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7 Attorneys for Complainant

8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
9 **REGION IX**

75 Hawthorne Street
10 San Francisco, California 94105

11 IN THE MATTER OF:) DOCKET NO. UIC-09-2020-00¹³
12)
13 K. Oue, Limited)
P.O. Box 145)
14 Kealakekua, Hawai'i 96750-0145) **CONSENT AGREEMENT**
15) **AND**
Respondent.) **FINAL ORDER**
16)
17 Proceedings under Sections 1423(c) of the)
Safe Drinking Water Act,)
42 U.S.C. §§ 300h-2(c).)

18 **CONSENT AGREEMENT**

19 **I. AUTHORITIES AND PARTIES**

20 1. The United States Environmental Protection Agency (“EPA”), Region IX and K.
21 Oue, Limited (“Respondent”) (collectively the “Parties”) agree to settle this matter and consent
22 to the entry of this Consent Agreement and Final Order (“CA/FO”). This CA/FO commences
23 and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and
24 22.45(b).
25

1 2. This is a civil administrative action instituted by EPA Region IX against
2 Respondent pursuant to Section 1423(c) of the Safe Drinking Water Act (“SDWA” or “the
3 Act”), 42 U.S.C. §§ 300h-2(c), for violations of the SDWA and the Underground Injection
4 Control (“UIC”) requirements set forth at 40 C.F.R. Part 144.

5 3. Complainant is the Director of the Enforcement and Compliance Assurance
6 Division, EPA Region IX. The Administrator of EPA delegated to the Regional Administrator of
7 EPA Region IX the authority to bring and settle this action under SDWA. In turn, the Regional
8 Administrator of EPA Region IX further delegated the authority to bring and sign a consent
9 agreement settling this action under SDWA to the Director of the Enforcement and Compliance
10 Assurance Division.

11 4. Respondent is a privately-held company headquartered at P.O. Box 145,
12 Kealakekua, Hawai‘i 96750-0145

13 II. APPLICABLE STATUTES AND REGULATIONS

14 5. Pursuant to SDWA Sections 1421 to 1429, 42 U.S.C. §§ 300h to 300h-8, EPA has
15 promulgated regulations at 40 C.F.R. Part 144 establishing minimum requirements for UIC
16 programs to prevent underground injection that endangers drinking water sources.

17 6. “Underground injection” means the subsurface emplacement of fluids by well
18 injection. 42 U.S.C. § 300h(d)(1); 40 C.F.R. § 144.3.

19 7. “Well injection” means the subsurface emplacement of fluids through a well. 40
20 C.F.R. § 144.3.

21 8. “Well” means, in relevant part, a dug hole whose depth is greater than the largest
22 surface dimension. 40 C.F.R. § 144.3.

23 9. A “cesspool” is a “drywell,” which in turn is a “well,” as those terms are defined
24 in 40 C.F.R. § 144.3.

1 10. “Large capacity cesspools” (“LCCs”) include “multiple dwelling, community or
2 regional cesspools, or other devices that receive sanitary wastes, containing human excreta,
3 which have an open bottom and sometimes perforated sides.” 40 C.F.R. § 144.81(2). LCCs do
4 not include single-family residential cesspools or non-residential cesspools which receive solely
5 sanitary waste and have the capacity to serve fewer than 20 persons per day. *Id.*

6 11. UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F.R.
7 § 144.80(e).

8 12. Class V UIC injection wells are considered a “facility or activity” subject to
9 regulation under the UIC program. 40 C.F.R. § 144.3.

10 13. “Owner or operator” means the owner or operator of any “facility or activity”
11 subject to regulation under the UIC program. 40 C.F.R. § 144.3.

12 14. The “owner or operator” of a Class V UIC well “must comply with Federal UIC
13 requirements in 40 C.F.R. Parts 144 through 147,” and must also “comply with any other
14 measures required by States or an EPA Regional Office UIC Program to protect [underground
15 sources of drinking water].” 40 C.F.R. § 144.82.

16 15. Owners or operators of existing LCCs were required to have closed those LCCs
17 no later than April 5, 2005. 40 C.F.R. §§ 144.84(b)(2) and 144.88.

18 16. Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R.
19 § 147.601, EPA administers the UIC program in the State of Hawaii. This UIC program consists
20 of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

21 17. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40
22 C.F.R. § 19.4, EPA may issue an administrative order either assessing a civil penalty of not more
23 than \$22,927 per day per violation up to a maximum of \$286,586, or requiring compliance, or
24 both, against any person who violates the SDWA or any requirement of an applicable UIC
25 program.

1 III. ALLEGATIONS

2 18. Respondent is a corporation and thus qualifies as a “person” within the meaning
3 of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

4 19. Respondent owns and operates various residential rental properties located on a
5 contiguous plot of land located at 79-7589 A Hawaii Belt Road, 79-7585 D Hawaii Belt Road
6 and 79-7454 Hawaii Belt Road, Kealakekua, North Kona District, on the Big Island of Hawaii
7 (“Property”). The Property is comprised of three separate Tax Map Key (“TMK”) parcels, 3-7-9-
8 010-089, 79-7589; 3-7-9-010-004, 79-7585 D; and 3-7-9-007-042, 79-7454.

9 20. Since at least April 5, 2005, Respondent has owned and operated nine (9)
10 cesspools located at Tax Map Key (“TMK”) 3-7-9-010-089, 79-7589 A Hawaii Belt Road,
11 Kealakekua, North Kona District on the Big Island of Hawai‘i, each servicing multiple
12 residential units as identified in Exhibit A.

13 21. Since at least April 5, 2005, Respondent has owned and operated one (1) cesspool
14 located at TMK 3-7-9-010-004, 79-7585 D Hawaii Belt Road, Kealakekua, North Kona District
15 on the Big Island of Hawai‘i, which services multiple residential units as identified in Exhibit A.

16 22. Since at least April 5, 2005, Respondent has owned and operated one (1) cesspool
17 located at TMK 3-7-9-007-042, 79-7454 Hawaii Belt Road, Kealakekua, North Kona District on
18 the Big Island of Hawai‘i, which services multiple residential units as identified in Exhibit A.

19 23. Each of the cesspools identified in Paragraphs 20-22 meet the definition of LCC
20 as that term is defined at 40 C.F.R. § 144.81(2).

21 24. Respondent’s failure to close the eleven (11) LCCs at the Property identified in
22 Paragraphs 20-22 by April 5, 2005 or thereafter constitutes an ongoing violation of 40 C.F.R. §§
23 144.84(b)(2) and 144.88.

24 IV. SETTLEMENT TERMS

25 A. General Provisions

1 25. For the purposes of this proceeding, Respondent (1) admits the jurisdictional
2 allegations contained in this CA/FO, (2) neither admits nor denies the specific factual allegations
3 contained in this CA/FO, (3) consents to the assessment of the penalty and to the specified
4 compliance obligations contained in this CA/FO, and (4) waives any right to contest the
5 allegations or to appeal the final order accompanying this consent agreement. 40 C.F.R. §
6 22.18(b)(2).

7 26. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire
8 agreement between the Parties to resolve EPA’s civil claims against Respondent for the alleged
9 violations of the SDWA identified in Section III of this CA/FO. Full compliance with this
10 CA/FO, which includes (1) bringing the LCCs at the Property into compliance with the UIC
11 requirements in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a) and in
12 accordance with Section IV.B of this CA/FO; and (2) payment of an administrative civil penalty
13 of \$88,545 in accordance with Section IV.C of this CA/FO; shall constitute full settlement of
14 Respondent’s liability for federal civil claims for the alleged SDWA violations specifically
15 identified in Section III of this CA/FO.

16 27. The provisions of this CA/FO shall apply to and be binding upon Respondent, its
17 officers, directors, agents, servants, authorized representatives, employees, and successors or
18 assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations
19 acting under, through, or for Respondent shall not excuse any failure of Respondent to fully
20 perform its obligations under this CA/FO.

21 28. Issuance of this CA/FO does not in any manner affect the right of EPA to pursue
22 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law,
23 except with respect to the claims described in Paragraph 26 that have been specifically resolved
24 by this CA/FO.

1 29. This CA/FO is not a permit or modification of a permit, and does not affect
2 Respondent's obligation to comply with all federal, state, local laws, ordinances, regulations,
3 permits, and orders. Issuance of, or compliance with, this CA/FO does not waive, extinguish,
4 satisfy, or otherwise affect Respondent's obligation to comply with all applicable requirements
5 of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder,
6 except as specifically set forth herein.

7 30. EPA reserves any and all legal and equitable remedies available to enforce this
8 CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in
9 any actions against Respondent for noncompliance with this CA/FO.

10 31. Unless otherwise specified, the Parties shall each bear their own costs and
11 attorneys' fees incurred in this proceeding.

12 32. This CA/FO may be executed and transmitted by facsimile, email or other
13 electronic means, and in multiple counterparts, each of which shall be deemed an original, but all
14 of which shall constitute an instrument. If any portion of this CA/FO is determined to be
15 unenforceable by a competent court or tribunal, the Parties agree that the remaining portions
16 shall remain in full force and effect.

17 33. The undersigned representative of each party certifies that he or she is duly and
18 fully authorized to enter into and ratify this CA/FO.

19 34. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the
20 Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section IV.B (Compliance
21 Requirements) is restitution or required to come into compliance with law.

22 B. Compliance Requirements

23 35. As required by Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), and
24 consistent with the timeframes set forth below, Respondent shall:

25 a. By April 1, 2021, close the eleven (11) LCCs located at the Property and

1 identified in Exhibit A in accordance with 40 C.F.R. §§ 144.84(b)(2),
2 144.88(a), and 144.89(a), and all other applicable requirements, including all
3 Hawaii Department of Health (“HDOH”) closure, conversion, and/or
4 replacement requirements. If Respondent installs one or more replacement
5 wastewater systems, such as Individual Wastewater Systems (“IWSs”), then
6 installation and operation of such systems shall comply with all HDOH
7 requirements; and

8 b. Within thirty (30) days of closure of each LCC, submit to EPA a description
9 of how the LCC was closed and identify the contractor(s) providing the
10 service as well as copies of the cesspool Backfill Closure Reports for the
11 closure of that cesspool. Respondent shall also submit all related approvals,
12 including for any replacement systems, issued by HDOH within thirty (30)
13 days of closure of each LCC, provided that, should HDOH not issue any
14 approval within thirty (30) days of closure, Respondent shall submit HDOH’s
15 approval to EPA within fourteen (14) days of its receipt of the approval.

16 C. Penalty

17 36. Respondent agrees to the assessment of a civil penalty in the amount of EIGHTY-
18 EIGHT THOUSAND FIVE HUNDRED FORTY-FIVE DOLLARS (\$88,545) for the violations
19 at the Property of the SDWA alleged in Section III of this CA/FO.

20 37. Respondent shall pay the assessed penalty no later than thirty (30) days from the
21 Effective Date of this CA/FO.

22 38. Respondent may pay the penalty by check (mail or overnight delivery), wire
23 transfer, automated clearing house, or online payment. Payment instructions are available at:
24 <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified
25 check must be payable to the order of “Treasurer, United States of America” and delivered to the
following address:

In re K. Oue, Limited

1 U.S. Environmental Protection Agency
2 Fines and Penalties
3 Cincinnati Finance Center
4 P.O. Box 979077
5 St. Louis, Missouri 63197-9000

6 39. Concurrent with making the payment, Respondent must provide a letter with
7 evidence of the payment made pursuant to Paragraphs 36 and 37, accompanied by the title and
8 docket number of this action, to the EPA Region IX Regional Hearing Clerk, the EPA Region IX
9 Enforcement and Compliance Assurance Division Compliance Officer, and the EPA Region IX
10 Office of Regional Counsel attorney, via United States mail, at the following addresses:

11 Regional Hearing Clerk
12 U.S. Environmental Protection Agency
13 Region IX - Office of Regional Counsel
14 75 Hawthorne Street (ORC-1)
15 San Francisco, CA 94105

16 Jelani Shareem, Enforcement Officer
17 U.S. Environmental Protection Agency
18 Region IX – Enforcement and Compliance Assurance Division
19 75 Hawthorne Street (ENF-3-3)
20 San Francisco, CA 94105

21 Janet A. Magnuson, Attorney Advisor
22 U.S. Environmental Protection Agency
23 Region IX – Office of Regional Counsel
24 75 Hawthorne Street (ORC-2-3)
25 San Francisco, CA 94105

40. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13
interest, penalty charges, and administrative costs will be assessed against the outstanding
amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative
penalty by the deadline specified in Paragraph 37.

41. Interest on delinquent penalties will be assessed at an annual rate that is equal to
the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan

1 account rate), as prescribed and published by the Secretary of the Treasury in the Federal
2 Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1).

3 42. A penalty charge will be assessed on all debts more than 90 days delinquent. The
4 penalty charge will be at a rate of 6% per annum and will be assessed monthly. 40 C.F.R. §
5 13.11(c).

6 43. In addition, administrative costs for handling and collecting Respondent's
7 overdue debt will be based on either actual or average cost incurred, and will include both direct
8 and indirect costs. 40 C.F.R. § 13.11(b).

9 44. Failure to pay any civil administrative penalty by the deadline may also lead to
10 any or all of the following actions:

- 11 a. The debt being referred to a credit reporting agency, a collection agency, or to
12 the Department of Justice for filing of a collection action in the appropriate
13 United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any
14 such collection action, the validity, amount, and appropriateness of the
15 assessed penalty and of this CA/FO shall not be subject to review.
- 16 b. The department or agency to which this matter is referred (e.g., the
17 Department of Justice, the Internal Revenue Service) may assess
18 administrative costs for handling and collecting Respondent's overdue debt in
19 addition to EPA's administrative costs.
- 20 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or
21 (ii) suspend or disqualify Respondent from doing business with EPA or
22 engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.

23 45. Respondent shall tender any interest, handling charges, late penalty payments, and
24 stipulated penalties in the same manner as described in Paragraphs 38 and 39.

25 D. Stipulated Penalties

1 46. Respondent shall pay stipulated penalties in accordance with this Section for any
2 violations of this CA/FO.

3 47. If Respondent fails to pay the assessed civil administrative penalty specified in
4 Section IV.C of this CA/FO by the deadline specified in that section, or fails to meet the
5 compliance deadline for closure of the cesspools at the Property by the deadline specified in
6 Section IV.B of this CA/FO, Respondent agrees to pay in addition to the assessed penalty, a
7 stipulated penalty of \$250 per day for each day the Respondent is late in making the penalty
8 payment or meeting the closure deadline for the Property's LCCs.

9 48. If Respondent fails to timely submit any reports in accordance with the timelines
10 set forth in this CA/FO, Respondent agrees to pay a stipulated penalty of \$75 for each day after
11 the report was due until it submits the report in its entirety.

12 49. Respondent agrees to pay any stipulated penalties within thirty (30) days of
13 receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the
14 first date of noncompliance, and shall continue to accrue through the date of completion of the
15 delinquent CA/FO requirement. Respondent will use the method of payment specified in
16 Paragraphs 38 and 39, and agrees to pay interest, handling charges and penalties that accrue for
17 late payment of the stipulated penalty in the same manner as set forth in Paragraphs 40 through
18 44.

19 50. Neither the demand for, nor payment of, a stipulated penalty relieves Respondent
20 of its obligation to comply with any requirement of this CA/FO or modifies or waives any
21 deadlines set forth in this CA/FO.

22 51. EPA may, in the unreviewable exercise of its discretion, elect to pursue any other
23 administrative or judicial remedies in addition to or in lieu of assessing stipulated penalties
24 and/or reduce or waive stipulated penalties due under this CA/FO.

25 E. Force Majeure

1 52. Respondent shall exercise its best efforts to avoid or minimize any delay and any
2 effects of a delay. If any event occurs which causes or may cause delays meeting the deadlines
3 set forth in this CA/FO, Respondent or its attorney shall, within forty-eight (48) hours of the
4 delay or within forty-eight (48) hours of Respondent’s knowledge of the anticipated delay,
5 whichever is earlier, notify EPA in writing, by email or overnight mail. Within fifteen (15) days
6 thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration
7 of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable
8 by which those measures will be implemented. Failure to comply with the notice requirement of
9 this paragraph shall preclude Respondent from asserting any claim of *force majeure*.

10 53. If EPA agrees in writing that the delay or anticipated delay in compliance with
11 this CA/FO has been or will be caused by circumstances entirely beyond the control of
12 Respondent, the time for performance may be extended for the period of the delay resulting from
13 the circumstances causing the delay. In such event, EPA will grant, in writing, an extension of
14 time. An extension of the time for performing an obligation granted by EPA pursuant to this
15 paragraph shall not, of itself, extend the time for performing a subsequent obligation. EPA also
16 retains discretion to grant extensions for reasons other than those established as *force majeure*
17 events.

18 54. EPA will not impose stipulated penalties for performance of a task during any
19 time period covered by an extension of time for that task granted pursuant to Paragraph 53.

20 F. Notices

21 55. Respondent must send written communications and/or submittals under this
22 CA/FO, including any requests for extensions of time to meet the compliance deadlines, to the
23 following:

24 Jelani Shareem, Enforcement Officer
25 U.S. Environmental Protection Agency
 Region IX – Enforcement and Compliance Assurance Division

1 75 Hawthorne Street (ENF-3-3)
2 San Francisco, CA 94105
3 Shareem.Jelani@epa.gov

4 Janet A. Magnuson, Attorney Advisor
5 U.S. Environmental Protection Agency
6 Region IX - Office of Regional Counsel
7 75 Hawthorne Street (ORC-2-3)
8 San Francisco, CA 94105
9 Magnuson.Janet@epa.gov

10 For each written communication and/or submittal, Respondent shall identify the case name, the
11 case Docket Number, and the paragraph and/or requirement of this CA/FO under which the
12 submission is being made.

13 56. Respondent shall include the following signed certification made in accordance
14 with 40 C.F.R. § 144.32(b) and (d) with all written communications required by this CA/FO:

15 *I certify under penalty of law that this document and all attachments
16 were prepared under my direction or supervision in accordance with
17 a system designed to assure that qualified personnel properly gather
18 and evaluate the information submitted. Based on my inquiry of the
19 person or persons who manage the system, or those persons directly
20 responsible for gathering the information, the information submitted
21 is, to the best of my knowledge and belief, true, accurate, and
22 complete. I am aware that there are significant penalties for
23 submitting false information, including the possibility of fine and
24 imprisonment for knowing violations.*

25 57. EPA must send any written communications under this CA/FO to the following
address: K. Oue, Limited, P.O. Box 145, Kealakekua, Hawai'i 96750-0145.

26 G. REPORTING REQUIREMENTS

27 58. Respondent shall submit quarterly status reports no later than the fifteenth day of
28 every third month, beginning the fourth month following the Effective Date of this CA/FO.

29 These status reports shall describe the progress that has been made toward closure of the LCCs in
30 accordance with Paragraph 35. Respondent shall submit quarterly status reports until
31 Respondent's closure of the LCCs in accordance with Paragraph 35.

1 VI. EFFECTIVE DATE

2 59. Pursuant to 40 C.F.R. § 22.45, this CA/FO will be subject to public notice and
3 comment at least 40 days prior to it becoming effective through the issuance of the final order by
4 the Regional Judicial Officer.

5 60. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be
6 effective on the date that the final order contained in this CA/FO, having been approved and
7 issued by either the Regional Judicial Officer or Regional Administrator, is filed with the
8 Regional Hearing Clerk.

9
10 FOR THE CONSENTING PARTIES:

11 K. Oue, Limited.:

12 *Claire Oue*
13 Claire Oue, Its Vice-President

14 Date: 1/23/2020

1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

2 **AMY MILLER-**
3 **BOWEN**

Digitally signed by AMY MILLER-
BOWEN
Date: 2020.03.31 16:15:49 -07'00'

Date: _____

4 Amy C. Miller
5 Director, Enforcement and Compliance Assurance Division
6 Region IX
7 U.S. Environmental Protection Agency
8 75 Hawthorne Street
9 San Francisco, CA 94105

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
2 **REGION IX**

3 75 Hawthorne Street
San Francisco, California 94105

4 IN THE MATTER OF:)

DOCKET NO. UIC-09-2020-00¹³

5)
6 K. Oue, Limited)
P.O. Box 145)
7 Kealakekua, Hawai'i 96750-0145)
8 Respondent.)

**CONSENT AGREEMENT
AND
FINAL ORDER**

9 Proceedings under Sections 1423(c) of the)
10 Safe Drinking Water Act,)
42 U.S.C. §§ 300h-2(c).)
11)
12 _____)

13 **FINAL ORDER**

14 The United States Environmental Protection Agency Region IX (“EPA”), and the
15 Respondent K. Oue, Limited (“Respondent”), having entered into the foregoing Consent
16 Agreement, and EPA having duly publicly noticed the Stipulations and Findings and Final Order
17 regarding the matters alleged therein,

18 **IT IS HEREBY ORDERED THAT:**

- 19 1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-
20 2020-00¹³) be entered;
- 21 2. Respondent pay an administrative civil penalty of **\$88,545** dollars to the Treasurer
22 of the United States of America in accordance with the terms set forth in the Consent Agreement;
- 23 3. Respondent close eleven (11) LCCs by April 1, 2021 in accordance with the terms
24 set forth in Paragraph 35 of the Consent Agreement; and
- 25 4. Respondent comply with all other requirements of the Consent Agreement.

In re K. Oue, Limited

1 This Final Order is effective on the date that it is filed. This Final Order constitutes full
2 adjudication of the allegations in the Consent Agreement entered into by the Parties in this
3 proceeding.

4
5 _____ Date: _____

6 Steven L. Jawgiel
7 Regional Judicial Officer, Region IX
8 U.S. Environmental Protection Agency
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CERTIFICATE OF SERVICE

The following document does hereby certify that the CONSENT AGREEMENT AND FINAL ORDER in the matter of K. Oue Limited (UIC-09-2020-0013), has been filed with the Regional Hearing Clerk, and a copy was served on both Respondent and Counsel for EPA, as indicated below:

RESPONDENT

Claire Oue,
Vice-President, K. Oue Ltd.
majormom@hawaii.rr.com

COUNSEL FOR EPA

Janet Magnuson,
Assistant Regional Counsel
magnuson.janet@epa.gov

Date Filed: April 14, 2020

Steven Armsey

Steven Armsey
Regional Hearing Clerk
EPA, Region 9