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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-09-2023-0056
	)	
Capurro Trucking	)	CONSENT AGREEMENT AND
	)	FINAL ORDER PURSUANT TO
Respondent.	)	40 C.F.R. §§ 22.13 and 22.18
	)	

**I. CONSENT AGREEMENT**

**A. PRELIMINARY STATEMENT**

1. This is a civil administrative penalty assessment proceeding brought under section 113(d) of the Clean Air Act (the “Act”), 42 U.S.C. § 7413(d), and sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), as codified at 40 C.F.R. Part 22. In accordance with 40 C.F.R. §§ 22.13 and 22.18, entry of this Consent Agreement and Final Order (“CAFO”) simultaneously initiates and concludes this matter.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region IX (“EPA”), who has been duly delegated the authority to initiate and settle civil administrative penalty proceedings under section 113(d) of the Act.
3. Respondent is Capurro Trucking (“Capurro Trucking” or “Capurro”). Capurro Trucking is a transportation company. Capurro Trucking owns and operates diesel-fueled vehicles driven in California, among other states.
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CAFO without adjudication of any issues of law or fact herein and agree to comply with the terms of this CAFO.

#### B. JURISDICTION

5. Pursuant to section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), the EPA and the United States Department of Justice jointly determined that this matter, which involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment.
6. The regulations at issue in this action have been incorporated into the federally-approved and federally-enforceable California state implementation plan (“SIP”); therefore, in satisfaction of the notice requirements of section 113(a) of the Act, 42 U.S.C. § 7413(a), on December 22, 2021, the EPA issued to Respondent a notice of violation (“NOV”) and provided a copy of the NOV to the California Air Resources Board (“CARB”), providing notice to both Respondent and CARB that the EPA believed Respondent committed the violations alleged in Section I.E of this CAFO and providing Respondent an opportunity to confer with the EPA. On January 11, 2022, representatives of Respondent and the EPA discussed the NOV.

## C. GOVERNING LAW

### Clean Air Act

7. Pursuant to section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region (“AQCR”) in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for California AQCRs are listed at 40 C.F.R. § 81.305.
8. There are multiple AQCRs designated as nonattainment, as well as multiple AQCRs designated as attainment, for fine particulate matter (i.e., PM<sub>2.5</sub>) and ozone in California. *See* 40 C.F.R. § 81.305.
9. Section 110(a) of the Act requires that all states adopt SIPs that provide for the implementation, maintenance, and enforcement of primary and secondary air quality standards. 42 U.S.C. § 7410(a).
10. A person’s failure to comply with any approved regulatory provision of a SIP renders the person in violation of an applicable implementation plan and subject to enforcement under section 113(a)(1) of the Act. 42 U.S.C. § 7413(a)(1).

### Title 13, Section 2025 of the California Code of Regulations:

#### On-Road Heavy-Duty Diesel Vehicles

11. On December 14, 2011, CARB amended its “Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles,” codified at title 13, section 2025 of the California Code of Regulations (the “Truck and Bus Regulation”).

12. The Truck and Bus Regulation was incorporated into the federally-approved and federally-enforceable California SIP on May 4, 2012. *See* 77 Fed. Reg. 20308 (April 4, 2012). Since that time, the EPA has coordinated with CARB regarding EPA's enforcement of the Truck and Bus Regulation pursuant to section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), and 40 C.F.R. § 52.23.
13. Section 2025(a) of the Truck and Bus Regulation states that the purpose of the regulation is "to reduce emissions of diesel particulate matter (PM), oxides of nitrogen (NOx) and other criteria pollutants from in-use diesel-fueled vehicles."
14. Section 2025(b) of the Truck and Bus Regulation states that the regulation applies to diesel-fueled trucks and buses that are privately or federally owned, and to publicly and privately-owned school buses, that have a manufacturer's gross vehicle weight rating ("GVWR") greater than 14,000 pounds. The Truck and Bus Regulation requires, in part, Fleet Owners to upgrade their vehicles to meet specific performance standards for NOx and PM.
15. Section 2025(d)(17) of the Truck and Bus Regulation defines "Diesel Particulate Filter" ("DPF") as "an emission control technology that reduces diesel particulate matter emissions by directing the exhaust through a filter that physically captures particles but permits gases to flow through...."
16. Under section 2025(d)(18) of the Truck and Bus Regulation, "Diesel Particulate Matter (PM)" means "the particles found in the exhaust of diesel fueled compression ignition engines..."
17. Under section 2025(d)(28) of the Truck and Bus Regulation, "Fleet" means "one or more vehicles, owned by a person, business, or government agency, traveling in California and subject to this regulation."

18. Under section 2025(d)(29) of the Truck and Bus Regulation, “Fleet Owner” means, with certain exceptions, “either the person registered as the owner or lessee of a vehicle by the California Department of Motor Vehicles (DMV), or its equivalent in another state, province, or country, as evidenced on the vehicle registration document carried in the vehicle.”
19. Section 2025(d)(42) of the Truck and Bus Regulation defines “Motor Carrier” to mean “the same as defined in California Vehicle Code section 408 for fleets other than those that are comprised entirely of school buses, which for the purposes of this regulation, means the registered owner, lessee, licensee, school district superintendent, or bailee of any school bus, who operates or directs the operation of any such bus on either a for-hire or not-for-hire basis.”
20. Under section 2025(d)(47) of the Truck and Bus Regulation, “Person” means “an individual, corporation, business trust, estate, trust, partnership, Limited Liability Company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.”
21. Section 2025(d)(48) of the Truck and Bus Regulation defines “PM BACT” as “the technology employed on the highest level VDECS for PM or an engine that is equipped with an original equipment manufacturer (OEM) diesel particulate filter and certified to meet the 0.01 g/bhp-hr certification standard.”
22. Section 2025(g) of the Truck and Bus Regulation requires Fleet Owners to comply with the following compliance schedule for vehicles above 26,000 pounds GVWR:
  - a. Vehicles with 1993 and older engine model years must be upgraded to 2010 model year engines by January 1, 2015;

- b. Vehicles with an engine model year of 1994 or 1995 must be equipped with a 2010 model year engine by January 1, 2016;
  - c. Vehicles with an engine model year of 1996 through 1999 must be equipped with a DPF by January 1, 2012, and with a 2010 model year engine by January 1, 2020;
  - d. Vehicles with an engine model year of 2000 through 2004 must be equipped with a DPF by January 1, 2013;
  - e. Vehicles with an engine model year of 2005 or 2006 must be equipped with a DPF by January 1, 2014; and
  - f. Vehicles with an engine model year of 2007 or newer must be equipped with PM BACT by January 1, 2014.
23. A fleet may meet the 2010 model year emissions equivalent engine (as defined in section 2025(d)(3) of the Truck and Bus Regulation) requirement by replacing the engine or vehicle with one with a 2010 model year engine or later, retrofitting the engine with a verified diesel emission control system (as defined in section 2025(d)(60) of the Truck and Bus Regulation) that achieves 2010 model year equivalent emissions, or by replacing a vehicle with one that has a future compliance deadline.
24. Section 2025(s)(4) of the Truck and Bus Regulation requires motor carriers or brokers to maintain “[b]ills of lading and other documentation identifying the motor carrier or broker who hired or dispatched the vehicle and the vehicle dispatched.”
25. Section 2025(x)(2) of the Truck and Bus Regulation provides that “[a]ny in-state or out-of-state motor carrier, California broker, or any California resident who operates or directs the operation of any vehicle subject to this regulation shall verify that each hired or dispatched

vehicle is in compliance with the regulation and comply with the record keeping requirements of section 2025(s)(4).”

26. Section 2025(x)(3) of the TBR provides that “[c]ompliance may be accomplished by keeping at the business location, a copy of the Certificate of Reported Compliance with the In-Use On-Road Diesel Vehicle Regulation for each fleet, or in the vehicle.”

#### D. STIPULATED FACTS

27. On December 11, 2020, the EPA issued an information request (“Information Request”) to Respondent pursuant to section 114 of the Act, 42 U.S.C. § 7414, seeking information concerning Respondent’s compliance with the Truck and Bus Regulation, Drayage Truck Regulation (under California Code of Regulations, section 2027), and TRU Regulation, which was shared with CARB.
28. Capurro Trucking submitted its response to the Information Request on February 25, 2021; April 14, 2021; and April 28, 2021.
29. As referenced in paragraph 6 above, on December 22, 2021, the EPA issued an NOV to Respondent and provided a copy of the NOV to CARB regarding the alleged violations described in Section I.E of this CAFO, providing notice to both Respondent and CARB and an opportunity for Respondent to confer with the EPA regarding the NOV.
30. Representatives of Respondent and the EPA discussed the NOV on January 11, 2022, and have had additional discussions on subsequent occasions to resolve this matter through settlement.
31. Respondent represents that it has taken actions with respect to its Fleet sufficient to address any noncompliance with the Truck and Bus Regulation.

#### E. VIOLATIONS OF LAW ALLEGED BY THE EPA

32. EPA alleges Capurro Trucking owns and/or operates diesel-fueled vehicles registered to be driven on public highways in California, among other states.
33. EPA alleges Respondent is a "Person" as that term is defined under section 302(e) of the Act, 42 U.S.C. § 7602(e), and section 2025(d)(47) of the Truck and Bus Regulation.
34. EPA alleges that, at all times relevant to this CAFO, Respondent was a "Fleet Owner" of a "Fleet" of vehicles as those terms are defined under section 2025(d)(28) and (29) of the Truck and Bus Regulation.
35. EPA alleges that, at all times relevant to this CAFO, Respondent was a "Motor Carrier" as the term is defined under section 2025(d)(42) of the Truck and Bus Regulation.
36. EPA alleges that, at all times relevant to this CAFO, the Truck and Bus Regulation applied to Capurro Trucking.
37. EPA alleges the Respondent violated section 2025(g) of the Truck and Bus Regulation as a Fleet Owner by operating in California in 2017, 2018 and 2019 one (1) diesel-fueled vehicle above 26,000 pounds GVWR with an engine model year of 1993 that was not equipped with a 2010 model year engine after the compliance deadline of January 1, 2015.
38. EPA alleges the Respondent violated section 2025(g) of the Truck and Bus Regulation as a Fleet Owner by operating in California during 2017, 2018 2019, and 2020 three (3) diesel-fueled vehicles above 26,000 pounds GVWR with engine model years 1996 and 1999 that were not equipped with 2010 model year engines after the compliance deadline of January 1, 2020.
39. EPA alleges the Respondent violated section 2025(g) of the Truck and Bus Regulation as a Fleet Owner by operating in California during 2017, 2018 and 2019 one (1) diesel-fueled

- vehicle above 26,000 pounds GVWR with an engine model year of 1999 that was not equipped with a DPF after the compliance deadline of January 1, 2012.
40. EPA alleges the Respondent violated section 2025(g) of the Truck and Bus Regulation as a Fleet Owner by operating in California in 2017, 2018, 2019 and/or 2020 nine (9) diesel-fueled vehicles above 26,000 pounds GVWR with engine model years 2000 – 2004 that were not equipped with DPFs after the compliance deadline of January 1, 2013.
41. EPA alleges the Respondent violated section 2025(g) of the Truck and Bus Regulation as a Fleet Owner by operating in California in 2017, 2018, 2019 and/or 2020 twenty-seven (27) diesel-fueled vehicles above 26,000 pounds GVWR with engine model years 2005 or 2006 that were not equipped with DPFs after the compliance deadline of January 1, 2014.
42. EPA alleges the Respondent violated section 2025(g) of the Truck and Bus Regulation as a Fleet Owner by operating in California in 2017, 2018, 2019 and/or 2020 three (3) diesel-fueled vehicles above 26,000 pounds GVWR with engine model year 2007 that were not equipped with PM BACT after the compliance deadline of January 1, 2014.
43. EPA alleges that, within the period of January 1, 2017, to December 11, 2020, Respondent violated section 2025(x)(2) of the Truck and Bus Regulation by failing to verify that each of the seventy-four (74) vehicles subject to the Truck and Bus Regulation that Capurro Trucking hired or dispatched was in compliance with the Truck and Bus Regulation.

#### F. TERMS OF CONSENT AGREEMENT

44. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
- a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO and over Respondent;
  - b. admits to the stipulated facts contained in Section I.D of this CAFO;

- c. neither admits nor denies the specific factual allegations and legal conclusions contained in Section I.E of this CAFO;
- d. consents to the assessment of a civil penalty under this Section, as stated below;
- e. consents to the conditions specified in this CAFO;
- f. waives any right to contest the allegations set forth in Section I.E of this CAFO; and
- g. waives its rights to appeal the proposed Order contained in this CAFO.

Civil Penalty

45. Respondent agrees to:

- a. pay the civil penalty of ONE HUNDRED NINETEEN THOUSAND ONE HUNDRED SIXTY-TWO DOLLARS (\$119,162) (“EPA Penalty”) within 30 calendar days of the Effective Date of this CAFO;
- b. pay the EPA Penalty using any method, or combination of methods, provided on the website: <https://www.epa.gov/financial/makepayment>, and identifying each and every payment with “Docket No. CAA-09-2023-0056”; and
- c. within 24 hours of payment of the EPA Penalty, send proof of payment to the Regional Hearing Clerk and EPA Region 9 at the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region IX  
[r9HearingClerk@epa.gov](mailto:r9HearingClerk@epa.gov)

Mark Sims  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region IX  
[Sims.Mark@epa.gov](mailto:Sims.Mark@epa.gov)

(“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer,

and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with “Docket No. CAA-09-2023-0056”).

46. If Respondent fails to pay the civil administrative penalty specified in paragraph 45(a) of this CAFO within 30 days after the Effective Date of this CAFO, then Respondent shall pay to the EPA a stipulated penalty in the amount of FIVE HUNDRED DOLLARS (\$500.00) for each day the default continues plus the penalty sum specified in paragraph 45(a), upon written demand by the EPA.

- a. All penalties owed to EPA under Section I.F.46 of this CAFO shall be due within thirty (30) calendar days of Respondent’s receipt of a notification of noncompliance and request for payment from EPA. Such notification shall describe the amount of penalties due.
- b. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of the penalty in Section I.F.45 of this CAFO.
- c. Notwithstanding any other provision of this Section I.F, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CAFO.

47. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:

- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States’ enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);

- b. refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33 (in any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review);
- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
- d. consistent with 40 C.F.R. § 13.17, (i) suspend or revoke Respondent's licenses or other privileges if the failure to timely pay is "inexcusable, prolonged, or repeated," or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
- e. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalties 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 45. Interest 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 account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost

incurred and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

#### Additional Terms of Settlement

48. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assignees. Respondent must give written notice and a copy of this CAFO to any successors in interest prior to any transfer of ownership or control of any portion of or interest in Respondent. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this CAFO unless EPA has provided written approval of the release of said obligations or liabilities.
49. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
50. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.

51. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
52. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

53. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
54. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.
55. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
56. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties up to \$117,468 per day per violation, or both, as provided in section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in section 113(c) of the Act, 42 U.S.C. § 7413(c). EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.
57. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be

construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

58. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
59. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any material information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

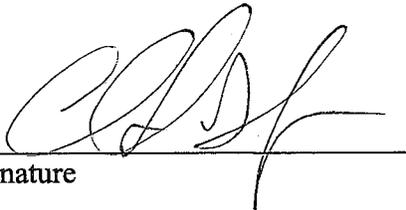
#### H. EFFECTIVE DATE

60. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed CAFO to Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk.

The foregoing Consent Agreement In the Matter of Capurro Trucking, Docket No. CAA-09-2023-0056 is hereby stipulated, agreed, and approved for entry.

FOR RESPONDENT:

6-7-23  
Date

  
Signature

Printed Name: CLINT D. CAPURRO

Title: PRES.

Address: 955 DEMING W. SPARKS NV, 89431

Email Address: CLINT@CAPURROTRUCKING.COM

The foregoing Consent Agreement In the Matter of Capurro Trucking, Docket No. CAA-09-2023-0056 is hereby stipulated, agreed, and approved for entry.

FOR COMPLAINANT:

\_\_\_\_\_  
Date

AMY MILLER-  
BOWEN

Digitally signed by AMY  
MILLER-BOWEN  
Date: 2023.06.14  
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\_\_\_\_\_  
Amy C. Miller-Bowen  
Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

## II. FINAL ORDER

EPA Region IX and Capurro Trucking having entered into the foregoing Consent Agreement, IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2023-0056) be entered, and Respondent shall pay a civil administrative penalty in the amount of ONE HUNDRED NINETEEN THOUSAND ONE HUNDRED SIXTY-TWO DOLLARS (\$119,162) and otherwise comply with the terms set forth in the CAFO.

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Beatrice Wong  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region IX

Date

**CERTIFICATE OF SERVICE**

I hereby certify the original copy of the foregoing Consent Agreement and associated Final Order in the matter of Capurro Trucking (Docket No. CAA-09-2023-0056), was filed with the Regional Hearing Clerk, Region IX and that a true and correct copy was sent by electronic mail to the following parties:

**RESPONDENT**

Clint Capurro  
President  
Capurro Trucking  
955 Deming Way  
Sparks, NV 89341-6450  
[Clint@CapurroTrucking.com](mailto:Clint@CapurroTrucking.com)

**COMPLAINANT**

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San Francisco, CA 94105  
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Ponnly J. Tu  
Regional Hearing Clerk  
U.S. EPA, Region IX

Date