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U.S.EPA - Region 09

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7 Region IX  
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11

12 **UNITED STATES**  
13 **ENVIRONMENTAL PROTECTION AGENCY**  
14 **REGION IX**  
15 **75 HAWTHORNE STREET**  
16 **SAN FRANCISCO, CA 94105**  
17

18 In the matter of: ) Docket No. FIFRA-09-2015- **0010**  
19 ) **CONSENT AGREEMENT**  
20 Compton Ag Services LLC, ) and  
21 ) **FINAL ORDER PURSUANT TO**  
22 Respondent. ) **SECTIONS 22.13 AND 22.18**  
23 )  
24  
25  
26

27 **I. CONSENT AGREEMENT**

28 The United States Environmental Protection Agency (“EPA”) and Compton Ag Services  
29 LLC (“Respondent”) agree to settle this matter and consent to the entry of this Consent  
30 Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and concludes this  
31 proceeding in accordance with 40 C.F.R. §§22.13(b) and 22.18(b).

32 **A. AUTHORITY AND PARTIES**

33 1. This administrative proceeding for the assessment of a civil administrative penalty is  
34 initiated pursuant to section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7  
35 U.S.C. § 136, et seq. (hereinafter referred to as "FIFRA" or the “Act”), and the Consolidated  
Rules of Practice Governing the Administrative Assessment of Civil Penalties and the

1 Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

2 2. Complainant is the Assistant Director of the Water and Pesticide Branch, Enforcement  
3 Division, EPA Region IX, who has been duly delegated to commence and settle an enforcement  
4 action in this matter.

5 3. Respondent is a California limited liability company that owns, operates, or otherwise  
6 controls a facility located at 19751 South Defrain Boulevard, Blythe, California.

7 **B. STATUTORY AND REGULATORY AUTHORITIES**

8 4. Under section 2(s) of FIFRA, 7 U.S.C. §136(s), the term “person” means “any  
9 individual, partnership, association, corporation, or any organized group of persons whether  
10 incorporated or not.”

11 5. Under section 2(u) of FIFRA, 7 U.S.C. §136(u), the term “pesticide” is, among other  
12 things, any substance or mixture of substances intended for preventing, destroying, repelling, or  
13 mitigating any pest.

14 6. Under section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), a pesticide is  
15 “misbranded” if its label does not bear the registration number assigned under section 136(e) of  
16 FIFRA to each establishment in which it was produced.

17 7. Under section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), the term “label” means the  
18 written, printed, or graphic matter on, or attached to, the pesticide or device or any of its  
19 containers or wrappers.

20 8. Under section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term “to distribute or sell”  
21 means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment,  
22 ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or  
23 offer to deliver.

1           9. Under section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any  
2 person in any state to distribute or sell to any person any pesticide that is adulterated or  
3 misbranded.

4           10. Under section 12(a)(2)(B) of FIFRA, 7 U.S.C. § 136j(a)(2)(B), it is unlawful for any  
5 person to refuse to prepare, maintain, or submit any records required by or under sections 5, 7, 8,  
6 11, or 19 of FIFRA, 7 U.S.C. §§ 136c, 136e, 136f, 136i or 136q.

7           11. Under section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(1)(S), it is unlawful for any  
8 person to violate any regulation issued under sections 3 or 19 of FIFRA, 7 U.S.C. §§ 136a(a) and  
9 136q.

10           12. Pursuant to FIFRA, 7 U.S.C. §§ 136-136y, the EPA Administrator promulgated  
11 regulations governing the labeling requirements for pesticides and devices, which are codified at  
12 40 C.F.R. Part 156.

13           13. Pursuant to sections 3, 8, 19 and 25 of FIFRA, 7 U.S.C. §§ 136a, 136f, 136q and  
14 136w, the EPA Administrator promulgated regulations pertaining to standards for pesticide  
15 containers and pesticide containment structures (“the Container/Containment regulations”),  
16 which are codified at 40 C.F.R. Part 165.

17           14. *Agricultural pesticide* means any pesticide product labeled for use in or on a farm,  
18 forest, nursery, or greenhouse. 40 C.F.R. § 165.3.

19           15. *Containment pad* means any structure that is designed and constructed to intercept  
20 and contain pesticides, rinsates, and equipment wash water at a pesticide dispensing area. 40  
21 C.F.R. § 165.3.

22           16. *Containment structure* means either a secondary containment unit or a containment  
23 pad. 40 C.F.R. § 165.3.

1           17. *Facility* means all buildings, equipment, structures, and other stationary items which  
2 are located on a single site or on contiguous or adjacent sites and which are owned or operated by  
3 the same person (or by any person who controls, who is controlled by, or who is under common  
4 control with such person). 40 C.F.R. § 165.3.

5           18. *Establishment* means any site where a pesticidal product, active ingredient, or device  
6 is produced, regardless of whether such site is independently owned or operated, and regardless  
7 of whether such site is domestic and producing a pesticidal product for export only, or whether  
8 the site is foreign and producing any pesticidal product for import into the United States. 40  
9 C.F.R. § 165.3.

10           19. *Operator* means any person in control of, or having responsibility for, the daily  
11 operation of a facility at which a containment structure is located.

12           20. *Owner* means any person who owns a facility at which a containment structure is  
13 required. 40 C.F.R. § 165.3.

14           21. *Pesticide dispensing area* means an area in which pesticide is transferred out of or  
15 into a container. 40 C.F.R. § 165.3.

16           22. *Produce* means to manufacture, prepare, propagate, compound, or process any  
17 pesticide, including any pesticide produced pursuant to section 5 of the Act, and any active  
18 ingredient or device, or to package, repackage, label, relabel, or otherwise change the container  
19 of any pesticide or device. 40 C.F.R. § 165.3.

20           23. *Refilling establishment* means an establishment where the activity of repackaging  
21 pesticide product into refillable containers occurs.

22           24. *Refillable container* means a container that is intended to be filled with pesticide  
23 more than once for sale or distribution.



1           32. Pesticide dispensing areas that are subject to the Container/Containment regulations  
2 and must have a containment pad that complies with the requirements of the Containment  
3 regulations include areas where agricultural pesticides are dispensed from a transport vehicle for  
4 purposes of filling a refillable container. 40 C.F.R. § 165.82(a)(3).

5           33. At the times relevant to this CAFO, the Facility included a *stationary pesticide*  
6 *container* (the “Honcho Plus Tank”), as that term is defined by 40 C.F.R. § 165.3, with a holding  
7 capacity of approximately 5,000 gallons that held Honcho Plus.

8           34. At all times relevant to this CAFO, the Honcho Plus Tank was located within a  
9 *secondary containment unit* (the “Secondary Containment Unit”), as that term is defined by 40  
10 C.F.R. § 165.3.

11           35. At all times relevant to this CAFO, the Facility includes a *pesticide dispensing area*  
12 with a concrete *containment pad*, as those terms are defined by 40 C.F.R. § 165.3 (the  
13 “Containment Pad”).

14           36. At all times relevant to this CAFO, pesticides were being stored or dispensed at the  
15 Secondary Containment Unit and the Containment Pad.

16           37. The containment structures at the Facility were constructed on or before November  
17 16, 2006 and are each *existing containment structures*, as that term is defined by 40 C.F.R. §  
18 165.83(b).

19           38. On or about October 26, 2011, California Department of Pesticide Regulation  
20 (“CDPR”) inspectors inspected the Facility.

21                           **Count 1: Failure To Keep Containment Structures Liquid-Tight**

22           39. Existing containment structures must be liquid-tight with cracks, seams and joints  
23 appropriately sealed. 40 C.F.R. § 165.87(a)(1).

1           40. On or about October 26, 2011, the corner seams and north wall of the Secondary  
2 Containment Unit had unsealed cracks.

3           41. On or about October 26, 2011, the Containment Pad floor had unsealed cracks and  
4 the Containment Pad had been constructed with a gap at the warehouse entrance where the berms  
5 were not joined and sealed.

6           42. On and before October 26, 2011, Respondent failed to keep containment structures  
7 liquid-tight with cracks, seams and joints appropriately sealed, as required by 40 C.F.R. §  
8 165.87(a)(1).

9           43. On and before October 26, 2011, Respondent violated section 12(a)(2)(S) of FIFRA,  
10 7 U.S.C. § 136j(a)(2)(S) by failing to keep containment structures liquid-tight with cracks, seams  
11 and joints appropriately sealed, as required by 40 C.F.R. § 165.87(a)(1).

12                   **Count 2: Failure To Meet The Design Requirements For Containment Pads**

13  
14           44. Existing containment pads in pesticide dispensing areas must be designed and  
15 constructed to intercept leaks and spills of pesticides that may occur in the pesticide dispensing  
16 area. 40 C.F.R. § 165.87(e)(1).

17           45. Existing containment pads in pesticide dispensing areas which do not have a  
18 pesticide container or pesticide holding equipment with a volume of at least 750 gallons must  
19 have a holding capacity of at least 100 percent of the volume of the largest pesticide container or  
20 pesticide-holding equipment used on the pad. 40 C.F.R. § 165.87(c)(3).

21           46. On or about October 26, 2011, the largest pesticide container used on the  
22 Containment Pad was 275 gallons. Therefore, the Containment Pad was required to have a  
23 holding capacity of 275 gallons.

24           47. On or about October 26, 2011, the Containment Pad had been constructed with a gap

1 at the warehouse entrance and the Containment Pad did not have a holding capacity of at least  
2 275 gallons. Respondent thus failed to meet the design requirements for containment pads in  
3 dispensing areas, as required by 40 C.F.R. §§ 165.87(c)(3) and 165.87(e)(1).

4 48. On and before October 26, 2011, Respondent violated section 12(a)(2)(S) of FIFRA,  
5 7 U.S.C. § 136j(a)(2)(S) by failing to meet the design requirements for containment pads in  
6 dispensing areas, as required by 40 C.F.R. §§ 165.87(c)(3) and 165.87(e)(1).

7 **Count 3: Failed To Keep Records Required By 40 C.F.R. § 165.95**  
8

9 49. An owner or operator of a pesticide containment structure must keep for three years  
10 records of inspection and maintenance for each containment structure and for each stationary  
11 pesticide container and its appurtenances, and these records must include the (1) name of the  
12 person conducting the inspection or maintenance; (2) date the inspection or maintenance was  
13 conducted; (3) conditions noted; and (4) specific maintenance performed. 40 C.F.R. § 165.95(a).

14 50. Between January 2011 and September 2011, Respondent failed to keep records of  
15 inspection and maintenance for each containment structure and for each stationary pesticide  
16 container and its appurtenances that include the name of the person conducting the inspection or  
17 maintenance; date the inspection or maintenance was conducted; conditions noted; and specific  
18 maintenance performed, as required by 40 C.F.R. § 165.95(a).

19 51. On and before October 26, 2011, Respondent violated sections 12(a)(2)(B) and  
20 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(2)(B) and 136j(a)(2)(S) by failing to keep records as  
21 required by 40 C.F.R. § 165.95(a).

22 **Count 4: Failure to Look For Signs of Damage And Make Repairs**  
23

24 52. An owner or operator of a pesticide containment structure must: (1) Inspect each  
25 stationary pesticide container and its appurtenances and each containment structure at least



1 monthly during periods when pesticides are being stored or dispensed on the containment  
2 structure. This inspection must look for visible signs of wetting, discoloration, blistering,  
3 bulging, corrosion, cracks or other signs of damage or leakage. (2) Initiate repair to any areas  
4 showing visible signs of damage and seal any cracks and gaps in the containment structure or  
5 appurtenances with material compatible with the pesticide being stored or dispensed no later than  
6 the end of the day on which damage is noticed and complete repairs within a time frame that is  
7 reasonable, taking into account factors such as the weather, and the availability of cleanup  
8 materials, trained staff, and equipment. 40 C.F.R. § 165.90(b).

9 53. From January 4, 2011 to September 30, 2011, Respondent failed in its monthly  
10 inspections to look for and note the gap in the Containment Pad, the cracks in the Containment  
11 Pad floor and the cracks in the corner seams and north wall of the Secondary Containment Unit.

12 54. On or about October 26, 2011, Respondent failed to initiate repair to the gap in the  
13 Containment Pad, and failed to seal the cracks in the Containment Pad floor and cracks in the  
14 corner seams and north wall of the Secondary Containment Unit. Respondent failed to initiate  
15 and complete timely repairs to cracks in containment areas and appurtenances as required by 40  
16 C.F.R. § 165.90(b).

17 55. On and before October 26, 2011, Respondent violated section 12(a)(2)(S) of FIFRA,  
18 7 U.S.C. § 136j(a)(2)(S) by failing to look for cracks or other signs of damage or leakage at each  
19 containment unit, and failing to initiate and complete timely repairs to cracks in containment  
20 areas and appurtenances as required by 40 C.F.R. § 165.90(b).



1 Respondent; (ii) **neither admits nor denies** the specific factual allegations contained in Section  
2 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO, (iv) agrees to  
3 pay, and consents to the assessment of, the civil administrative penalty under Section I.E of this  
4 CAFO; (v) waives any right to contest the allegations contained in Section I.C of this CAFO; and  
5 (vi) waives the right to appeal the proposed final order contained in this CAFO.

6 **E. CIVIL ADMINISTRATIVE PENALTY**

7 62. Respondent consents to the assessment of a penalty in the amount of **TWENTY-**  
8 **ONE THOUSAND, FOUR HUNDRED FORTY DOLLARS (\$21,440)** as final settlement and  
9 complete satisfaction of the civil claims against Respondent arising from the facts alleged in  
10 Section I.C of the CAFO and under the Act.

11 a. Respondent shall pay the civil penalty within thirty (30) days of the effective  
12 date of this CAFO by one of the methods listed below:

- 13
- 14 i. Respondent may pay online through the Department of the Treasury  
15 website at [www.pay.gov](http://www.pay.gov). In the Search Public Form field, enter SFO 1.1,  
16 click EPA Miscellaneous Payments - Cincinnati Finance Center, and  
17 complete the SFO Form Number 1.1.
- 18
- 19 ii. Respondent may pay by remitting a certified or cashier's check, including  
20 the name and docket number of this case, for the amount, payable to  
21 "Treasurer, United States of America," and sent as follows:
- 22

23 **Regular Mail:**

24 U.S. Environmental Protection Agency  
25 PO Box 979077  
26 St. Louis, MO 63197-9000

27

28 **Overnight/Signed Receipt Confirmation Mail:**

29 U.S. Environmental Protection Agency  
30 ATTN Box 979077  
31 1005 Convention Plaza  
32 Mail Station SL-MO-C2GL  
33 St. Louis, MO 63101

1  
2 iii. Respondent may also pay the civil penalty using any method, or  
3 combination of methods, provided on the following website:

4  
5 <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>  
6

7 If clarification regarding a particular method of payment remittance is needed,  
8 contact the EPA's Cincinnati Finance Center at (513) 487-2091.  
9

10 b. Respondent shall identify each and every payment with the name and docket  
11 number of this case; and

12 c. Within 24 hours of payment, Respondent shall provide EPA with proof of  
13 payment ("proof of payment" means, as applicable, a copy of the check, confirmation of credit  
14 card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any  
15 other information required to demonstrate that payment has been made according to EPA  
16 requirements, in the amount due, and identified with the name and docket number of this case),  
17 including proof of the date payment was made, along with a transmittal letter, indicating  
18 Respondent's name, the case title, and docket number, to the following addresses:

19 Regional Hearing Clerk  
20 Office of Regional Counsel (ORC-1)  
21 U.S. Environmental Protection Agency, Region IX  
22 75 Hawthorne Street  
23 San Francisco, CA 94105  
24

25 Scott McWhorter  
26 Enforcement Division (ENF 3-3)  
27 U.S. Environmental Protection Agency, Region IX  
28 75 Hawthorne Street  
29 San Francisco, CA 94105  
30

31 Margaret Alkon  
32 Office of Regional Counsel (ORC-2)  
33 U.S. Environmental Protection Agency, Region IX  
34 75 Hawthorne Street  
35 San Francisco, CA 94105  
36 [or via email to: [alkon.margaret@epa.gov](mailto:alkon.margaret@epa.gov)]

1           63. In the event that Respondent fails to pay the civil administrative penalty assessed  
2 above by its due date, Respondent shall pay to EPA a stipulated penalty in the amount of **FIVE**  
3 **HUNDRED DOLLARS (\$500)** for each day that payment is late in addition to the unpaid  
4 balance of the penalty assessed above. Upon EPA's written demand, this stipulated penalty shall  
5 immediately become due and payable.

6           64. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date,  
7 the entire unpaid balance and accrued interest shall become immediately due and owing.  
8 Respondent's tax identification number may be used for collecting or reporting any delinquent  
9 monetary obligation arising from this CAFO (see 31 U.S.C. § 7701). If payment is not received  
10 within thirty (30) calendar days, interest, penalty and administrative costs will accrue from the  
11 effective date of this CAFO as described at 40 CFR §13.11. Respondent's failure to pay in full  
12 the civil administrative penalty by its due date also may also lead to any or all of the following  
13 actions:

14           a. The debt being referred to a credit reporting agency, a collection agency, or to  
15 the Department of Justice for filing of a collection action in the appropriate United States District  
16 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount,  
17 and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

18           b. The debt being collected by administrative offset (i.e., the withholding of  
19 money payable by the United States to, or held by the United States for, a person to satisfy the  
20 debt the person owes the Government), which includes, but is not limited to, referral to the  
21 Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C  
22 and H.

23           c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii)

1 suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA  
2 sponsors or funds; (iii) convert the method of payment under a grant or contract from an  
3 advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-  
4 of-credit. 40 C.F.R. §§ 13.17.

#### 5 **F. CERTIFICATION OF COMPLIANCE**

6 65. In executing this CAFO, Respondent certifies that the information it has supplied  
7 concerning this matter was at the time of submission, and is at the time of signature to this  
8 CAFO, truthful, accurate, and complete; and that Respondent has corrected the violations alleged  
9 in Section I.C of this CAFO. Under 18 U.S.C. § 1001, submitting false or misleading information  
10 can result in significant penalties, including the possibility of fines and imprisonment for  
11 knowing submission of such information.

#### 12 **G. RETENTION OF RIGHTS, BINDING EFFECT, ETC.**

13 66. This Consent Agreement constitutes the entire agreement between the Respondent  
14 and EPA. Full payment of the civil penalty and any applicable interest charges or late fees or  
15 penalties as set forth in this CAFO shall constitute full settlement and satisfaction of civil penalty  
16 liability against Respondent for the violations alleged in Section I.C of this CAFO.

17 67. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's  
18 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C  
19 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil  
20 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,  
21 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal  
22 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it  
23 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address

1 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.  
2 This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duties to  
3 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and  
4 permits.

5 68. Except as set forth in Paragraph 64 above, each party shall bear its own fees, costs,  
6 and disbursements in this action.

7 69. For the purposes of state and federal income taxation, Respondent shall not claim a  
8 deduction for any civil penalty payment made pursuant to this CAFO.

9 70. This CAFO constitutes an enforcement action for purposes of considering  
10 Respondent's compliance history in any subsequent enforcement action. This CAFO will be  
11 available to the public and does not contain any confidential business information.


12 71. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this  
13 CAFO shall be the date on which the accompanying Final Order, having been signed by the  
14 Regional Judicial Officer, is filed.

15 72. The provisions of this CAFO shall be binding on Respondent and on Respondent's  
16 officers, directors, employees, agents, servants, authorized representatives, successors, and  
17 assigns.

18 73. The undersigned representatives of each party to this Consent Agreement certify that  
19 each is duly authorized by the party whom he or she represents to enter into the terms and  
20

1 conditions of this Consent Agreement and Final Order and bind that party to it.


2  
3  
4 **COMPTON AG SERVICES LLC:**

5  
6  
7 Date: 8/17/15 By: 

8  
9  
10 Name: James R. Compton, Jr.

11  
12  
13 Title: Member

14  
15  
16  
17  
18  
19 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

20  
21  
22 Date: 9/17/15 By: 

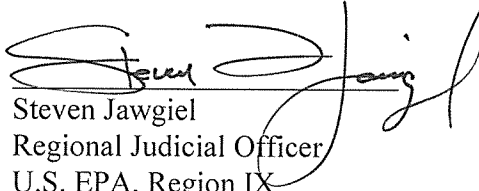
23  
24 CLAIRES TROMBADORE  
25 Assistant Director  
26 Water and Pesticide Branch, Enforcement Division  
27 U.S. Environmental Protection Agency,  
28 Region IX  
29  
30



**II. FINAL ORDER**

IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and that Respondent shall pay a civil administrative penalty in the amount of **TWENTY-ONE THOUSAND, FOUR HUNDRED FORTY DOLLARS (\$21,440)** in accordance with the terms set forth in the Consent Agreement.

Date: 09/19/15

  
Steven Jawgiel  
Regional Judicial Officer  
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (**Docket No FIFRA-09-2015-0010** ) 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:

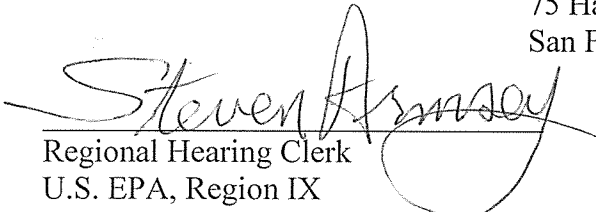
A copy was mailed via CERTIFIED MAIL to: 7012 2210 0000 1205 6562

James R. Compton, Jr.  
President  
Compton Ag Services, LLC  
19751 S Defrain Blvd  
Blythe, CA 92225

**CERTIFIED MAIL NUMBER:**

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

Margaret Alkon  
Assistant Regional Counsel (ORC-2)  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

  
Regional Hearing Clerk  
U.S. EPA, Region IX

  
Date