

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

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2
3 IN THE MATTER OF:) Docket SRPD01/02SCC-4273
4)
5 Hixson Metal Finishing,)
6 Incorporated)
7 829 Production Place)
8 Newport Beach, California 92663)
9 ID No. CAD008357295) CORRECTIVE ACTION
10) CONSENT AGREEMENT
11)
12)
13 Respondent.)
14) Health and Safety Code
15) Sections 25187 and 25200.14
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INTRODUCTION

14 1. The Department of Toxic Substances Control (DTSC) and
15 Hixson Metal Finishing, Incorporated (Respondent) enter into this
16 Corrective Action Consent Agreement (Consent Agreement) and agree
17 as follows:

18 1.1. Jurisdiction exists pursuant to Health and Safety
19 Code section 25187 and 25200.14, which authorize DTSC to issue an
20 order to require corrective action when DTSC determines that
21 there is or may be a release of hazardous waste or hazardous
22 waste constituents into the environment from a hazardous waste
23 facility.

25 1.2. The parties enter into this Consent Agreement to
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1 avoid the expense of litigation and to carry out promptly the
2 corrective action described below.

3 1.3. Respondent is the owner and operator of a hazardous
4 waste facility located at 817-853 Production Place, Newport
5 Beach, California(Facility).

6 1.4. Respondent engages in the management of hazardous
7 waste pursuant to a Permit By Rule issued by DTSC on July 29,
8 1993, and a Cyanide Treatment Consent Agreement Order Number SRPD
9 00/01SCB-4014 dated June 13, 2001.

10 1.5. The terms used in this Consent Agreement are as
11 defined in California Code of Regulations, title 22, section
12 66260.10, except as otherwise provided.

13 1.6. Respondent agrees to implement all DTSC-approved
14 workplans and to undertake all actions required by the terms and
15 conditions of this Consent Agreement, including any portions of
16 this Consent Agreement incorporated by reference.

17 1.7. Respondent waives any right to request a hearing on
18 this Consent Agreement pursuant to Health and Safety Code section
19 25187.
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21 FINDINGS OF FACT

22 2.1. On February 1, 2000, Respondent submitted a Phase I
23 Environmental Assessment pursuant to Health and Safety Code
24 section 25200.14. The Phase I Environmental Assessment
25 identifies solid waste management units (SWMUs) and/or areas of
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1 concern (AOCs) that either have released or may release hazardous
2 waste or hazardous waste constituents into the environment. DTSC
3 conducted a site inspection of the Facility. Based on the site
4 inspection and the information available to DTSC, DTSC has
5 identified 12 solid waste management units (SWMUs) and/or areas
6 of concerns (AOCs) that either have released or may release
7 hazardous waste or hazardous waste constituents into the
8 environment. The following SWMUs were identified as a result of
9 the inspection and review of the documents submitted to DTSC by
10 the Respondent:

11 SWMU1 - Building 853: solvent storage, hazardous waste storage,
12 chemical storage, spray booth

13 SWMU2 - Yard: oxidizer, poison, flammable liquid storage

14 SWMU3 - Building 835: spray booth, degreaser, maintenance

15 SWMU4 - Building 835: General Plating: sump, trenches, former
16 plating operations

17 SWMU5 - Building 835: Precious Metals: sump, trenches

18 SWMU6 - Waste water treatment and black oxide operation

19 SWMU7 - Building 829: former chrome plating department sumps and
20 trenches

21 SWMU8 - Building 829: former degreasing operations

22 SWMU9 - Building 829: cadmium stripping operations, electroless
23 nickel department, anodizing department

24 SWMU10 - Building 817: current and former degreasing operations,
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1 former chromate tank

2 SWMU11 - Former fuel UST

3 SWMU12 - Ground water

4 2.2. Based on the information available to DTSC, DTSC
5 concludes that further investigation is needed to determine the
6 nature and extent of any release of hazardous waste or hazardous
7 waste constituents for the entire facility and the ground water.

8 2.3. The hazardous waste and hazardous waste
9 constituents of concern at the Facility are: cyanide, copper,
10 cadmium, chromic acid, nickel, lead, vanadium, zinc, nitric acid,
11 sulfuric acid, hydrochloric acid, sodium hydroxide, other
12 alkaline solutions, solvents (halogenated and non-halogenated),
13 Volatile Organic Compounds (VOCs), and oils (Semi-Volatile
14 Organics)

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16 2.4. Hazardous wastes or hazardous waste constituents
17 have migrated or may migrate from the Facility into the
18 environment through the following pathways: soils, groundwater,
19 airborne dust, particulate matter, vapors.

20 2.5. The Facility is located near single family and
21 multifamily residential properties to the south and east, and
22 commercial properties to the north and west. The Facility is
23 located within a mile of the Newport Bay. Depth to groundwater at
24 the Facility is forty to fifty feet below the ground surface.

25 2.6. Releases from the Facility may migrate or may have
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1 migrated toward the neighboring residential and commercial
2 properties, and the Newport Bay.

3 PROJECT COORDINATOR

4 3. Within 14 days of the effective date of this Consent
5 Agreement, DTSC and Respondent shall each designate a Project
6 Coordinator and shall notify each other in writing of the Project
7 Coordinator selected. Each Project Coordinator shall be
8 responsible for overseeing the implementation of this Consent
9 Agreement and for designating a person to act in his/her absence.
10 All communications between Respondent and DTSC, and all
11 documents, report approvals, and other correspondence concerning
12 the activities performed pursuant to this Consent Agreement shall
13 be directed through the Project Coordinators. Each party may
14 change its Project Coordinator with at least seven days prior
15 written notice.
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17 WORK TO BE PERFORMED

18 4. Respondent agrees to perform the work required by
19 this Consent Agreement in accordance with the applicable state
20 and federal laws, their implementing regulations, and the
21 applicable DTSC and the United States Environmental Protection
22 Agency guidance documents.

23 INTERIM MEASURES (IM)

24 5.1. Respondent shall evaluate available data and assess
25 the need for interim measures in addition to those specifically
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1 required by this Consent Agreement. Interim measures shall be
2 used whenever possible to control or abate immediate threats to
3 human health and/or the environment, and to prevent and/or
4 minimize the spread of contaminants while long-term corrective
5 action alternatives are being evaluated.

6 5.2. Within 180 days of the effective date of this
7 Consent Agreement, Respondent shall submit a Current Conditions
8 Report to DTSC. The Current Conditions Report is subject to
9 approval by DTSC and shall be developed in a manner consistent
10 with the Scope of Work for a Facility Investigation contained in
11 Attachment 1. The Current Conditions Report shall contain an
12 assessment of interim measures. The assessment must include both
13 previously implemented interim measures and other interim
14 measures that could be implemented at the Facility. The
15 assessment must also identify any additional data needed for
16 making decisions on interim measures. This new data or
17 information shall be collected during the early stages of the
18 RCRA Facility Investigation. DTSC will review the Respondent's
19 assessment and determine which interim measures, if any,
20 Respondent will implement at the Facility. If deemed appropriate
21 by DTSC, such determination may be deferred until additional data
22 are collected.
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24 5.3. If at any time Respondent identifies an immediate
25 or potential threat to human health and/or the environment,
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1 discovers new releases of hazardous waste and/or hazardous waste
2 constituents, or discovers new solid waste management units not
3 previously identified, Respondent shall notify DTSC Project
4 Coordinator orally within 48 hours of discovery and notify DTSC
5 in writing within 10 days of discovery summarizing the findings,
6 including the immediacy and magnitude of the potential threat to
7 human health and/or the environment. Within 90 days of receiving
8 DTSC's written request, Respondent shall submit to DTSC an IM
9 Workplan for approval. The IM Workplan shall include a schedule
10 for submitting to DTSC an IM Operation and Maintenance Plan and
11 IM Plans and Specifications. The IM Workplan, IM Operation and
12 Maintenance Plan, and IM Plans and Specifications shall be
13 developed in a manner consistent with the Scope of Work for
14 Interim Measures Implementation contained in as Attachment 5. If
15 DTSC determines that immediate action is required, DTSC Project
16 Coordinator may orally authorize the Respondent to act prior to
17 DTSC's receipt of the IM Workplan.

19 5.4. If DTSC identifies an immediate or potential threat
20 to human health and/or the environment, discovers new releases of
21 hazardous waste and/or hazardous waste constituents, or discovers
22 new solid waste management units not previously identified, DTSC
23 will notify Respondent in writing. Within 90 days of receiving
24 DTSC's written notification, Respondent shall submit to DTSC for
25 approval an IM Workplan that identifies Interim Measures that
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1 will mitigate the threat. The IM Workplan shall include a
2 schedule for submitting to DTSC an IM Operation and Maintenance
3 Plan and IM Plans and Specifications. The IM Workplan, IM
4 Operation and Maintenance Plan, and IM Plans and Specifications
5 shall be developed in a manner consistent with the Scope of Work
6 for Interim Measures Implementation contained in as Attachment 5.
7 If DTSC determines that immediate action is required, DTSC
8 Project Coordinator may orally authorize Respondent to act prior
9 to receipt of the IM Workplan.

10 5.5. All IM Workplans shall ensure that the Interim
11 Measures are designed to mitigate current or potential threats to
12 human health and/or the environment, and should, to the extent
13 practicable, be consistent with the objectives of, and contribute
14 to the performance of, any remedy which may be required at the
15 Facility.

16 5.6. Concurrent with the submission of an IM Workplan,
17 Respondent shall submit to DTSC a Health and Safety Plan in
18 accordance with the Scope of Work for a Health and Safety Plan
19 contained in Attachment 2.

20 5.7. Concurrent with the submission of an IM Workplan,
21 Respondent shall submit to DTSC for approval a Community Profile
22 in accordance with Attachment 3. Based on the information
23 provided in the Community Profile, if DTSC determines that there
24 is a high level of community concern about the Facility, DTSC may
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1 require Respondent to prepare a Public Participation Plan.

2 FACILITY INVESTIGATION (FI)

3 6.1. Within 360 days of the effective date of this
4 Consent Agreement, Respondent shall submit to DTSC a Workplan for
5 a Facility Investigation ("FI Workplan"). The FI Workplan is
6 subject to approval by DTSC and shall be developed in a manner
7 consistent with the Scope of Work for a Facility Investigation
8 contained in Attachment 1. DTSC will review the FI Workplan and
9 notify Respondent in writing of DTSC's approval or disapproval.

10 6.2. Respondent shall complete Facility Investigation
11 within 5 years of the effective date of the Agreement or within
12 180 days of a closure notification which ever comes first.

13 6.3. The FI Workplan shall detail the methodology to:

- 14 (1) gather data needed to make decisions on interim measures/
15 stabilization during the early phases of the RCRA Facility
16 Investigation; (2) identify and characterize all sources of
17 contamination; (3) define the nature, degree and extent of
18 contamination; (4) define the rate of movement and direction of
19 contamination flow; (5) characterize the potential pathways of
20 contaminant migration; (6) identify actual or potential human
21 and/or ecological receptors; and (7) support development of
22 alternatives from which a corrective measure will be selected by
23 DTSC. A specific schedule for implementation of all activities
24 shall be included in the FI Workplan.
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1 6.4. Respondent shall submit a FI Report to DTSC for
2 approval in accordance with DTSC-approved FI Workplan schedule.
3 The FI Report shall be developed in a manner consistent with the
4 Scope of Work for a Facility Investigation contained in
5 Attachment 1. If there is a phased investigation, separate FI
6 Reports and a report that summarizes the findings from all phases
7 of the FI must be submitted to DTSC. DTSC will review the FI
8 Report(s) and notify Respondent in writing of DTSC's approval or
9 disapproval.

10 Concurrent with the submission of a FI Workplan, Respondent shall
11 submit to DTSC a Health and Safety Plan in accordance with
12 Attachment 2. If Workplans for both an IM and FI are required by
13 this Consent Agreement, Respondent may submit a single Health and
14 Safety Plan that addresses the combined IM and FI activities.

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16 6.5. DTSC may require Respondent to prepare a FI Summary
17 Fact Sheet. If required, Respondent shall submit a FI Summary
18 Fact Sheet to DTSC that summarizes the findings from all phases
19 of the FI. The FI Summary Fact Sheet shall be submitted to DTSC
20 in accordance with the schedule contained in the approved FI
21 Workplan. DTSC will review the FI Summary Fact Sheet and notify
22 Respondent in writing of DTSC's approval or disapproval,
23 including any comments and/or modifications. When DTSC approves
24 the FI Summary Fact Sheet, Respondent shall mail the approved FI
25 Summary Fact Sheet to all individuals on a mailing list
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1 established pursuant to California Code Regulations, title 22,
2 section 66271.9(c)(1)(D), within 15 calendar days of receipt of
3 written approval.

4 6.6. Concurrent with the submission of a FI Workplan,
5 Respondent shall submit to DTSC for approval a Community Profile
6 in accordance with Attachment 3. Based on the information
7 provided in the Community Profile and any Supplement to the
8 Community Profile, if DTSC determines that there is a high level
9 of community concern about the Facility, Respondent shall prepare
10 a Public Participation Plan.

11 RISK ASSESSMENT

12 7. Based on the information available to DTSC,
13 Respondent may be required to conduct a Risk Assessment to
14 evaluate potential human health risk and ecological risk and to
15 establish site-specific action levels and cleanup standards. If
16 DTSC determines that a Risk Assessment is required, Respondent
17 shall submit to DTSC for approval a Risk Assessment Workplan
18 within 90 days of receipt of DTSC's determination. Respondent
19 shall submit to DTSC for approval a Risk Assessment Report in
20 accordance with DTSC-approved Risk Assessment Workplan schedule.

21 CORRECTIVE MEASURES STUDY (CMS)

22 8.1. Respondent shall prepare a Corrective Measures
23 Study, if contaminant concentrations exceed human health-based or
24 ecologically-based action levels established by the DTSC-approved
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1 Risk Assessment Report if one is required under this Consent
2 Agreement, or if DTSC otherwise determines that the contaminant
3 releases pose a potential threat to human health or the
4 environment.

5 8.2. Within 90 days of DTSC's approval of the FI Report
6 (or Respondent's receipt of a written request from DTSC)
7 Respondent shall submit a CMS Workplan to DTSC. The CMS Workplan
8 is subject to approval by DTSC and shall be developed in a manner
9 consistent with the Scope of Work for a Corrective Measures Study
10 contained in Attachment 6.

11 8.3. The CMS Workplan shall detail the methodology for
12 developing and evaluating potential corrective measures to remedy
13 any contamination at the Facility. The CMS Workplan shall
14 identify the potential corrective measures, including any
15 innovative technologies, that may be used for the containment,
16 treatment, remediation, and/or disposal of contamination.

17 8.4. Respondent shall prepare treatability studies for
18 all potential corrective measures that involve treatment except
19 where Respondent can demonstrate to DTSC's satisfaction that they
20 are not needed. The CMS Workplan shall include, at a minimum, a
21 summary of the proposed treatability study including a conceptual
22 design, a schedule for submitting a treatability study workplan,
23 or Respondent's justification for not proposing a treatability
24 study.
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1 Respondent shall submit to DTSC a Corrective Measures
2 Implementation (CMI) Workplan. The CMI Workplan is subject to
3 approval by DTSC and shall be developed in a manner consistent
4 with the Scope of Work for Corrective Measures Implementation
5 contained in Attachment 7.

6 10.2. Concurrent with the submission of a CMI Workplan,
7 Respondent shall submit to DTSC a Health and Safety Plan in
8 accordance with Attachment 2.

9 10.3. The CMI program shall be designed to facilitate
10 the design, construction, operation, maintenance, and monitoring
11 of corrective measures at the Facility. In accordance with the
12 schedule contained in the approved CMI Workplan, Respondent shall
13 submit to DTSC the documents listed below, to the extent
14 applicable. These documents shall be developed in a manner
15 consistent with the Scope of Work for Corrective Measures
16 Implementation contained in Attachment 7.

- 17 o Operation and Maintenance Plan
- 18 o Draft Plans and Specifications
- 19 o Final Plans and Specifications
- 20 o Construction Workplan
- 21 o Construction Completion Report
- 22 o Corrective Measures Completion Report

23 10.5. DTSC will review all required CMI documents and
24 notify Respondent in writing of DTSC's approval or disapproval.
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1 be prepared under a separate agreement between DTSC and
2 Respondent.

3 DTSC APPROVAL

4 12.1. Respondent shall revise any workplan, report,
5 specification, or schedule in accordance with DTSC's written
6 comments. Respondent shall submit to DTSC any revised documents
7 by the due date specified by DTSC. Revised submittals are
8 subject to DTSC's approval or disapproval.

9 12.2. Upon receipt of DTSC's written approval,
10 Respondent shall commence work and implement any approved
11 workplan in accordance with the schedule and provisions contained
12 therein.

13 12.3. Any DTSC-approved workplan, report, specification,
14 or schedule required under this Consent Agreement shall be deemed
15 incorporated into this Consent Agreement.

16 12.4. Verbal advice, suggestions, or comments given by
17 DTSC representatives will not constitute an official approval or
18 decision.
19

20 SUBMITTALS

21 13.1. Beginning with the first full month following the
22 effective date of this Consent Agreement, Respondent shall
23 provide DTSC with quarterly progress reports of corrective action
24 activities conducted pursuant to this Consent Agreement.
25 Progress reports are due on the first day of the first month
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1 following the close of each reporting period. The progress
2 reports shall conform to the Scope of Work for Progress Reports
3 contained in Attachment 4. DTSC may adjust the frequency of
4 progress reporting to be consistent with site-specific
5 activities.

6 13.2. Respondent shall provide DTSC with the first
7 quarterly groundwater monitoring report on or before July 1,
8 2003.

9 13.3. Respondent shall provide DTSC with the first full
10 year groundwater monitoring report on or before July 1, 2004.

11 13.4. Respondent shall provide DTSC with the Soil and
12 Soil Gas Facility Investigation Summary Report on or before July
13 1, 2005.

14 13.5. Respondent shall complete Facility investigation
15 and remediation on or before July 1, 2007.

16 13.6. Any report or other document submitted by
17 Respondent pursuant to this Consent Agreement shall be signed and
18 certified by the project coordinator, a responsible corporate
19 officer, or a duly authorized representative.

20 13.3. The certification required by paragraph 13.2
21 above, shall be in the following form:

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

6
7 Signature: _____

8 Name: _____

9 Title: _____

10 Date: _____
11

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13 13.4. Respondent shall provide three copies of all
14 documents, including but not limited to, workplans, reports, and
15 correspondence. Submittals specifically exempted from this copy
16 requirement are all progress reports and correspondence of less
17 than 15 pages, of which one copy is required.

18 13.5. Unless otherwise specified, all reports,
19 correspondence, approvals, disapprovals, notices, or other
20 submissions relating to this Consent Agreement shall be in
21 writing and shall be sent to the current Project Coordinators.

22 PROPOSED CONTRACTOR/CONSULTANT

23 14. All work performed pursuant to this Consent
24 Agreement shall be under the direction and supervision of a
25 professional engineer or registered geologist, registered in
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1 California, with expertise in hazardous waste site cleanup.
2 Respondent's contractor or consultant shall have the technical
3 expertise sufficient to fulfill his or her responsibilities.
4 Within 14 days of the effective date of this Consent Agreement,
5 Respondent shall notify DTSC Project Coordinator in writing of
6 the name, title, and qualifications of the professional engineer
7 or registered geologist and of any contractors or consultants and
8 their personnel to be used in carrying out the terms of this
9 Consent Agreement.

10 ADDITIONAL WORK

11 15. DTSC may determine or Respondent may propose that
12 certain tasks, including investigatory work, engineering
13 evaluation, or procedure/methodology modifications are necessary
14 in addition to, or in lieu of, the tasks and deliverables
15 included in any part of DTSC-approved workplans. DTSC shall
16 request in writing that Respondent perform the additional work
17 and shall specify the basis and reasons for DTSC's determination
18 that the additional work is necessary. Within 14 days after the
19 receipt of such determination, Respondent may confer with DTSC to
20 discuss the additional work DTSC has requested. If required by
21 DTSC, Respondent shall submit to DTSC a workplan for the
22 additional work. Such workplan shall be submitted to DTSC within
23 30 days of receipt of DTSC's determination or according to an
24 alternate schedule established by DTSC. Upon approval of a
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1 workplan, Respondent shall implement it in accordance with the
2 provisions and schedule contained therein. The need for, and
3 disputes concerning, additional work are subject to the dispute
4 resolution procedures specified in this Consent Agreement.

5 QUALITY ASSURANCE

6 16.1. All sampling and analyses performed by Respondent
7 under this Consent Agreement shall follow applicable DTSC and
8 USEPA guidance for sampling and analysis. Workplans shall
9 contain quality assurance/quality control and chain of custody
10 procedures for all sampling, monitoring, and analytical
11 activities. Any deviations from the approved workplans must be
12 approved by DTSC prior to implementation, must be documented,
13 including reasons for the deviations, and must be reported in the
14 applicable report.
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16 16.2. The names, addresses, and telephone numbers of the
17 California State certified analytical laboratories Respondent
18 proposes to use must be specified in the applicable workplans.

19 SAMPLING AND DATA/DOCUMENT AVAILABILITY

20 17.1. Respondent shall submit to DTSC upon request the
21 results of all sampling and/or tests or other data generated by
22 its employees, agents, consultants, or contractors pursuant to
23 this Consent Agreement.

24 17.2. Respondent shall notify DTSC in writing at least
25 seven days prior to beginning each separate phase of field work
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1 approved under any workplan required by this Consent Agreement.
2 If Respondent believes it must commence emergency field
3 activities without delay, Respondent may seek emergency telephone
4 authorization from DTSC Project Coordinator or, if the Project
5 Coordinator is unavailable, his/her Branch Chief, to commence
6 such activities immediately.

7 17.3. At the request of DTSC, Respondent shall provide
8 or allow DTSC or its authorized representative to take split or
9 duplicate samples of all samples collected by Respondent pursuant
10 to this Consent Agreement. Similarly, at the request of
11 Respondent, DTSC shall allow Respondent or its authorized
12 representative to take split or duplicate samples of all samples
13 collected by DTSC under this Consent Agreement.
14

15 ACCESS

16 18. Subject to the Facility's security and safety
17 procedures, Respondent agrees to provide DTSC and its
18 representatives access at all reasonable times to the Facility
19 and any off-site property to which access is required for
20 implementation of this Consent Agreement and shall permit such
21 persons to inspect and copy all records, files, photographs,
22 documents, including all sampling and monitoring data, that
23 pertain to work undertaken pursuant to this Consent Agreement and
24 that are within the possession or under the control of Respondent
25 or its contractors or consultants.
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DISPUTE RESOLUTION

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2 20.1. The parties agree to use their best efforts to
3 resolve all disputes informally. The parties agree that the
4 procedures contained in this section are the sole administrative
5 procedures for resolving disputes arising under this Consent
6 Agreement. If Respondent fails to follow the procedures
7 contained in this section, it shall have waived its right to
8 further consideration of the disputed issue.

9 20.2. If Respondent disagrees with any written decision
10 by DTSC pursuant to this Consent Agreement, Respondent's Project
11 Coordinator shall orally notify DTSC's Project Coordinator of the
12 dispute. The Project Coordinators shall attempt to resolve the
13 dispute informally.

14 20.3. If the Project Coordinators cannot resolve the
15 dispute informally, Respondent may pursue the matter formally by
16 placing its objection in writing. Respondent's written objection
17 must be forwarded to Chief, State Regulatory Programs Branch,
18 Hazardous Waste Management Program, Department of Toxic
19 Substances Control, with a copy to DTSC's Project Coordinator.
20 The written objection must be mailed to the Branch Chief within
21 14 days of Respondent's receipt of DTSC's written decision.
22 Respondent's written objection must set forth the specific points
23 of the dispute and the basis for Respondent's position.
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25 20.4. DTSC and Respondent shall have 14 days from DTSC's
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1 receipt of Respondent's written objection to resolve the dispute
2 through formal discussions. This period may be extended by DTSC
3 for good cause. During such period, Respondent may meet or
4 confer with DTSC to discuss the dispute.

5 20.5. After the formal discussion period, DTSC will
6 provide Respondent with its written decision on the dispute.
7 DTSC's written decision will reflect any agreements reached
8 during the formal discussion period and be signed by the Branch
9 Chief or his/her designee.

10 20.6. During the pendency of all dispute resolution
11 procedures set forth above, the time periods for completion of
12 work required under this Consent Agreement that are affected by
13 such dispute shall be extended for a period of time not to exceed
14 the actual time taken to resolve the dispute. The existence of a
15 dispute shall not excuse, toll, or suspend any other compliance
16 obligation or deadline required pursuant to this Consent
17 Agreement.
18

19 RESERVATION OF RIGHTS

20 21.1. DTSC reserves all of its statutory and regulatory
21 powers, authorities, rights, and remedies, which may pertain to
22 Respondent's failure to comply with any of the requirements of
23 this Consent Agreement. Respondent reserves all of its statutory
24 and regulatory rights, defenses and remedies, as they may arise
25 under this Consent Agreement. This Consent Agreement shall not
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1 be construed as a covenant not to sue, release, waiver, or
2 limitation on any powers, authorities, rights, or remedies, civil
3 or criminal, that DTSC or Respondent may have under any laws,
4 regulations or common law.

5 21.2. DTSC reserves the right to disapprove of work
6 performed by Respondent pursuant to this Consent Agreement and to
7 request that Respondent perform additional tasks.

8 21.3. DTSC reserves the right to perform any portion of
9 the work consented to herein or any additional site
10 characterization, feasibility study, and/or remedial actions it
11 deems necessary to protect human health and/or the environment.
12 DTSC may exercise its authority under any applicable state or
13 federal law or regulation to undertake response actions at any
14 time. DTSC reserves its right to seek reimbursement from
15 Respondent for costs incurred by the State of California with
16 respect to such actions. DTSC will notify Respondent in writing
17 as soon as practicable regarding the decision to perform any work
18 described in this section.
19

20 21.4. If DTSC determines that activities in compliance
21 or noncompliance with this Consent Agreement have caused or may
22 cause a release of hazardous waste and/or hazardous waste
23 constituents, or a threat to human health and/or the environment,
24 or that Respondent is not capable of undertaking any of the work
25 required, DTSC may order Respondent to stop further
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1 firm, partnership, or corporation for any liability it may have
2 arising out of or relating in any way to the generation, storage,
3 treatment, handling, transportation, release, or disposal of any
4 hazardous constituents, hazardous substances, hazardous wastes,
5 pollutants, or contaminants found at, taken to, or taken or
6 migrating from the Facility.

7 COMPLIANCE WITH WASTE DISCHARGE REQUIREMENTS

8 23. Respondent shall comply with all applicable waste
9 discharge requirements issued by the State Water Resources
10 Control Board or a California regional water quality control
11 board.

12 OTHER APPLICABLE LAWS

13 24. All actions required by this Consent Agreement shall
14 be conducted in accordance with the requirements of all local,
15 state, and federal laws and regulations. Respondent shall obtain
16 or cause its representatives to obtain all permits and approvals
17 necessary under such laws and regulations.

18 REIMBURSEMENT OF DTSC'S COSTS

19 25.1. Respondent shall pay DTSC's costs incurred in the
20 implementation of this Consent Agreement.

21 25.2. An estimate of DTSC's costs is attached as Exhibit
22 A showing the amount of \$25,000.00. It is understood by the
23 parties that this amount is only a cost estimate for the
24 activities shown on Exhibit A and it may differ from the actual
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1 costs incurred by DTSC in overseeing these activities or in
2 implementing this Consent Agreement. DTSC will provide
3 additional cost estimates to Respondent as the work progresses
4 under the Consent Agreement.

5 25.3. Respondent shall make an advance payment to DTSC
6 in the amount of \$12,500.00. Payment shall be made on or before
7 the following schedule:

8 \$500.00 by August 20, 2002

9 \$3,000.00 by September 20, 2002

10 \$3,000.00 by October 20, 2002

11 \$3,000.00 by November 20, 2002

12 \$3,000.00 by December 20, 2002

13
14 If the advance payment exceeds DTSC's costs, DTSC will refund the
15 balance within 120 days after the execution of the Acknowledgment
16 of Satisfaction pursuant to Section 27 of this Consent Agreement.

17 25.4. DTSC will provide Respondent with a billing
18 statement at least quarterly, which will include the name(s) of
19 the employee(s), identification of the activities, the amount of
20 time spent on each activity, and the hourly rate charged. If
21 Respondent does not pay an invoice within 60 days of the date of
22 the billing statement, the amount is subject to interest as
23 provided by Health and Safety Code section 25360.1.

24 25.5. DTSC will retain all costs records associated with
25 the work performed under this Consent Agreement as required by
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1 state law. DTSC will make all documents that support the DTSC's
2 cost determination available for inspection upon request, as
3 provided by the Public Records Act.

4 25.6. Any dispute concerning DTSC's costs incurred
5 pursuant to this Consent Agreement is subject to the Dispute
6 Resolution provision of this Consent Agreement and the dispute
7 resolution procedures as established pursuant to Health and
8 Safety Code section 25269.2. DTSC reserves its right to recover
9 unpaid costs under applicable state and federal laws.

10 25.7. All payments shall be made within 30 days of the
11 date of the billing statement by check payable to the Department
12 of Toxic Substances Control and shall be sent to:

13
14 Accounting Unit
15 Department of Toxic Substances Control
16 P. O. Box 806
17 Sacramento, California 95812-0806

18 All checks shall reference the name of the Facility, the
19 Respondent's name and address, and the docket number of this
20 Consent Agreement. Copies of all checks and letters transmitting
21 such checks shall be sent simultaneously to DTSC's Project
22 Coordinator.

23 MODIFICATION

24 26.1. This Consent Agreement may be modified by mutual
25 agreement of the parties. Any agreed modification shall be in
26 writing, shall be signed by both parties, shall have as its
27

1 effective date the date on which it is signed by all the parties,
2 and shall be deemed incorporated into this Consent Agreement.

3 26.2. Any requests for revision of an approved workplan
4 requirement must be in writing. Such requests must be timely and
5 provide justification for any proposed workplan revision. DTSC
6 has no obligation to approve such requests, but if it does so,
7 such approval will be in writing and signed by the Chief, State
8 Regulatory Programs Branch, Hazardous Waste Management Program,
9 Department of Toxic Substances Control, or his or her designee.
10 Any approved workplan revision shall be incorporated by reference
11 into this Consent Agreement.
12

13 TERMINATION AND SATISFACTION

14 27. The provisions of this Consent Agreement shall be
15 deemed satisfied upon the execution by both parties of an
16 Acknowledgment of Satisfaction (Acknowledgment). DTSC will
17 prepare the Acknowledgment for Respondent's signature. The
18 Acknowledgment will specify that Respondent has demonstrated to
19 the satisfaction of DTSC that the terms of this Consent Agreement
20 including payment of DTSC's costs have been satisfactorily
21 completed. The Acknowledgment will affirm Respondent's
22 continuing obligation to preserve all records after the rest of
23 the Consent Agreement is satisfactorily completed.
24

25 EFFECTIVE DATE

26 28. The effective date of this Consent Agreement shall
27

1 be the date on which this Consent Agreement is signed by all the
2 parties. Except as otherwise specified, "days" means calendar
3 days.

4 SIGNATORIES

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

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DATE September 6, 2002

BY Original signed by Dale Young
Dale Young, CEO
Representing Respondent
Hixson Metals Finishing, Inc.

DATE: September 9, 2002

BY: Original signed by Stephen W. Lavinger
Stephen W. Lavinger, Chief
State Regulatory Programs Branch
Hazardous Waste Management Program
Department of Toxic Substances Control

This Corrective Action Consent Agreement posted on DTSC's website does not include all attachments from the original document. If you need copies of a specific document, please contact the DTSC project manager listed in the document.