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1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY 2007 SEP 18 AM 7:44
3 REGION 9

U.S. EPA REGION IX
REGIONAL HEARING CLERK

4	In the Matter of:)	Docket No. EPCRA-09-2007- 0019
5	Hightower Plating and)	CONSENT AGREEMENT AND FINAL
6	Manufacturing, Inc.)	ORDER pursuant to 40 C.F.R.
7	2090 North Glassell Street)	§§ 22.13 and 22.18
8	Orange, California 92865,)	
9	Respondent.)	

10 I. CONSENT AGREEMENT

- 11 1. The Director of the Communities and Ecosystems Division
12 ("Complainant"), United States Environmental Protection
13 Agency ("EPA") Region 9, and Hightower Metal Products, Inc.
14 and Hightower Plating and Manufacturing Co., Inc.
15 ("Respondent" or "Hightower Plating and Manufacturing, Inc.")
16 agree to settle this matter and consent to the filing of this
17 Consent Agreement and Final Order Pursuant to 40 C.F.R. §§
18 22.13 and 22.18 ("CAFO"), which simultaneously commences and
19 concludes this matter in accordance with 40 C.F.R. §§
20 22.13(b) and 22.18(b).
- 21 2. This is a civil administrative proceeding initiated pursuant
22 to Section 325(c) of Title III of the Superfund Amendments
23 and Reauthorization Act, 42 U.S.C. § 11001 et seq., also
24 known as the Emergency Planning and Community Right-to-Know
25 Act of 1986 ("EPCRA"), for violation of Section 313 of EPCRA,
26 42 U.S.C. § 11023, and the regulations promulgated to
27 implement Section 313 at 40 C.F.R. Part 372.
- 28 3. Complainant has been duly delegated the authority to file
this action and sign a consent agreement settling this

1 action. Respondent is a corporation incorporated in
2 California.

3 4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023
4 and 11048, EPA promulgated the Toxic Chemical Release
5 Reporting: Community Right-to-Know Rule at 40 C.F.R. Part
6 372.

7 5. Section 313(a) of EPCRA, as implemented by 40 C.F.R.
8 § 372.30, provides that an owner or operator of a facility
9 that meets the criteria set forth in EPCRA Section 313(b) and
10 40 C.F.R. § 372.22, is required to submit annually to the
11 Administrator of EPA and to the State in which the facility
12 is located, no later than July 1st of each year, a toxic
13 chemical release inventory reporting form (hereinafter "Form
14 R") for each toxic chemical listed under 40 C.F.R. § 372.65
15 that was manufactured, processed or otherwise used at the
16 facility during the preceding calendar year in quantities
17 exceeding the thresholds established under EPCRA Section
18 313(f) and 40 C.F.R. §§ 372.25, 375.27, and 372.28.

19 6. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that
20 the requirements of Section 313(a) and 40 C.F.R. § 372.30
21 apply to an owner and operator of a facility that has 10 or
22 more full-time employees; that is in a Standard Industrial
23 Classification major group codes 10 (except 1011, 1081, and
24 1094), 12 (except 1241), 20 through 39; industry codes 4911,
25 4931, or 4939 (limited to facilities that combust coal and/or
26 oil for the purpose of generating power for distribution in
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1 commerce), or 4953 (limited to facilities regulated under the
2 Resource Conservation and Recovery Act, subtitle C, 42 U.S.C.
3 §6921 *et seq.*), or 5169, 5171, or 7389 (limited to facilities
4 primarily engaged in solvent recovery services on a contract
5 or fee basis); and that manufactures, processes, or otherwise
6 uses one or more toxic chemicals listed under Section 313(c)
7 of EPCRA and 40 C.F.R. § 372.65 in quantities in excess of
8 the applicable thresholds established under EPCRA Section
9 313(f) and 40 C.F.R. §§ 372.25, 372.27, and 372.28.

10 7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and 40 C.F.R.
11 Part 19 authorize EPA to assess a penalty of up to \$27,500
12 for each violation of Section 313 of EPCRA that occurred on
13 or after January 31, 1997 but before March 15, 2004 and up to
14 \$32,500 for each violation of Section 313 of EPCRA that
15 occurred on or after March 15, 2004.

16 8. Respondent is a "person," as that term is defined by Section
17 329(7) of EPCRA.

18 9. At all times relevant to this CAFO, Respondent was the owner
19 and operator of a "facility," as that term is defined by
20 Section 329(4) of EPCRA and 40 C.F.R. § 372.3, located at
21 2090 North Glassell Street, Orange, CA ("Facility"); the
22 Facility had 10 or more "full-time employees," as that term
23 is defined at 40 C.F.R. § 372.3; and the Facility was
24 classified in Standard Industrial Classification Codes 3469 -
25 metal stamping and 3471 - electroplating, plating, polishing,
26 anodizing and coloring.

1 10. During calendar years 2002, 2003 and 2004, Respondent
2 processed approximately the following amounts (in pounds) of
3 chromium (CAS/Identifier 7440473) and of nickel
4 (CAS/Identifier 7440020), chemicals listed under 40 C.F.R.
5 § 372.65:

<u>Year</u>	<u>Chromium</u>	<u>Nickel</u>
2002	86,555	77,611
2003	65,167	45,913
2004	90,355	67,773

8
9 11. The quantities of chromium and nickel that the Respondent
10 processed at the Facility during calendar years 2002, 2003
11 and 2004 exceeded the established threshold of 25,000 pounds
12 set forth at 40 C.F.R. § 372.25(a).

13 12. Respondent failed to submit Form Rs for chromium and nickel
14 processed at the Facility to the EPA Administrator and to the
15 State of California on or before July 1, 2003 for calendar
16 year 2002, on or before July 1, 2004 for calendar year 2003,
17 and on or before July 1, 2005 for calendar year 2004, as
18 required by Section 313(a) of EPCRA and 40 C.F.R. § 372.30.

19 13. Respondent's failure to submit Form Rs on or before July 1 of
20 2003, 2004 and 2005 for chromium and for nickel processed at
21 the Facility during the preceding calendar years, constitutes
22 six violations of Section 313 of EPCRA and 40 C.F.R. §
23 372.30.

24 14. During calendar year 2002 Respondent processed approximately
25 the following amounts (in pounds) of cobalt (CAS/Identifier
26 7440484), chemicals listed under 40 C.F.R. § 372.65:
27
28

1 Year Cobalt
2 2002 25,694

3 15. The quantities of cobalt that the Respondent processed at the
4 Facility during calendar year 2002 exceeded the established
5 threshold of 25,000 pounds set forth at 40 C.F.R. §
6 372.25(a).

7 16. Respondent failed to submit a Form R for cobalt processed at
8 the Facility to the EPA Administrator and to the State of
9 California on or before July 1, 2003 for calendar year 2002,
10 as required by Section 313(a) of EPCRA and 40 C.F.R. §
11 372.30.

12 17. Respondent's failure to submit Form Rs on or before July 1 of
13 2003 for cobalt processed at the Facility during the
14 preceding calendar years, constitutes one violation of
15 Section 313 of EPCRA and 40 C.F.R. § 372.30.

16 18. The EPA Enforcement Response Policy for EPCRA Section 313
17 dated August 10, 1992 provides for a penalty of forty-two
18 thousand three hundred dollars (\$42,300) for these seven
19 violations.

20 19. In executing this CAFO, Respondent certifies that (1) it has
21 now fully completed and submitted to EPA all of the required
22 Form Rs in compliance with Section 313 of EPCRA and the
23 regulations promulgated to implement Section 313; and (2) it
24 has complied with all other EPCRA requirements at all
25 facilities under its control.

26 20. In accordance with 40 C.F.R. § 22.18(b) (2) and for the
27 purpose of this proceeding, Respondent (i) admits that EPA
28

1 has jurisdiction over the subject matter of this CAFO and
2 over Respondent; (ii) admits the violations and facts alleged
3 in this CAFO; (iii) consents to the terms of this CAFO; (iv)
4 waives any right to contest the allegations in this CAFO; and
5 (v) waives the right to appeal the proposed final order
6 contained in this CAFO.

7 21. The terms of this CAFO constitute a full settlement of the
8 civil administrative matter filed under the docket number
9 above.

10 22. EPA's final policy statement on Incentives for Self-Policing:
11 Discovery, Disclosure, Correction and Prevention of
12 Violations, 65 Fed. Reg. 19617 (April 11, 2000) ("Audit
13 Policy") has several important goals, including encouraging
14 greater compliance with the laws and regulations which
15 protect human health and the environment and reducing
16 transaction costs associated with violations of the laws EPA
17 is charged with administering. If certain specified criteria
18 are met, reductions in gravity-based penalties of up to 100%
19 are available under the Audit Policy. These criteria are (1)
20 discovery of the violation(s) through an environmental audit
21 or due diligence; (2) voluntary disclosure; (3) prompt
22 disclosure; (4) discovery and disclosure independent of
23 government or third party plaintiff; (5) correction and
24 remediation; (6) prevent recurrence; (7) no repeat
25 violations; (8) other violations excluded; and (9)
26 cooperation.

1 23. Complainant has determined that Respondent has satisfied all
2 of the criteria under the Audit Policy and thus qualifies for
3 the elimination of civil penalties in this matter.

4 Accordingly, the civil penalty assessed in this matter is
5 zero (\$0) dollars.

6 24. Complainant's finding that Respondent has satisfied the
7 criteria of the Audit Policy is based upon documentation that
8 Respondent has provided to establish that it satisfies these
9 criteria. Complainant and Respondent agree that, should any
10 material fact upon which Complainant relied in making its
11 finding subsequently prove to be other than as represented by
12 Respondent, this CAFO may be voided in whole or in part.

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

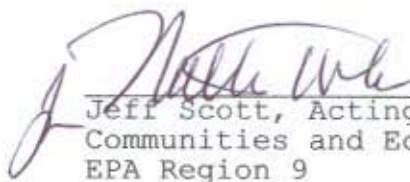
1 to address any violation of this CAFO or any violation not
2 specifically alleged in this CAFO.

3 26. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b),
4 this CAFO shall be effective on the date that the final order
5 contained in this CAFO, having been approved and issued by
6 either the Regional Judicial Officer or Regional
7 Administrator, is filed.

8 27. The provisions of this CAFO shall be binding upon Respondent,
9 its agents, successors or assigns. Respondent's obligations
10 under this Consent Agreement, if any, shall end when
11 Respondent has performed all of the terms of the Consent
12 Agreement in accordance with the Final Order. Complainant
13 and Respondent consent to the entry of the CAFO without
14 further notice.


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16
17 FOR COMPLAINANT:

18 9/13/2007
19 Date


Jeff Scott, Acting Director
Communities and Ecosystems Division
EPA Region 9

20
21 FOR RESPONDENT:

22 9/4/07
23 Date


Kurt Koch, President
Hightower Plating and Manufacturing, Inc.

5 Hearing Clerk, United States Environmental Protection Agency,
6 Region 9, 75 Hawthorne Street, San Francisco, California 94105,
7 and that a true and correct copy thereof was placed in the United
8 States Mail, certified mail, return receipt requested, addressed
9 to the following address:

10 Kurt Koch
11 Hightower Plating and Manufacturing, Inc.
12 2090 North Glassell Street
13 Orange, CA 92865

14 Certified Return Receipt No.: _____

15 Date: 9 / 18 / 2007 By: Danielle E Carr


16 Danielle Carr
17 Regional Hearing Clerk
18 United States Environmental
19 Protection Agency, Region 9
20 75 Hawthorne Avenue
21 San Francisco, California 94105-3143
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1 **II. FINAL ORDER**

2 Complainant EPA Region 9 and Respondent Hightower Plating and
3 Manufacturing, Inc., having entered into the foregoing Consent
4 Agreement,

5 IT IS HEREBY ORDERED that this Consent Agreement and Final
6 Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (Docket No. EPCRA-
7 09-2007- 0019) be entered.

8
9 09/17/07 _____
10 Date


11 Steven L. Jawgiel
12 Regional Judicial Officer
13 U.S. Environmental Protection
14 Agency, Region 9
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