

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

IN THE MATTER OF:)	Docket HWCA:SRPD03/04SCC-4319
)	
Trident Plating Facility)	
2161 Saybrook Avenue)	
Commerce, California 90040)	
CAD 981449887)	
)	
Dayco Funding Corporation.)	
4751 Wilshire Boulevard)	CORRECTIVE ACTION
Los Angeles, CA 90010)	CONSENT AGREEMENT
)	
)	Health and Safety Code
Respondent.)	Sections 25187 and 25200.14
_____)	

INTRODUCTION

1. The Department of Toxic Substances Control (DTSC) and Dayco Funding Corporation, Inc. (Respondent) enter into this Corrective Action Consent Agreement (Consent Agreement) and agree as follows:

1.1. Jurisdiction exists pursuant to Health and Safety Code (HSC) sections 25187 and 25200.14, which authorize DTSC to issue an order 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.

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

1.3. Respondent is the Owner of a former hazardous waste facility located at 2161 Saybrook Avenue, Commerce, California 90040 (Facility).

1.4. Trident Plating, Inc. (Facility Operator) engaged in the management of hazardous waste at the Facility pursuant to a Permit By Rule (PBR) issued by DTSC on July 19, 1993.

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 workplans and to undertake all actions required by the terms and conditions of this Consent Agreement.

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

FINDINGS OF FACT

2.1. On November 13, 1996, Facility Operator submitted a Phase I Environmental Assessment pursuant to HSC section 25200.14 (Phase I). The Phase I did not identify solid waste management units (SWMUs) or areas of concern (AOCs) that either have released or may release hazardous waste or hazardous waste constituents into the environment. In addition to the Phase I, the Facility Operator submitted the following documents:

- a. Environmental Site Assessment (ESA), Trident Plating, Inc., (Glenfos, Inc., December 1998);
- b. Phase II Environmental Site Assessment Subsurface Investigation (Phase II ESA), Trident Plating, Inc., (ECM Group, February 1999);
- c. Closure Report for Industrial Waste Pretreatment Facilities (Closure Report), Trident Plating, Inc., (Fero Environmental Engineering, Inc., February 2001); and
- d. Phase I Environmental Site Evaluation (Phase I ESE), Trident Plating, Inc., (Fero Environmental Engineering, Inc., April 2001).

Although not listed in the Phase I, two (2) SWMUs were identified in the Trident Plating, Inc. ESA:

(1) Former Plating Areas (SWMU #1); and

(2) Former Hot Oil Bath Areas (SWMU #2).

Furthermore, two (2) additional SWMUs were identified in the Trident Plating, Inc. Closure Report:

- (3) Former Wastewater Treatment Area (SWMU #3); and
- (4) Beneath the Former Clarifier (SWMU #4).

A site inspection/meeting conducted by DTSC on April 25, 2001, and review of state and local agency records, four (4) additional SWMUs were identified:

- (5) Chemical Storage Area (SWMU #5);
- (6) West end of the property adjacent to the Santa Fe Railroad spurs and easement (SWMU #6);
- (7) Abandoned Oil Well, if any (SWMU #7); and
- (8) Parking lot (SWMU #8).

2.2. Based on review of the Phase I, the documents submitted to DTSC by the Facility Operator, files reviewed at the local agencies, and site inspection conducted by DTSC on February 23, 2001, DTSC concludes that Respondent shall complete the Preliminary Endangerment Assessment (PEA) that was initiated by the Facility Operator, and if necessary, conduct further investigation to determine the extent of hazardous waste contamination at or from the Facility, and/or remediation of any such releases of hazardous waste.

2.3. The hazardous waste and hazardous waste constituents of concern at the Facility are Title 22 Metals (Antimony, Arsenic, Barium, Beryllium, Cadmium, Chromium, Cobalt, Copper, Lead, Mercury, Molybdenum, Nickel, Selenium, Silver, Thallium, Vanadium, and Zinc), Aqueous Ammonia, Cadmium Oxide, Sodium Hydroxide, Chromic Acid, Sodium Metal, Sulfuric Acid, Chromium Trioxide, Copper Cyanide, Sodium Cyanide, Potassium Cyanide, Fluoboric Acid, Formic Acid, Sodium Hypophosphite, Hydrochloric Acid, Nickel Sulfate, Nickel Chloride, Nickel Sulfamate, Nickel Sulfate, Nitric Acid, Potassium Stannate, Potassium Hydroxide, Silver Cyanide, Potassium Silver Cyanide, Sodium Metabisulfite, Sodium Sulfate, Oils, Waste Oil, and Halogenated Solvents.

2.4. The hazardous wastes or hazardous waste constituents have migrated or may migrate from the Facility into the environment through the following pathways: subsurface soils, groundwater, airborne dust particulate matter, and rain surface runoff.

2.5. The Facility is located in a commercial and industrial area of Commerce, California. Surrounding properties

consist of industrial development and railroad spurs. Groundwater within this area is designated as having beneficial uses for municipal supply and is currently utilized for this purpose, according to the local agency. The Los Angeles River is located approximately 2 miles southwest of the Facility. Worthy of note, the Facility is located within the East Los Angeles Oil Field. Furthermore, an oil well is depicted on the Facility according to a USGS Los Angeles, California 7.5 Minute Series topographic map.

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 Respondent's Project Coordinator.

WORK TO BE PERFORMED

4. Respondent agrees to conduct a Preliminary Endangerment Assessment (PEA) for the Facility, and if necessary, further investigation and remediation of any release of hazardous waste at or from the Facility. Respondent shall submit a PEA Workplan and schedule to DTSC within 30 days of the effective date of this Consent Agreement. In addition, the PEA Final Report shall be submitted within 60 days upon completion of field work. The PEA shall be conducted in accordance with Preliminary Endangerment Assessment - Guidance Manual (State of California Environmental Protection Agency - Department of Toxic Substances Control, June 1999). The work undertaken pursuant to this Consent Agreement shall also be done in a manner consistent with: the attached Scopes of Work; any DTSC-approved Workplans; 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, Test Methods For Evaluating Solid Waste" (SW-846)

and Reporting Hydrogeologic Characterization Data at Hazardous Substance Release Sites - Guidance Manual for Ground Water Investigations (State of California Environmental Protection Agency, July 1995).

INTERIM MEASURES (IM)

5.1. If DTSC determines, based on the PEA Final Report, that Interim Measures are necessary, within 30 days of Respondent's receipt of DTSC's determination, Respondent shall submit to DTSC a Workplan for the Implementation of Interim Measures ("IM Workplan"). The IM Workplan is subject to approval by DTSC and shall provide for the performance of all Interim Measures necessary to achieve stabilization at the Facility. The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Workplan, IM Operation and Maintenance Plan, and IM Plans and Specifications shall be developed in a manner consistent with the Scope of Work for Interim Measures Implementation appended as Attachment 1.

5.2. Respondent shall continue to evaluate the available data and assess the need for Interim Measures. 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 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) Workplan for approval. The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Workplan 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 Workplan.

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

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 Workplan that identifies Interim Measures that will mitigate the threat. The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Workplan 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 Workplan.

5.4. All IM Workplans 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 Workplan, 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.

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

FACILITY INVESTIGATION (FI)

6.1. Within 60 days of DTSC's determination that further investigation is necessary based upon the review of the PEA Final Report, Respondent shall develop and submit a Facility Investigation Workplan (FI Workplan) in a manner consistent with the Scope of Work for a Facility Investigation contained in Attachment 4. DTSC will review the FI Workplan and notify Respondent in writing of DTSC's approval or disapproval.

6.2. The FI Workplan shall detail the methodology to:
(1) gather data needed to make decisions on interim measures/stabilization during the early phases of the Facility

Investigation; (2) identify and characterize all sources of contamination; (3) define the nature, degree and extent of contamination; (4) define the rate of movement and direction of contamination flow; (5) characterize the potential pathways of contaminant migration; (6) identify actual or potential human and/or ecological receptors; and (7) 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 FI Workplan.

6.3. Respondent shall submit a Facility Investigation Report (FI Report) to DTSC for approval in accordance with DTSC-approved Workplan schedule. The FI Report shall be developed in a manner consistent with the Scope of Work for a Facility Investigation contained in Attachment 4. If there is a phased investigation, separate Reports and a report that summarizes the findings from all parts of the FI must be submitted to DTSC. DTSC will review the Report(s) and notify Respondent in writing of DTSC's approval or disapproval.

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

6.5. Concurrent with the submission of a FI Workplan, 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, DTSC will determine the level of community interest. Depending on the level of community interest, DTSC will decide which public participation activities are necessary. These activities may include a Facility Investigation Fact Sheet (FI Fact Sheet), a public participation plan, a public notice and a public meeting. If a Community Profile has been prepared in connection with an earlier submittal, this section may be deleted, or may be revised to require a supplement to the Community Profile, if necessary.

6.6. Respondent shall evaluate the results of all sampling, tests and other data generated during the Facility Investigation in comparison with the current health-based screening levels for each contaminant. Respondent shall include

a Risk Assessment Report in the final Facility Investigation Report.

CORRECTIVE MEASURES STUDY (CMS)

7.1. Respondent shall prepare a Corrective Measures Study if contaminant concentrations exceed current health-based action levels and/or if DTSC determines that the contaminant releases pose a potential threat to human health and/or the environment.

7.2. Within 30 days of DTSC's approval of the FI Report, Respondent shall submit a CMS Workplan to DTSC. The CMS Workplan is subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for a Corrective Measures Study contained in Attachment 5.

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

7.4. Respondent shall prepare treatability studies for all potential corrective measures that involve treatment except where Respondent can demonstrate to DTSC's satisfaction that they are not needed. The CMS Workplan shall include, at a minimum, a summary of the proposed treatability study including a conceptual design, a schedule for submitting a treatability study workplan, or Respondent's justification for not proposing a treatability study.

7.5. Respondent shall submit a CMS Report to DTSC for approval in accordance with DTSC-approved CMS Workplan schedule. The CMS Report shall be developed in a manner consistent with the Scope of Work for a Corrective Measures Study contained in Attachment 5. DTSC will review the CMS Report and notify Respondent in writing of DTSC's approval or disapproval.

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. Based on the information provided in the Community Profile and any Supplement to the Community Profile, if DTSC determines that there is a high level of community concern about the Facility, DTSC may require Respondent to prepare a Public Participation Plan and 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)

9.1. Within 60 days of Respondent's receipt of notification of DTSC's selection of the corrective measures, Respondent shall submit to DTSC a Corrective Measures Implementation (CMI) Workplan. The CMI Workplan is subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for Corrective Measures Implementation contained in Attachment 6.

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

9.3. Concurrent with the submission of a CMI Workplan, 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, if DTSC determines that there is a high level of community concern about the Facility, DTSC may require Respondent to prepare a Public Participation Plan.

9.4. The CMI program shall be designed to facilitate the design, construction, operation, maintenance, and monitoring of corrective measures at the Facility. In accordance with the schedule contained in the approved CMI Workplan, Respondent shall submit to DTSC the documents listed below. These documents shall be developed in a manner consistent with the

Scope of Work for Corrective Measures Implementation contained in Attachment 6.

- o Operation and Maintenance Plan
- o Draft Plans and Specifications
- o Final Plans and Specifications
- o Construction Workplan
- o Construction Completion Report
- o Corrective Measures Completion Report

9.5. DTSC will review all required CMI documents and notify Respondent in writing of DTSC's approval or disapproval.

9.6. As directed by DTSC, within 90 days of DTSC's approval of all required CMI documents, Respondent shall establish a financial assurance mechanism for Corrective Measures Implementation. The financial assurance mechanisms may include a performance or surety bond, liability insurance, an escrow performance guarantee account, a trust fund, financial test, or corporate guarantee as described in Title 22 Cal. Code Regs. section 66265.143 or any other mechanism acceptable to DTSC. The mechanism shall be established to allow DTSC access to the funds to undertake Corrective Measures Implementation tasks if Respondent is unable or unwilling to undertake the required actions.

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 workplan, 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 workplan in accordance with the schedule and provisions contained therein.

11.3. Any DTSC approved workplan, 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 quarterly progress reports of corrective action activities conducted pursuant to this Consent Agreement. Progress reports are due on the first (1st) day of the month when reports are due. The progress reports shall conform to the Scope of Work for Progress Reports contained in Attachment 7. 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, workplans, 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 may disapprove of Respondent's contractor and/or consultant. Based on the February 23, 2001 site inspection meeting, Teradyne, Inc. announced that Camp Dresser & McKee Inc. (CDM) will be the environmental consultant for all work performed under this consent agreement.

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 workplans. 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 workplan to DTSC for the additional work. Such workplan 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 workplan, 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. If it becomes necessary to perform a subsequent phase of work, Respondent agrees the associated additional costs incurred will be payable under this Consent Agreement. DTSC reserves its right to issue an order or take any other action provided by law, if the Respondent refuses to perform the subsequent work or to pay the associated additional costs incurred.

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. Workplans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved workplans 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., FI 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 workplans.

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 workplan 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. 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
Tiered Permitting Corrective Action Branch
Permitting and Corrective Action 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 Chief, Southern California Branch, Statewide Regulatory Programs Division, Department of Toxic Substances Control, with a copy 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 or redress such release or threat and/or to undertake any action which DTSC determines is necessary to abate 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 workplan, plan, and/or specification does not constitute a warranty or representation that the workplans, 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. Such costs shall include DTSC's costs, if any, incurred in the preparation and implementation of this Consent Agreement prior to the effective date of this Consent Agreement.

23.2. An estimate of DTSC's costs is attached as Exhibit A showing the amount of \$15,061. It is understood by the parties that this amount is only an estimate for those activities shown in Exhibit A, and may differ from the actual costs incurred by DTSC in implementing this Consent Agreement, and does not represent the total costs incurred by DTSC in overseeing all activities required at the Facility under this Consent Agreement. DTSC will provide additional cost estimates for the subsequent phases of work, if required, as the work progresses.

23.3. Respondent shall make an advance payment to DTSC in the amount of \$7,530.50 within 30 days of the effective date of this Consent Agreement. If the advance payment exceeds DTSC's complete costs under this Agreement, DTSC will refund the balance within 120 days after the execution of the Acknowledgement of Satisfaction pursuant to Section 25 of this Consent Agreement.

23.4. If the advance payment does not exceed DTSC's complete costs under this Agreement, 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 workplan requirement must be in writing. Such requests must be timely and provide justification for any proposed workplan 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 workplan modification shall be incorporated by reference into this Consent Agreement.

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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: 07-29-04 BY: Original signed by Sean Dayani
President for Dayco Funding Co.
Name/Respondent

DATE: 08-03-04 BY: Original signed by Stephen W. Lavinger
Stephen W. Lavinger, Chief
Tiered Permitting Corrective Action
Branch
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.