

OHIO E.P.A.  
OCT 22 2009

ENTERED DIRECTOR'S JOURNAL

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Mahle Engine Components USA, Inc.  
17226 County Road 57  
Caldwell, Ohio 43724

and

Gould Electronics Inc.  
34929 Curtis Boulevard  
Eastlake, Ohio 44095-4001

Respondents

Director's Final  
Findings and Orders  
For Remedial Design and  
Remedial Action

I certify this to be a true and accurate copy of the  
official documents as filed in the records of the Ohio  
Environmental Protection Agency.

PREAMBLE By: [Signature] Date: 10-22-09

It is hereby agreed to by the Parties as follows:

I. JURISDICTION

1. These agreed Director's Final Findings and Orders ("Orders") are issued to Mahle Engine Components USA, Inc. ("Mahle") and Gould Electronics Inc. ("Gould"), (collectively, "Respondents"), to settle disputed claims pursuant to the authority vested in the Director of Ohio EPA under Ohio Revised Code ("ORC") §§ 3734.13, 3734.20, 6111.03, and 3745.01, and 42 U.S.C. § 9613(f).

II. PARTIES BOUND

- 2. These Orders shall apply to and be binding upon Respondents and their successors in interest liable under Ohio law.
- 3. No change in ownership or corporate status of the Respondents, or of the Facility

owned by Respondent Mahle, including, but not limited to, any transfer of assets or real or personal property, shall in any way alter Respondents' obligations under these Orders.

4. Respondents shall provide a copy of these Orders to all contractors, subcontractors, and consultants retained to conduct any substantial portion of the Work performed pursuant to these Orders. Respondents shall ensure that all contractors, subcontractors, and consultants retained to perform the Work pursuant to these Orders also comply with the applicable provisions of these Orders.

### III. DEFINITIONS

5. Unless otherwise expressly provided herein, all terms used in these Orders or in any appendices shall have the same meaning as defined in ORC Chapters 3734 and 6111 and the rules promulgated thereunder. Whenever the terms listed below are used in these Orders or in any appendices, attached hereto and incorporated herein, the following definitions shall apply:

- a. "Amended Decision Document" means the remedial action selected for the Site as set forth in the document attached to these Orders as Appendix A.
- b. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.
- c. "Contaminants" or "contamination" means (1) any "hazardous waste" under ORC § 3734.01(J); (2) any "industrial waste" under ORC § 6111.01(C); and (3) any "other wastes" under ORC § 6111.01(D).
- d. "Day" means a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or state holiday. In computing any period of time under these Orders, where the last day would fall on a Saturday, Sunday, or state holiday, the period shall run until the close of the next business day.
- e. "Facility" means the manufacturing facility located on the Subject Property.
- f. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.
- g. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.
- h. "Orders" mean these Director's Final Findings and Orders and the Amended

Decision Document (Appendix A), RDRA Work Plan (Appendix B), Statement of Work (Appendix C), List of Relevant Guidance Documents (Appendix D) and Environmental Covenant (Appendix E) attached hereto and incorporated by reference herein.

- i. "Paragraph" means a portion of these Orders identified by an arabic numeral or an uppercase or lowercase letter.
- j. "Parties" means Respondents and the Ohio EPA.
- k. "Remedial Action" ("RA") means those activities to be undertaken by Respondents to implement the Amended Decision Document pursuant to the Remedial Design and Remedial Action Work Plan.
- l. "Remedial Design" ("RD") means those activities to be undertaken by Respondents to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design and Remedial Action Work Plan.
- m. "Remedial Design and Remedial Action Work Plan" ("RD/RA Work Plan") means the document submitted by Respondents pursuant to the Performance of Work Section of these Orders, attached to these Orders as Appendix B.
- n. "Respondents" means Mahle Engine Components USA, Inc. and Gould Electronics Inc.
- o. "Response Costs" means all costs incurred by Ohio EPA to implement these Orders that are consistent with Ohio law and not inconsistent with the NCP, including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, indirect costs, oversight costs, laboratory costs, and the costs of reviewing plans, reports, and other items pursuant to these Orders.
- p. "Section" means a portion of these Orders identified by a Roman numeral.
- q. "Site" means the Subject Property, where the treatment, storage, and/or disposal of hazardous waste, and/or the discharge to waters of the state of industrial waste or other wastes have occurred, including any other area where such hazardous wastes, industrial wastes, and/or other wastes have migrated or threaten to migrate.
- r. "Statement of Work" ("SOW") means the statement of work for the implementation of the Remedial Design and Remedial Action at the Site, as set forth in Appendix C to these Orders. The SOW is not specific to the Site; the SOW was used as a conceptual outline to develop the approved RD/RA Work

Plan, attached to these Orders as Appendix B. Because of its general nature, not all elements of the SOW are necessarily applicable to the Site.

- s. "Subject Property" means the property located at 17226 County Road 57 in Olive Township, approximately 0.75 mile south of the Village of Caldwell, in Noble County, Ohio [parcels 28-21135 (32.90 acres), 28-21134 (8.65 acres) and 29-29295 (0.01 acres)].
- t. "Transferee" means any future owner of any interest in the Subject Property, including but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and lessees.
- u. "Work" means all activities Respondents are required to perform under these Orders.

#### IV. FINDINGS

6. All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3734.13, 3734.20, 6111.03 and 3745.01 have been made by the Director and are outlined below. Nothing in these Orders shall be considered to be an admission by Respondents of any matter of law or fact. Subject to the foregoing, the Director of Ohio EPA has determined the following:

- a. The Subject Property is located at 17226 County Road 57 in Olive Township, approximately 0.75 mile south of the Village of Caldwell, in Noble County, Ohio. The Subject Property is owned by the Respondent Mahle, which acquired the assets of Dana Corporation and various Dana Corporation affiliates on March 9, 2007 (the "Acquisition"). Through the Acquisition, Mahle became the owner of the Subject Property, which consists of a facility used for the manufacture of small machined parts on approximately 41 acres.
- b. The original manufacturing facility was constructed in 1952. The plant was originally owned and operated by Cleveland Graphite Bronze Company, which in 1969 became part of Gould Inc. Gould Inc. subsequently operated the facility until 1981, when Imperial Clevite Industries purchased the operations and the property. Clevite Industries acquired the facility through a merger with Imperial Clevite Industries in 1986. J.P. Industries, Inc. (JPI) purchased the Site in 1987. JPI was acquired by T&N PLC in August 1990. In the spring of 1998, T&N PLC was acquired by Federal Mogul Corporation. However, the Federal Trade Commission (FTC) required Federal Mogul to divest its interest in the facility, and under the FTC ruling it was sold to Dana Corporation in late 1998. The facility operated under the name Dana Glacier Vandervell Inc. ("GVI") until the Acquisition, at which point title and future operation of the Facility transferred to

Respondent Mahle. In addition, the rights and obligations of GVI under a certain Settlement Agreement dated July 5, 1995 among Gould, GVI and the other parties were assigned to Respondent Mahle. All interests in the facility, including the property, structures, and manufacturing operations, are currently owned by Respondent Mahle.

- c. The facility has manufactured the same type of products since production began in 1952. Products include a variety of small machined parts, including bi-metal bushings and washers. Processes involved in the manufacturing of the parts include casting, milling, rolling, annealing, slitting, blank forming, coining, plating and finishing.
- d. Historically, solvents have been used at the facility to clean and degrease equipment and structures. These solvents include trichloroethene (TCE), 1,1,1-trichloroethane (TCA), and trans-1,2-dichloroethene.
- e. As a result of manufacturing operations, the facility generated industrial waste water which was treated and discharged into the local publicly owned treatment works (POTW). Prior to final discharge of this water, settled sludge was drawn off and discharged into sludge dewatering beds, also known as sand filter beds, with filtrate recycled to an on-Site treatment plant. Waste discharged to these units included electroplating waste as well as oil and grease from degreasing operations. Today, these wastes would be designated as F006 listed hazardous waste under the Resource Conservation and Recovery Act (RCRA). The filter beds had been in use since 1952. Prior to 1980, the waste generated from the filter beds and from other plant operations was disposed of on the Site by Gould and others.
- f. In 1987, a Preliminary Site Investigation (PSI) determined that metal hydroxide sludge, corn cob deburring media waste, and lead-bearing sludge were disposed of at the Site, in the area known as the Western Disposal Area (WDA). Soil borings indicated the presence of lead in the soil, with concentrations as high as 100,000 mg/kg. Ground water samples indicated the presence of several chlorinated solvents at concentrations significantly higher than drinking water standards. There are no drinking water wells at the Site.
- g. In April 1987, Ohio EPA conducted a RCRA inspection of the Site pursuant to ORC § 3734.07. Subsequently, GVI submitted a RCRA Closure Plan for the sand filter beds and for conducting a ground water monitoring program. The Closure Plan was approved by Ohio EPA on February 17, 1988. As part of the closure, GVI removed and properly disposed of 500 tons of soil from the area of the filter beds. GVI installed one upgradient and four downgradient monitoring wells to evaluate ground water conditions. GVI monitored the wells on a quarterly basis in 1988 and on a semi-annual basis from July 1989 to February

1991.

- h. In late 1987, an additional investigation of a gasoline leak revealed further contamination at the Site. Ground water collected during this study indicated the presence of trans-1,2-dichloroethane, trichloroethene, toluene, and benzene, at concentrations significantly higher than drinking water standards.
- i. On December 11, 1991, the Director of Ohio EPA issued agreed Director's Final Findings and Orders to Gould and GVI to complete a remedial investigation and feasibility study (RI/FS) to investigate the nature and extent of the contamination at the Site.
- j. Activities performed during the RI and other investigations included the installation of 38 monitoring wells and the drilling of 91 soil borings. Tasks included sampling of surface and subsurface soil, wetland and stream sediments, surface water, and ground water. Ground water sampling events were conducted on several occasions during the RI/FS process, including February 1993, May 1993, September 1994, June 1995, and May 2000.
- k. The Western Disposal Area (WDA) was historically used to dispose of pre-RCRA wastes generated in the production processes at the Facility. These wastes included plating and grinding sludge, corn cob deburring media, waste oil, solvents, and waste water treatment sludge from the sand filter beds. The WDA was used through 1979. In 1980 and 1981, the WDA was covered with 6 to 8 inches of soil and seeded. RI sampling within the WDA identified the presence of metals (primarily copper and lead), semivolatile organic compounds (SVOCs), and VOCs in soil.
- l. The Soluble Oil (SO) Line, located beneath the Facility building, was historically used to transport spent solvents to a concrete holding tank for further treatment. The line is no longer in use. During RI activities, VOCs were detected in soil in the vicinity of the SO Line.
- m. Plant Area Soils are those shallow (0-2 feet below ground surface) soils found in the general outdoor portions of the Site, including the former RCRA closure unit, the former UST area, the southwest loading dock area, and upland areas near the wetland. Based upon RI sampling data, lead represents the primary chemical of concern in the Plant Area Soils; VOCs were detected only occasionally.
- n. The primary contaminants, their maximum concentrations, and their Preliminary Remediation Goals (PRGs) or Maximum Contaminant Levels (MCLs) in Site media are:

Soil/Sediment		
Contaminant	Maximum Concentration	PRG
Trichloroethene	210 mg/kg	0.048 mg/kg
Tetrachloroethene	92 mg/kg	0.27 mg/kg
Ethylbenzene	40 mg/kg	16 mg/kg
Toluene	61 mg/kg	7.7 mg/kg
Copper	140,000 mg/kg	3,036 mg/kg <sup>1</sup> 358 mg/kg <sup>2</sup>
Lead	52,000 mg/kg	1,600 mg/kg <sup>1</sup> 189 mg/kg <sup>2</sup>
Tin	3,300 mg/kg	2,536 mg/kg <sup>1</sup> 299 mg/kg <sup>2</sup>

<sup>1</sup> PRG based on ecological risk in upland soils.

<sup>2</sup> PRG based on ecological risk in wetland soils.

Ground Water		
Contaminant	Maximum Concentration <sup>1</sup>	PRG (MCL)
Trichloroethene	4,300 ug/l	5 ug/l
Cis-1,2 dichloroethene	4,400 ug/l	70 ug/l

Vinyl chloride	410 ug/l	2 ug/l
Benzene	720 ug/l	5 ug/l

<sup>1</sup>Concentration data from May 2000 FS ground water sampling event.

Additional PRGs are set forth in the Amended Decision Document.

- o. Gould and GVI installed an interim ground water recovery and treatment system in January 1997. The system is currently operating at the Site. The system consists of three pumping wells (MW-7, MW-10, and MW-18) located in areas of highest VOC concentration and an activated carbon system to treat VOC-contaminated ground water.
- p. On March 29, 1999, Ohio EPA approved the Respondents' RI Report. The RI included a Baseline Human Health Risk Assessment and Ecological Risk Assessment. The RI characterized the nature and extent of the contaminants released at the Site and the nature of potential risks to human health and safety and the environment. The RI revealed that the principal contaminants of concern are the metals antimony, arsenic, copper, lead and tin; and the VOCs trichloroethene, perchloroethene and benzene. The principal exposure pathways of concern at the Site include potential exposure of both human and ecological receptors to metals-contaminated soils and VOC-contaminated ground water, as detailed in the RI.
- q. The Human Health Risk Assessment concluded that a theoretical current grounds worker and a theoretical future construction worker would be at risk from exposure to copper, antimony, and thallium in Site soils. For a theoretical future on-site child resident, risks could arise from exposure to antimony and thallium in Site soils, as well as potential ingestion of TCE, PCE, and benzene in ground water. For a theoretical future on-site adult resident, risks could arise from potential ingestion of TCE, PCE, and benzene in ground water.
- r. The Ecological Risk Assessment identified various risks to potential biological receptors on-Site, including the muskrat, meadow vole, American robin, red-tailed hawk, American woodcock, and great blue heron. These risks are driven primarily by the concentrations of metals in soils - including copper, lead, tin, antimony, arsenic, beryllium, chromium, and zinc.
- s. On August 15, 2001, Ohio EPA approved the FS Report. The FS Report evaluated potential remedial alternatives to address metals and VOC contamination in the Western Disposal Area and Site soils, metals contamination in wetland sediments, and VOC contamination in ground water.

- t. On August 12, 2003, Ohio EPA released to the public the Preferred Plan for remediation of the Site. The Preferred Plan summarized the information presented in the RI and FS prepared by Gould and GVI, and identified and explained Ohio EPA's preferred alternative for the remedial action at the Site.
- u. On October 2, 2003, Ohio EPA held a public meeting to discuss the Preferred Plan and to solicit public comments. The public comment period ended on October 9, 2003. Gould and GVI submitted public comments on the Preferred Plan. Based on those comments, some changes were made to the Preferred Plan before it was issued as the Decision Document.
- v. On May 5, 2004, Ohio EPA issued a Decision Document, which selected the remedy for the Site.
- w. On June 2 and 3, 2004, Gould and GVI appealed the Decision Document to the Environmental Review Appeals Commission. Gould and GVI subsequently met with Ohio EPA, discussed the issues identified by Gould and GVI and, on December 21, 2006, Ohio EPA, Gould and GVI entered into a Stipulation and Settlement Agreement that resolved the issues identified in the appeals of the Decision Document.
- x. On October 10, 2006, Ohio EPA released to the public a draft Amended Decision Document for remediation of the Site. The draft Amended Decision Document included changes to the initial Decision Document.
- y. On December 7, 2006, Ohio EPA held a public meeting to discuss the draft Amended Decision Document and to solicit public comments. The public comment period ended on December 15, 2006. On December 28, 2006, the Director of Ohio EPA issued an Amended Decision Document, which modified the remedy selected for the Site. The Amended Decision Document is attached hereto as Appendix A, and incorporated by reference herein.
- z. By letter dated July 20, 2007, the Governor of Ohio designated the Director of Ohio EPA as the trustee for natural resources, pursuant to CERCLA section 107(f)(2)(B), 42 U.S.C. § 9607(f)(2)(B).
- aa. Each Respondent is a "person" as defined in ORC §§ 3734.01(G) and 6111.01(I).
- bb. The Site is a hazardous waste facility, solid waste facility or other location where hazardous waste was treated, stored or disposed, within the meaning of ORC section 3734.01(N). Gould and GVI generated contaminants at the Site. Gould and GVI directly or indirectly allowed and/or directed the placement and/or disposal of contaminants at the Site.

- cc. Ohio EPA has incurred and continues to incur Response Costs associated with the Site.
- dd. Because of their quantity, concentration, physical or chemical characteristics, some contaminants of concern ("COCs") found at the Site are "hazardous wastes" as defined under ORC § 3734.01(J).
- ee. The COCs found at the Site are "industrial wastes" or "other wastes" as defined under ORC §§ 6111.01(C) and (D).
- ff. The ground and surface waters at the Site are "waters of the state" as defined in ORC § 6111.01(H).
- gg. Conditions at the Site constitute a substantial threat to public health or safety or are causing or contributing or threatening to cause or contribute to air or water pollution or soil contamination within the meaning of ORC § 3734.20(B).
- hh. The migration and threatened migration of these contaminants to ground water and surface water at or from the Site constitutes a discharge of industrial wastes or other wastes into "waters of the state," as that term is defined in ORC § 6111.01(H). The Work required pursuant to these Orders will contribute to the prohibition or abatement of the discharge of contaminants to waters of the state.
- ii. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders, and to evidence relating to conditions calculated to result from compliance with these Orders, and their relation to the benefits to the people of the state to be derived from such compliance.

## V. GENERAL PROVISIONS

### 7. Objectives of the Parties

The objectives of the Parties in entering into these Orders are to provide for the protection of public health and safety and the environment from the disposal, discharge, or release of contaminants at the Site through the design, construction, operation and maintenance of the remedy set forth in the Amended Decision Document, to reimburse Ohio EPA for response costs incurred in connection with the Site, and to resolve claims by the State of Ohio ("State") alleging injury to natural resources of the State through the establishment of an environmental covenant for the Site.

### 8. Commitment of Respondents

Respondents agree to perform the Work in accordance with these Orders including but not limited to the RD/RA Work Plan, and all standards, specifications, and schedules set forth in or developed pursuant to these Orders. Respondent Mahle also agrees to execute an environmental covenant affecting a designated portion of the Site as provided in the Land Use and Conveyance of Title Section of these Orders, and Respondents agree to reimburse Ohio EPA for all Response Costs as provided in the Reimbursement of Costs Section of these Orders.

#### 9. Compliance With Law

- a. All activities undertaken by Respondents pursuant to these Orders shall be performed in accordance with the requirements of all applicable federal, state and local laws and regulations.
- b. Respondents shall perform the activities required pursuant to these Orders in a manner that is not inconsistent with the NCP. Ohio EPA has determined that activities conducted pursuant to these Orders, as approved by Ohio EPA, are necessary and consistent with the NCP.
- c. Where any portion of the Work requires a permit or other authorization, Respondents shall submit applications in a timely manner and take all other actions reasonably necessary to obtain such permits or other authorization. These Orders are not, and shall not be construed to be, a permit or other authorization issued pursuant to any statute or regulation.

### VI. PERFORMANCE OF WORK

#### 10. Supervising Contractor

All Work performed pursuant to these Orders shall be under the direction and supervision of a contractor with expertise in hazardous waste site remediation. Prior to the initiation of the Work, Respondents shall notify Ohio EPA in writing of the name of the supervising contractor and any subcontractor then expected to be used in performing the Work under these Orders.

#### 11. Remedial Design and Remedial Action

- a. The approved RD/RA Work Plan is attached to these Orders as Appendix B.
- b. The RD/RA Work Plan provides for the design, construction, operation and maintenance of the remedy as set forth in the Amended Decision Document.

- c. The RD/RA Work Plan was developed in conformance with the SOW, Appendix C of these Orders, the NCP, and the guidance documents listed in Appendix D of these Orders, attached hereto and incorporated herein. If Ohio EPA determines that any additional or revised guidance documents affect the Work to be performed in implementing the RD/RA, Ohio EPA will notify Respondents, and the RD/RA Work Plan and other affected documents shall be modified accordingly, subject to the provisions of Section XV, Dispute Resolution.
- d. Handling Inconsistencies. Should Respondents identify any inconsistency between any of the laws and regulations and guidance documents that Respondents are required to follow by these Orders, Respondents shall notify Ohio EPA in writing of each inconsistency and the effect of the inconsistencies upon the Work to be performed. Respondents shall also recommend, along with a supportable rationale justifying each recommendation, the requirement Respondents believe should be followed. Respondents shall implement the affected Work as directed by Ohio EPA, subject to the provisions of Section XV, Dispute Resolution.
- e. RD/RA Work Plan Implementation. Respondents shall submit all plans, reports, or other deliverables required under the approved RD/RA Work Plan in accordance with the approved RD/RA schedule set forth therein, for review and approval pursuant to the Review of Submittals Section of these Orders.

## 12. Health and Safety Plan

Within thirty (30) days after the effective date of these Orders, Respondents shall submit to Ohio EPA for review and comment a health and safety plan developed in conformance with the guidance listed in Appendix D.

## 13. Operation and Maintenance Plan

The Operation and Maintenance (O&M) Plan, including a schedule for implementation, shall be submitted in accordance with the schedule set forth in the approved RD/RA Work Plan. Ohio EPA will review the O&M Plan pursuant to the procedures set forth in the Review of Submittals Section of these Orders. Subject to the provisions of Section XV, Dispute Resolution, upon approval of the O&M Plan by Ohio EPA, Respondents shall implement the O&M Plan. Respondents shall submit all plans, reports, or other deliverables required under the approved O&M Plan, in accordance with the approved O&M schedule set forth therein, for review and approval pursuant to the Review of Submittals Section of these Orders.

## **VII. ASSURANCE OF ABILITY TO COMPLETE WORK**

#### 14. Cost Estimates

- a. Within sixty (60) days after Respondents' receipt of Ohio EPA's approval of the Final Design Report required under Section VI (PERFORMANCE OF WORK) of these Orders, Respondents shall submit to Ohio EPA a final detailed written estimate of the cost of the work associated with the long-term operation and maintenance ("O&M") and monitoring of the selected remedy identified in the Amended Decision Document, in current dollars ("Initial Cost Estimate") (estimated in the Amended Decision Document to be \$2,010,640), including any adjustments for inflation based upon the Gross Domestic Product Implicit Price Deflator ("GDP/IPD") and any adjustments for discount rates based upon the Federal Reserve Bank's 30-year Treasury Bill rate for the most recent month for which data is available.
- b. Beginning one year after the effective date of these Orders, and semi-annually thereafter, Respondents must submit to Ohio EPA an estimated cost of the remaining O&M and monitoring Work to be performed ("Current Revised Cost Estimate") based upon the procedures described in the preceding paragraph. Information relied upon in support of the Current Revised Cost Estimate must be provided with any request for reduction. If an adjustment is made to any such Current Revised Cost Estimate for inflation and/or discount rates, an explanation shall be provided.
- c. The Current Revised Cost Estimate shall reflect any adjustments caused by the Respondents' agreement to perform any additional O&M and monitoring Work requested by Ohio EPA pursuant to Section IX (ADDITIONAL WORK) or by any other conditions that have increased the cost of the O&M and monitoring Work to be performed under these Orders (e.g., change in contractor).
- d. Respondents shall submit the Initial Cost Estimate and all Current Revised Cost Estimates to Ohio EPA for review and approval, which approval shall not be unreasonably withheld. Ohio EPA will review each cost estimate and notify Respondents in writing of Ohio EPA's approval, disapproval, or combination thereof in accordance with Section XIV (REVIEW OF SUBMITTALS).

#### 15. Performance Guarantee

- a. In order to secure the full and final completion of the O&M and monitoring Work in accordance with these Orders, within sixty (60) days following the effective date of these Orders or within sixty (60) days following Ohio EPA's approval of the Initial Cost Estimate, whichever date is later, Respondents shall establish financial security for the benefit of Ohio EPA in an amount at least equal to the Initial Cost Estimate. Thereafter, Respondents shall maintain financial security in an amount at least equal to the Current Revised Cost Estimate ("Financial

Assurance"). Respondents may use one or more of the Financial Assurance mechanisms described in subparagraphs i. through iv., below.

Respondents shall submit draft Financial Assurance instruments and related documents to Ohio EPA, concurrently with Respondents' submission of the Initial Cost Estimate, for Ohio EPA's review and approval in accordance with Section XIV (REVIEW OF SUBMITTALS).

- i. A trust fund administered by a trustee which is an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency and that is acceptable to Ohio EPA. The trust agreement shall provide that the trustee shall make payments from the fund, (1) as Respondents shall direct in writing to pay invoices submitted by Respondents from the fund for Work expenditures made by approved contractors engaged by Respondents; Respondents must only direct payment of invoices for which Respondents have submitted a notification to Ohio EPA's Site Coordinator, in accordance with Section XIV (REVIEW OF SUBMITTALS) of these Orders, or (2) in the event of a failure of performance as described in this Section, to pay any other person whom Ohio EPA determines has performed or will perform the Work required by these Orders at the direction of Ohio EPA.
- ii. A surety bond unconditionally guaranteeing performance of the Work or payment, at the direction of Ohio EPA, into a standby trust fund which meets the requirements of the trust fund described in subparagraph i. above. The surety company issuing the bond must be among those listed as acceptable sureties on Federal Bonds as set forth in Circular 570 of U.S. Department of the Treasury and under Title 31 U.S.C. §§ 9304-9308.
- iii. One or more irrevocable letter(s) of credit, payable at the direction of Ohio EPA, into a standby trust fund which meets the requirements of the trust fund described in subparagraph i. above. The letter(s) of credit must be issued by one or more financial institution(s) (a) that has the authority to issue letters of credit, and (b) whose letter-of-credit operations are regulated and examined by a Federal or State agency. The letter(s) of credit must be irrevocable and issued for a period of at least one (1) year. The letter(s) of credit must provide that upon its expiration date, the letter(s) of credit will be automatically extended for a period of at least one (1) year unless, at least 120 days before the current expiration date, the issuing institution notifies the Respondents and Ohio EPA by certified mail of a decision not to extend the expiration date. Under the terms of the letter(s) of credit, the 120 days will begin on the date when the Respondents and Ohio EPA have received the notice, as evidenced by the return receipts.

- iv. A policy of insurance that (a) provides Ohio EPA with rights as a beneficiary, which is acceptable to Ohio EPA; and (b) is issued by an insurance carrier that (i) has the authority to issue insurance policies in Ohio, and (ii) whose insurance operations are regulated and examined by a Federal or Ohio agency. The insurance policy shall be issued for a face amount at least equal to the Initial Cost Estimate or Current Revised Cost Estimate, whichever is the most current estimate, except for those costs covered by another Financial Assurance instrument, as permitted in subparagraphs i. through iii. above. The policy shall provide that the insurer shall make payments as the Respondents shall direct in writing (A) to reimburse Respondents for expenditures made by Respondents for Work performed in accordance with these Orders, or (B) to pay any other person whom Ohio EPA determines has performed or will perform the Work in accordance with these Orders, up to an amount equal to the face amount of the policy. The policy shall also provide that it may not be canceled, terminated or non-renewed and the policy shall remain in full force and effect in the event that (1) either of the Respondents is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) of the U.S. Code; or (2) Ohio EPA issues a Performance Failure Notice under this Section of these Orders.
- b. All Financial Assurance instruments provided pursuant to this Section of these Orders shall be consistent with OAC rules 3745-55-43 (A) through (E) and 3745-55-51 (A) through (E) to the extent appropriate to the O&M and monitoring Work required by these Orders. The Financial Assurance instrument(s) provided pursuant to this Section (including, without limitation, the original versions of letters of credit and other negotiable instruments issued for Ohio EPA's benefit) shall be submitted by Respondents to the Ohio EPA Site Coordinator in accordance with Section XIV (REVIEW OF SUBMITTALS) of these Orders.
- c. Whenever the Current Revised Cost Estimate exceeds the amount of Financial Assurance already provided pursuant to this Section by more than 5%, the Respondents shall, within sixty (60) days thereafter, obtain and present to Ohio EPA, for review and approval a revised form of Financial Assurance (and otherwise acceptable under this Section) that reflects such cost increase.
- d. In the event that an institution involved in the management of funds provided to guarantee performance under this Section, or responsible for providing such performance guarantee, becomes unable to perform its obligations, or to provide the funds or financial resources for the Work as required by these Orders, Ohio EPA shall issue a written notification to Respondents of such incapacity. Thereafter, within sixty (60) days of receipt of such notification, Respondents shall either secure proper performance of the guarantee from the institution to

satisfy Ohio EPA, or submit to Ohio EPA for approval an alternative form of Financial Assurance that meets the requirements of this Section. Respondents' inability to post Financial Assurance shall in no way excuse performance of any other requirements of these Orders, including, without limitation, the Respondents' obligation to complete the O&M and monitoring Work in accordance with the terms hereof.

#### 16. Performance Failure

- a. Financial Assurance instruments provided pursuant to this Section shall provide Ohio EPA with immediate access to resources, whether in cash or in kind services, to continue and complete the O&M and monitoring Work in the event Ohio EPA determines that Respondents (i) have ceased implementation of any portion of the O&M and monitoring Work, (ii) are significantly or repeatedly deficient or late in their performance of the O&M and monitoring Work, or (iii) are implementing the O&M and monitoring Work in a manner which may cause an endangerment to human health and/or the environment. Upon making such determination, Ohio EPA may issue a written notice ("Performance Failure Notice") to both the Respondents and the Financial Assurance provider of Respondents' failure to perform. The Performance Failure Notice will specify the grounds upon which such a notice was issued and will provide the Respondents with a period of ten (10) days within which to remedy the circumstances giving rise to the issuance of such notice. Upon the expiration of the ten-day notice period, Respondents may invoke the procedures set forth in Section XV (DISPUTE RESOLUTION), to dispute Ohio EPA's determination that any of the circumstances described in clauses (i), (ii) or (iii) has occurred.
- b. Failure by the Respondents to remedy the relevant Performance Failure to Ohio EPA's satisfaction before the expiration of the ten-day notice period specified in this paragraph shall trigger Ohio EPA's right to have immediate access to and benefit of the Financial Assurance provided pursuant to this Section, and Ohio EPA may, at any time after the expiration of the ten-day notice period, both order Respondents to cease performance of the Work and direct the Financial Assurance provider to immediately (i) deposit into a newly created trust fund approved by Ohio EPA, the remaining funds obligated under the Financial Assurance instrument or (ii) arrange for performance of the O&M and monitoring Work in accordance with these Orders.
- c. If Ohio EPA has issued a Performance Failure Notice but is nevertheless unable after reasonable efforts to secure the resources (whether in cash or in-kind services) necessary to continue and complete the O&M and monitoring Work from the Financial Assurance instrument(s) posted by Respondents pursuant to this Section, then, upon receiving written notice from Ohio EPA, Respondents shall (in the event Respondents do not prevail in Dispute Resolution, if any, as

set forth in Section XV (DISPUTE RESOLUTION) of these Orders), secure the resources available under the Financial Assurance mechanism, or deposit into an account specified by Ohio EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount equal to the Current Revised Cost Estimate.

- d. If Respondents dispute an Ohio EPA determination under this paragraph that identifies an immediate or potential threat to human health and/or the environment that warrants immediate action, Ohio EPA will direct the Trustee of the trust account newly-created by Ohio EPA following the Performance Failure Notice to make any appropriate payments from such trust fund to address such threat. Otherwise, Ohio EPA will direct the Trustee to not make any payments from the newly-created trust fund, pending resolution of a dispute. If Respondents prevail in dispute resolution, all funds in the newly-created trust fund, including any interest that accrued on the funds, shall be returned to a Financial Assurance provider who has agreed to continue providing Financial Assurance to the Respondents.

#### 17. Reduction of Amount of Financial Assurance

Concurrent with the submission of the Current Revised Cost Estimate, if the Respondents believe that the estimated cost to complete the remaining O&M and monitoring Work has decreased below the aggregate amount of the Financial Assurance mechanism or mechanisms selected by Respondents, the Respondents may, at the time of submittal of the Current Revised Cost Estimate, submit a written request to Ohio EPA to reduce the current amount of Financial Assurance to an amount no less than the Current Revised Cost Estimate. If Ohio EPA decides to accept such a proposal, Ohio EPA shall issue a notification to the Respondents of such decision in writing. After receiving Ohio EPA's written acceptance, which shall not be unreasonably withheld, Respondents may reduce the amount of the Financial Assurance in accordance with and to the extent permitted by such written acceptance.

#### 18. Release of Financial Assurance

Respondents may petition Ohio EPA to allow the release or discontinuance of the Financial Assurance required hereunder. Respondents shall submit a written proposal for such release to Ohio EPA which shall specify the basis for the requested release (e.g., full and final completion of the O&M and monitoring Work, etc.). If Ohio EPA decides to accept such a proposal, Ohio EPA shall notify the Respondents and the provider of the Financial Assurance of such decision in writing. The provider of the Financial Assurance may be released from its obligations under the instrument only upon a written release from Ohio EPA.

## VIII. LAND USE AND CONVEYANCE OF TITLE

### 19. Environmental Covenant

Within thirty (30) days after the effective date of these Orders, Respondent Mahle shall execute and file for recording, in the deed or official records of the Noble County Recorder's Office, on the title to the Subject Property owned by the Respondent Mahle, the environmental covenant that is attached hereto as Appendix E. Within thirty (30) days after filing with the Noble County Recorder's Office the executed environmental covenant, Respondent Mahle shall submit to Ohio EPA a file-stamped copy of the recorded environmental covenant. The terms and conditions of the environmental covenant are incorporated into these Orders and shall be binding upon Respondent Mahle. Upon the recording of the environmental covenant in accordance with this paragraph, the Director waives and releases any claims that the State of Ohio has or may have against Respondents alleging injury to natural resources arising from releases of hazardous substances at the Site prior to the effective date of these Orders.

### 20. Land Use Self-Reporting Requirement

Respondent Mahle shall not permit the Subject Property to be used in any manner that would violate the terms of the environmental covenant or adversely affect the integrity of any containment, treatment, or monitoring systems at the Site, and shall promptly notify Ohio EPA of any violation of the terms of the environmental covenant or any such adverse effect.

### 21. Notice of Transfer of Property

If Respondent Mahle conveys any interest in the Subject Property, each deed, title, or other instrument shall contain a notice stating that the Subject Property is subject to these Orders and the environmental covenant, and shall reference any monitoring, treatment or containment devices present on the Subject Property as a result of these Orders. Prior to each conveyance by Respondent Mahle of an interest in any portion of the Subject Property, including but not limited to easements, deeds, leases and mortgages, Respondent Mahle shall notify the Transferee of the existence of any containment, treatment, or monitoring systems, and shall provide copies of these Orders and the environmental covenant to the Transferee. Respondent Mahle shall notify Ohio EPA and Respondent Gould at least thirty (30) days in advance of each conveyance of an interest in any portion of the Subject Property owned by the Respondent Mahle. Respondent Mahle's notice shall include the name and address of the Transferee and a description of the provisions made for the continued access to and maintenance of any containment, treatment, and monitoring systems.

### 22. Confirmation of Conveyance

Within thirty (30) days after each conveyance of any fee simple interest in any portion of the Subject Property, Respondent Mahle shall submit to Ohio EPA and Respondent Gould, via certified mail, the following information:

- a. A copy of the deed or other documentation evidencing the conveyance;
- b. The name, address, and telephone number of the new property owner and the name, address, and telephone number of the contact person for the property owner;
- c. A legal description of the property, or the portion of the property, being transferred;
- d. A survey map of the property, or the portion of the property, being transferred;
- e. The closing date of the transfer of ownership of the property, or portion of the property.

#### **IX. ADDITIONAL WORK**

23. Ohio EPA or Respondents may determine that in addition to the tasks defined in the approved RD/DA Work Plan, additional Work may be necessary to implement the final remedy set forth in the Amended Decision Document. Within sixty (60) days after receipt of written notice from Ohio EPA that such additional Work is necessary, unless otherwise specified in writing by Ohio EPA, Respondents shall submit a work plan for the performance of the additional Work and a revised RD/RA schedule. In addition, Respondents shall submit revisions for any other schedules impacted by the additional Work. To the extent Respondents dispute that additional Work is necessary, Respondents shall initiate the procedures for dispute resolution set forth in the Dispute Resolution Section of these Orders within thirty (30) days after receipt of Ohio EPA's notification of the need for additional Work. The work plan for additional Work shall conform to the applicable standards and requirements set forth in the documents attached to these Orders as Appendices C and D (SOW and relevant guidance documents). Upon approval by Ohio EPA of the work plan and schedule for additional Work pursuant to the Review of Submittals Section of these Orders, Respondents shall implement the approved work plan for additional Work in accordance with the revised schedules contained therein.

24. In the event that Respondents determine that additional Work is necessary, Respondents shall submit an initial letter to Ohio EPA to explain why the additional Work is necessary, what the additional Work is, and what impact, if any, the additional Work will have on the overall Work schedule. If Ohio EPA concurs with the request for additional Work, Respondents shall submit a work plan and schedule for the performance of additional Work. The work plan shall conform to the applicable

standards and requirements set forth in the documents attached to these Orders as Appendices C and D. Upon approval by Ohio EPA of the work plan and schedule for additional Work pursuant to the Review of Submittals Section of these Orders, Respondents shall implement the approved work plan for additional Work in accordance with the schedules contained therein.

25. In the event that additional Work is necessary to accomplish any task described in a previously approved work plan, the deadline for completing such task(s) shall be extended by mutual agreement between the Parties by the amount of time required to perform the additional Work, including the period of time required to plan and/or obtain approval from Ohio EPA for the performance of such Work.

26. This Section shall not apply to Ohio EPA's selection of a changed remedy for soils beneath the SO Line, Vapor Degreaser or loading dock upon removal of those structures in the future. If, pursuant to Section 7.2 of the Amended Decision Document, Ohio EPA selects a remedy other than incorporation of the remaining foundation and/or loading dock components into a RCRA multimedia cap, such selection shall be made by the Director as a separate final action subject to ORC § 3745.04.

#### **X. SAMPLING AND DATA AVAILABILITY**

27. Unless otherwise agreed to by the Site Coordinators, as identified pursuant to Section XII, each Party shall notify the other Parties not less than five (5) business days in advance of all sample collection activity related to the Work. Ohio EPA shall also have the right to take any additional samples it deems necessary. Upon request, the Parties shall allow split and/or duplicate samples to be taken by the other Parties.

28. Within ten (10) business days after receipt of a request by Ohio EPA, Respondents shall submit to Ohio EPA copies of all QA/QC-validated results Respondents have received of sampling and/or tests or other data, including raw data and original laboratory reports, generated by or on behalf of Respondents with respect to the Site and/or the implementation of these Orders. An electronic copy shall also be provided in a commonly available format approved by Ohio EPA. Respondents may submit to Ohio EPA any interpretive reports and written explanations concerning the raw data and original laboratory reports. Such interpretive reports and written explanations shall not be submitted in lieu of original laboratory reports and raw data. Should Respondents subsequently discover an error in any report or raw data, Respondents shall promptly notify Ohio EPA of such discovery and provide the correct information.

#### **XI. ACCESS**

29. Ohio EPA shall have access at all reasonable times to the Subject Property and

any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by Respondents. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including but not limited to the following:

- a. Monitoring the Work;
- b. Conducting sampling;
- c. Inspecting and copying records, operating logs, and/or other documents related to the implementation of these Orders;
- d. Monitoring compliance with use restrictions;
- e. Conducting investigations and tests related to the implementation of these Orders; and
- f. Verifying any data and/or other information submitted to Ohio EPA.

30. To the extent that the Subject Property or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondents, Respondents shall use their reasonable best efforts to secure from such persons access for Respondents and Ohio EPA as may be necessary to effectuate these Orders. Copies of all access agreements obtained by Respondents shall be provided to Ohio EPA upon request. If any access required to implement these Orders is not obtained within thirty (30) days after the date Ohio EPA notifies Respondents in writing that additional access beyond that previously secured is necessary, Respondents shall promptly notify Ohio EPA in writing of the steps Respondents have taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondents in obtaining access.

31. Notwithstanding any provision of these Orders, the State of Ohio retains all of its access rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulation including but not limited to ORC §§ 3734.20 and 6111.05.

## **XII. DESIGNATED SITE COORDINATORS**

32. The name, address and telephone number of the designated Site Coordinator and Alternate Site Coordinator for each Party is as follows:

For Ohio EPA:

Kevin O'Hara, Site Coordinator

Brian Blair, Alternate Site Coordinator  
Ohio EPA  
Southeast District Office  
2195 Front Street  
Logan, Ohio 43138  
(740) 385-8501

For Respondent Mahle:

Phil Lawrence, Site Coordinator  
Mahle Industries, Incorporated  
HEN – HR – Environment – Health & Safety (HNAE)  
One MAHLE Drive  
Morristown, Tennessee 37814  
(423) 318-3164

Steven D. Kline, PE, Alternate Site Coordinator  
GaiaTech Incorporated  
200 North LaSalle, Suite 2600  
Chicago, Illinois 60601  
(312) 541-4200 x-226

For Respondent Gould:

James F. Cronmiller, Site Coordinator  
34929 Curtis Boulevard  
Eastlake, Ohio 44095-4001  
(440) 953-5044

Patrick Cyr, Alternate Site Coordinator  
Advanced GeoServices  
1055 Andrew Drive, Suite A  
West Chester, Pennsylvania 19380  
(610) 840-9120

If a designated Site Coordinator or Alternate Site Coordinator is changed, the identity of the successor will be given to the other Parties at least seven (7) days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.

33. To the maximum extent practicable, except as specifically provided in these Orders, communications between Respondents and Ohio EPA concerning the implementation of these Orders shall be made between the Site Coordinators. Respondents' Site Coordinators shall be available for communication with Ohio EPA regarding the

implementation of these Orders for the duration of these Orders. Each Site Coordinator shall be responsible for ensuring that all communications from the other Parties are appropriately disseminated and processed. Respondents' Site Coordinators or Alternate Site Coordinators shall be present on the Site or on call during all hours of Work at the Site.

34. Without limitation of any authority conferred on Ohio EPA by statute or regulation, the Ohio EPA Site Coordinator's authority includes but is not limited to the following:

- a. Directing the type, quantity and location of samples to be collected by Respondents pursuant to an approved Work plan;
- b. Collecting samples;
- c. Observing, taking photographs, or otherwise recording information related to the implementation of these Orders, including the use of any mechanical or photographic device;
- d. Directing that Work stop for a period not to exceed seventy-two (72) hours whenever the Ohio EPA Site Coordinator determines that activities at the Site may create or exacerbate a threat to public health or safety, or threaten to cause or contribute to air or water pollution or soil contamination. If the Chief of the Ohio EPA Division of Emergency and Remedial Response concurs with the determination of the Ohio EPA Site Coordinator, the 72-hour time limitation shall not apply. Elements of the Work not affected by the Work stoppage shall be completed according to schedules in the approved RD/RA Work Plan or approved additional Work work plan(s);
- e. Conducting investigations and tests related to the implementation of these Orders;
- f. Inspecting and copying records, operating logs and/or other documents related to the implementation of these Orders; and
- g. Assessing Respondents' compliance with these Orders.

### **XIII. PROGRESS REPORTS AND NOTICE**

35. Respondents shall submit a written progress report to Ohio EPA by the tenth (10<sup>th</sup>) day of every month. The progress reports shall include:

- a. A description of the Work performed during the reporting period including an estimate of the percentage of the RD/RA completed;

- b. A list of all target and actual completion dates for each element of activity including project completion;
- c. An explanation for any deviation from any applicable schedule;
- d. Summaries of all findings and QA/QC-validated sampling results received during the reporting period;
- e. Summaries of all significant changes made in the RD/RA during the reporting period, indicating consultation with Ohio EPA and date for approval by Ohio EPA of those changes, when necessary;
- f. Summaries of all significant contacts with representatives of the local community, public interest groups or government agencies during the reporting period;
- g. Summaries of all significant problems or potential problems encountered during the reporting period, including those which delay or threaten to delay completion of project milestones with respect to the approved work plan schedule or RD/RA schedule;
- h. Summaries of actions taken and/or planned to rectify or prevent problems;
- i. Changes in personnel during the reporting period;
- j. Summary of projected Work to occur during the next reporting period;
- k. Copies of daily reports, inspection reports, sampling data, and laboratory/monitoring data, etc;
- l. The quantity and disposition of any media treated, removed, or contained:
  - i. Soil treated or removed should be reported by volume and soil contained must be reported by area;
  - ii. Surface water load reduction - Load reduction must address all contaminants of concern;
  - iii. Ground water treated, removed, or contained - Ground water treated must be reported by volume and ground water contained should be reported as an estimated area of the plume;
  - iv. Leachate treated, removed or contained - Leachate treated, removed or contained must be reported by volume;

- v. Sediments treated, removed or contained - Sediments treated or removed should be reported by volume and sediments contained must be reported by area;
  - vi. Waste and debris treated, removed, or contained - Waste and debris will be defined as regulated materials not otherwise covered in Roman number i through v above. Waste and debris treated or contained should be reported by either volume or area as appropriate.
- m. The disposition of contaminated soil, sediments, and waste material that was treated on or off Site, or the disposal location for any quantity of contaminated ground water and/or surface water that was pumped and treated or disposed.
36. Progress reports (one copy only) and all other documents (two copies) required to be submitted pursuant to these Orders to Ohio EPA shall be sent to the Ohio EPA Site Coordinator at the address listed in Section XII, Designated Site Coordinators, of these Orders.
37. All written correspondence to Respondents shall be directed to the Respondents' Site Coordinators at the addresses listed in Section XII, Designated Site Coordinators, of these Orders.

#### **XIV. REVIEW OF SUBMITTALS**

38. Ohio EPA shall promptly review any work plan, report, or other item required to be submitted pursuant to these Orders. Upon review, Ohio EPA may in its sole discretion: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve the submission in part and disapprove the submission in part, specifying the deficiencies; (d) disapprove the submission, specifying the deficiencies; or (e) any appropriate combination of the above. The results of Ohio EPA's review shall be detailed in writing and provided to the Respondents.
39. In the event of Ohio EPA's approval or partial approval of any submission, Respondents shall proceed to take any action required by the submission as approved or partially approved by Ohio EPA.
40. In the event that Ohio EPA disapproves a submission, in whole or in part, or conditionally approves a submission, and notifies Respondents in writing of the deficiencies or conditions, Respondents shall within thirty (30) days, or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and incorporate the conditions, and submit a revised submission to Ohio EPA for approval. The revised submission shall incorporate all of the undisputed changes, additions,

and/or deletions specified by Ohio EPA in its disapproval, partial approval or conditional approval. Revised submissions shall be accompanied by a letter indicating how and where each of Ohio EPA's comments were incorporated into the submission. Any other changes made to the submission by Respondents shall also be identified in the letter. To the extent that Respondents dispute any changes, additions, deletions or conditions specified by Ohio EPA, Respondents shall initiate the procedures for dispute resolution set forth in the Dispute Resolution Section of these Orders, within thirty (30) days after receipt of Ohio EPA's disapproval, partial approval or conditional approval of a submission. Notwithstanding the disapproval, partial approval or conditional approval, Respondents shall proceed to take any action required by a non-deficient or unconditionally approved portion of the submission.

41. In the event that Ohio EPA disapproves a revised submission, in whole or in part, and notifies Respondents in writing of the deficiencies, Respondents shall within fifteen (15) business days, or such longer period of time as specified by Ohio EPA in writing, either: (i) correct the deficiencies and incorporate all changes, additions, and/or deletions, and submit the revised submission to Ohio EPA for approval; or (ii) initiate the dispute resolution process pursuant to Section XV, Dispute Resolution, of these Orders. If Respondents fail to submit a revised submission incorporating all changes, additions, and/or deletions within fifteen (15) business days, or such period of time as specified by Ohio EPA in writing, or alternatively, initiate the dispute resolution process pursuant to Section XV, Respondents shall be considered in breach and/or violation of these Orders.

42. All work plans, reports, or other items required to be submitted to Ohio EPA under these Orders shall, upon approval by Ohio EPA, be deemed to be incorporated in and made an enforceable part of these Orders. In the event that Ohio EPA approves a portion of a work plan, report, or other item, the approved portion shall be deemed to be incorporated in and made an enforceable part of these Orders.

## **XV. DISPUTE RESOLUTION**

43. The Site Coordinators shall, whenever possible, operate by consensus. In the event of a dispute regarding a conditional approval or a partial or complete disapproval by Ohio EPA of a submission by Respondents, or a dispute regarding the Work required to be performed under these Orders, the Respondents shall have thirty (30) days from the date the dispute arises to invoke the dispute resolution procedures of this Section by notifying Ohio EPA in writing of the dispute. The written notice of dispute shall reference this Dispute Resolution section of these Orders. After Ohio EPA's receipt of such written notice, the Site Coordinators may, for the remainder of the thirty (30) day period, negotiate in good faith in an attempt to resolve the dispute. This thirty (30) day period may be extended by mutual agreement of the Parties; however, any such extension shall be confirmed in writing by Ohio EPA and any such negotiation period

shall not exceed sixty (60) days from the date of Ohio EPA's receipt of the written notice of dispute.

44. A dispute regarding a submission of Respondents shall be considered to have arisen when Respondents' Site Coordinators receive Ohio EPA's written conditional approval or disapproval in accordance with Section XIV, Review of Submittals. A dispute regarding the Work to be performed under these Orders shall be considered to have arisen when Ohio EPA's Site Coordinator communicates in writing to Respondents' Site Coordinators the position which gives rise to the dispute. If written notice is not provided within thirty (30) days after the date the dispute arises, the dispute resolution procedures may not be invoked for the disputed issue(s). Within thirty (30) days after Ohio EPA's receipt of the written notice of dispute, Respondents shall provide Ohio EPA with the rationale supporting the Respondents' position(s). If Ohio EPA concurs with the position(s) of Respondents, then the work plan, report or other item required to be submitted pursuant to these Orders shall be modified accordingly.

45. If Ohio EPA does not concur with Respondents, Ohio EPA's Site Coordinator shall notify the Respondents in writing that Ohio EPA does not concur. Upon receipt of such written notice, the Respondents shall have fifteen (15) business days after receipt of the non-concurrence notification from Ohio EPA to provide a written statement of the dispute to the Ohio EPA Southeast District Office Chief and request a formal resolution of the dispute. The Respondents' written statement instituting the formal dispute resolution procedure shall include the rationale supporting the position of the Respondents. If the Respondents do not provide such a statement, rationale and request within fifteen (15) business days after receipt of Ohio EPA's non-concurrence notification, Ohio EPA will adopt the written position of its Site Coordinator and the work plan, report, other item required to be submitted pursuant to these Orders, or any other item subject to the dispute resolution procedures of this Section shall be modified accordingly. If the Respondents provide such a statement, rationale and request within fifteen (15) business days after receipt of Ohio EPA's non-concurrence notification, the Ohio EPA Southeast District Office Chief shall review the written positions of the Parties and shall resolve the dispute based upon and consistent with these Orders, including the SOW, the Amended Decision Document, any applicable approved work plan, and applicable federal and state statutes and regulations.

46. This Section shall not apply to disputes regarding Ohio EPA's selection of a remedy for soils beneath the SO Line, Vapor Degreaser or loading dock upon removal of those structures in the future. If, pursuant to Section 7.2 of the Amended Decision Document, Ohio EPA selects a remedy other than incorporation of the remaining foundation and/or loading dock components into a RCRA multimedia cap, such selection shall be made by the Director as a final action subject to ORC § 3745.04.

47. The pendency of a dispute under this Section shall extend only the time period for completion of the tasks related to the matters in dispute, except that upon mutual

agreement of the Parties, any other time period may be extended as is deemed appropriate under the circumstances. Such agreement shall not be unreasonably withheld by Ohio EPA. Elements of the Work not affected by the dispute shall be completed in accordance with applicable schedules and time frames. The dispute resolution procedures under this section shall apply only to disputes regarding a conditional approval or a partial or complete disapproval by Ohio EPA of a submission by Respondents, and to disputes regarding the Work required to be performed and the Response Costs required to be reimbursed under these Orders.

#### **XVI. UNAVOIDABLE DELAYS**

48. Respondents shall cause all Work to be performed in accordance with applicable schedules and time frames unless any such performance is prevented or delayed by an event that constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall mean an event beyond the reasonable control of Respondents that prevents or delays performance of any obligation required by these Orders and that could not be overcome by due diligence on the part of Respondents. Increased cost of compliance shall not be considered an event beyond the reasonable control of Respondents.

49. Respondents shall notify Ohio EPA in writing within ten (10) business days after the occurrence of an event that Respondents contend is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the known or suspected cause or causes of the delay, the measures taken and to be taken by Respondents to minimize the delay, and the timetable under which these measures will be implemented. Respondents shall have the burden of demonstrating that the event constitutes an unavoidable delay.

50. If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify the Respondents in writing. If Ohio EPA agrees that the delay is attributable to an unavoidable delay, Ohio EPA will notify Respondents in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay.

#### **XVII. REIMBURSEMENT OF COSTS**

51. Respondents shall reimburse Ohio EPA for all Response Costs incurred both prior to and after the effective date of these Orders.

52. Within thirty (30) days after the effective date of these Orders, Respondents shall remit a check to the Ohio EPA for \$86,451.51 for all Response Costs incurred prior to December 10, 2007.

53. For Response Costs incurred after December 10, 2007 and before January 1, 2010, Ohio EPA will submit to Work Respondent, in 2010, an itemized invoice of its Response Costs for that time period. For Response Costs incurred after January 1, 2010, Ohio EPA will submit to Respondents on an annual basis an itemized invoice of its Response Costs for the previous year. Within forty-five (45) days of receipt of such itemized invoice, Respondents shall remit payment for all of Ohio EPA's undisputed Response Costs for the applicable time period and invoke dispute resolution with respect to any claimed Response Costs disputed by Respondents. Section XV, Dispute Resolution, of these Orders shall apply should a dispute arise between the parties under this Section of these Orders regarding the completeness or accuracy of a statement for Response Costs, whether Response Costs claimed are outside the definition of Response Costs in these Orders, or whether Response Costs claimed are inconsistent with the NCP, but shall not apply to disputes regarding the recoverability of costs of Ohio EPA legal counsel as Response Costs.

54. Respondents shall remit payments to Ohio EPA pursuant to this Section as follows:

- a. Payment shall be made by certified check payable to "Treasurer, State of Ohio" and shall be forwarded to Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049.
- b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: Steve Snyder or his successor, and to DERR's Site Coordinator.

#### **XVIII. ACCESS TO INFORMATION**

55. Upon request, Respondents shall provide, and/or shall use their reasonable best efforts to have their contractors or agents provide, to Ohio EPA within fourteen (14) days, access to or copies of all documents and information within their or their contractors' or agents' possession or control relating to events or conditions at the Site including, but not limited to manifests, reports, correspondence, or other documents or information related to the Work; provided, however, that requests for documents created prior to the effective date of these Orders shall be provided as promptly as is reasonably practical under the circumstances, which may exceed fourteen (14) days.

56. Respondents may assert a claim that documents or other information submitted to Ohio EPA pursuant to these Orders are confidential under the provisions of OAC 3745-50-30(A) or ORC § 6111.05(A). If no such claim of confidentiality accompanies the documents or other information when the documents are submitted to Ohio EPA, the documents may be made available to the public without notice to such Respondent.

57. Any Respondent may assert that certain documents or other information are privileged under the attorney-client privilege, the work-product doctrine or other right of non-disclosure recognized by state law. If any Respondent makes such an assertion, such Respondent shall identify the date, subject, author and known recipients of the privileged document or information, the privilege being asserted by such Respondent and the grounds upon which the assertion is made.

58. No claim of confidentiality shall be made with respect to any data generated pursuant to these Orders, including but not limited to all sampling, analytical, and monitoring data.

59. Respondents shall preserve for the duration of these Orders and for a minimum of ten (10) years after termination of these Orders, one (1) complete set of: (a) all documents submitted to Ohio EPA by Respondents pursuant to these Orders; and (b) all other final unprivileged records and documents produced pursuant to these Orders that are within their possession or control, or within the possession or control of their contractors or agents, notwithstanding any document retention policy to the contrary. Respondents may preserve such documents by microfiche, or other electronic or photographic device. At the conclusion of this document retention period, Respondents shall notify Ohio EPA at least sixty (60) days prior to the destruction of these documents or other information; and upon request, shall deliver such documents and other information to Ohio EPA.

#### **XIX. PERIODIC REVIEW**

60. Respondents shall collect and provide such information as is reasonably requested by Ohio EPA in order to permit Ohio EPA to conduct reviews as to the effectiveness of the Remedial Action as described in section 121(c) of CERCLA and any applicable regulations.

61. If Ohio EPA determines that information received, in whole or in part, during a review conducted pursuant to this Section of these Orders indicates that the Remedial Action selected in the Amended Decision Document is not protective of public health and safety and the environment, nothing herein shall limit Ohio EPA's authority under state or federal law to assert claims for further remedial action against any parties, including Respondents.

#### **XX. MODIFICATIONS**

62. These Orders may be modified only by agreement of the Parties. Modifications shall be in writing, signed by the authorized representatives of the Respondents and by the Director, and shall be effective on the date entered in the Journal of the Director of Ohio EPA.

## **XXI. INDEMNITY**

63. Respondents agree to indemnify, save, and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to, the implementation of these Orders or to events or conditions at the Site, including any acts or omissions of Respondents. Said indemnification shall not apply to acts or omissions of the State of Ohio, its employees, agents or assigns at, on, upon, or related to the Site if said acts are negligent, performed outside the scope of employment or official responsibilities, or performed with malicious purpose, in bad faith, or in a wanton or reckless manner. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by Respondents in carrying out the activities pursuant to these Orders. Ohio EPA agrees to provide notice to Respondents within thirty (30) days after receipt of any claim that may be the subject of indemnity as provided in this Section, and to cooperate with Respondents in the defense of any such claim or action against Ohio EPA.

## **XXII. OTHER CLAIMS**

64. Nothing in these Orders 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 not a Party to these Orders. The Parties specifically disclaim any intent to create rights in or for persons not parties to these Orders.

## **XXIII. RESERVATION OF RIGHTS**

65. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against Respondents for noncompliance with these Orders. Respondents reserve any rights they may have to seek legal or equitable relief to enforce the terms and conditions of these Orders or raise any legal or equitable defense, claim or counterclaim in any action brought by or on behalf of Ohio EPA to enforce the terms and conditions of these Orders.

66. Ohio EPA reserves the right to terminate these Orders and/or perform all or any portion of the Work or any other measures in the event that the requirements of these Orders are not wholly complied with within the time frames required by these Orders. In the event that Ohio EPA elects to perform all or any portion of the Work, Respondents shall not be obligated under these Orders to reimburse Ohio EPA for the costs of such Work. Rather, Ohio EPA reserves the right to seek to recover such costs in a separate proceeding, and Respondents reserve the right to raise any defenses they may have to such a claim under applicable law.

67. Ohio EPA reserves the right to take any action under applicable law against Respondents if conditions at the Site, previously unknown to the State, are discovered

after the effective date of these Orders, or information is received, after the effective date of these Orders and these previously unknown conditions or this previously unknown information shows that the remedy for the Site as set forth in the Amended Decision Document is not protective of public health or safety or the environment.

68. Subject to the Contribution and Agreement Not To Refer Section of these Orders, Ohio EPA reserves the right to take any action under applicable law, including but not limited to any enforcement action, or action to recover costs, pursuant to ORC Chapters 3734, 3745, or 6111, or any available legal authority as a result of past, present, or future violations of state or federal laws or regulations or the common law, and/or as a result of events or conditions arising from, or related to, the Site that were not a basis for these Orders.

69. Issuance of these Orders without a provision that explicitly contemplates recovery of costs of Ohio EPA legal counsel as Response Costs does not constitute a waiver of any rights that Ohio EPA may have under applicable law to recover these costs and/or to claim these costs are recoverable Response Costs under either state or federal law. In any action by Ohio EPA to enforce any provision of these Orders or seek recovery of Response Costs, Respondents may raise at any time the question of whether Ohio EPA is entitled to recover from Respondents costs for Ohio EPA legal counsel. While Respondents do not agree that such a right of recovery exists, it is hereby agreed by Respondents and Ohio EPA that it is premature at this time to decide the existence of such a right among themselves and that the appropriate point at which to adjudicate the existence of such a right is at the time, if ever, that a proceeding to enforce these Orders or seek recovery of Response Costs is commenced.

70. Respondents reserve all rights, claims, demands and causes of action they may have against any and all persons and entities who are not Parties to these Orders. Respondents reserve rights of contribution against any other parties, including without limitation the State of Ohio, who may be liable for actual or threatened releases of contaminants at the Site.

#### **XXIV. CONTRIBUTION AND AGREEMENT NOT TO REFER**

71. With respect to matters addressed in these Orders, the Parties hereto agree that these Orders constitute an administrative settlement for purposes of CERCLA sections 113(f)(2) and 113(f)(3)(B), 42 U.S.C. § 9613(f)(2) and § 9613(f)(3)(B), pursuant to which Respondents have resolved their liability to the State, and that Respondents are entitled to contribution protection and contribution rights as of the effective date of these Orders as to any liable persons who are not parties to these Orders, as provided by CERCLA sections 113(f)(2) and (f)(3)(B), 42 U.S.C. § 9613(f)(2) and (f)(3)(B), provided that Respondents comply with these Orders. The "matters addressed" in these Orders are injuries to natural resources, all investigative and remedial actions taken or to be taken and all response costs incurred or to be incurred by Ohio EPA or any other person with

respect to the Site, including without limitation the Work and Response Costs under these Orders.

72. During the implementation of these Orders, and provided Respondents are in compliance with these Orders, Ohio EPA agrees not to refer to the Ohio Attorney General's Office for enforcement, or take administrative enforcement action against, Respondents or their present or future agents, successors, subsidiaries or assigns, for Work required under these Orders or for recovery of natural resource damages at the Site. Upon termination of these Orders pursuant to the Termination section of these Orders, Ohio EPA agrees to not refer Respondents to the Ohio Attorney General's Office for enforcement, or take administrative enforcement action against Respondents or their present or future agents, successors, subsidiaries or assigns for Work required under these Orders or for recovery of natural resource damages at the Site.

#### **XXV. TERMINATION**

73. Respondents' obligations under these Orders shall terminate upon Ohio EPA's approval in writing of Respondents' written certification to Ohio EPA that all Work required to be performed under these Orders including payment of Response Costs has been completed. The Respondents' certification shall contain the following attestation: "We certify that to the best of our knowledge the information contained in or accompanying this certification is true, accurate, and complete." This certification shall be submitted by Respondents to Ohio EPA and shall be signed by responsible officials of Respondents. Ohio EPA's approval shall not be unreasonably withheld. The termination of Respondents' obligations under these Orders shall not terminate the Parties' rights and obligations under the Reservation of Rights, Access to Information, Periodic Review, Indemnity, Other Claims, Land Use and Conveyance of Title, and Contribution and Agreement Not to Refer sections of these Orders; and any Operation and Maintenance Plan developed by Respondents and approved by Ohio EPA pursuant to these Orders.

#### **XXVI. WAIVER AND AGREEMENT**

74. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondents consent to the issuance of these Orders, and agree to comply with these Orders.

75. Subject to Section XXIII, Reservation of Rights, Respondents hereby waive the right to appeal or to otherwise seek administrative or judicial review of the issuance, terms and conditions, and service of these Orders either in law or equity.

76. Notwithstanding the limitations herein on Respondents' right to appeal or seek administrative or judicial review, Ohio EPA and Respondents agree that if these Orders

are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

**XXVII. EFFECTIVE DATE**

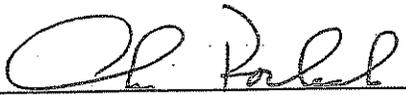
77. The effective date of these Orders shall be the date these Orders are entered in the Journal of the Director of Ohio EPA.

**XXVIII. SIGNATORY AUTHORITY**

78. Each undersigned representative of a Party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such Party to these Orders.

**IT IS SO ORDERED AND AGREED:**

OHIO ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
Chris Korleski, Director  
Ohio Environmental Protection Agency

—OCT 22 2009  
Date

**IT IS SO AGREED:**

Mahle Engine Components USA, Inc.

BY:   
\_\_\_\_\_  
Name  
PRESIDENT  
\_\_\_\_\_  
Title

9-23-09  
Date

Gould Electronics Inc.

BY:

Thomas N. Ruth  
Name

Sept. 11, 2009  
Date

Chief Administrative Officer  
Title

**LIST OF APPENDICES**

**APPENDIX A**  
Amended Decision Document

**APPENDIX B**  
RD/RA Work Plan

**APPENDIX C**  
SOW

**APPENDIX D**  
List of Relevant Guidance Documents

**APPENDIX E**  
Environmental Covenant