

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

IN THE MATTER OF:)	Docket No.
)	CAA(112r)-09-2016- 0002
Eco Services Operations Corp.,)	EPCRA(304)-09-2016- 0001
)	
Respondent.)	CONSENT AGREEMENT
)	AND
)	FINAL ORDER PURSUANT TO
)	40 CFR §§ 22.13 and 22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act (“CAA”), as amended, 42 U.S.C. § 7413(a)(3)(A) and (d), Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), 42 U.S.C. § 11045, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 CFR Part 22. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”). Respondent is Eco Services Operations Corp., a corporation organized and existing under the laws of Delaware (“Respondent”).

2. Respondent owns and operates a facility located at 20720 S. Wilmington Avenue, Carson, California (“Facility”). The Facility produces and regenerates sulfuric acid used by nearby refineries and at other industrial facilities, as well as in chemical processes at the Facility.

3. This Consent Agreement and Final Order (“CA/FO”), pursuant to 40 CFR §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Sections 112(r)(1) of the CAA, 42 U.S.C. §§ 7412(r)(1), Section 304 of

EPCRA, 42 U.S.C. § 11004, and their respective implementing regulations. Full payment of the penalty proposed herein shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

B. GENERAL ALLEGATIONS

4. Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

i. CAA Section 112(r)

5. At all times relevant to this CA/FO, the real property and any improvements thereto located at 20720 S. Wilmington Avenue, Carson, California, is and has been a "stationary source" as defined by Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3).

6. At all times relevant to this CA/FO, Respondent and its affiliates and Solvay USA Inc. have been the owners and operators of the Facility.

7. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling or storing a regulated substance or other extremely hazardous substances have a general duty to identify hazards which may result from a release using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

8. Sulfur dioxide is an extremely hazardous substance within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C. §§ 7412(r)(1).

9. At all times relevant to this CA/FO, the Facility processed or handled sulfur dioxide. Respondent is therefore subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413.

10. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes the assessment of a civil penalty for any violation of Section 112(r) of CAA, 42 U.S.C. § 7412(r).

11. The Administrator of EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA. Delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, has re-delegated this authority with respect to enforcement of Section 112(r)(1) of the CAA to the Directors of the Superfund and Enforcement Divisions. Regional Delegation R9-7-6-A, dated February 11, 2013.

12. On November 18, 2013, the Facility released approximately 65,049 pounds of sulfur dioxide during start-up operations, following a maintenance turnaround.

13. On February 27, 2014, an inspector from USEPA Region 9 conducted an inspection of the facility as a result of the release.

14. Based on information supplied by Respondent, EPA alleges that Respondent has violated Section 112(r)(1) of CAA, 42 U.S.C. §§ 7412(r)(1).

15. In a letter dated July 28, 2016, the Department of Justice granted EPA authority to bring the CAA enforcement claims commenced in this action pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

ii. EPCRA Section 304

16. At all times relevant to this CA/FO, Respondent and its affiliates and Solvay USA Inc. have been the owners and operators of the Facility, which is a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

17. The Administrator of the EPA, as required under Section 302 of EPCRA, 42 U.S.C. § 11002, has published a list of substances designated as “Extremely Hazardous Substances,” which, when released into the environment, may present substantial danger to public health or

welfare or the environment, and has promulgated regulations establishing the reportable quantity (“RQ”) of Extremely Hazardous Substances. The list of Extremely Hazardous Substances and the corresponding RQs are codified at 40 C.F.R. Part 355, Appendices A and B.

18. Sulfur dioxide is an “Extremely Hazardous Substance” (“EHS”) as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3). Sulfur dioxide has an RQ of five hundred (500) pounds, as designated in 40 C.F.R. Part 355, Appendices A and B.

19. At all times relevant to this CA/FO, the Facility processed or handled sulfur dioxide. Respondent is therefore subject to the powers vested in the EPA Administrator by Section 325 of EPCRA, 42 U.S.C. § 11045.

20. Section 304 of EPCRA, 42 U.S.C. § 11004, requires the owner or operator of a facility at which a hazardous chemical is produced, used, or stored to notify immediately the appropriate governmental entities of any release over a twenty-four hour period that requires notification under Section 103 of CERCLA and of any release in an amount that exceeds its RQ of an EHS listed under Section 302 of EPCRA, 42 U.S.C. § 11002. The notification must be given to the local emergency planning committee and to the state emergency planning commission (“SERC”) for each area and state likely to be affected by the release. For purposes of this reporting, the California Office of Emergency Services serves as the SERC.

21. On November 18, 2013, the Facility released approximately 65,049 pounds of sulfur dioxide over a period of approximately five hours, and did not provide notification to the SERC until approximately eight hours after becoming aware of the release.

22. Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), authorizes the Administrator of EPA to assess civil penalties for any violation of Section 304 of EPCRA, 42 U.S.C. § 11004. The Administrator of EPA has delegated this authority to the Regional Administrators by EPA

delegation 22-3-A, respectively. The Regional Administrator, EPA Region IX, has delegated this authority to the Director, Deputy Director, and Assistant Directors of the Superfund Division pursuant to Regional Delegation R9-22-3-A.

23. Based on information supplied by Respondent, EPA alleges that Respondent has violated Section 304 of EPCRA, 42 U.S.C. § 11004, and its implementing regulations.

C. ALLEGED VIOLATIONS

COUNT I

(Failure to Design and Maintain a Safe Facility)

24. Paragraphs 1 through 23, above, are incorporated herein by this reference as if they were set forth here in their entirety.

25. Based on EPA's February 27, 2014, inspection and on information gathered during EPA's investigation, EPA found that, on November 18, 2013, Respondent failed to conduct a thorough Pre-Startup Safety Review prior to commencing startup operations, with the result that a valve, which should have been open, remained closed. The closed valve prevented the efficient conversion of sulfur dioxide to sulfur trioxide ("SO₃"). Also, Respondent failed to follow the Facility's Standard Operating Procedures ("SOPs") for startup operations in that employees introduced sulfur feeds before the converter beds reached the optimum startup temperatures specified in the SOPs. Several longer-term factors also contributed to the release, including: insufficient operator training relating to alarm response; failure of the Facility's Distributed Control System to reflect correctly the relevant valve's position; and failure of the Facility's hazard assessment to identify the need for an instantaneous concentration-based interlock that would have prevented such a release.

26. Therefore, Respondent failed to design and maintain a safe facility by taking such steps as are necessary to prevent releases of a regulated substance or other extremely hazardous

substance in violation of the “general duty” clause of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

COUNT II

(Failure to Minimize the Consequences of Accidental Releases which Do Occur)

27. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.

28. Based on EPA’s February 27, 2014, inspection and information gathered during EPA’s investigation, EPA found that Respondent failed to immediately cease operations when multiple alarms sounded. Facility employees ignored various alarms that would have alerted them that a release was imminent or occurring; the employees apparently assumed that the system would automatically shut down if emissions exceeded a pre-determined safe level. Facility personnel were also unaware of both the release and the offsite consequences of the release until first responders arrived at the Facility.

29. Therefore, Respondent failed to minimize the consequences of accidental releases which do occur in violation of the “general duty” clause of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

COUNT III

(Violation of Section 304 of EPCRA)

30. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.

31. On November 18, 2013, more than 500 pounds (the RQ) of sulfur dioxide was released from the Facility.

32. Respondent had actual or constructive knowledge of the release of sulfur dioxide which occurred on November 18, 2013, close to the time that it occurred.

33. Respondent did not notify the SERC until approximately 8 hours after the release occurred.

34. By failing to immediately notify the SERC as soon as it had knowledge of this release of an RQ of sulfur dioxide, Respondent violated Section 304 of EPCRA, 42 U.S.C. § 11004.

D. CIVIL PENALTY

35. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section 325 of EPCRA, 42 U.S.C. § 11045, as adjusted by the Debt Collection Improvement Act of 1996, *see* 40 CFR Part 19, both authorize a civil penalty of up to thirty-seven thousand five hundred dollars (\$37,500) per day for each day a violation of Section 112(r) of the CAA or Section 304 of EPCRA occurs on or after January 13, 2009. *See* Table 1 of 40 CFR § 19.4.

36. Based on the facts alleged herein and upon all the factors which the Complainant considers pursuant to the Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68 (“CEP”), dated June 2012, the Complainant proposes that the Respondent be assessed, and Respondent agrees to pay **EIGHTY-EIGHT THOUSAND, SEVEN HUNDRED DOLLARS (\$88,700)** as the civil penalty for the CAA violations alleged herein. The proposed penalty was calculated in accordance with the CEP.

37. Based on the facts alleged herein and upon all the factors which the Complainant considers pursuant to the Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (“ERP”), dated September 30, 1999, including the nature, extent, and gravity of the violations, the Respondent’s ability to pay, prior history of violations, degree of culpability, and any economic benefit, and such other matters as justice may require, the Complainant proposes that the Respondent be assessed, and Respondent

agrees to pay **SEVENTEEN THOUSAND, THREE HUNDRED DOLLARS (\$17,300)**, as the civil penalty for the EPCRA violation alleged herein. The proposed penalty was calculated in accordance with the ERP.

E. ADMISSIONS AND WAIVERS OF RIGHTS

38. Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent pursuant to Section 113 of the CAA, 42 U.S.C. § 7413, Section 325 of EPCRA, 42 U.S.C. § 11045, and 40 CFR Part 22. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

39. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing or an appeal on any issue relating to the factual allegations or legal conclusions set forth in the CA/FO, with respect only to the specific alleged violations set forth above, including without limitation a hearing pursuant to Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2), or Section 325 of EPCRA, or judicial review pursuant to Section 113(d)(4) of the CAA, 42 U.S.C. § 7413(4). Respondent hereby consents to the terms of this CA/FO and the issuance of this CA/FO without adjudication.

40. Complainant and Respondent agree that settlement of this matter is in the public interest and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter.

F. PARTIES BOUND

41. This CA/FO shall apply to and be binding upon Respondent, successors and assigns, until such time as the civil penalty required under Section D (and any additional civil penalty required under Section I) and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full and complete settlement of the violations alleged herein.

42. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

43. Until termination of this CA/FO, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.

44. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

G. CERTIFICATION OF COMPLIANCE

45. Upon signing this CA/FO, Respondent certifies to EPA that it has fully complied with the requirements of Section 112(r) of the CAA and Section 304 of EPCRA that formed the basis for the violations alleged in the CA/FO, and the Facility is now in compliance with Section 112(r) of the CAA and Section 304 of EPCRA. Full payment of the penalty proposed herein shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

46. The signatory for Respondent certifies under penalty of law that 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.

H. PAYMENT OF CIVIL PENALTY

47. Respondent consents to the assessment of and agrees to pay civil penalties of **ONE HUNDRED SIX THOUSAND DOLLARS (\$106,000)** in settlement of the civil penalty claims made in this CA/FO. This CA/FO constitutes a settlement of all claims for the violations of Section 112(r) of the CAA and Section 304 of EPCRA alleged in Section C above.

48. The CAA civil penalty is in the amount of **EIGHTY-EIGHT THOUSAND, SEVEN HUNDRED DOLLARS (\$88,700)** and the EPCRA civil penalty is in the amount of **SEVENTEEN THOUSAND, THREE HUNDRED DOLLARS (\$17,300)**.

49. Respondent shall pay the civil penalties via separate checks within thirty (30) days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date that the Final Order contained in this CA/FO having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed with the Regional Hearing Clerk.

50. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the appropriate EPA docket number of this action. Payment shall be made by corporate, certified, or cashier's checks payable to "Treasurer of the United States" and sent as follows:

Regular Mail:

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

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077

St. Louis, MO 63101
Contact: Natalie Pearson (314-418-4087)

Alternatively, payment may be made by electronic transfer as provided below:

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"

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

Contact - Jesse White (301-887-6548)

ABA = 051036706

Transaction Code 22 - checking

Environmental Protection Agency

Account 31006

CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pav.gov

Enter "sfol.l" in the search field

Open form and complete required fields

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

Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9

75 Hawthorne Street
San Francisco, CA 94105

and

Jeremy Johnstone (SFD-9-3)
Superfund Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105.

51. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send the penalty so that it is received by the due date will result in imposition of interest from the effective date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 CFR §13.11. In addition, a six percent (6%) per annum penalty that will be assessed monthly will be applied on any principal amount not paid within ninety (90) days of the due date.

52. 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

53. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

54. For failure to submit a payment to EPA by the time required in this CA/FO: 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 FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter.

55. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by Complainant for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section H of this CA/FO.

56. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 CFR §13.11. Complainant reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with the CAA and its implementing regulations.

57. 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.

58. 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. RESERVATION OF RIGHTS

59. EPA and Respondent expressly reserve all rights and defenses that they may have.

60. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO, except as it relates to those matters resolved 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 the CAA or any other statutory, regulatory or common law enforcement authority of the United States. 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 the CAA or any other statutory, regulatory or common law enforcement authority of the United States, except as it relates to those matters resolved by this CA/FO.

61. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with the CAA, EPCRA, or any other applicable local, state, tribal or federal laws and regulations. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, tribal, state or local permit.

62. 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 it relates to those matters resolved by this CA/FO. Full payment of the penalty proposed herein shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

63. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States in the event of delay of performance as provided by this CA/FO.

K. MISCELLANEOUS

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

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

66. Each party to this action shall bear its own costs and attorneys' fees.

67. EPA and Respondent consent to entry of this CA/FO without further notice.

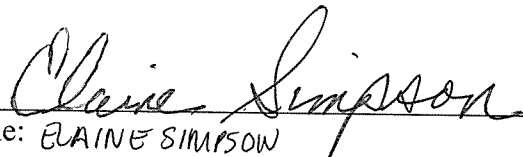
I. EFFECTIVE DATE

68. In accordance with 40 C.F.R §§ 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 either the Regional Judicial Officer or Regional Administrator, is filed.

IT IS SO AGREED.


Respondent Eco Services Operations Corp.

DATE: 09/12/16

BY: 
Name: ELAINE SIMPSON
Title: VICE PRESIDENT, HEALTH, SAFETY & ENVIRONMENT

United States Environmental Protection Agency, Region 9

DATE: 9/26/16

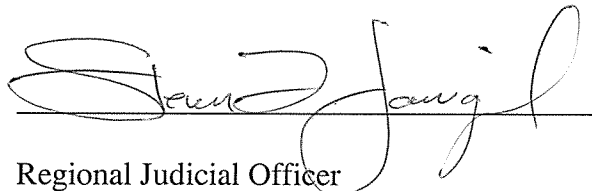
BY: 
Enrique Manzanilla
Director, Superfund Division

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (“CA/FO”) (Docket Nos. CAA (112r)-09-2016-0002 and EPCRA (304)-09-2016-0001) be entered and that Respondent pay a civil penalty of **ONE HUNDRED SIX THOUSAND DOLLARS (\$106,000)** in accordance with the terms of this CA/FO.

THIS FINAL ORDER SHALL BE EFFECTIVE UPON FILING WITH THE HEARING CLERK.

09/29/16
Date



Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

Docket No. CAA(112r)-09-2016-0002
Docket No. EPCRA(304)-09-2016-0001

I hereby certify that the original copy of the foregoing CA/FO with the Docket numbers referenced above, has been filed with the Region 9 Hearing Clerk and that a copy was sent by certified mail, return receipt requested, to:

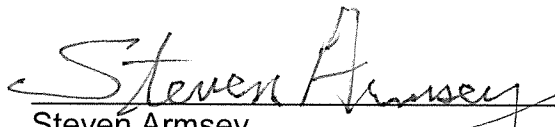
Elaine Simpson
Vice President – Health, Safety and Environment
Eco Services Operations Corp.
300 Lindenwood Drive
Valleybrooke Corporate Center
Malvern, PA 19355

CERTIFIED MAIL NUMBER: 7014 1820 0000 4722 5164

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

Taly Jolish, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne St.
San Francisco, CA 94105

Sept. 29, 2016
Date


Steven Armsey
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105