associated with an increased risk of heart disease.
19. Under section 202 of the CAA, 42 U.S.C. § 7521, the EPA promulgated emission standards for PM, NO_x, CO, and NMHC and other pollutants applicable to motor vehicles and motor vehicle engines. See generally 40 C.F.R. Part 86.

*EPA's Certificate of Conformity Program for New Motor Vehicles
and Motor Vehicle Engines*

20. Manufacturers of new motor vehicles or motor vehicle engines must apply for and obtain a certificate of conformity (COC) from the EPA to sell, offer to sell, or introduce or deliver

for introduction into commerce any new motor vehicle or motor vehicle engine in the United States. CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1).

21. To obtain a COC, the original equipment manufacturer (OEM) must demonstrate that each motor vehicle or motor vehicle engine will conform to established emissions standards for NO_x, PM, NMHC, CO, and other pollutants during the motor vehicle or motor vehicle engine's useful life. CAA § 206(a), 42 U.S.C. § 7525(a); see 40 C.F.R. §§ 86.1844-01, 86-1846-01(a)(1).
22. The COC application must describe, among other things, the emission-related elements of design of the motor vehicle or motor vehicle engine. See 40 C.F.R. § 86.1844-01(d)-(e).
23. The EPA issues COCs to OEMs under section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicles conforms to applicable EPA requirements governing motor vehicle emissions.
24. Once issued by the EPA, a COC only covers those new motor vehicles or motor vehicle engines that conform in all material respects to the specifications provided to the EPA in the COC application for such vehicles or engines. 40 C.F.R. § 86.1848-01(c)(6).

Emissions-Related Elements of Design

25. An "element of design" is "any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interactions, and/or hardware items on a motor vehicle or motor vehicle engine." 40 C.F.R. § 86.1803-01.
26. "Emission Related Parts" means those parts installed for the specific purpose of controlling emissions or those components, systems, or elements of design which must function properly to assure continued vehicle emission compliance. 40 C.F.R. § 85.2102(14)

27. Catalytic converters are an emission related part and element of design that promote chemical reactions to convert pollutants to non-pollutants. The chemical reaction for pollution abatement is the simultaneous oxidation of CO and NMHC to form carbon dioxide and water and reduce NOx to nitrogen. Precious metals are the catalytic components most commonly used for exhaust emission control, and the elements platinum, palladium, and rhodium are the three precious metals most frequently used for this purpose. Catalytic converters are contained in OEM-installed stock exhaust pipe systems.

Acts Prohibited by Section 203(a)(3)(B) of the Clean Air Act

28. Under the CAA, the term “person” includes individuals, corporations, partnerships, associations, states, municipalities, and political subdivisions of a state. CAA § 302(e), 42 U.S.C. § 7602(e).
29. Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), prohibits “any person from manufacturing, selling, offering to sell, or installing any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with Title II of the CAA, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” This is generally known as the defeat device prohibition.
30. It is also a violation for any person to cause any of the acts set forth in CAA section 203(a), 42 U.S.C. § 7522(a).
31. Any person violating sections 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), is subject to a civil penalty of up to \$3,750 for each for each violation that occurred on or

before November 2, 2015, and up to \$4,819 for each violation that occurred after November 2, 2015, where penalties are assessed on or after January 13, 2020. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4; Civil Monetary Penalty Inflation Adjustment Rule, 85 Fed. Reg. 1751 (Jan 13, 2020).

32. Any such violation with respect to section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B) shall constitute a separate offense with respect to each part or component. CAA § 205(a), 42 U.S.C. § 7524(a).

General Allegations

Motor Vehicle Emissions-Related Elements of Design

33. Respondent is a “person” as defined under section 302(e) of the CAA, 42 U.S.C. § 7602(e).
34. Pursuant to EPA-issued COCs, OEMs install a variety of hardware and software emissions-related elements of design in motor vehicles and motor vehicle engines.
35. Ford Motor Company (“Ford”) is the OEM of Model Years 2005-2006 Ford GT 5.4L/MT RWD, Model Years 2005-2010 Ford Mustang GT 4.6L V8, Model Years 2011-2014 Ford Mustang 3.7L V6, Model Years 2011-2017 Ford Mustang GT 5.0L, Model Years 2015-2016 Ford Mustang 2.3L Ecoboost, Model Years 2015-2017 Ford Mustang 2.3L Turbo, Model Years 2011-2016 Ford F-150 3.5L Ecoboost, Model Years 2011-2014 Ford F-150 Raptor 6.2L, and Model Years 2016-2018 Ford Focus RS 2.3L and their engines.
36. Bayerische Motoren Werke AG (“BMW”) is the OEM of Model Years 1987-1992 BMW M3 E30 2.3L, Model Years 2001-2006 BMW M3 Coupe/Convertible 3.2L AT, Model Years 2007-2009 BMW 335i/ 335xi, Model Years 2008-2013 BMW M3 4.0L, Model

- Years 2014-2017 Mini Cooper S F56 2.0L, Model Year 2015 BMW M3/M4 3.0L, and Model Years 2015-2017 BMW M3/M4 3.0L and their engines.
37. Fiat Chrysler Automobiles US LLC (“Chrysler”) is the OEM of Model Years 2007-2011 Chrysler Jeep Wrangler 3.8L, Model Years 2008-2014 Chrysler Dodge 300C/Challenger/Charger/Mag SRT-8 6.1L/6.4L, Model Years 2009-2016 Chrysler Dodge 300C/Charger/Challenger R/T 5.7L, and Model Years 2015-2017 Chrysler Dodge Challenger Hellcat/SRT-392 6.2L 6.4L and their engines.
38. General Motors LLC (“GM”) is the OEM of Model Years 2009-2015 GM Cadillac CTS-V 6.2L, Model Years 2010-2015 GM Chevrolet Camaro SS/ZL1 6.2L, Model Years 2016-2018 GM Chevrolet Camaro 2.0L, Model Years 2016-2018 GM Chevrolet Camaro 3.6L, Model Years 2016-2018 GM Chevrolet Camaro SS 6.2L V8, Model Years 1997-2004 GM Chevrolet Corvette 5.7L V8, Model Years 2005-2008 GM Chevrolet Corvette C6 6.0/6.2L, Model Years 2006-2013 GM Chevrolet Corvette Z06 (*sic*) 7.0L V8, Model Years 2009-2012 GM Chevrolet Corvette C6 6.2L, Model Years 2012-2013 GM Chevrolet Corvette C6 6.2L V8, Model Years 2014-2018 GM Chevrolet Corvette C7 6.2L, and Model Years 2014-2018 GM Chevrolet Corvette C7/Z06 6.2L and their engines.
39. Mazda Motor Corporation (“Mazda”) is the OEM of Model Years 1990-1993 Mazda Miata Spec NA 1.6L, Model Years 1994-1997 Mazda Miata Spec NA 1.8L, Model Years 1999-2005 Mazda Miata Spec NB 1.8L, and Model Years 2016-2017 Mazda Miata MX-5 2.0L and their engines.
40. Nissan Motor Company, Limited (“Nissan”) is the OEM of Model Years 2009-2015 Nissan GT-R 3.8L and their engines.

41. Porsche AG (“Porsche”) is the OEM of Model Years 2005-2008 Porsche Cayman/Cayman S/Boxster S 3.4L, Model Years 2007-2009 Porsche 997 TT 3.6L AT/MT RWD 2DR, Model Years 2009-2012 Porsche Cayman/Cayman S/Boxster/Boxster S/Spyder 2.9L/3.4L, and Model Year 2013 Porsche 991/911S/911 4S 3.8L and their engines.
42. Fuji Heavy Industries (“Subaru”) is the OEM of Model Years 2013-2017 Subaru BRZ 2.0L and Model Years 2015-2017 Subaru Impreza WRX 2.0L Turbo and their engines.
43. Toyota Motor Corporation (“Toyota”) is the OEM of Model Years 2008-2014 Toyota Lexus IS F 5.0L, Model Years 2015-2017 Toyota Lexus RC F 5.0L, and Model Years 2013-2016 Toyota Scion FR-S 2.0L and their engines.
44. Volkswagen Group of America, Inc. (“Volkswagen”) is the OEM of Model Years 2015-2017 Volkswagen Audi S3 2.0T, Model Years 2012-2013 Volkswagen Golf R 2.0L Turbo, and Model Years 2015-2017 Volkswagen GTI 2015-2017 2.0L Turbo and their engines.
45. The vehicles and their engines identified in Paragraphs 35-44, above, have emission-related elements of design in compliance with Title II of the CAA and installed in conformance with the relevant EPA-issued COC. The emissions-related elements of design include one or more catalytic converters.

The Type of Defeat Device at Issue

46. Third-party manufacturers and distributors, including Respondent, manufacture, sell, and/or offer to sell products that are designed to enhance a motor vehicle’s performance by altering, bypassing, replacing or disabling the motor vehicle’s OEM-installed emission-related elements of design. Some of these are hardware products that physically interfere with or remove emission-related elements of design and are generally known as defeat devices.

47. Some hardware products or defeat devices physically alter and/or remove all or part of a motor vehicle's catalytic converter and associated oxygen sensors installed by the OEM in conformance with the EPA-issued COC. These hardware products or defeat devices are often referred to as "straight pipes" or "race pipes" (hereinafter "Exhaust System Defeat Devices").
48. On November 8, 2017, EPA sent Respondent a request for information pursuant to section 208(a) of the CAA, 42 U.S.C. § 7542(a). Borla responded to this request on January 31, 2018. However, Respondent's response was seriously inadequate. Therefore, EPA sent an additional information request on August 16, 2018. Borla responded to this second information request on October 29, 2018.
49. Borla's October 29, 2018 response to EPA's information request included, among other things, an Excel spreadsheet. The spreadsheet included a column entitled "Function" that provided a response to request 2.b. In that request, EPA asked for the following information: "Describe the function of the component in an exhaust system and, based upon the component's design, explain how it could enable the customer or end-user to bypass, defeat, or otherwise render inoperative an Emission Related Part." The Excel spreadsheet provided by Borla is Attachment A to this Complaint.
50. The descriptions set forth by Borla in the Function column of Appendix A show that all of the components therein components could be used to bypass, defeat, or otherwise render inoperative one or more of the of catalytic converters installed by the OEM in a motor vehicle of the make and model identified in Appendix A.
51. Because installation of the exhaust system components described in Paragraph 50, above, would bypass, defeat, or otherwise render inoperative one or more of the catalytic

converters as installed by the OEM as an emission-related elements of design for the motor vehicles identified in Appendix A as well as Paragraphs 35-44, all of the products at issue in this matter that Respondent has manufactured and/or sold and/or offered for sale are Exhaust System Defeat Devices.

52. Respondent has previously sold and offered for sale the Exhaust System Defeat Devices identified in Appendix A over the internet through its website, <https://borla.com>.
53. On February 19, 2019, EPA issued a Notice of Violation (“NOV”) to Borla alleging that Borla committed 6,337 violations of section 203(a)(3)(B) of the CAA, from January 1, 2014, through August 16, 2018, by manufacturing and selling exhaust component “for motor vehicles and engines that bypass, defeat, or render inoperative elements of design of those engines that were installed by the original equipment manufacturer in order to comply with the CAA emission standards.”

COUNT ONE

Violation for Manufacture and/or Sale and/or Offer for Sale of Exhaust System Defeat Devices

54. The preceding Paragraphs are incorporated by reference.
55. Between January 15, 2015 and September 26, 2018, Respondent manufactured, sold, and offered for sale at least 5,547 Exhaust System Defeat Devices including, but not limited to, those products identified in Appendix A to this Complaint.
56. The Exhaust System Defeat Devices Respondent manufactured, sold, and offered to sell were designed by Respondent for use in “motor vehicles” as that term is defined by the Act, 42 U.S.C. § 7550(2), and regulations promulgated thereunder at 40 C.F.R. § 85.1703.

57. The Exhaust System Defeat Devices that Respondent manufactured and/or sold and/or offered for sale are intended for use with the motor vehicles or motor vehicle engines identified in Paragraphs 35-44 of this Complaint.
58. A principal effect of each Exhaust System Defeat Device that Respondent manufactured and/or sold and/or offered for sale as identified in Appendix A of this Complaint is to bypass, defeat, or render inoperative a vehicle's catalytic converter.
59. Catalytic converters are "device[s] or element of design[s] installed on or in a motor vehicle or motor vehicle engine in compliance with [CAA] regulations" within the meaning of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).
60. Respondent knew or should have known that the Exhaust System Defeat Devices were being offered for sale or installed for such use or put to such use as described in Paragraphs 57-59 of this Complaint.
61. Respondent's manufacture and/or sale and/or offering for sale of each Exhaust System Defeat Device constitutes a separate violation of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B). 42 U.S.C. § 7524(a).
62. Complainant seeks an administrative penalty to be assessed against Respondent for approximately 5,547 violations of section 203(a)(3)(B) of the CAA alleged in Count One that occurred between January 15, 2015 and September 26, 2018.
63. Complainant makes no specific penalty demand in this Complaint, as authorized by 40 C.F.R. § 22.14(a)(4)(ii).
64. Respondent is subject to a civil penalty of up to \$3,750 for each violation that occurred on or before November 2, 2015, and up to \$4,819 for each violation that occurred after November 2, 2015, where penalties are assessed on or after January 13, 2020. CAA

§ 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4; Civil Monetary Penalty Inflation Adjustment Rule, 85 Fed. Reg. 1751 (Jan 13, 2020).

65. Complainant reserves its right to seek the maximum civil penalty authorized by the CAA for each violation.
66. In determining the amount of the civil penalty in this matter, the CAA requires that the EPA take into account certain penalty factors, namely “the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of [Respondent’s] business, [Respondent’s] history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on [Respondent’s] ability to continue in business, and such other matters as justice may require.” CAA § 205(c)(2), 42 U.S.C. § 7524(c)(2).
67. Where applicable, Complainant proposes to account for the CAA’s penalty factors by using the EPA’s Clean Air Act Mobile Source Civil Penalty Policy - Vehicle and Engine Certification Requirements (2009) (“Penalty Policy”), available at https://www.epa.gov/sites/production/files/documents/vehicleengine-penalty-policy_0.pdf. (last visited on June 26, 2020). This Penalty Policy calculates civil penalties based on the number of violative engines or products, their horsepower, the egregiousness of the violations, remedial action, and other legal and equitable factors.

Notice of Opportunity to Request a Hearing

To contest any material fact or conclusions of law alleged in this Complaint, Respondent must file a written answer (Answer) within thirty (30) days of service of this Complaint. The Answer should comply with the requirements of 40 C.F.R. § 22.15. The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of

whether a hearing is requested. All material facts not denied in the Answer will be considered to be admitted.

If Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission by such Respondent of all facts newly alleged in the Complaint and a waiver by such Respondent of the right to a hearing. Failure to Answer may result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing penalties against Respondent without further proceedings.

Any hearing requested and granted will be conducted in accordance with the Consolidated Rules.

Pursuant to 40 C.F.R. § 22.5(b)(2) Complainant has filed with this Complaint a consent to receive service of all filings by Respondent via email with the documents filed being in a pdf format. Following the Regional Judicial Officer's Standing Order, dated May 14, 2020, Respondent's Answer should be sent to the Regional Hearing Clerk at the email address below his mailing address:

Steven Armsey, Regional Hearing Clerk
U.S. Environmental Protection Agency
75 Hawthorne St. (ORC-1)
San Francisco, CA 94105
R9HearingClerk@epa.gov

In addition, a copy of Respondent's Answer must be served on Allan Zabel, one of the attorneys assigned to represent EPA in this matter, at the email address below his mailing address:

Allan Zabel, Attorney-Advisor
U.S. Environmental Protection Agency
75 Hawthorne St. (ORC-2)
San Francisco, CA 94105
Zabel.Allan@epa.gov

Respectfully Submitted,

6/30/2020

Date



Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division
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(415) 947-4198
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CERTIFICATE OF SERVICE

I certify that the foregoing Complaint and Notice of Opportunity for Hearing in the Matter of Borla Performance Industries, Inc., Docket No. CAA-09-2020-0044, was filed via email with the Regional Hearing Clerk, United States Environmental Protection Agency, Region IX at R9Hearing Clerk@epa.gov and that a true and correct copy of (1) the Complaint and Notice of Opportunity for Hearing; (2) the Consolidated Rules of Practice at 40 C.F.R. Part 22; and (3) the Region IX Regional Judicial Officer's Standing Order dated May 14, 2020, was sent via United Parcel Service, with written verification of delivery requested, to:

Shannon Broome, Esq.
Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, CA 94111
sbroome@HuntonAK.com

Tracking No.1Z A46 W47 43 9579 6991

6/30/2020

Date



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U.S. Environmental Protection Agency, Region IX