

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO, ex rel.	:	CASE NO.: CV 03 509780
MICHAEL DEWINE	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE PETER J. CORRIGAN
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
HI TECMETAL GROUP, INC., et al.	:	
	:	
Defendants.	:	

---

**AGREED ORDER**

---

With respect to the Consent Order, having been filed on November 14, 2003, the Order to Amend Consent Order effective January 22, 2007, and the Written Charges in Contempt having been filed on August 11, 2010, in the above-captioned matter, Plaintiff State of Ohio, by and through Michael DeWine, Ohio Attorney General ("Plaintiff" or "State"), and Defendants Hi TecMetal Group, Inc., and Thermal Treatment Center, Inc. (collectively "Defendants"), have reached an agreement that will satisfy the State's Written Charges in Contempt. This Agreed Order ("Agreed Order") eliminates the need for a hearing regarding the State's Written Charges in Contempt.

THEREFORE, without hearing of any issues of fact or law, without any admission of any issues of law, liability, or fact, and upon the consent of the Parties hereto, it is ADJUDGED, ORDERED, AND DECREED as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Parties and the subject matter of this action pursuant to R.C. Chapter 3734. Venue is proper in this Court.

**II. PARTIES**

2. The provisions of this Order shall apply to and are binding upon the Defendants and their respective successors in interest, assigns, and any other parties in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure.

**III. SATISFACTION OF CONTEMPT CHARGES**

3. The State has alleged that Defendants have violated the November 14, 2003 Consent Order, the Order to Amend Consent Order effective January 22, 2007, and R.C. Chapter 3734 and the rules adopted thereunder.

4. Except as provided in Section V. Reservation of Rights, compliance with the terms of Section IV. of this Agreed Order shall satisfy all claims alleged in the State's Written Charges in Contempt.

**IV. INJUNCTIVE RELIEF, SATISFACTION OF CONSENT ORDER**

5. The Defendants are ordered and enjoined to submit the closure plans as identified in Section "V. CLOSURE AND OTHER INJUNCTIVE RELIEF, Closure," paragraph number 13, in the Consent Order, and Section "V. CLOSURE AND OTHER INJUNCTIVE RELIEF, Closure," paragraph 13, in the Order to

Amend Consent Order and to complete all closure activities at the Facilities according to the following schedule:

<u>Description of Task:</u>	<u>Task Completion Date:</u>
Submit a revised closure schedule for the Walker Heat Treating Facility (Exterior Area, Salt Bath Room and Atmospheric Room)	August 1, 2011
Submit an amended closure plan for the Thermal Treatment Center Old Salt Pit Room	November 1, 2011
Submit a revised closure schedule for the Hydrovac Facility	August 1, 2011
Submit a revised closure schedule for the Commercial Induction Facility	August 1, 2011
Establish financial assurance for Revised/amended closure plans	within 60 days of Dec. 31, 2013

6. The closure schedule shall include, but in no way be limited to, the following activities and timeframes:

Walker Heat Treating (Calendar Years 2011 and 2012):

- Remove and dispose of soil that is above remedial standards.
- Conduct vapor intrusion assessment.
- Conduct groundwater monitoring activities.
- Conduct soil sampling to define the extent of contamination.

Thermal Treatment Center (Calendar Year 2012):

- Conduct soil sampling to define the extent of contamination.
- Remove and dispose of soil that is above remedial standards.

Hydrovac (Calendar Year 2013):

- Conduct soil sampling to define the extent of contamination.
- Conduct concrete decontamination activities.

Commercial Induction (Calendar Year 2013):

- Conduct soil sampling to define the extent of contamination
- Conduct concrete decontamination activities.

Defendants shall spend, at a minimum, the amounts specified below in completing the tasks and activities listed above:

Calendar Year 2011	\$400,000
Calendar Year 2012	\$150,000
Calendar Year 2013	\$166,000

Where not otherwise specified herein, Defendants shall complete all closure activities at all Closure Facilities pursuant to the time frames set forth in the written, closure plans submitted to the Ohio EPA. In the event that Defendants can not complete the closure activities by December 31, 2013, Defendants shall provide written, approvable closure plan(s) proposing completion of remaining closure activities.

#### **V. RESERVATION OF RIGHTS**

7. Additional stipulated penalties shall not accrue from the effective date of this Agreed Order if Defendants comply with the terms of this Agreed Order.

8. At this time, the State shall not demand payment of stipulated penalties having accrued prior to the effective date of this Agreed Order, as required by the November 14, 2003 Consent Order and the Order to Amend Consent Order effective January 22, 2007, if Defendants comply with the amended injunctive relief in this Agreed Order and any other injunctive relief required by the November 14, 2003 Consent Order and the Order to Amend Consent Order effective January 22, 2007. If Defendants comply with this Agreed Order, the State may demand payment for previously accrued penalties only after December 31, 2013.

9. The State will provide Defendants an opportunity to submit financial information regarding their ability to pay stipulated penalties for the Consent Order violations that have already accrued. Upon future review of adequate financial

information that may be submitted by Defendants, the State may propose an amount for stipulated penalties up to and including the full amount of the penalties owed. If the State and Defendants do not agree upon an amount for stipulated penalties, the State will request a hearing from this Court to decide the amount. The State and Defendants agree that if Defendants comply with this Agreed Order, potential penalties described in this paragraph when paid shall not exceed an annual sum of \$175,000 per year for a period of two years following a determination of the penalty amount by the Court, and thereafter any remaining balance would be forgiven.

10. If Defendants do not comply with this Agreed Order, the State may immediately demand all stipulated penalties that have accrued prior to and after the effective date of this Agreed Order without limitation starting with the initial date of any non-compliance.

#### VI. NOTICES

11. Except as stated herein, all documents required to be submitted under this Order shall be submitted to the following, or their successor:

Ohio Environmental Protection Agency  
Division of Hazardous Waste Management  
122 S. Front Street  
Columbus, Ohio 43215  
Attn: Manager, Compliance Assurance Section

Ohio EPA  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Attn: DHWM Manager

Or send electronically to:  
RECORDS@epa.state.oh.us

12. Any payments that may be required pursuant to paragraphs 9 and 10 above shall be paid by Cashiers or Certified Check to Karen Pierson, or her successor, Ohio Attorney General's Office, Environmental Enforcement Section, 30 E. Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio, 43215.

13. Either Party may change the name and/or address of its contact person(s) by sending written notice to the other Party.

#### **VII. EFFECT AND EFFECTIVE DATE**

14. This Order shall become effective upon the date of its entry by the Court.

15. The November 2003 Consent Order and the Order to Amend the Consent Order effective January 22, 2007, shall remain in effect and are only changed or superseded as expressly stated herein.

#### **VIII. COSTS**

16. Defendants are hereby ordered to pay the court costs of this action.

#### **IX. RETENTION OF JURISDICTION AND WAIVER OF SERVICE**

17. The Court shall retain jurisdiction of this action for purposes of making any Order or Degree which it deems appropriate to carry out this Order.

#### **X. SIGNATORIES**

18. Each of the undersigned of the Parties represents that he/she is fully authorized to enter into the terms and conditions of this Order and legally bind the respective party to this document.

FOR THE PLAINTIFF

FOR THE DEFENDANTS

**MICHAEL DEWINE  
OHIO ATTORNEY GENERAL**

*Brian A. Ball*

Brian A. Ball (0078285)  
Assistant Attorney General  
Environmental Enforcement Section  
30 E. Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215-3400  
(614) 466-5246

*Counsel for Plaintiff*

*Michael S. McMahon*

Michael S. McMahon (0014285)  
McMahon DeGulis LLP  
The Caxton Building  
812 Huron Rd., Suite 650  
Cleveland, OH 44115  
(216) 621-1312 (x102)

*Counsel for Defendant*

*Terrance C. Profughi Pres.*

Terrance Profughi  
President  
Hi TecMetals Group, Inc.  
1101 East 53<sup>rd</sup> St.  
Cleveland, OH 44103

**IT IS SO ORDERED.**

*[Signature]*  
\_\_\_\_\_  
JUDGE PETER J. CORRIGAN  
CUYAHOGA COUNTY  
COURT OF COMMON PLEAS

*6/3/11*

\_\_\_\_\_  
DATE

**RECEIVED FOR FILING**

**JUN 03 2011**

GERALD E. FUERST, CLERK  
By *[Signature]* Deputy