

1
2 UNITED STATES
3 ENVIRONMENTAL PROTECTION AGENCY
4 REGION IX
5 75 HAWTHORNE STREET
6 SAN FRANCISCO, CA 94105

** FILED **
21SEP2016 - 11:20AM
U.S.EPA - Region 09

6 In the Matter of:)
7 Rayco Development Solutions,) Docket No. TSCA-09-2016-0001
8 Inc.,) CONSENT AGREEMENT
9 Respondent.) AND FINAL ORDER

9
10 I. CONSENT AGREEMENT

11 Complainant, the Director of the Enforcement Division of the
12 United States Environmental Protection Agency, Region IX ("EPA")
13 and Respondent, Rayco Development Solutions, Inc. ("Respondent")
14 agree to settle this matter and consent to the entry of this
15 Consent Agreement and Final Order ("CAFO").

16 A. AUTHORITY

17 1. EPA initiated this civil administrative proceeding for
18 the assessment of a civil penalty pursuant to Section 16(a) of
19 the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a),
20 by issuing a First Amended Complaint and Notice of Opportunity
21 for Hearing ("Complaint") against Respondent on January 20, 2016
22 in accordance with the Consolidated Rules of Practice Governing
23 the Administrative Assessment of Civil Penalties and the
24 Revocation/Termination or Suspension of Permits at 40 C.F.R. Part
25 22.

26 2. The Complaint alleges that Respondent violated Section
27 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with Sections
28 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, and implementing

1 regulations promulgated at 40 C.F.R. Part 745, Subpart E.

2 3. EPA and Respondent have agreed to resolve this civil
3 administrative proceeding by executing this CAFO pursuant to 40
4 C.F.R. § 22.18(b).

5 B. RESPONDENT'S ADMISSIONS

6 4. In accordance with 40 C.F.R. § 22.18(b)(2) and for the
7 purpose of this proceeding, Respondent (i) admits that EPA has
8 jurisdiction over the subject matter of this CAFO and over
9 Respondent; (ii) neither admits nor denies the specific factual
10 allegations contained in the Complaint; (iii) consents to any and
11 all conditions specified in this CAFO and to the assessment of
12 the civil administrative penalty under Section I.C of this CAFO;
13 (iv) waives any right to contest the allegations contained in the
14 Complaint; and (v) waives the right to appeal the proposed final
15 order contained in this CAFO.

16 C. CIVIL ADMINISTRATIVE PENALTY

17 5. Respondent agrees to the assessment of a penalty in the
18 amount of FIVE THOUSAND DOLLARS (\$5,000) as final settlement of
19 the civil claims against Respondent arising under TSCA as alleged
20 in the Complaint.

21 6. Respondent shall pay the assessed penalty no later than
22 thirty (30) days after the effective date of the CAFO.

23 The assessed penalty shall be paid by **certified or cashier's**
24 **check**, payable to "Treasurer, United States of America," or paid
25 by one of the other methods listed below and sent as follows:

26 ///

27

1 Regular Mail:
U.S. Environmental Protection Agency
2 Fines and Penalties
Cincinnati Finance Center
3 PO Box 979077
St. Louis, MO 63197-9000

4 Wire Transfers:

5 Wire transfers must be sent directly to the Federal Reserve Bank
6 in New York City with the following information:

7 Federal Reserve Bank of New York
ABA = 021030004
8 Account = 68010727
SWIFT address = FRNYUS33
9 33 Liberty Street
New York, NY 10045
10 Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

11 Overnight Mail:

12 U.S. Bank
13 1005 Convention Plaza
Mail Station SL-MO-C2GL
14 ATTN Box 979077
St. Louis, MO 63101

15 ACH (also known as REX or remittance express):

16 Automated Clearinghouse (ACH) for receiving US currency.
17 PNC Bank
808 17th Street, NW
18 Washington, DC 20074
ABA = 051036706
19 Transaction Code 22 - checking
Environmental Protection Agency
20 Account 31006
CTX Format

21 On Line Payment:

22 This payment option can be accessed from the information below:

23 www.pay.gov
24 Enter "sf01.1" in the search field
Open form and complete required fields

25 If clarification regarding a particular method of payment
26 remittance is needed, contact the EPA Cincinnati Finance Center
at 513-487-2091.

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

6 a) Regional Hearing Clerk (ORC-1)
7 Office of Regional Counsel
8 U.S. Environmental Protection Agency, Region IX
9 75 Hawthorne Street
10 San Francisco, California 94105

11 b) Lynn Kuo
12 Waste and Chemical Section (ENF-2-2)
13 Enforcement Division
14 U.S. Environmental Protection Agency, Region IX
15 75 Hawthorne Street
16 San Francisco, CA 94105

17 7. Payment of the above civil administrative penalty shall
18 not be used by Respondent or any other person as a tax deduction
19 from Respondent's federal, state, or local taxes.

20 8. If Respondent fails to pay the assessed civil
21 administrative penalty specified in Paragraph 5 by the deadline
22 specified in Paragraph 6, then Respondent shall pay to EPA a
23 stipulated penalty of \$150 per day in addition to the assessed
24 penalty. Stipulated penalties shall accrue until such time as
25 the assessed penalty and all accrued stipulated penalties are
26 paid and shall become due and payable upon written request by
27 EPA. In addition, failure to pay the civil administrative
28 penalty by the deadline specified in Paragraph 6 may lead to any
or all of the following actions:

a. The debt being referred to a credit reporting agency, a
collection agency, or to the Department of Justice for filing of

1 a collection action in the appropriate United States District
2 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such
3 collection action, the validity, amount, and appropriateness of
4 the assessed penalty and of this CAFO shall not be subject to
5 review.

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

12 c. EPA may (i) suspend or revoke Respondent's licenses or other
13 privileges; or (ii) suspend or disqualify Respondent from doing
14 business with EPA or engaging in programs EPA sponsors or funds.
15 40 C.F.R. § 13.17.

16 d. In accordance with the Debt Collection Act of 1982 and 40
17 C.F.R. Part 13 interest, penalties charges, and administrative
18 costs will be assessed against the outstanding amount that
19 Respondent owes to EPA for Respondent's failure to pay the civil
20 administrative penalty by the deadline specified in Paragraph 6.
21 Interest will be assessed at an annual rate that is equal to the
22 rate of current value of funds to the United States Treasury
23 (i.e., the Treasury tax and loan account rate) as prescribed and
24 published by the Secretary of the Treasury in the Federal
25 Register and the Treasury Fiscal Requirements Manual Bulletins.
26 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed
27 monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c).

1 Administrative costs for handling and collecting Respondent's
2 overdue debt will be based on either actual or average cost
3 incurred, and will include both direct and indirect costs. 40
4 C.F.R. § 13.11(b). In addition, if this matter is referred to
5 another department or agency (e.g., the Department of Justice,
6 the Internal Revenue Service), that department or agency may
7 assess its own administrative costs, in addition to EPA's
8 administrative costs, for handling and collecting Respondent's
9 overdue debt.

10 D. RESPONDENT'S CERTIFICATION

11 9. In executing this CAFO, Respondent certifies that it is
12 now in compliance with the federal regulations promulgated at 40
13 C.F.R. Part 745, Subpart E.

14 E. RETENTION OF RIGHTS

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

27 11. This CAFO does not exempt, relieve, modify, or affect

1 in any way Respondent's duty to comply with all applicable
2 federal, state, and local laws, regulations, rules, ordinances,
3 and permits.

4 F. ATTORNEYS' FEES AND COSTS

5 12. Each party shall bear its own attorneys' fees, costs,
6 and disbursements incurred in this proceeding.

7 G. EFFECTIVE DATE

8 13. In accordance with 40 C.F.R. §§ 22.18(b)(3) and
9 22.31(b), this CAFO shall be effective on the date that the final
10 order contained in this CAFO, having been approved and issued by
11 either the Regional Judicial Officer or Regional Administrator,
12 is filed.

13 H. BINDING EFFECT

14 14. The undersigned representative of Complainant and the
15 undersigned representative of Respondent each certifies that he
16 or she is fully authorized to enter into the terms and conditions
17 of this CAFO and to bind the party he or she represents to this
18 CAFO.

19 15. The provisions of this CAFO shall apply to and be
20 binding upon Respondent and its officers, directors, employees,
21 agents, trustees, servants, authorized representatives,
22 successors, and assigns.

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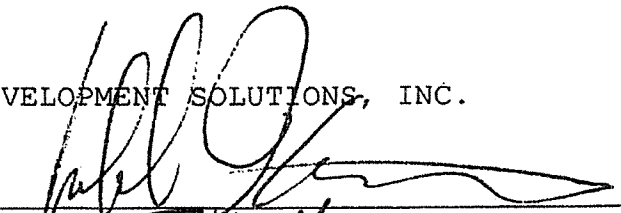
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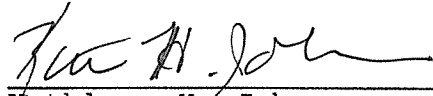
1 FOR RESPONDENT, RAYCO DEVELOPMENT SOLUTIONS, INC.

2
3 8/24 2016
4 DATE


Name: Todd Hamser, RMO
Title: RAYCO DEVELOPMENT SOLUTIONS, INC.

5
6
7 FOR COMPLAINANT, EPA REGION IX:

8
9 9-16 2016
10 DATE



Kathleen H. Johnson
Director
Enforcement Division
U.S. ENVIRONMENTAL PROTECTION AGENCY,
REGION IX

1 II. FINAL ORDER

2 Complainant and Respondent, having entered into the
3 foregoing Consent Agreement,

4 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-
5 2016-0001) be entered, and that Respondent shall pay a civil
6 administrative penalty in the amount of FIVE THOUSAND DOLLARS
7 (\$5,000) and comply with the terms and conditions set forth in
8 the Consent Agreement. This Consent Agreement and Final Order
9 shall become effective upon filing.

10
11 09/20/16
DATE


STEVEN L. JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection
Agency, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Consent Agreement and Final Order in the Matter of Rayco Development Solutions, Inc. with Docket # TSCA-09-2016-0001 has been filed with the Regional Hearing Clerk, Region IX and that a true and correct copy was sent:

By Certified Mail, Return Receipt Requested to:

Mr. Gabe Cooley
Chief Executive Officer
Rayco Development Solutions, Inc.
3541 Investment Boulevard
Hayward, CA 94545

Joseph M. Sweeney, Esq.
Sweeney, Mason, Wilson & Bosomworth
983 University Avenue, Suite 104C
Los Gatos, CA 95032-7637

Certified Mail Receipt:
7015 3010 0000 3883 7684

Certified Mail Receipt:
7016 1370 0000 2235 1374

Hand Delivered to:

Carol Bussey
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Sept. 21, 2016
Date

Steven Aronson
Regional Hearing Clerk
U.S. EPA, Region IX