

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

IN THE MATTER OF:	)	Docket HWCA:
	)	SRPD 98/99 SCC-4007
Mr. Gary McKenzie	)	
11011 Meads Avenue	)	CORRECTIVE ACTION
Orange, California 92826	)	CONSENT AGREEMENT
	)	
Respondent.	)	
	)	Health and Safety Code
_____	)	Sections 25187 and 25200.14

**INTRODUCTION**

1.1. The Department of Toxic Substances Control (DTSC) and Mr. Gary McKenzie (Respondent) enter into this Consent Agreement and agree as follows:

1.2. Jurisdiction exists pursuant to Health and Safety Code (HSC) sections 25187 and 25200.14, which authorize DTSC to issue a Consent Agreement to require corrective action when DTSC determines that there is or may be a release of hazardous waste or hazardous waste constituents into the environment from a hazardous waste facility.

1.3. The parties enter into this Consent Agreement to avoid the expense of litigation and to carry out promptly the corrective action described below.

1.4. Respondent is the owner of a hazardous waste facility located at 1022 South Petrolia Avenue, Compton,

California (Facility), EPA ID CAD 981383466.

1.5. The terms used in this Consent Agreement are as defined in Section 66260.10 of Title 22 of the California Code of Regulations (Cal. Code Regs.), except as otherwise provided.

1.6 Respondent agrees to implement all approved work plans and to undertake all actions required by the terms and conditions of this Consent Agreement, including any portions of this Consent Agreement incorporated by reference.

1.7. Respondent waives any right to request a hearing on this Consent Agreement pursuant to HSC section 25187.

#### **FINDINGS OF FACT**

2.1. South Bay Plating, Incorporated (SBP), a plating shop, was owned and operated by Respondent from on or about 1984 to 1992 when he sold it, via a stock purchase, to Mr. Robert Winters acting as agent for PCA Corporation (PCA) to which Mr. Tony Rezzuti was acting manager. Respondent has retained title to the property since he purchased it, in 1984, until the present.

2.2. During the succeeding years, different businesses have been in operation at the site. One of those businesses, was operated by Mr. Robert Winters, acting as Agent for PCA which

Mr. Tony Rezzuti was acting plant Manager. During this period, on March 31, 1993, the owner and operator of the business, Mr. Tony Rezzuti, on behalf of PCA, to which Mr. McKenzie was not a part of, submitted a Tiered Permitting Onsite Hazardous Waste treatment Notification Form (DTSC 1772) to DTSC, and was issued, by DTSC, on August 11, 1993 a Conditional Authorization. South Bay Plating, Incorporated a business owned by PCA and operated by Mr. Tony Rezutti as a plating shop, at this location, engaged in the generation and management of hazardous waste pursuant to a Conditional Authorization issued by DTSC on August 11, 1993. A Phase I Environmental Assessment Checklist (Phase I), was completed on or about December 30, 1996. SBP was operated by Mr. Tony Rezzuti at that time. Mr. Rezzuti then sold the business back to the Respondent on June 27, 1997. SBP has not submitted a Closure Plan or Notification of Closure to DTSC.

2.3. In a September 1995, a report entitled, Limited Subsurface Soil Investigation for the Area in the Vicinity of the Former Paint Stripping Operations and Existing Wastewater Treatment System, was prepared at the request and direction of the operator of SBP/PCA, Mr. Tony Rezzuti. The areas under investigation, the paint stripping operations area, the chemical storage area and the wastewater treatment system, are

surrounded by secondary containment to prevent leaks or spills from entering the environment. The investigation (conducted on April 25, 1995), consisted of installation of one soil boring in the vicinity of the existing wastewater treatment system, three borings in the vicinity of the former paint stripping operations area, and one soil boring in the vicinity of the former chemical storage area associated with the former paint stripping operations. The objective of the investigation was to determine whether the soil immediately surrounding or beneath the existing wastewater treatment system, former paint stripping operations area and former chemical storage area contained elevated levels of chemical constituents. The information contained in the investigation report was based on soil sampling results, visual observations and information provided by representatives of SBP.

A total of 19 soil samples were collected. The results of these samples were as follows: total chromium ranged from 11.3 mg/kg to 2,540 mg/kg; total copper was present in the soil in concentrations ranging from 14.4 mg/kg to 1,260 mg/kg; total nickel was present in concentrations ranging from 8.6 mg/kg to 2,310 mg/kg; total zinc was present in concentrations ranging from 38.7 mg/kg to 424 mg/kg; Perchloroethylene concentrations ranged from 0.01 mg/kg to 111 mg/kg, Trichloroethylene

concentrations ranged from 0.01 mg/kg to 17 mg/kg; Total Recoverable Petroleum Hydrocarbons were detected ranging from 16 mg/kg to 27,400 mg/kg; Total Petroleum Hydrocarbons as diesel was detected ranging from 10 mg/kg to 6,580 mg/kg.

In October 1996, a report entitled, Second Phase Subsurface Soil Investigation was prepared. The investigation was conducted in April and May 1996 in the vicinity of former paint stripping operations and the existing wastewater treatment system. Soil impacted with copper, chromium, nickel, zinc, perchloroethylene, trichloroethylene, total petroleum hydrocarbons and total recoverable petroleum hydrocarbons were detected at the site during a prior investigation. The objective of the second phase investigation was to determine the vertical and lateral extent of impact to soil in the vicinity of the former paint stripping operations and existing wastewater treatment system areas.

On January 9, 1997, DTSC received a Phase I from SBP/PCA. In the submittal, six (6) Areas of Concern were identified, which are: Open Process Tanks, Air Compressor, Miscellaneous Equipment Accumulation Area, Maintenance Building Chemical Storage Area, Polishing Bar Storage Area, Underground Storage Tanks. In addition, as mentioned on the

Signature/Certification page, the submittal also identified two (2) new areas, that were under investigation for soil contamination, which were: the paint stripping operations area and the wastewater treatment system area. DTSC conducted a Phase 1 verification inspection on February 11, 1998 to verify the existence of the six (6) areas of concern and the two (2) new areas.

2.4. Based on the findings of the reports dated September 1995, October 1996, the Phase I dated 1/9/97 and the verification inspection of 2/11/98, DTSC concluded that further investigation is needed to determine the nature and extent of contamination in the areas listed below:

- o paint stripping operations (no longer in use);
- o existing wastewater treatment system (in use);
- o open process tanks area;
- o air compressor area;
- o miscellaneous equipment accumulation area;
- o maintenance building chemical storage area;
- o polishing bar storage area (no longer in use); and
- o underground storage tanks (no longer in use).

2.5. Hazardous wastes or hazardous waste constituents have migrated or may migrate from the Facility into the environment through the following pathways: spills in secondary

containment areas and surface water runoff (rainfall).

2.6. The hazardous waste and hazardous waste constituents of concern at the Facility are chromium, copper, nickel, perchloroethylene, trichloroethylene, total petroleum hydrocarbons and total recoverable petroleum hydrocarbons.

2.7. The Facility is neighbored by manufacturing and processing facilities (Jorgensen, September 1995). The groundwater at the site was reported to be approximately 88 feet below ground surface. According to the Los Angeles County Department of Public Works records, the closest well to the site is well #1517, located approximately 2.75 miles north of the site.

2.8. Releases from the paint stripping area and wastewater treatment system area have a potential to enter the soil followed by the same releases contaminating groundwater. Employees could be exposed to various chemicals during working hours.

2.9. Mr. Winters and Mr. Rezutti broke the contract/agreement with Mr. McKenzie then sold the corporation business back to the Respondent on June 27, 1997. Then to which the subject facility was leased to "The Chrome Factory" to which also operated as a plating facility and as of today's date the facility is still operated as a plating facility.

### **PROJECT COORDINATOR**

3. Within fourteen (14) days of the effective date of this Consent Agreement, DTSC and Respondent shall each designate a Project Coordinator and shall notify each other in writing of the Project Coordinator selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Agreement and for designating a person to act in his/her absence. All communications between Respondent and DTSC, and all documents, report approvals, and other correspondence concerning the activities performed pursuant to this Consent Agreement shall be directed through the Project Coordinators. Each party may change its Project Coordinator with at least seven (7) days prior written notice. DTSC reserves the right to disapprove of Respondent's project coordinator.

### **WORK TO BE PERFORMED**

4. Respondent agrees to perform the work undertaken pursuant to this Consent Agreement in a manner consistent with: the attached Scope of Work; HSC and other applicable state and federal laws and their implementing regulations; and applicable DTSC and USEPA guidance documents. Applicable guidance

documents include, but are not limited to, the *Preliminary Endangerment Assessment* (PEA) guidance manual, *Test Methods for Evaluating Solid Waste* (SW-846) Update III, *Drilling, Coring, Sampling, and Logging at Hazardous Substance Release Sites* (July 1995)- State of California Environmental Protection Agency Guidance Manual, *Interim Guidance for Active Soil Gas Investigation* (February 25, 1997)- Los Angeles Regional Water Quality Control Board.

**INTERIM MEASURES (IM)**

5.1. If deemed necessary by DTSC, respondent shall evaluate available data and assess the need for interim measures in addition to those specifically required by this Consent Agreement. Interim measures shall be used whenever possible to control or abate immediate threats to human health and/or the environment, and to prevent and/or minimize the spread of contaminants while long-term corrective action alternatives are being evaluated.

5.2. If at any time Respondent identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, Respondent shall notify DTSC

Project Coordinator orally within 48 hours of discovery and notify DTSC in writing within 10 days of discovery summarizing the findings, including the immediacy and magnitude of the potential threat to human health and/or the environment. Within 30 days of receiving DTSC's written request, Respondent shall submit to DTSC an Interim Measures (IM) Work plan for approval. The IM Work plan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Work plan is subject to approval by DTSC and shall provide for the performance of all Interim Measures necessary to achieve stabilization at the Facility. If DTSC determines that immediate action is required, DTSC Project Coordinator may orally authorize the Respondent to act prior to DTSC's receipt of the IM Work plan.

5.3. If DTSC identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, DTSC will notify Respondent in writing. Within 30 days of receiving DTSC's written notification, Respondent shall submit to DTSC for approval an IM Work plan that identifies Interim Measures that will mitigate the threat. The IM Work plan shall include a schedule for submitting to DTSC an IM

Operation and Maintenance Plan and IM Plans and Specifications. The IM Work plan is subject to approval by DTSC and shall provide for the performance of all Interim Measures necessary to achieve stabilization at the Facility. If DTSC determines that immediate action is required, DTSC Project Coordinator may orally authorize Respondent to act prior to receipt of the IM Work plan.

5.4. All IM Work plans shall ensure that the Interim Measures are designed to mitigate current or potential threats to human health and/or the environment, and should, to the extent practicable, be consistent with the objectives of, and contribute to the performance of, any remedy which may be required at the Facility.

5.5. Concurrent with the submission of an IM Work plan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with the Scope of Work for a Health and Safety Plan, Attachment 2.

#### **PHASE II FACILITY INVESTIGATION (PHASE II)**

6.1. A draft report entitled, Phase II Site Investigation Work plan (Phase II Work plan) prepared by Applied Remediation Technologies for SBP was submitted to DTSC on May 7, 1999. The Phase II Work plan is subject to approval by DTSC and shall be

developed in a manner consistent with the Scope of Work for a Phase II Facility Investigation contained in Attachment 1.

DTSC will review the Phase II Work plan and notify Respondent in writing of DTSC's approval or disapproval.

6.2. The Phase II Work plan shall detail the methodology to: (1) identify and characterize all sources of contamination; (2) define the nature, degree, and extent of contamination; (3) define the rate of movement and direction of contamination flow; (4) characterize the potential pathways of contaminant migration; (5) identify actual or potential human and/or ecological receptors; and (6) support development of alternatives from which a corrective measure will be selected by DTSC. A specific schedule for implementation of all activities shall be included in the Phase II Work plan.

6.3. Respondent shall submit a Phase II Report to DTSC for approval in accordance with DTSC-approved Phase II Work plan schedule. The Phase II Report shall be developed in a manner consistent with the Scope of Work for a Facility Investigation contained in Attachment 1. If there is a phased investigation, separate FI Reports and a report that summarizes the findings from all phases of the FI must be submitted to DTSC. DTSC will review the Phase II Report and notify Respondent in writing of DTSC's approval or disapproval.

6.4. Concurrent with the submission of a Phase II Work plan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with Attachment 2.

6.5. Concurrent with the submission of a Phase II Work plan, Respondent shall submit for DTSC approval a Community Profile in accordance with Attachment 3. Based on the information provided in the Community Profile and any Supplement to the Community Profile, and DTSC's determination of the level of community concern about the Facility, Respondent shall prepare a Public Participation Plan.

6.6. Respondent shall evaluate the results of all sampling, tests and other data generated during the Phase II Facility Investigation in comparison with the current health-based screening levels for each contaminant. The Respondent will perform a cumulative Health Risk Assessment to establish cleanup levels pursuant to this Consent Agreement.

#### **CORRECTIVE MEASURES STUDY (CMS)**

7.1. If it becomes necessary to perform a subsequent phase of work, DTSC and Respondent will negotiate another Consent Agreement to address the additional work. If another Consent Agreement is not reached within sixty (60) days, DTSC reserves its right to issue an order or take any other action

provided for by law. DTSC's costs incurred in negotiating the subsequent Consent Agreement are considered costs incurred pursuant to this Consent Agreement and are payable under this Consent Agreement.

7.2. Respondent shall prepare a Corrective Measures Study if contaminant concentrations exceed current health-based action levels and/or if DTSC determines that the contaminants releases pose a potential threat to human health and/or the environment. The cumulative Health Risk Assessment should be used as a trigger point for requiring a CMS.

#### **REMEDY SELECTION**

8.1. DTSC will provide the public with an opportunity to review and comment on the final draft of the CMS Report, DTSC's proposed corrective measures for the Facility, and DTSC's justification for selection of such corrective measures. Depending on the level of community concern, DTSC may conduct a public hearing to obtain comments.

8.2. Following the public comment period, DTSC may select final corrective measures or require Respondent to revise the CMS Report and/or perform additional corrective measures studies.

8.3. DTSC will notify Respondent of the final corrective

measures selected by DTSC in the Final Decision and Response to Comments. The notification will include DTSC's reasons for selecting the corrective measures.

**CORRECTIVE MEASURES IMPLEMENTATION (CMI)**

9. After selection by DTSC of the corrective measures, DTSC may provide Respondent with an opportunity to negotiate the terms of another Consent Agreement for implementation of such corrective measures. If another Consent Agreement is not reached within sixty (60) days, DTSC reserves its right to issue an order or take any other action provided for by law. DTSC's costs incurred in negotiating the subsequent Consent Agreement are considered costs incurred pursuant to this Consent Agreement and are payable under this Consent Agreement.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT**

10. DTSC must comply with the California Environmental Quality Act (CEQA) insofar as activities required by this Consent Agreement are projects subject to CEQA. Respondent shall provide all information necessary to facilitate any CEQA analysis. DTSC will make an initial determination regarding the applicability of CEQA. If the activities are not exempt from CEQA, DTSC will conduct an Initial Study. Based on the results of the Initial Study, DTSC will determine if a Negative

Declaration or an Environmental Impact Report (EIR) should be prepared. DTSC will prepare and process any such Negative Declaration. However, should DTSC determine that an EIR is necessary, such an EIR would be prepared under a separate agreement between DTSC and Respondent.

#### **DTSC APPROVAL**

11.1. Respondent shall revise any Work plan, report, specification, or schedule in accordance with DTSC's written comments. Respondent shall submit to DTSC any revised documents by the due date specified by DTSC. Revised submittals are subject to DTSC's approval or disapproval.

11.2. Upon receipt of DTSC's written approval, Respondent shall commence work and implement any approved Work plan in accordance with the schedule and provisions contained therein.

11.3. Any DTSC approved Work plan, report, specification, or schedule required under this Consent Agreement shall be deemed incorporated into this Consent Agreement.

11.4. Verbal advice, suggestions, or comments given by DTSC representatives will not constitute an official approval or decision.

## SUBMITTALS

12.1. Beginning with the first full month following the effective date of this Consent Agreement, Respondent shall provide DTSC with bi-monthly progress reports of corrective action activities conducted pursuant to this Consent Agreement. Progress reports are due on the first day of the month. The progress reports shall conform to the Scope of Work for Progress Reports contained in Attachment 4. DTSC may adjust the frequency of progress reporting to be consistent with site-specific activities.

12.2. Any report or other document submitted by Respondent pursuant to this Consent Agreement shall be signed and certified by the project coordinator, a responsible corporate officer, or a duly authorized representative.

12.3. The certification required by paragraph 12.2 above, shall be in the following form:

I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those portions of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared at my direction in accordance with procedures designed to assure that qualified personnel properly gathered and

evaluated the information submitted.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

12.4. Respondent shall provide two copies of all documents, including but not limited to, work plans, reports, and correspondence of fifteen (15) pages or longer. Submittals specifically exempted from this copy requirement are all progress reports and correspondence of less than 15 pages, of which one copy is required.

12.5. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submissions relating to this Consent Agreement shall be in writing and shall be sent to the current Project Coordinators.

**PROPOSED CONTRACTOR/CONSULTANT**

13. All work performed pursuant to this Consent Agreement shall be under the direction and supervision of a professional engineer or registered geologist, registered in California, with expertise in hazardous waste site cleanup. Respondent's

contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities. Within fourteen (14) days of the effective date of this Consent Agreement, Respondent shall notify DTSC Project Coordinator in writing of the name, title, and qualifications of the professional engineer or registered geologist and of any contractors or consultants and their personnel to be used in carrying out the terms of this Consent Agreement. DTSC reserves the right to disapprove of Respondent's contractor and/or consultant.

#### **ADDITIONAL WORK**

14. DTSC may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications are necessary in addition to, or in lieu of, the tasks and deliverables included in any part of DTSC-approved work plans. DTSC shall request in writing that Respondent perform the additional work and shall specify the basis and reasons for DTSC's determination that the additional work is necessary. Within fourteen (14) days after the receipt of such determination, Respondent may confer with DTSC to discuss the additional work DTSC has requested. If required by DTSC,

Respondent shall submit a Work plan to DTSC for the additional work. Such Work plan shall be submitted to DTSC within thirty (30) days of receipt of DTSC's determination or according to an alternate schedule established by DTSC. Upon approval of a Work plan, Respondent shall implement it in accordance with the provisions and schedule contained therein. The need for, and disputes concerning, additional work are subject to the dispute resolution procedures specified in this Consent Agreement.

#### **QUALITY ASSURANCE**

15.1. All sampling and analyses performed by Respondent under this Consent Agreement shall follow applicable DTSC and USEPA guidance for sampling and analysis. Work plans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved work plans must be approved by DTSC prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report (e.g., Phase II Report).

15.2. The names, addresses, and telephone numbers of the California State certified analytical laboratories Respondent proposes to use must be specified in the applicable work plans.

### **SAMPLING AND DATA/DOCUMENT AVAILABILITY**

16.1. Respondent shall submit to DTSC upon request the results of all sampling and/or tests or other data generated by its employees, agents, consultants, or contractors pursuant to this Consent Agreement.

16.2. Respondent shall notify DTSC in writing at least seven (7) days prior to beginning each separate phase of field work approved under any Work plan required by this Consent Agreement. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from DTSC Project Coordinator or, if the Project Coordinator is unavailable, his/her Branch Chief, to commence such activities immediately.

16.3. At the request of DTSC, Respondent shall provide or allow DTSC or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this Consent Agreement. Similarly, at the request of Respondent, DTSC shall allow Respondent or its authorized representative to take split or duplicate samples of all samples collected by DTSC under this Consent Agreement.

### **ACCESS**

17. Subject to the Facility's security and safety

procedures, Respondent agrees to provide DTSC and its representatives access at all reasonable times to the Facility and any other property to which access is required for implementation of this Consent Agreement and shall permit such persons to inspect and copy all records, files, photographs, documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Agreement and that are within the possession or under the control of Respondent or its contractors or consultants.

**RECORD PRESERVATION**

18.1. Respondent shall retain, during the pendency of this Consent Agreement and for a minimum of six (6) years after its termination, all data, records, and documents that relate in any way to the performance of this Consent Agreement or to hazardous waste management and/or disposal at the Facility. After this time, Respondent shall notify DTSC in writing ninety (90) days prior to the destruction of any such records, and shall provide DTSC with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this Consent Agreement and shall be addressed to:

Stephen W. Lavinger, Chief  
Southern California Branch  
Statewide Regulatory Programs Division  
Department of Toxic Substances Control

5796 Corporate Avenue  
Cypress, California 90630

18.2. If Respondent retains or employs any agent, consultant, or contractor for the purpose of carrying out the terms of this Consent Agreement, Respondent will require any such agents, consultants, or contractors to provide Respondent a copy of all documents produced pursuant to this Consent Agreement.

18.3. All documents pertaining to this Consent Agreement shall be stored in a central location at the Facility to afford ease of access by DTSC and its representatives.

#### **DISPUTE RESOLUTION**

19.1. The parties agree to use their best efforts to resolve all disputes informally. The parties agree that the procedures contained in this section are the sole administrative procedures for resolving disputes arising under this Consent Agreement. If Respondent fails to follow the procedures contained in this section, it shall have waived its right to further consideration of the disputed issue.

19.2. If Respondent disagrees with any written decision by DTSC pursuant to this Consent Agreement, Respondent's Project Coordinator shall orally notify DTSC Project Coordinator of the dispute. The Project Coordinators shall

attempt to resolve the dispute informally.

19.3. If the Project Coordinators cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objection in writing. Respondent's written objection must be forwarded to:

Stephen W. Lavinger, Chief  
Southern California Branch  
Statewide Regulatory Programs Division  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, California 90630

A copy of the objection shall be forwarded to DTSC Project Coordinator. The written objection must be mailed to the Branch Chief within fourteen (14) days of Respondent's receipt of DTSC's written decision. Respondent's written objection must set forth the specific points of the dispute and the basis for Respondent's position.

19.4. DTSC and Respondent shall have fourteen (14) days from DTSC's receipt of Respondent's written objection to resolve the dispute through formal discussions. This period may be extended by DTSC for good cause. During such period, Respondent may meet or confer with DTSC to discuss the dispute.

19.5. After the formal discussion period, DTSC will provide the Respondent with its written decision on the dispute. DTSC's written decision will reflect any agreements reached during the formal discussion period and be signed by

Chief, Southern California Branch, Statewide Regulatory Programs Division, Department of Toxic Substances Control, or his/her Designee.

19.6. During the pendency of all dispute resolution procedures set forth above, the time periods for completion of work to be performed under this Consent Agreement that are affected by such dispute shall be extended for a period of time not to exceed the actual time taken to resolve the dispute. The existence of a dispute shall not excuse, toll, or suspend any other compliance obligation or deadline required pursuant to this Consent Agreement.

#### **RESERVATION OF RIGHTS**

20.1. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Consent Agreement. This Consent Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation on any rights, remedies, powers, or authorities, civil or criminal, that DTSC has under any statutory, regulatory, or common law authority.

20.2. DTSC reserves the right to disapprove of work performed by Respondent pursuant to this Consent Agreement and

to request that Respondent perform additional tasks.

20.3. DTSC reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and/or remedial actions it deems necessary to protect human health and/or the environment. DTSC may exercise its authority under any applicable state or federal law or regulation to undertake response actions at any time. DTSC reserves its right to seek reimbursement from Respondent for costs incurred by the State of California with respect to such actions. DTSC will notify Respondent in writing as soon as practicable regarding the decision to perform any work described in this section.

20.4. If DTSC determines that activities in compliance or noncompliance with this Consent Agreement have caused or may cause a release of hazardous waste and/or hazardous waste constituents, or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work required, DTSC may order Respondent to stop further implementation of this Consent Agreement for such period of time as DTSC determines may be needed to abate any such release or threat and/or to undertake any action which DTSC determines is necessary to abate or redress such release or threat. The deadlines for any actions required of

Respondent under this Consent Agreement affected by the order to stop work shall be extended to take into account DTSC's actions.

20.5. This Consent Agreement is not intended to be nor shall it be construed to be a permit. The parties acknowledge and agree that DTSC's approval of any Work plan, plan, and/or specification does not constitute a warranty or representation that the work plans, plans, and/or specifications will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Consent Agreement shall not relieve Respondent of its obligations to comply with HSC or any other applicable local, state, or federal law or regulation.

#### **OTHER CLAIMS**

21. Except as provided in this Consent Agreement, nothing in this Consent Agreement shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or

migrating from the Facility.

**OTHER APPLICABLE LAWS**

22. All actions required to be taken pursuant to this Consent Agreement shall be undertaken in accordance with the requirements of all local, state, and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

**REIMBURSEMENT OF DTSC'S COSTS**

23.1. Respondent shall pay DTSC's costs incurred in the implementation of this Consent Agreement.

23.2. An estimate of DTSC's costs is attached as Exhibit A showing the amount of \$19,356. It is understood by the parties that the amount shown on Exhibit A is an estimate only and may differ from the actual costs incurred by DTSC in implementing this Consent Agreement.

23.3 Respondent shall make an advance payment to DTSC in the amount of \$8,000 within 30 days of the effective date of this Consent Agreement. If the advance payment exceeds DTSC's costs, DTSC will refund the balance within 120 days after the execution of the Acknowledgment of Satisfaction pursuant to Section 25 of this Consent Agreement.

23.4. After the advance payment, DTSC will provide Respondent with a billing statement at least quarterly, which will include the name of the employee, identification of the activity, the amount of time spent on each activity, and the hourly rate charged. If Respondent does not pay an invoice within 60 days, the amount is subject to interest as provided by HSC section 25360.1.

23.5. DTSC will retain all costs records associated with the work performed under this Consent Agreement as required by state law. DTSC will make all documents which support the Department's cost determination available for inspection upon request, as provided by the Public Records Act.

23.6. Any dispute concerning costs pursuant to this Consent Agreement is subject to the Dispute Resolution provision of this Consent Agreement. DTSC reserves its right to recover unpaid costs under applicable state and federal laws.

23.7. All payments shall be made within 30 days of the date of the billing statement by check payable to the Department of Toxic Substances Control and shall be sent to:

Accounting Unit  
Department of Toxic Substances Control  
P. O. Box 806  
Sacramento, California 95812-0806

All checks shall reference the name of the Facility, the

Respondent's name and address, and the docket number of this Consent Agreement. Copies of all checks and letters transmitting such checks shall be sent simultaneously to DTSC's Project Coordinator.

#### **MODIFICATION**

24.1. This Consent Agreement may be modified by mutual agreement of the parties. Any agreed modifications shall be in writing, shall be signed by both parties, shall have as their effective date the date on which they are signed by DTSC, and shall be deemed incorporated into this Consent Agreement.

24.2. Any requests for revision of an approved Work plan requirement must be in writing. Such requests must be timely and provide justification for any proposed Work plan revision. DTSC has no obligation to approve such requests, but if it does so, such approval will be in writing and signed by the Chief, Southern California Branch, Statewide Regulatory Programs Division, Department of Toxic Substances Control, or his or her designee. Any approved Work plan modification shall be incorporated by reference into this Consent Agreement.

#### **TERMINATION AND SATISFACTION**

25. The provisions of this Consent Agreement shall be

deemed satisfied upon the execution by both parties of an Acknowledgment of Satisfaction (Acknowledgment). DTSC will prepare the Acknowledgment for Respondent's signature. The Acknowledgment will specify that Respondent has demonstrated to the satisfaction of DTSC that the terms of this Consent Agreement including payment of DTSC's costs have been satisfactorily completed. The Acknowledgment will affirm Respondent's continuing obligation to preserve all records after the rest of the Consent Agreement is satisfactorily completed.

#### **EFFECTIVE DATE**

26. The effective date of this Consent Agreement shall be the date on which this Consent Agreement is signed by all the parties. Except as otherwise specified, "days" means calendar days.

#### **SIGNATORIES**

27. Each undersigned representative certifies that he or she is fully authorized to enter into this Consent Agreement.

Date: May 25, 1999 By: Signed by Gary McKenzie  
Signature/Respondent

Date: June 10, 1999 By: Signed by Stephen W. Lavinger  
Stephen W. Lavinger, Chief  
Southern California Branch  
Statewide Regulatory Programs Division  
Department of Toxic Substances Control