

COPY

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12 Attorneys for Plaintiff
13 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO

16 MATEEL ENVIRONMENTAL JUSTICE
17 FOUNDATION,

18 Plaintiff,

19 v.

20 DAYCO PRODUCTS, INC., and DOES I
21 through 100, inclusive,

22 Defendants.

ENDORSED
FILED
San Francisco County Superior Court

MAR 22 2004

GORDON PARK-LI, Clerk
BY: JOCELYN C. ROCHE
Deputy Clerk

Case No. CGC-03-418855

~~[PROPOSED]~~ CONSENT
JUDGMENT

Complaint Filed:
Dept.:
Judge:

23 1. INTRODUCTION

24 1.1 On February 16, 2001, the MATEEL ENVIRONMENTAL JUSTICE
25 FOUNDATION ("MEJF") and its attorneys, Klamath Environmental Law Center ("KELC")
26 sent a 60-Day Notice Letter ("Notice Letter") to the Office of the California Attorney General of
27 the State of California ("California Attorney General"), all California counties' District
28 Attorneys and all City Attorneys of California cities with populations exceeding 750,000
(collectively, "Public Enforcers"), charging this business with violating the Safe Drinking Water
and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, *et seq.*
("Proposition 65"), and Business and Professions Code Sections 17200 *et seq.* (the "Unfair

1 Competition Act”). Specifically, MEJF charged that such business through the manufacture,
2 distribution, and/or sale of certain home, industrial, agricultural, and lawn and garden products
3 allegedly exposed individuals in the State to chemicals listed under Proposition 65, including
4 lead and lead compounds, without first providing those persons with clear and reasonable
5 warnings and by discharging or releasing such chemicals into drinking water.

6 1.2 On October 16, 2001, certain assets of Dayco Products, Inc. were acquired from
7 its parent, Mark IV Industries, by Tekni-Plex, Inc. (“Tekni-Plex”). Tekni-Plex also assumed
8 certain liabilities relating to Dayco Products, Inc.’s business. Dayco Products, LLC (“Dayco”)
9 is the successor in interest to Dayco Products, Inc. as a result of the conversion of the Dayco
10 Products, Inc. entity into the limited liability company known as Dayco Products, LLC.

11 1.3 On April 1, 2003, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION
12 (“Plaintiff MEJF”) acting on behalf of itself and the general public filed a Complaint for civil
13 penalties and injunctive relief (“Complaint”) in San Francisco County Superior Court styled
14 *Mateel Environmental Justice Foundation v. Dayco Products, Inc., et al.*, Case No. CGC-03-
15 418855 and DOES 1 through 100 based on the Notice Letter. A copy of the complaint is
16 attached hereto as Exhibit A.

17 1.4 On or about July 28, 2003, MEJF served on all required entities, a modified
18 notice letter substantially similar to the Notice Letter, but covering Tekni-Plex as an additional
19 business subject to its allegations. Copies of exemplars of the Notice Letter and the Notice
20 Letter as subsequently modified are attached hereto as Exhibit B. Upon entry of this Consent
21 Judgment, the Complaint shall be deemed to have been amended to add Tekni-Plex as a
22 Defendant to this Action.

23 1.5 Dayco and Tekni-Plex are hereinafter referred to as “Settling Defendants.”

24 1.6 Settling Defendants are or were businesses that employ ten or more persons and
25 distribute and/or market irrigation products within the State of California. Some of those
26 products are alleged to contain lead and/or lead compounds. Lead and lead compounds are
27 chemicals known to the State of California to cause cancer, and lead is a chemical known to the
28 State of California to cause reproductive toxicity pursuant to Health and Safety Code section

1 25249.9. Under specified circumstances, products containing lead and/or lead compounds that
2 are sold or distributed in the State of California are subject to the Proposition 65 warning
3 requirement set forth in Health and Safety Code section 25249.6 and may be subject to a
4 prohibition on their discharge or release into sources of drinking water as set forth in Health &
5 Safety Code section 25249.5. Plaintiff MEJF alleges that brass irrigation products, such as hose
6 nozzles, sprinklers, wands, shower heads, sprayers, hose couplings, connectors, quick connects,
7 caps, converters, valves, shut offs, unions, and hose ends manufactured, distributed, sold and/or
8 marketed by Settling Defendants for use in California and containing lead and/or lead
9 compounds require a warning under Proposition 65 and violate the Proposition 65 discharge
10 prohibition. Settling Defendants, and each of them, deny each and every allegation of the
11 Complaint and are hereby deemed to have answered the Complaint with a general denial.

12 1.7 For purposes of this Consent Judgment, the term "Covered Products" shall be
13 defined as hose nozzles, sprinklers, wands, shower heads, sprayers, hose couplings, connectors,
14 quick connects, caps, converters, valves, shut offs, unions, and hose ends made from leaded
15 brass, or for which brass is a component, to the extent such products are distributed and sold
16 within the State of California, that are manufactured by Settling Defendants or any other entity
17 affiliated with or acting on their behalf, and/or distributed, marketed and/or sold by Settling
18 Defendants or by any other entity that distributes, markets or sells such products manufactured,
19 distributed, marketed and/or sold by Settling Defendants or manufactured by any other entity for
20 Settling Defendants, whether or not the products bear labels reflecting the brands Colorite
21 Waterworks, Colorite Plastics, Colorite Polymers, Swan Hose and Colorite Swan Hose.

22 1.8 The term Covered Products includes products that are exempted from the
23 warning requirements of this Consent Judgment pursuant to Sections 7.1 or 7.3.

24 1.9 For purposes of this Consent Judgment, the parties stipulate that this Court has
25 jurisdiction over the allegations of violations contained in the Complaint and personal
26 jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that venue is proper
27 in the County of San Francisco and that this Court has jurisdiction to enter this Consent
28 Judgment as a full settlement and resolution of the allegations contained in the Complaint and of

1 all claims which were or could have been raised by any person or entity based in whole or in
2 part, directly or indirectly, on the facts alleged therein or arising therefrom or related thereto.

3 1.10 This Consent Judgment resolves claims that were raised or could have been
4 raised in the Complaint as well as claims that were denied and disputed. The parties enter into
5 this Consent Judgment pursuant to a full and final settlement of any and all claims between the
6 parties and their privies for the purpose of avoiding prolonged litigation. This Consent
7 Judgment shall not constitute an admission with respect to any material allegation of the
8 Complaint, each and every allegation of which Settling Defendants deny; nor may this Consent
9 Judgment or compliance with it be used as evidence of any wrongdoing, misconduct, culpability
10 or liability on the part of Settling Defendants.

11 **2. SETTLEMENT PAYMENT**

12 2.1 In settlement of all of the claims referred to in this Consent Judgment against the
13 Settling Defendants, within 30 days of notice entry of this Consent Judgment, Settling
14 Defendants shall pay \$15,000 to the Klamath Environmental Law Center ("KELC") to cover
15 plaintiffs' attorneys' fees and costs.

16 2.2 Within 30 days of notice of entry of this Consent Judgment, Settling Defendants
17 shall also pay \$7,500 to the Ecological Rights Foundation; and \$7,500 to Californians for
18 Alternatives to Toxics. Both are California non-profit environmental organizations that
19 advocate for workers' and consumers' safety, and for awareness and reduction of toxic
20 exposures. The parties agree and acknowledge that the funds paid pursuant to this subparagraph
21 shall not be construed as a credit against personal claims of absent third parties for restitution
22 against the Settling Defendants. The funds paid pursuant to this subparagraph may not be used
23 to pay attorneys fees for Proposition 65 enforcement actions. The funds paid pursuant to this
24 section shall be mailed care of William Verick to 424 First Street, Eureka, California, 95501.

25 **3. ENTRY OF CONSENT JUDGMENT**

26 3.1 The parties hereby request that the Court promptly enter this Consent Judgment
27 following hearing on a formally noticed motion concerning its entry. Upon entry of the Consent
28

1 Judgment, Settling Defendants and MEJF waive their respective rights to a hearing or trial on
2 the allegations of the Complaint.

3 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

4 4.1 Subject to Paragraph 4.4 below, this Consent Judgment is a final and binding
5 resolution between MEJF, acting on behalf of itself and, as to those matters described in the
6 Notice Letter and the Notice Letter as subsequently modified, acting on behalf of the general
7 public, and Settling Defendants, of:

8 (i) any violation of Proposition 65 or the Unfair Competition Act with respect to
9 the Covered Products, or

10 (ii) any other statutory or common law claim,

11 to the fullest extent that any of the foregoing described in (i) or (ii) were or could have been
12 asserted by any person or entity against Settling Defendants based upon, arising out of, or relating
13 to: (a) the Settling Defendants' compliance with Proposition 65, or regulations promulgated
14 thereunder, and Business and Professions Code §§ 17200 *et seq.*, with respect to the Covered
15 Products, or (b) as to alleged exposures associated with Covered Products, any alleged discharges
16 or releases from Covered Products to sources of drinking water, and any other claim based in
17 whole or part on the facts alleged in the Complaint, whether based on actions committed by
18 Settling Defendants, or by any other entity within the chain of distribution, including, but not
19 limited to, manufacturers, wholesale or retail sellers or distributors and any other person in the
20 course of doing business.

21 4.2 As to alleged exposures to chemicals currently listed under Proposition 65
22 associated with Covered Products and to discharges or releases of such chemicals to sources of
23 drinking water from Covered Products, compliance with the terms of this Consent Judgment
24 resolves any issue, now and in the future, concerning compliance by Settling Defendants and their
25 parents (including but not limited to Mark IV Industries, Inc.), subsidiaries or affiliates (including
26 but not limited to Puretec Corp.; Plastic Specialties & Technologies, Inc., and TPI Acquisition
27 Subsidiary, Inc.), predecessors (including but not limited to Dayco Products, Inc.), brands
28 (including but not limited to Colorite Waterworks, Colorite Plastics, Colorite Polymers, Swan

1 Hose and Colorite Swan Hose); officers, directors, employees, and all of their manufacturers,
2 customers, distributors, wholesalers, retailers or any other person in the course of doing business
3 and the successors and assigns of any of them who may use, maintain, distribute, market or sell
4 Covered Products, with the requirements of Proposition 65 and the Unfair Competition Act.

5 4.3 As to alleged exposures to chemicals associated with Covered Products and as to
6 alleged discharges or releases of such chemicals to sources of drinking water from Covered
7 Products, MEJF, and the Klamath Environmental Law Center ("KELC"), by and on behalf of
8 themselves, and their respective agents, successors and assigns, waive all rights to institute any
9 form of legal action, and release all claims against Settling Defendants and their parents
10 (including but not limited to Mark IV Industries, Inc.), subsidiaries or affiliates (including but not
11 limited to Puretec Corp., Plastic Specialties & Technologies, Inc., and TPI Acquisition
12 Subsidiary, Inc.), predecessors (including but not limited to Dayco Products, Inc.), brands
13 (including but not limited to Colorite Waterworks, Colorite Plastics, Colorite Polmers, Swan
14 Hose and Colorite Swan Hose), officers, directors, employees, and all of its customers,
15 manufacturers, distributors, wholesalers, retailers or any other person in the course of doing
16 business, and the successors and assigns of any of them, who may manufacture, use, maintain,
17 distribute or sell the Covered Products, whether under Proposition 65 or the Unfair Competition
18 Act or otherwise, arising out of or resulting from, or related directly or indirectly to, in whole or
19 in part, the Covered Products. In furtherance of the foregoing, MEJF and KELC hereby waive
20 any and all rights and benefits which they now have, or in the future may have, conferred upon
21 them with respect to the Covered Products by virtue of the provisions of Section 1542 of the
22 California Civil Code, which provides as follows:

23 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
24 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
25 EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE
26 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
DEBTOR."

27 MEJF and KELC understand and acknowledge that the significance and consequence of this
28 waiver of California Civil Code Section 1542 is that even if MEJF or KELC suffer future

1 damages arising out of or resulting from, or related directly or indirectly to, in whole or in part,
2 the Covered Products, they will not be able to make any claim for those damages against Settling
3 Defendants and their parents (including but not limited to Mark IV Industries, Inc.), subsidiaries
4 or affiliates (including but not limited to Puretec Corp.; Plastic Specialties & Technologies, Inc.,
5 and TPI Acquisition Subsidiary, Inc.), predecessors (including but not limited to Dayco Products,
6 Inc.), brands (including but not limited to Colorite Waterworks, Colorite Plastics, Colorite
7 Polmers, Swan Hose and Colorite Swan Hose), officers, directors, employees, and all of their
8 customers, manufacturers, distributors, wholesalers, retailers or any other person in the course of
9 doing business, and the successors and assigns of any of them, who may manufacture, use,
10 maintain, distribute or sell the Covered Products. Furthermore, Plaintiff MEJF and KELC
11 acknowledge that they intend these consequences for any such claims which may exist as of the
12 date of this release but which MEJF or KELC do not know exist, and which, if known, would
13 materially affect their decision to enter into this Consent Judgment, regardless of whether its lack
14 of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

15 4.4 The liability releases provided for by this Section 4 of the Consent Judgment shall
16 become effective as to Dayco and its related entities immediately upon entry of this Consent
17 Judgment by the Court. On October 6, 2003, or on such subsequent date as the Court approves
18 and enters this Consent Judgment should the Court not have approved and entered the Consent
19 Judgment by that time, provided that no Public Enforcer has brought a Proposition 65
20 enforcement action as to the matters addressed in Notice Letter as modified, all liability releases
21 provided for by Section 4 of this Consent Judgment shall also become operative as to Tekni-Plex
22 and its related entities and downstream customers.

23 **5. ENFORCEMENT OF JUDGMENT**

24 5.1 The terms of this Consent Judgment shall be enforceable exclusively by the parties
25 hereto or a Public Enforcer acting within its proper jurisdiction and authority. The foregoing
26 may, by noticed motion or order to show cause before the Superior Court of San Francisco
27 County, giving the notice required by law, enforce the terms and conditions contained herein. In
28 any proceeding brought by any party to enforce this Consent Judgment, such party may seek

1 whatever fines, costs, penalties or remedies as may be provided by law for any violation of the
2 Consent Judgment. Additionally, if in such a proceeding the Court finds that Settling Defendants
3 failed to make reasonable efforts to comply with the warning requirements specified in Section 7
4 of this Consent Judgment, and notwithstanding any other provision of this Consent Judgment,
5 then as to Covered Products for which warnings were required under section 7 below, and are or
6 were not provided pursuant to Section 7 of this Consent Judgment, and only as to such Covered
7 Products, Settling Defendants shall be subject to the potential remedies provided for under
8 Proposition 65 and Business and Professions Code section 17204.

9 **6. MODIFICATION OF JUDGMENT**

10 Except as provided for in Paragraph 7.2(d), this Consent Judgment may be modified only
11 upon written agreement of the parties and upon entry of a modified Consent Judgment by the
12 Court thereon, or upon motion of any party as provided by law and upon entry of a modified
13 Consent Judgment by the Court.

14 **7. INJUNCTIVE RELIEF – CLEAR AND REASONABLE WARNING**

15 **7.1** Covered Products shall be deemed to comply with Proposition 65 and be exempt
16 from Proposition 65's requirements, including those set forth below, if the components of the
17 Covered Product which are made of brass and which involve the user gripping or holding the
18 component made from brass have an external surface meeting the following criteria: (a) the
19 surface contact layer of the brass components shall have no lead as an intentionally added
20 constituent; and (b) the surface contact layer shall have lead content by weight of no more than
21 0.03% (300 parts per million or "300 ppm") as determined by a test method having a level of
22 quantitation of at least 300 ppm.

23 **7.2** Covered Products manufactured and shipped for distribution to or sale in
24 California on or after Effective Date that do not meet the warning exemption standard set forth in
25 Section 7.1 of this Consent Judgment and are not exempt pursuant to Section 7.3 shall be
26 accompanied by a warning as described in Section 7.4 below. For purposes of this Section 7 of
27 the Consent Judgment, one hundred eighty (180) days after the entry of this Consent Judgment
28 shall be considered the "Effective Date."

1 be read and understood by an ordinary individual under customary conditions of purchase or use.
2 The warning shall be the same general size as other safety warnings, if any, on the product
3 container. If printed on the label itself, the warning may be contained in the same section of the
4 label that states other safety warnings, if any, concerning the use of the product.

5 (c) The requirement for product labeling, set forth in subparagraph (b) above is
6 imposed pursuant to the terms of this Consent Judgment. The parties recognize that product
7 labeling is not the exclusive method of providing a warning under Proposition 65 and its
8 implementing regulations.

9 (d) If Proposition 65 warnings for lead or lead compounds no longer should be
10 required because of a change or changes in law or regulation, Settling Defendants shall have no
11 further warning obligations pursuant to this Consent Judgment.

12 (e) In the event that a Settling Defendant wishes to modify the warning
13 language required under this Consent Judgment, it shall first obtain the express consent of the
14 California Attorney General's Office and, before attempting to do so, provide written notice to
15 plaintiff no less than twenty (20) days in advance. Plaintiff shall notify Settling Defendants in
16 writing of any objection within ten (10) days of its receipt of such notice, or such objection by the
17 plaintiff shall be deemed waived.

18 **8. AUTHORITY TO STIPULATE**

19 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
20 party he or she represents to enter into this Consent Judgment and to execute it on behalf of the
21 party represented and legally to bind that party and their privies.

22 **9. RETENTION OF JURISDICTION**

23 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

24 **10. SERVICE ON THE ATTORNEY GENERAL**

25 Plaintiff shall serve a copy of this Consent Judgment, signed by all parties, on the
26 California Attorney General on behalf of the parties within two (2) days of its full execution. At
27 least forty-five (45) days prior to a hearing before the Court, Plaintiff shall also serve the Attorney
28 General with a formally noticed motion for entry of this Consent Judgment together with a

1 supporting declaration justifying its entry and reimbursement of attorneys' fees provided for in
2 Section 2.1 above. Prior to submittal to the Court for approval, KELC shall file and serve a proof
3 of service attesting that this Consent Judgment has been served on the California Attorney
4 General and the manner and date on which that service was made.

5 **11. ENTIRE AGREEMENT**

6 This Consent Judgment contains the sole and entire agreement and understanding of the
7 parties with respect to the entire subject matter hereof, and any and all prior discussions,
8 negotiations, commitments and understandings related hereto. No representations, oral or
9 otherwise, express or implied, other than those contained herein have been made by any party
10 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
11 deemed to exist or to bind any of the parties.

12 **12. GOVERNING LAW**

13 The validity, construction and performance of this Consent Judgment shall be governed by
14 the laws of the State of California, without reference to any conflicts of law provisions of
15 California law.

16 **13. COUNTERPARTS AND FACSIMILE**

17 This Agreement may be executed in counterparts and facsimile, each of which shall be
18 deemed an original, and all of which, when taken together, shall constitute one and the same
19 document.

20 **14. COURT APPROVAL**

21 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and
22 cannot be used in any proceeding for any purpose.

23 **IT IS SO STIPULATED:**

24
25 DATED: _____

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

26
27 By _____

28 Its _____

1
2 DATED: August 28, 2003

DAYCO PRODUCTS LLC, Successor in Interest to
Dayco Products, Inc.

3
4 By 
5 Richard L. Grenolds
6 Vice President
7 Its Chief Accounting Officer

8
9 DATED: _____

TEKNI-PLEX, INC.

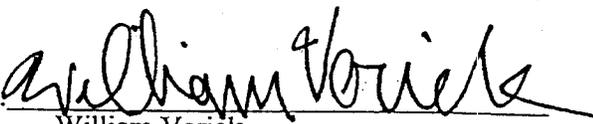
10 By: _____
11 Kenneth W. R. Baker

Its: President

12 APPROVED AS TO FORM:

13 DATED: 9-8-03

14 KLAMATH ENVIRONMENTAL LAW CENTER

15 By: 
16 William Verick

17 Attorney for Plaintiff
18 MATEEL ENVIRONMENTAL JUSTICE
19 FOUNDATION

20 DATED: _____

MORRISON & FOERSTER LLP

21
22 By: _____
23 Robert L. Falk

24 Attorney for Settling Defendants
25 DAYCO PRODUCTS, LLC TEKNI-PLEX,
26 INC.

27 IT IS SO ORDERED, ADJUDGED AND DECREED:

28 MAR 22 2004

RONALD EVANS CLERK

DATED: _____

Judge of the Superior Court

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DATED: _____

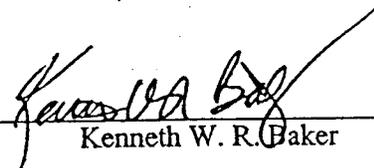
DAYCO PRODUCTS LLC, Successor in Interest to Dayco Products, Inc.

By _____

Its _____

DATED: August 14, 2003

TEKNI-PLEX, INC.

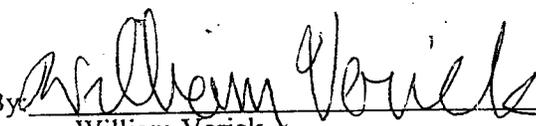
By: 
Kenneth W. R. Baker

Its: President

APPROVED AS TO FORM:

DATED: 9/8/03

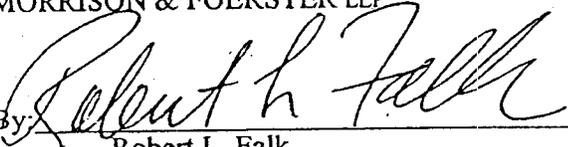
KLAMATH ENVIRONMENTAL LAW CENTER

By: 
William Verick

Attorney for Plaintiff
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

DATED: 8/14/03

MORRISON & FOERSTER LLP

By: 
Robert L. Falk

Attorney for Settling Defendants
DAYCO PRODUCTS, LLC TEKNI-PLEX,
INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

(JCR)

DATED: _____

Judge of the Superior Court