

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

Please print or type required information

Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S) RBC FOUR CO., LLC, and WILLIAM DUNLAP Individually			
	DEFENDANT(S) INVOLVED IN SETTLEMENT HIXSON METAL FINISHING			
CASE INFO	COURT DOCKET NUMBER 30-2014-00762137-CU-MC-CJC		COURT NAME ORANGE COUNTY SUPERIOR COURT	
	SHORT CASE NAME RBC FOUR CO., LLC V HIXSON METAL FINISHING			
REPORT INFO	INJUNCTIVE RELIEF N/A			
	PAYMENT: CIVIL PENALTY 5000.00	PAYMENT: ATTORNEYS FEES 20,000	PAYMENT: OTHER 13,000	
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL	DATE SETTLEMENT SIGNED 11 / 07 / 2014	
	COPY OF SETTLEMENT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT Kurt S. Bollin, Esq.			
	ORGANIZATION RBC FOUR CO., LLC		TELEPHONE NUMBER (818) 599-8020	
	ADDRESS 1506 OAK STREET- D		FAX NUMBER (626) 399-0124	
	CITY S. PASADENA, CA	STATE CA	ZIP _____	E-MAIL ADDRESS kurt@bollinlaw.com

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FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

1 Kurt S. Bollin, Esq., SBN. 134578
2 Law Office of Kurt S. Bollin
3 1506 Oak Street-D
4 South Pasadena, CA. 91030

5 Tel: 1 (818) 599-8020
6 Facsimile: 1 (626) 399-0144
7 kurt@bollinlaw.com

8 Attorneys for Plaintiffs

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ORANGE

11
12 RBC FOUR CO. LLC., and WILLIAM)
13 DUNLAP, INDIVIDUALLY AND DBA)
14 RBC CO. IN THE PUBLIC INTEREST,)
15 AND INDIVIDUAL DOE PLAINTIFFS)
1-3,)

16 Plaintiffs,)

17 vs.)

18)
19 HIXSON METAL FINISHING)
20 [Facility ID No. 11818])

21)
22 Defendant.)
23)

CASE NO. 30-2014-00762137-CU-MC-CJC
[Related to 30-2014-00745416-CU-TT-
CXC, 30-2014-00729353-CU-MC-CJC]

CONSENT TO JUDGMENT AS TO
DEFENDANT HIXSON METAL
FINISHING.

Date: December 30, 2014

Time: 1:30 p.m.

Dept.: C-21

Assigned to: Hon. David T. McEachen

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25
26 RBC Four Co. LLC and William Dunlap, collectively Plaintiffs, (“Plaintiffs”) hereby enter into this
27 Consent To Judgment with Hixson Metal Finishing, (as defined below).
28

10 The Parties

1 This Consent to Judgment is entered into by and between RBC Four Co. LLC (hereinafter "RBC") and
2 Hixson Metal Finishing, including its owners, parents, subsidiaries, affiliates, division (hereinafter "HMF"),
3 with RBC and HMF collectively referred to as the "Parties." RBC is a Limited Liability company in Fillmore,
4 California who seeks to promote awareness of exposures to toxic chemicals and improve human health by
5 reducing or eliminating hazardous substances contained in the environment. HMF employs ten or more persons
6 and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement
7 Act of 1986, California Health & Safety Code §§25249.5 *et seq.* ("Proposition 65").
8
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12 General Allegations

10 RBC alleges that HMF operates a manufacturing facility in Newport Beach, CA that utilizes hexavalent
11 chromium or its compounds, including but not limited to chromic acid. Hexavalent chromium, (Cr VI) is listed
12 pursuant to Proposition 65 as a chemical known to the State of California to be a carcinogen and reproductive
13 toxicant. Carbon Monoxide is also a chemical identified in RBC's Proposition 65 Notice. Cr VI and
14 Carbon Monoxide shall be referred to herein as the "Listed Chemicals."
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13 Notice of Violation

17 On or about April 2, 2014, RBC served HMF and various public enforcement agencies with a
18 document entitled "60-Day Notice of Violation" (the "Notice") that provided HMF and those public enforcers
19 with notice, among other allegations, (i) alleging that HMF was in violation of California Health & Safety
20 Code §25249.6 for failing to warn persons adjacent to their facility in Newport Beach that Hixson was
21 releasing quantities of Chromium compounds, "Cr VI," and carbon monoxide; and (ii) further alleging that
22 Hixson "contaminated sources of drinking water within the state in violation of Health & Safety Code
23 §25249.5 for specifically Cr VI".
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1 The Notice alleges that “[t]he first violation addressed by this Notice began on or after April 4,
2 2013, and has occurred on numerous occasions each and every day since that date and are ongoing and
3 continuing failures to warn in conformity with CCR Tit. 27 §25601. The air exposures caused by these
4 emissions of specifically Chromium compounds, “CR VI” and carbon monoxide are violations of statute
5 and are a “continuing violations”...[t]here is a second allegation that [HMF] has contaminated sources of
6 drinking water within the state in violation of H&S Code §25249.5 for specifically CR VI as they have
7 discharged onto land or into land where the chemical may pass into a source of drinking water.” To the
8 best of the Parties' knowledge, no public enforcer has diligently prosecuted the allegations set forth in the
9 Notice relating to the alleged violations of Health & Safety Code §25249.5 or the non-hexavalent
10 chromium claims asserted by RBC. On or about September 17, 2014, the Attorney General of the State of
11 California filed a Complaint against HMF relating to alleged violations of Health & Safety Code §25249.6
12 with respect to hexavalent chromium and, to the best of Parties' knowledge, is diligently prosecuting those
13 claims (the “AG Action”). This Consent to Judgment does not purport to settle any claims alleged in the
14 AG Action, although it resolves all claims that were brought or could have been brought by RBC pursuant
15 to the Notice. As part of, and upon execution of, this Consent to Judgment and concurrently with the filing
16 of RBC's motion to approve settlement the Parties stipulate and agree that RBC shall file a Complaint in
17 the Superior Court of the State of California for the County of Orange, alleging violations consistent with
18 the claims in the Notice and any ancillary claims. At the time of filing, the Complaint shall be deemed to
19 be served on HMF and HMF shall also be deemed to have answered the Complaint by denying each and
20 every allegation contained therein.
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25 1.4 No Admission

26 This Consent to Judgment resolves claims that are denied and disputed by HMF. The parties enter
27 into this Consent to Judgment pursuant to a full and final settlement of any and all claims between the
28

1 Parties (including any other claims that could have been brought in this action) for the purpose of avoiding
2 prolonged litigation. HMF denies the each and every material factual and legal allegation contained in the
3 RBC Notice and each and every allegation contained in the Complaint. HMF further maintains that all
4 alleged emissions and/or discharges or alleged releases in, around, and beyond Newport Beach, California,
5 alleged to be attributable to HMF, have been and are in compliance with all laws. Nothing in this Consent
6 to Judgment shall be construed as an admission by HMF of any fact, finding, issue of law, or violation of
7 law, nor shall compliance with this Consent to Judgment constitute or be construed as an admission by
8 HMF of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by
9 HMF. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect the
10 obligations, responsibilities and duties of HMF under this Consent to Judgment.
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13 1.5 Effective Date, Approval Date

14 For purposes of this Consent to Judgment, the term "Effective Date" shall mean the date which is
15 sixty (60) days after the Approval Date. For purposes of this Consent to Judgment, the term "Approval
16 Date" shall mean the date the court approves the consent judgment.
17

18 2. INJUNCTIVE RELIEF

19
20 2.1 WARNINGS

21 As of the Effective Date, HMF shall (assuming its emissions of chrome compounds, Cr VI, and
22 carbon monoxide are at levels requiring a warning) provide environmental warnings that are in compliance
23 with Title 27, Article 6, Sections 25605, 25605.1, and 25605.2 of the California Code of Regulations.
24

25 2.2 PROHIBITION ON DISCHARGES TO LAND THAT COULD PASS INTO A SOURCE
26 OF DRINKING WATER.
27

1 The Parties understand and acknowledge that Hixson is subject to a Corrective Action Consent
2 Agreement, dated as of September 9, 2002, with the California Department of Toxic Substances Control
3 ("Corrective Action Agreement"). Hixson shall continue to comply with the terms of the Corrective
4 Action Agreement until such time as that agreement is concluded.

5
6 3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE §25249.7(B)

7 3.1 Penalty Assessment

8 Pursuant to Health & Safety Code §25249.7(b), HMF shall be assessed \$5,000.00 in civil penalties
9 to be apportioned in accordance with California Health & Safety Code §25249.12(c)(1), with 75% of these
10 funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")
11 and the remaining 25% of these penalty monies remitted to RBC as provided by California Health & Safety
12 Code §25249.12(d). HMF shall issue two separate checks for the penalty payment: (a) one check made
13 payable to Kurt Bollin Law in Trust for the State of California's Office of Environmental Health Hazard
14 Assessment (OEHHA), representing 75% of the total penalty and (b) one check to Kurt Bollin Law for
15 RBC representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments:
16 The first 1099 shall be issued to Office of Environmental Health Hazard Assessment, P.O. Box 4010,
17 Sacramento, CA 95814 (EIN: 68-0284486), in the amount identified hereinabove. The second 1099 shall
18 be issued to RBC, in the amount identified hereinabove, whose address and tax identification number shall
19 be furnished, upon request, ten (10) calendar days before payment is due.
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23 3.2 Payment In Lieu of Penalties

24 On or before the Effective Date, Hixson shall make a payment in the amount of thirteen thousand
25 dollars (\$13,000) to RBC (at the address set forth below) to be used to fund an environmental project or
26 projects of RBC, related to the health impacts of Chrome VI, and in compliance with Title 11 of Section
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1 3203(b) of the California Code of Regulations. Payments shall be delivered within 5 days of the Approval
2 Date, at the following address:

3 Kurt Bollin Law
4 1506 Oak St.-D
5 South Pasadena, CA 91030
6

7 3.3 Settlement Payment
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9 Within five (5) business days of fully executing this Consent to Judgment, Hixson shall make a
10 settlement payment to RBC and William Dunlap, individually, in the amount of twenty thousand dollars
11 (\$20,000) to resolve all tort and/or non-Proposition 65 claims that are alleged in the Complaint or that could
12 have brought in this action by RBC or William Dunlap in their individual or representative capacities.
13

14 4. REIMBURSEMENT OF FEES AND COSTS

15 The parties reached an accord on the compensation due to RBC and his counsel under the private
16 attorney general doctrine and principles of contract law. Under these legal principles, HMF shall reimburse
17 RBC counsel for fees and costs, incurred as a result of investigating, bringing this matter to Defendant's
18 attention, and negotiating a settlement in the public interest. Except as to any attorney fees and costs
19 expended pursuant to Section 3.2, HMF shall pay RBC and his counsel \$20,000.00 for all attorneys' fees,
20 expert and investigation fees, and related costs. The payment shall be made payable to Kurt Bollin Law and
21 shall be delivered on or before the Approval Date, at the following address:
22

23
24 Kurt Bollin Law
25 1506 Oak St.-D
26 South Pasadena, CA 91030
27
28

1 Paying Defendant shall issue a separate 1099 for fees and costs paid in the amount of \$20,000.00 to
2 Kurt Bollin Law at the above address.

3 5. RELEASE OF ALL CLAIMS

4
5 5.1 Release of Defendants

6 In further consideration of the promises and agreements herein contained, and for the payments to
7 be made pursuant to Sections 3 and 4 above, and excepting any claim, agreement, penalty, fee or cost to be
8 agreed or assessed under Section 3.2, William Dunlap, in his individual capacity, and RBC, on behalf of
9 itself, and each of their past and current agents, representatives, attorneys, successors and/or assignees, and
10 in the interest of the general public, hereby waive all rights to institute or participate in, directly or
11 indirectly, any form of legal action against Hixson and releases all claims (whether known or unknown,
12 suspected or unsuspected), including, without limitation, all actions, and causes of action, in law or in
13 equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses
14 (including, but not limited to, investigation fees, expert fees and attorneys' fees), of any nature whatsoever,
15 arising out of the alleged release or discharge, at any time, of Chrome VI and/or carbon monoxide from
16 HMF's facility, RBC's 60-Day Notice of Violation, and/or the claims in its Complaint (collectively
17 "Released Claims"), against HMF and each of HMF's owners, parent companies, corporate affiliates,
18 subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and
19 employees, and sister and parent entities (collectively "Releasees").
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23 RBC and William Dunlap expressly waive all rights they have or may have under Section 1542 of
24 the Civil Code of California and similar laws of any state or territory of the United States or other
25 jurisdictions. Section 1542 of the Civil Code of the California provides as follows:
26

27 Section 1542. General Release: Extent. A general release does not
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1 extend to claims which the creditor does not know or suspect to exist in his
2 favor at the time of executing the release, which if known by him must have
3 materially affected his settlement with the debtor.

4 5.2 HMF's Release of RBC

5 HMF waives any and all claims against RBC, his attorneys and other representatives, for any and all
6 actions taken or statements made (or those that could have been taken or made) by RBC and his attorneys
7 and other representatives, whether in the course of investigating claims or otherwise seeking enforcement
8 of Proposition 65 against Defendant in this matter, and/or with respect to the Newport Beach facility.
9

10 6. ELECTION TO SECURE JUDGMENT UPON SETTLEMENT

11 The Parties intend and agree that this Consent to Judgment shall be given full effect for purposes of
12 precluding claims against HMF or the Releasees either under Proposition 65 as alleged in the Notice
13 (except for those claims currently being prosecuted by the Attorney General's Office against Hixson under
14 Proposition 65) or any of the causes of action asserted in RBC's Complaint (or that could have been
15 asserted in the Complaint or otherwise), as covered under the terms of the release in Section 5.
16
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18 7. SEVERABILITY

19 If, subsequent to the execution of this Consent to Judgment, any of the provisions of this Settlement
20 Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining
21 shall not be adversely affected.
22

23 8. COURT APPROVAL

24 This Consent to Judgment must be approved by the Court. The Consent to Judgment shall become
25 null and void if, for any reason, it is not approved and entered by the Court within six months after it has
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1 been fully executed by the Parties. Notwithstanding the generality of the foregoing, those portions of this
2 settlement not pertaining to Proposition 65 shall remain in effect and the Parties shall cooperate in drafting
3 any documentation to effectuate that intention.

4 9. GOVERNING LAW

5
6 The terms of this Consent to Judgment shall be governed by the laws of the State of California and
7 apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered
8 inapplicable by reason of law generally, or as to the Newport Beach facility, then HMF shall provide
9 written notice to RBC of any asserted change in the law, and shall have no further obligations pursuant to
10 this Consent to Judgment with respect to, and to the extent that, the Newport facility is so affected.
11

12 10. NOTICES

13
14 Unless specified herein, all correspondence and notices required to be provided pursuant to this
15 Consent to Judgment shall be in writing and personally delivered or sent by: (i) first-class, (registered or
16 certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the
17 following addresses:
18

19 For HMF:

20 Mr. Douglas Greene
21 Hixson Metal Finishing
22 829 Production Place
23 Newport Beach, CA 92663

24 With a copy to:

25 Chris M. Amantea, Esq.
26 Squire Patton Boggs (US) LLP
27 555 So. Flower St., Suite 3100
28

1 Los Angeles, CA 90071

2
3 For RBC or DUNLAP:

4 Kurt Bollin Law
5 1506 Oak St.-D
6 South Pasadena, CA 91030
7

8 Any party, from time to time, may specify in writing to the other party a change of address to which
9 all notices and other communications shall be sent.
10

11 11. COUNTERPARTS, FACSIMILE SIGNATURES

12 This Consent to Judgment may be executed in counterparts and by facsimile, each of which shall be
13 deemed an original, and all of which, when taken together, shall constitute one and the same document.
14

15 12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

16 RBC agrees to comply with the reporting form requirements referenced in Health & Safety Code §
17 25249.7(f) and to seek judicial approval in conformity with CCR 3000, et seq.
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19 13. MODIFICATION

20 This Consent to Judgment may be modified only by a written agreement of the Parties, and
21 approved by the Court.
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23 14. AUTHORIZATION

24 The undersigned are authorized to execute this Consent to Judgment on behalf of their respective
25 Parties and have read, understood and agree to all of the terms and conditions of this Consent to Judgment.
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Date: 11-10-2014

Kurt S. Bollin, Esq. For
RBC Four Co. LLC

Kurt S. Bollin

Date: 11-11-2014

William Dunlap, Individually

William Dunlap

Date: 11-7-14

Douglas Greene For
Hixson Metal Finishing

Douglas C. Greene