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US EPA - REGION IX
HEARING CLERK

1 ROBERT E. MOYER
Acting Regional Counsel
2
3 EDGAR P. CORAL
Assistant Regional Counsel
U.S. Environmental Protection Agency
4 Region IX
75 Hawthorne Street
5 San Francisco, CA 94105
(415) 972-3898
6

7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:

) Docket No. TSCA-09-2013- 0015

11)
12) Ross Valley Sanitary District,

) CONSENT AGREEMENT
) AND FINAL ORDER
) pursuant to 40 C.F.R. §§ 22.13(b),
) 22.18(b)(2), and 22.18(b)(3)
)

13 Respondent.
14

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency, Region IX ("EPA"), and Ross
17 Valley Sanitary District (the "Respondent") agree to settle this matter and consent to the entry of
18 this Consent Agreement and Final Order ("CAFO"). This CAFO simultaneously initiates and
19 concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
20

21 A. AUTHORITY AND PARTIES

22 1. This is a civil administrative action brought under Section 16(a) of the Toxic
23 Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for assessment of a civil administrative
24 penalty against Respondent for violation of Section 15 of TSCA, 15 U.S.C. § 2614, by failing to
25 comply with implementing regulations governing polychlorinated biphenyls ("PCBs") set forth at
40 C.F.R. Part 761.

26 2. Complainant is the Director of the Enforcement Division in EPA, Region IX. The
27 Administrator of EPA delegated to the Regional Administrator of Region IX the authority to
28 bring this action under TSCA by EPA Delegation Order Number 12-2-A, dated May 11, 1994.

1 The Regional Administrator of Region IX further delegated the authority to bring this action
2 under TSCA to the Director, Deputy Director, Assistant Directors, and Managers of the
3 Enforcement Division by EPA Regional Order Number R9-12-2-A, dated February 11, 2013.

4 3. Respondent is Ross Valley Sanitary District, a special enterprise district organized
5 under the California Health and Safety Code.

6 **B. STATUTORY AND REGULATORY BASIS**

7 4. Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), makes it unlawful for any person
8 to (1) fail or refuse to comply with (C) any rule promulgated or order issued under Section 6 of
9 TSCA, 15 U.S.C. § 2605.

10 5. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), EPA has promulgated
11 comprehensive regulations setting forth requirements and use prohibitions for the manufacturing,
12 processing, and distribution in commerce of PCBs. These regulations, as amended, are presently
13 codified at 40 C.F.R. Part 761.

14 6. 40 C.F.R. § 761.50(a), General PCB Disposal Requirements, states that any person
15 storing or disposing of PCB waste must do so in accordance with subpart D of this part, Part 761.

16 7. 40 C.F.R. § 761.50(b)(4)(i) states that any person disposing of PCB bulk product
17 waste must do so in accordance with § 761.62.

18 8. Pursuant to 40 C.F.R. § 761.3, "Person" means any natural or judicial person,
19 including any individual, corporation, partnership, or association; any State or political
20 subdivision thereof; any interstate body; and any department, agency, or instrumentality of the
21 Federal Government.

22 9. Pursuant to 40 C.F.R. § 761.3, "Disposal" means intentionally or accidentally to
23 discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB Items.
24 Disposal includes spills, leaks, and other uncontrolled discharges of PCBs as well as actions
25 related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs
26 and PCB Items.

27 10. Pursuant to 40 C.F.R. § 761.3, "PCB Bulk Product Waste" means waste derived from
28 manufactured products containing PCBs in a non-liquid state, at any concentration where the

1 concentration at the time of designation for disposal was greater than or equal to 50ppm PCBs.
2 PCB bulk product waste does not include PCBs or PCB Items regulated for disposal under §
3 761.60 (a) through (c), § 761.61, § 761.63, or § 761.64. PCB bulk product waste includes, but is
4 not limited to: (1) non-liquid bulk wastes or debris from the demolition of buildings and other
5 man-made structures manufactured, coated, or serviced with PCBs . . . (3) applied dried paints,
6 varnishes, waxes or other similar coatings or sealants; caulking; adhesives

7 11. 40 C.F.R. § 761.62 states that PCB bulk product waste shall be disposed of in
8 accordance with paragraph (a), (b), or (c) of this section.

9 C. ALLEGED VIOLATION

10 12. Respondent is a political subdivision of the State of California and therefore fits
11 within the definition of "person" as that term is defined by 40 C.F.R. § 761.3.

12 13. Respondent operates and maintains the wastewater infrastructure for a large portion
13 of southeastern Marin County in California.

14 14. In or around 1998-99, Respondent demolished a decommissioned wastewater
15 treatment plant located at 2000 Larkspur Landing Circle in Larkspur, California (the "Facility").

16 15. During demolition, Respondent crushed concrete from the Facility on site and used
17 the crushed concrete to backfill various excavation areas at the Facility site.

18 16. Unknown to Respondent at the time, portions of the concrete at the Facility that
19 Respondent had crushed and used as backfill were painted with an industrial paint that contained
20 PCBs at a concentration equal to or greater than 50ppm.

21 17. The crushed concrete painted with industrial paint containing PCBs at a
22 concentration equal to or greater than 50ppm constitutes "PCB bulk product waste," as that term
23 is defined by 40 C.F.R. § 761.3.

24 18. Respondent's backfilling of various excavation areas at the Facility site with crushed
25 concrete painted with industrial paint containing PCBs at a concentration equal to or greater than
26 50ppm constitutes "disposal," as that term is defined by 40 C.F.R. § 761.3.

27 19. Respondent's disposal of the crushed concrete painted with industrial paint
28 containing PCBs at a concentration equal to or greater than 50ppm by using it as backfill at the

1 Facility site was not in accordance with the PCB bulk product waste disposal requirements set
2 forth at 40 C.F.R. § 761.62.

3 20. By failing to comply with the PCB bulk product waste disposal requirements set
4 forth at 40 C.F.R. § 761.62, Respondent violated 40 C.F.R. § 761.50(b)(4)(i) and Section
5 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

6 21. On or around July 7, 2008, Respondent first became aware of the potentially
7 violative disposal of PCB bulk product waste at the Facility site.

8 22. Between July 7 and August 12, 2008, Respondent notified EPA of the potentially
9 violative disposal of PCB bulk product waste at the Facility site.

10 23. On or around August 31, 2010, Respondent submitted to EPA a Risk Based Cleanup
11 and Disposal Approval Application adopting the self-implementing cleanup levels established at
12 40 C.F.R. § 761.61(a)(4)(i)(b) for a low occupancy area.

13 24. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty
14 Inflation Adjustment Rule, 40 C.F.R. Part 19, as amended, provide that any person who violates
15 Section 15 of TSCA, 15 U.S.C. § 2614, shall be liable to the United States for a civil penalty in
16 an amount not to exceed \$32,500 for each such violation that occurred between March 15, 2004
17 and January 12, 2009. Under the EPA's *Polychlorinated Biphenyls Enforcement Response*
18 *Policy*, dated August 10, 1992, and the Civil Monetary Penalty Inflation Adjustment Rule, the
19 single violation cited above would merit an administrative civil penalty of up to \$32,500 given
20 the nature, circumstances, and extent of the violations alleged.

21 **D. RESPONDENT'S ADMISSIONS**

22 25. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
23 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
24 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
25 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
26 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
27 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
28 proposed Final Order contained in this CAFO.

1 E. CIVIL ADMINISTRATIVE PENALTY

2 26. In settlement of the violations specifically alleged in Section I.C of this CAFO,
3 Respondent shall pay a civil administrative penalty of SIXTEEN THOUSAND, TWO
4 HUNDRED AND FIFTY DOLLARS (\$16,250). Respondent shall pay this civil penalty within
5 thirty (30) days of the effective date of this CAFO. The civil penalty shall be paid by remitting a
6 certified or cashier's check, including the name and docket number of this case, for the amount,
7 payable to "Treasurer, United States of America," (or be paid by one of the other methods listed
8 below) and sent as follows:

9 Regular Mail:

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

15 Wire Transfers:

16 Wire transfers must be sent directly to the Federal Reserve Bank in New
17 York City with the following information:
18 Federal Reserve Bank of New York
19 ABA = 021030004
20 Account = 68010727
21 SWIFT address = FRNYUS33
22 33 Liberty Street
23 New York, NY 10045
24 Field Tag 4200 of the Fedwire message should read "D 68010727
25 Environmental Protection Agency"

26 Overnight Mail:

27 U.S. Bank
28 1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving U.S. currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 31006
CTX Format

1 On Line Payment:

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

3 www.pay.gov

4 Enter "sf01.1" in the search field

5 Open form and complete required fields

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

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

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

17 Jennifer MacArthur
18 Enforcement Division (ENF-2-2)
19 U.S. Environmental Protection Agency, Southern California Field Office
20 600 Wilshire Blvd., Suite 1460
21 Los Angeles, CA 90017

22 Edgar Coral
23 Office of Regional Counsel (ORC-2)
24 U.S. Environmental Protection Agency, Region IX
25 75 Hawthorne Street
26 San Francisco, CA 94105

27 27. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
28 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
29 use such payment as a tax deduction.

30 28. If Respondent fails to pay the assessed civil administrative penalty of SIXTEEN
31 THOUSAND, TWO HUNDRED AND FIFTY DOLLARS (\$16,250), as identified in Paragraph
32 26, by the deadline specified in that Paragraph, then Respondent shall also pay a stipulated
33 penalty to EPA upon EPA's written request. The amount of the stipulated penalty will be
34 SIXTEEN THOUSAND, TWO HUNDRED AND FIFTY DOLLARS (\$16,250), and will be
35 immediately due and payable upon EPA's written request on the day following the deadline
36 specified in Paragraph 26, together with the initially assessed civil administrative penalty of

1 SIXTEEN THOUSAND, TWO HUNDRED AND FIFTY DOLLARS (\$16,250), resulting in a
2 total penalty due of THIRTY-TWO THOUSAND, FIVE HUNDRED DOLLARS (\$32,500).

3 Failure to pay the civil administrative penalty specified in Paragraph 26 by the deadline specified
4 in that Paragraph may also lead to any or all of the following actions:

5 (1) EPA may refer the debt to a credit reporting agency, a collection
6 agency, or to the Department of Justice for filing of a collection action in the appropriate United
7 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
8 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
9 collection proceeding.

10 (2) The U.S. Government may collect the debt by administrative offset
11 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a
12 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
13 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
14 C.F.R. §§ 13(C) and 13(H).

15 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
16 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
17 business with EPA or engaging in programs EPA sponsors or funds.

18 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
19 Government may assess interest, administrative handling charges, and nonpayment penalties
20 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
21 civil administrative penalty specified in Paragraph 26 by the deadline specified in that Paragraph.

22 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
23 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
24 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
25 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
26 (30) days of the effective date of this CAFO.

27 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.
28 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,

1 based on either actual or average cost incurred (including both direct and indirect costs), for
2 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

3 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
4 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
5 may be assessed on all debts more than ninety (90) days delinquent.

6 F. RETENTION OF RIGHTS

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

15 30. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
16 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
17 and permits.

18 G. ATTORNEYS' FEES AND COSTS

19 31. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
20 this proceeding.

21 H. EFFECTIVE DATE

22 32. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
23 effective on the date that the Final Order contained in this CAFO, having been approved and
24 issued by either the Regional Judicial Officer or Regional Administrator, is filed.


25 I. BINDING EFFECT

26 33. The undersigned representative of Complainant and the undersigned representative of
27 Respondent each certifies that he or sbe is fully authorized to enter into the terms and conditions
28 of this CAFO and to bind the party he or she represents to this CAFO.

1 34. The provisions of this CAFO shall apply to and be binding upon Respondent and its
2 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
3 and assigns.
4

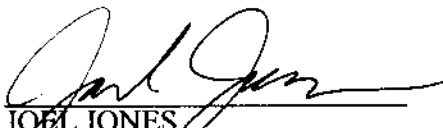
5
6 FOR RESPONDENT ROSS VALLEY SANITARY DISTRICT:

7
8 9/19/13
DATE

9 
GREG NORBY
Interim General Manager
Ross Valley Sanitary District

10
11 FOR COMPLAINANT EPA:

12
13 9/27/13
DATE

14 
JOEL JONES
Assistant Director, Air, Waste & Toxics Branch
Enforcement Division
U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and Ross Valley Sanitary District having entered into the foregoing Consent
3 Agreement,

4 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2013- 0014) be
5 entered, and Respondent shall pay a civil administrative penalty in the amount of SIXTEEN
6 THOUSAND, TWO HUNDRED AND FIFTY DOLLARS (\$16,250), and comply with the terms
7 and conditions set forth in the Consent Agreement.

8
9
10 09/27/13
11 DATE

12 
13 STEVEN JAWGIEL
14 Regional Judicial Officer
15 U.S. Environmental Protection Agency, Region IX
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CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of Ross Valley Sanitary District (**Docket #: TSCA-09-2013-0015**) 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:

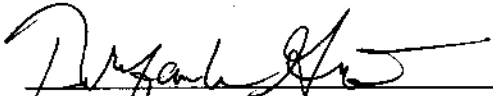
A copy was mailed via CERTIFIED MAIL to:

Greg Norby
Interim General Manager
Ross Valley Sanitary District
2960 Kerner Boulevard
San Rafael, CA 94901

CERTIFIED MAIL NUMBER: 7010 2780 0000 8388 8341

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

Edgar Coral, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

9/30/13
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105

Phone: (415) 972-3000

<http://www.epa.gov/region9>

CERTIFIED MAIL NO. 7010-2780-0000-8388-8341
RETURN RECEIPT REQUESTED

SEP 30 2013
Greg Norby
Interim General Manager
Ross Valley Sanitary District
2960 Kerner Boulevard
San Rafael, CA 94901

Re: In the matter of Ross Valley Sanitary District
U.S. EPA Docket No. TSCA-09-2013- 0615

Dear Mr. Norby:

Enclosed is a copy of the fully executed Consent Agreement and Final Order which contains the terms of the settlement reached with the United States Environmental Protection Agency (EPA).

When the EPA receives the final payment of the penalty identified in the Consent Agreement and Final Order this case will be closed. If you have any questions regarding the rules, regulations and statutes which govern the proceedings terminated by the enclosed Consent Agreement and Final Order, please contact Edgar P. Coral at (415) 972-3898.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel Jones".

Joel Jones
Assistant Director, Air, Waste & Toxics Branch
Enforcement Division

Enclosure