

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

**IN THE MATTER OF:** ) **FINAL ADMINISTRATIVE**  
 ) **ORDER ON CONSENT**  
**MARJOL BATTERY AND EQUIPMENT** )  
**COMPANY** )  
 )  
 ) U.S. EPA Docket No.  
Gould Electronics Inc. ) RCRA-03-2006-0041CA  
600 Delaware Avenue )  
Throop, Pennsylvania 18512 )  
 ) Proceeding under Section 3008(h)  
**RESPONDENT** ) of the Resource Conservation and Recovery  
 ) Act, *as amended*, 42 U.S.C. § 6928(h).  
PAD 00 304 1910 )  
 )

**AND**

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**IN THE MATTER OF:** )  
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**MARJOL BATTERY AND EQUIPMENT** )  
**COMPANY** )  
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 ) 1980, P.L.380, *as amended*, 35 P.S. §§ 6018.101  
 ) *et seq.*; The Clean Streams Law, Act of June 22,  
 ) 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1  
Gould Electronics Inc. ) *et seq.*; Hazardous Sites Cleanup Act, Act of  
600 Delaware Avenue ) October 18, 1988, P.L. 756, §§ 6020.101 *et seq.*;  
Throop, Pennsylvania 18512 ) Section 1917-A of the Administrative Code of  
 ) 1929, Act of April 9, 1929, P.L. 177, *as*  
 ) *amended*, 71 P.S. § 510-17  
**RESPONDENT** )  
 )

**FINAL ADMINISTRATIVE ORDER ON CONSENT**

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**RESPONDENT** ) *amended*, 71 P.S. § 510-17

**FINAL ADMINISTRATIVE ORDER ON CONSENT**

The Parties to this Final Administrative Order on Consent (“Consent Order” or “Order”), the United States Environmental Protection Agency (“EPA”), the Commonwealth of Pennsylvania Department of Environmental Protection (“PADEP”), and Gould Electronics Inc. (“Gould” or “Respondent”), having agreed to entry of this Consent Order, it is therefore ordered

and agreed that:

## **I. JURISDICTION**

This Consent Order is issued pursuant to the authority vested in the Administrator of the EPA by Section 3008(h) of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6928(h). The authority vested in the Administrator has been delegated to the Regional Administrators by EPA Delegation No. 8-32 dated November 22, 1989, and redelegated to the Region III Waste and Chemicals Management Division Director on June 21, 2004. This Consent Order is also issued pursuant to the authority vested in PADEP by Section 602 of the Solid Waste Management Act, (“SWMA”), Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. §§ 6018.602, Section 610 of The Clean Streams Law, (“CSL”), Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.610, and Section 505(d) of the Pennsylvania Hazardous Sites Cleanup Act, Act of October 18, 1988, P.L. 756, 35 P.S. §§ 6020.505(d), and Section 1917-A of the Administrative Code, Act of April 19, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17.

On January 30, 1986, EPA granted the Commonwealth of Pennsylvania (“the Commonwealth”) authorization to operate a hazardous waste program in lieu of the Federal program pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b) and has, since that time, authorized revisions to the Commonwealth’s hazardous waste program. The Commonwealth, however, does not have authority to enforce Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

This Consent Order is issued to Respondent, the current owner and former operator of the former Marjol Battery and Equipment Company facility located at 600 Delaware Avenue in Throop, Lackawanna County, Pennsylvania. The property on which the facility is located is referred to hereinafter as the “Facility” or “Site” as depicted in the map set forth as Attachment A which is attached hereto and made a part hereof.

The Respondent consents to and agrees not to contest EPA’s and/or PADEP’s authority to issue this Consent Order and to enforce its terms. Further, while reserving all defenses set forth in Section XVIII (RESERVATION OF RIGHTS), the Respondent will not contest EPA’s or PADEP’s authority to compel compliance with this Consent Order in any subsequent enforcement proceeding.

## **II. PARTIES BOUND**

A. This Consent Order shall apply to and be binding upon EPA, PADEP, and Respondent and their agents, successors and assigns.

B. Any change in ownership of any part of the Facility or in the corporate status and/or majority ownership or control of the Respondent including, but not limited to, any sale or transfer of assets or real or personal property, shall in no way alter, diminish, or change in control or otherwise affect Respondent's obligations and responsibilities under this Consent Order. Any conveyance or transfer of any interest in the Facility property, or portion thereof, including, but not limited to, fee interests, leasehold interests, easements, assignments, licenses and mortgage interests (hereinafter "Conveyance"), will not affect Respondent's obligations under this Consent Order, unless EPA, PADEP and Respondent agree in writing to such a modification of this Consent Order. The Respondent shall give written notice of this Consent Order and such Conveyance to any successor-in-interest, EPA and PADEP pursuant to Section VI.H.1.c of this Consent Order. In the event of any change in the corporate status and/or majority ownership or control of the Respondent, the Respondent shall notify EPA and PADEP in writing of the nature of any such change no later than thirty (30) calendar days after the effective date of such change.

C. Respondent shall provide a copy of this Consent Order to its supervisory personnel responsible for implementation of the work required under this Consent Order and all contractors, subcontractors, laboratories, and consultants retained to conduct and/or monitor any portion of the work performed pursuant to this Consent Order within thirty (30) calendar days of the effective date of this Consent Order or the date of such retention, whichever is later. All contracts, agreements, or other arrangements with such persons shall require such persons to conduct and/or monitor the work in accordance with the requirements of this Consent Order. Notwithstanding the terms of any such contract, agreement, or arrangement, Respondent is responsible for complying with this Consent Order and for ensuring that all such persons conduct and/or monitor such work in accordance with this Consent Order. The existence of any provision or term of any contract, agreement or other arrangement requiring a contractor, subcontractor, laboratory or consultant to conduct or monitor the work in accordance with the requirements of this Consent Order shall not excuse or otherwise relieve Respondent of its obligation to comply with this Consent Order.

## **III. STATEMENT OF PURPOSE**

In entering into this Consent Order, the mutual objectives of EPA, PADEP, and the Respondent shall be the protection of human health and/or the environment through: (1) the implementation of the Corrective Measures described in EPA's Statement of Basis, dated October 15, 1999 ("SB") which has been modified and clarified by the Final Decision and Response to Comments, dated December 1, 2000 ("FDRTC") (Attachment B), a letter from EPA Region III to Respondent regarding Technical Implementation Issues, dated September 8, 2005

(Attachment C) and by EPA Region III's Response to the Ombudsman's Final Report (Attachment D); and (2) the performance of Interim Measures ("IM") at the Facility as necessary to prevent or mitigate any immediate threats to human health and/or the environment. Attachments B, C and D are attached hereto and made a part hereof.

#### **IV. EPA AND PADEP FINDINGS OF FACT**

EPA and PADEP make the following Findings of Fact which Respondent does not admit and which shall not be binding on Respondent for any purpose other than establishing jurisdiction for the issuance and enforcement of this Consent Order:

A. Respondent is a corporation doing business in the Commonwealth of Pennsylvania and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and Section 1 of CSL, 35 P.S. § 691.1, Section 103 of SWMA, 35 P.S. § 6018.103 and Section 103 of HSCA, 35 P.S. § 6020.103.

B. Respondent is the current owner and a former operator of a hazardous waste management facility located at 600 Delaware Avenue, Throop, Pennsylvania. Respondent was engaged in the storage of hazardous waste in a waste pile at the Facility subject to the interim status requirements of 40 C.F.R. Part 265 and 25 PA Code § 265a.

C. The Facility consists of 43.9 acres of land adjacent to the Lackawanna River which borders the Facility to the west. Sulphur Creek is adjacent to the Facility and discharges to the Lackawanna River. Wooded, undeveloped land is found north ("the North Woods") and south of the Facility. Residential areas, within the Borough of Throop, exist to the east and southwest of the Facility. Dickson City is located across the Lackawanna River to the west of the Facility.

D. Respondent owned and operated its Facility as a hazardous waste management facility on and after November 19, 1980, the applicable date which renders facilities subject to interim status requirements or the requirement to have a permit under Sections 3004 and 3005 of RCRA, 42 U.S.C §§ 6924 and 6925.

E. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent notified EPA of its hazardous waste activity. In its notification dated August 15, 1980, Respondent identified itself as a generator of hazardous waste and an owner/operator of a treatment, storage, and/or disposal facility for hazardous waste.

F. In its August 15, 1980 notification, Respondent also identified itself as handling at the Facility hazardous wastes exhibiting the characteristics of corrosivity and TC toxicity identified at 40 C.F.R. §§ 261.22 and 261.24, respectively.

G. Respondent's Facility was the location of a battery crushing and lead processing

facility which was previously operated by the Marjol Battery and Equipment Company (“Marjol”) from 1963 to 1980. In May 1980, Respondent purchased the Facility from its former owner, Mr. Lawrence Fiegelman. After a brief period of operation of the battery crushing and lead processing equipment, Respondent ceased operations at the Facility in April 1982.

H. Respondent utilized a portion of the 43.9 acres in connection with the battery crushing and lead processing operations at the Facility. These operations included storage of lead contaminated waste exhibiting the characteristic of EP Toxicity (EPA Hazardous Waste No. D008) in a waste pile. Battery casings were placed in strip mining pits, a drainage way to the south, and in an area in the central portion of the Facility referred to as the primary battery casing fill area. In total, the Facility contains approximately 372,000 cubic yards of crushed battery casings and contaminated soils.

I. Operations at the Facility involved severing the tops of the batteries. The battery acid (sulphuric acid) was collected in floor drains which routed the acid away from the operational area to the adjacent drainage ways. In 1976, an acid treatment building was constructed to neutralize the acid. Batteries were crushed and small pieces of lead were separated from its rubber and plastic casings. The final process involved heating the recovered lead in a melting pot. Approximately six to seven tons of lead was processed daily into the melting pot. Molten lead was poured into ingots and moved to temporary storage areas and subsequently sent off-site.

J. As a result of the plant operations, the ground surface at the Facility became contaminated with lead. Fugitive dust emissions and lead contained in on-site soils were carried off-site by wind borne transport. Storm water runoff carried lead contaminated soil off-site into adjacent drainage ways and into nearby Sulphur Creek.

K. On June 5, 1987, EPA’s Technical Assistance Team collected surface soil samples at the Facility and in surrounding residential areas. Analysis of these samples showed elevated lead concentrations at the Facility, in certain off-site residential properties, and in some storm water channels leading to the Lackawanna River.

L. On April 6, 1988, EPA and Respondent entered into a Consent Agreement and Order (Docket No. III-88-26-DC), pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9606(a). Pursuant to this Consent Agreement and Order, Respondent agreed to conduct a study to determine the extent of contamination from the Facility, to prevent further releases of hazardous substances from the Facility property into the surrounding community, and to remove soil from certain off-site properties impacted by hazardous substances from the Facility.

M. On May 1, 1989, Respondent submitted to EPA a “Report on Extent of Contamination Study, Marjol Battery Plant, Throop, Pennsylvania.” This report presented the findings of sampling activities conducted since May 1988. The Extent of Contamination Study (“ECS”) consisted of sampling and analysis of soil, sediment, surface water, groundwater, and

air to determine the magnitude of hazardous substances both on the Facility and in the surrounding community. The on-site investigation included a geophysical survey, test pit excavations, and sampling and analysis of fill materials to characterize the battery casing fill area.

N. As part of the ECS, Respondent sampled more than 400 residential and commercial properties. This sampling effort resulted in the removal of lead contamination from 133 residential properties from 1988 to 1992. Lead dust was removed from the interior of 107 residential units. Excavation involved removal of soils with lead concentrations greater than 500 mg/kg attributable to the Facility. Excavated off-site areas were backfilled with clean soil as confirmed by soil analyses. The ECS determined that lead is the primary constituent of concern at the Facility. PAHs (“polyaromatic hydrocarbons”) and PCBs (“polychlorinated biphenyls”) were also identified as constituents of concern in soils at the Facility.

O. On June 11, 1990, EPA, PADEP, and Respondent entered into an Administrative Order on Consent (“RCRA Consent Order”) pursuant to Section 3008(h) of RCRA and the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. §§ 6018.101 *et seq.* (“SWMA”); The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1 *et seq.* (“CSL”); and Section 1917-A of the Administrative Code, Act of April 19, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17, which required Respondent to conduct a RCRA Facility Investigation (“RFI”) at the Facility to identify the nature and extent of on-site and off-site contaminants, to conduct a Corrective Measures Study (“CMS”) during which Respondent evaluated and proposed to EPA and PADEP several corrective measures alternatives for long-term remediation of the Facility, and to perform Interim Measures as required therein.

P. On March 15, 1993, Respondent submitted an RFI Report to EPA and PADEP. On August 30, 1994, the RFI Report was approved by EPA and PADEP following a thorough review process. Respondent submitted a CMS Report to EPA in March 1995. EPA and PADEP disapproved the CMS Report in September 1995. In November 1997, following extensive comments from EPA, PADEP, and the Throop community, including comments regarding the potential for mine subsidence at the Facility, EPA and PADEP required Respondent to conduct a Mine Subsidence Investigation and to revise the CMS Report. The Mine Subsidence Investigation was conducted by Respondent from September 1998 through November 1998. In January 1999, Respondent submitted a Mine Subsidence Investigation Report to EPA and PADEP. In March 1999, EPA and PADEP approved the work completed during the Mine Subsidence Investigation. The results of the Mine Subsidence Investigation were incorporated into the revised CMS Report submitted by Respondent to EPA and PADEP on June 21, 1999.

Q. The RFI identified lead as the primary constituent of concern in soils at the Facility. PAHs and PCBs were also found in soils at the Facility. Levels of each of these contaminants were identified in on-site soils at levels exceeding EPA Region III’s Risk Based Concentrations. In addition to lead contaminated soil at the Facility, lead was also present in battery casing material, and mine spoils, and debris from the demolition of on-site buildings. PCB contamination was generally limited to the upper three to four feet of surface soil in

discrete areas on-site. PAH contamination was found to occur randomly throughout the Facility, but was mainly restricted to the upper three to four feet of material. Based on fingerprint analysis, the RFI concluded that the likely source of the PAH and PCB contamination was waste oil. The soils which exhibit PAH and PCB concentrations comprise a relatively small volume of material in isolated areas of the Facility.

R. Groundwater quality of all three groundwater zones located beneath the Facility had been evaluated during the RFI, the Supplementary RFI Activities Report dated July 17, 1995, and the Mine Subsidence Investigation that were conducted as part of the CMS. Although lead was found leaching from the battery casing fill area into the unsaturated zone above the groundwater table, the amount of the leaching had not been enough to cause the mine pool groundwater to become contaminated with lead. The mine pool groundwater was sampled for lead during the Mine Subsidence Investigation. The results of the monitoring of the mine pool did not show the presence of elevated levels of lead. The only detection for lead occurred in an unfiltered sample from well MSB-3, which detected lead at  $0.99 \mu\text{g/l}$ , just above the detection limit of  $0.8 \mu\text{g/l}$ . This concentration is below EPA's action level for lead of  $15 \mu\text{g/l}$ . The absence of elevated lead concentrations in the mine pool indicates that the lead found in the unsaturated zone groundwater above the mine pool is either attenuated before it reaches the mine pool, or becomes significantly diluted when it reaches the mine pool. The mine pool is not used as a drinking water supply.

S. Lead is a hazardous waste within the meaning of Section 1004(5), 42 U.S.C. § 6903(5), and Section 3001 of RCRA, 42 U.S.C. § 6921, and as listed in 40 C.F.R. Part 261. The substance referred to in Section IV.S. of this Consent Order is a "hazardous waste" and a "hazardous substance" within the meaning of Section 103 of the SWMA, 35 P.S. § 6018.103 and an "industrial waste" within the meaning of Section 1 of the CSL, 35 P.S. § 691.1. Lead is a "hazardous waste" as listed in 25 PA Code § 75.261a.

T. On October 15, 1999, EPA issued a Statement of Basis ("SB"), for public comment which described and evaluated corrective measures alternatives to mitigate or eliminate releases of hazardous waste and/or hazardous constituents at and/or from the Facility. The SB also described EPA's recommended corrective measure. On October 19, 1999, EPA held a briefing on the proposed corrective measures for the Facility for representatives from the offices of U.S. Senator Arlen Specter, U.S. Senator Rick Santorum, State Senator Robert Mellow, U.S. Congressman Donald Sherwood, State Representative Gaynor Cawley, and the Throop Borough Council. On October 26 and October 27, 1999, EPA conducted a series of informational briefings on the proposed corrective measures for citizens at the Throop Borough Civic Center in Throop, Pennsylvania.

U. On December 11 and December 17, 1999, EPA's announcement of a public hearing regarding the SB appeared in the Scranton Times. On December 27, 1999, EPA sent announcements of the public hearing on the proposed corrective measures for the Facility to 1,500 residents of Throop, Pennsylvania. The hearing was held on January 11, 2000 at 6:30 p.m. at the Throop Borough Civic Center. Political representatives, Respondent and community

members provided oral and written comments on EPA's proposed corrective measures for the Facility. The SB and the Administrative Record for the Facility were made available to the public for a sixty-eight (68) day comment period. The public comment period began on November 1, 1999, and ended on January 18, 2000.

V. In Section X, Table 5 of the SB, EPA proposed media cleanup standards for the contaminants of concern in surface and sub-surface soils at the Facility. These standards are set forth in Attachment E to this Consent Order which is incorporated herein and made a part hereof.

W. The human health and environmental effects of the contaminants of concern at the Facility are described in the Administrative Record supporting the issuance of this Consent Order. A current index of the Administrative Record is set forth as Attachment F of this Consent Order which is incorporated herein and made a part hereof.

X. In a letter dated April 13, 2000, U. S. Senator Arlen Specter requested that the EPA Office of the Ombudsman ("EPA Ombudsman") assess EPA Region III's activities in connection with the proposed cleanup of the Facility due to the high level of community interest.

Y. On December 1, 2000, EPA issued a Final Decision and Response to Comments which identified the remedial alternative and media cleanup standards selected by EPA and provided responses to all comments received during the public comment period. The FDRTC establishes a Corrective Action Management Unit for the containment of contaminated materials at the Facility. The FDRTC is set forth in Attachment B to this Consent Order and is incorporated herein and made part hereof.

Z. On December 18, 2000, EPA Region III, in consultation with PADEP and Respondent, suspended further action under the RCRA Consent Order to negotiate a Consent Order for implementation of the Corrective Measures set forth in the FDRTC in order allow the Ombudsman an opportunity to complete and issue its recommendation to EPA Region III.

AA. Over the next several years, Respondent, EPA Region III and PADEP responded to inquiries from the EPA Ombudsman and other interested parties regarding the condition of the Facility, the FDRTC and other issues in connection with the Facility.

BB. On May 18, 2004, the EPA Ombudsman issued a Final Report to EPA Region III which supported the FDRTC and recommended that EPA Region III work with Throop citizens, PADEP and Respondent with respect to implementation of the Corrective Measures at the Facility. The EPA Ombudsman's Final Report to EPA Region III is set forth as Attachment G of this Consent Order and is incorporated herein and made a part hereof.

CC. On August 16, 2004, EPA Region III issued a response to the Ombudsman's Final Report in which the Region accepted the Ombudsman's recommendations. Shortly thereafter, discussions and inquiries resumed between EPA Region III and Respondent regarding the implementation of the Ombudsman's recommendations and their impact upon the FDRTC.

DD. EPA Region III and PADEP responded to and clarified technical issues raised by Respondent in a letter dated September 8, 2005 herein referred to by the parties to this Consent Order as the “Technical Implementation Issues Letter” set forth as Attachment C of this Consent Order and is incorporated herein and made a part hereof.

EE. On September 13, 2005, EPA Region III, in consultation with PADEP, advised Respondent of its intention to lift the December 18, 2000 suspension and commence the sixty-day negotiation period under the RCRA Consent Order upon Respondent’s receipt of a proposed Corrective Measures Implementation Consent Order.

FF. Respondent received a proposed Corrective Measures Implementation Consent Order by electronic mail on December 1, 2005 and by letter dated December 5, 2005.

## **V. EPA AND PADEP CONCLUSIONS OF LAW AND DETERMINATIONS**

Based on the Findings of Fact set forth above, and after consideration of the Administrative Record supporting the issuance of this Consent Order, an index of which is Attachment F to this Consent Order, EPA and PADEP, as appropriate, have made the following Conclusions of Law and Determinations which Respondent does not admit and which shall not be binding on Respondent for any purpose other than establishing jurisdiction for issuance and enforcement of this Consent Order:

A. The Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); Section 103 of the SWMA, 35 P.S. § 6018.103, Section 1 of the CSL, 35 P.S. § 691.1 and Section 103 of HSCA, 35 P.S. § 6020.103.

B. Respondent is the current owner and a former operator of a facility authorized to operate under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), within the meaning of Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

C. The substance referred to in Section IV.S of this Consent Order is a “hazardous waste” within the meaning of Section 1004(5), 42 U.S.C. § 6903(5), and Section 3001 of RCRA, 42 U.S.C. § 6921, and as listed in 40 C.F.R. Part 261. The substance referred to in Section IV.S. of this Consent Order is a “hazardous waste” and a “hazardous substance” within the meaning of Section 103 of the SWMA, 35 P.S. § 6018.103; an “industrial waste” within the meaning of Section 1 of the CSL, 35 P.S. § 691.1. The substance referred to in Section IV.S. of this Consent Order is a “hazardous waste” as listed in 25 PA Code § 75.261a.

D. There has been a release of hazardous waste into the environment from the facility within the meaning of Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

E. The presence of lead at the Facility and the potential and actual migration of lead offsite constitute pollution or danger of pollution as those terms are defined in Section 103 of the

SWMA, 35 P.S. § 6018.103, and Section 1 of the CSL, 35 P.S. § 691.1 and a release or threat of release of a hazardous substance as defined by Section 501 of HSCA, 35 P.S. § 6020.501.

F. The actions required by this Consent Order are necessary to protect human health and/or the environment.

## **VI. WORK TO BE PERFORMED**

EPA and PADEP acknowledge that Respondent may have performed some of the tasks required by this Consent Order and that Respondent may have available some of the information and data required by this Consent Order. This information and/or data may be used to meet the requirements of this Consent Order, upon submission to and formal approval by EPA and PADEP.

Pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), Respondent agrees to and is hereby ordered to implement the Corrective Measures selected by EPA in the FDRTC (herein referred to as the “Work”) and to perform the following acts in the manner and by the dates specified herein. All Work undertaken pursuant to this Consent Order shall be developed and performed, as approved by EPA and PADEP, in a manner consistent with, at a minimum: the Scope of Work for Corrective Measures Implementation (“CMI”); the Scope of Work for a Health and Safety Plan; the Scope of Work for Interim Measures (“IM”); RCRA, its implementing regulations and relevant EPA guidance documents. EPA’s Scopes of Work and relevant guidances are available at:

[http://www.epa.gov/reg3wcmd/ca/ca\\_resources.htm](http://www.epa.gov/reg3wcmd/ca/ca_resources.htm), and are incorporated herein by reference and made a part hereof.

“Days” as used herein shall mean calendar days unless specifically stated otherwise.

### **A. CORRECTIVE MEASURES IMPLEMENTATION WORK PLAN AND DESIGN**

1. Within sixty (60) calendar days of the effective date of this Consent Order, Respondent shall submit to EPA and PADEP for approval a CMI Work Plan for the expeditious implementation of the corrective measures selected by EPA in the FDRTC. The CMI Work Plan shall be developed in accordance with the Scope of Work for Corrective Measures Implementation. The CMI Work Plan shall include a detailed scope of work for the predesign assessment work, including an evaluation of the limit of the Five Foot coal seam and the additional evaluation of the potential mine fire hazard associated with the Top Split Top Four Foot coal seam and the Top Four Foot coal seam.

2. Within thirty (30) calendar days of receipt of EPA’s and PADEP’s comments on the CMI Work Plan, Respondent shall incorporate those comments and submit a revised CMI Work Plan to EPA and PADEP for approval. Respondent may proceed to implement the

predesign assessment work prior to approval of the CMI Work Plan in the event that the scope of work for the predesign assessment is approved by EPA and PADEP.

3. Respondent shall implement the predesign assessment work in accordance with the schedule set forth in the EPA- and PADEP-approved CMI Work Plan or the predesign assessment portion of the EPA- and PADEP-approved CMI Work Plan if it has been approved by EPA and PADEP prior to the CMI Work Plan.

4. Respondent shall submit the results and analysis of the predesign assessment work in accordance with the schedule set forth in the EPA- and PADEP-approved predesign assessment portion of the CMI Work Plan.

5. In accordance with the schedule set forth in the EPA- and PADEP-approved CMI Work Plan, Respondent shall submit to EPA and PADEP, for review and comment, a 30% CMI Design Report (including a list of plans and specifications) which shall be developed in accordance with the Scope of Work for CMI.

6. In accordance with the approved schedule in the CMI Work Plan, Respondent shall incorporate those comments on the Preliminary 30% CMI Design Report received from EPA and PADEP and submit a 90% CMI Design Report to EPA and PADEP for review and comment. The 90% CMI Design Report shall be developed in accordance with the Scope of Work for CMI.

7. In accordance with the approved schedule in the CMI Work Plan, Respondent shall incorporate those comments on the 90% CMI Design Report received from EPA and PADEP and submit to EPA and PADEP for approval, a Final CMI Design Report (which shall include, at a minimum, complete plans and specifications).

8. Upon receipt by Respondent of EPA's and PADEP's approval of the Final CMI Design Report, said Report shall be incorporated into and become enforceable under this Consent Order, and Respondent shall implement said Report in accordance with the schedules and provisions contained therein.

## **B. CORRECTIVE MEASURES CONSTRUCTION**

1. Respondent shall commence and complete construction of the Corrective Measures selected in the FDRTC in accordance with the Scope of Work for the CMI, the schedule set forth in the EPA- and PADEP-approved CMI Work Plan, and the EPA- and PADEP-approved Final CMI Design Report (which shall include, at a minimum, complete plans and specifications). Performance of the approved Work Plan, and any subsequent modifications to the approved CMI Work Plan, shall be considered performance of the Scope of Work for the CMI.

2. Within ninety (90) calendar days of completion of construction and the

preliminary period of performance monitoring as specified in the EPA- and PADEP-approved Final CMI Design Report, Respondent shall submit to EPA and PADEP for approval a CMI Report (including construction certification and as-built drawings). The CMI Report shall be developed in accordance with the Scope of Work for the CMI and shall describe activities performed during construction, provide actual specifications of the implemented corrective measures, and provide a preliminary assessment of CMI performance. A registered professional engineer and Respondent's Project Manager shall determine in the CMI Report whether the media cleanup standards are being or have been achieved in full satisfaction of the requirements of the FDRTC and this Consent Order.

3. EPA and PADEP shall determine, on the basis of the CMI Report and any other relevant information, whether the constructed project is consistent with the EPA- and PADEP-approved Final CMI Design Report, and whether the Corrective Measures are achieving or have achieved the media cleanup standards set forth in the FDRTC. If EPA and PADEP determine that the constructed project is consistent with the EPA- and PADEP-approved Final CMI Design Report, and that the Corrective Measures are achieving or have achieved the media cleanup standards set forth in the FDRTC, EPA shall issue a joint notification to Respondent of such determination, in writing, and the CMI Report shall be considered the Final CMI Report.

4. If EPA and PADEP determine that the Corrective Measures are not implemented in accordance with the EPA- and PADEP-approved Final CMI Design Report, or that the Corrective Measures are not achieving or have not achieved the media cleanup standards set forth in the FDRTC, EPA and PADEP shall issue a joint notification to Respondent, in writing, of those activities that must be undertaken to complete the construction of the Corrective Measures or to achieve the media cleanup standards and a schedule for the completion of those activities. Respondent shall complete the activities in accordance with the schedule set forth in the EPA notification.

5. Respondent may, at any time following EPA and PADEP approval of all pre-design or investigative activities required by the FDRTC, request that EPA and PADEP select, for the purpose of this Consent Order, Alternative and/or Supplemental Corrective Measure(s), subject to EPA's and PADEP's review and approval.

6. Nothing in this Section VI.B shall limit EPA's or PADEP's authority to implement Alternative and/or Supplemental Corrective Measure(s) or to take any other

appropriate action under RCRA, CERCLA, or any other state or federal legal authority, including the issuance of a unilateral administrative order or the filing of a civil action.

### **C. FIVE (5) YEAR ASSESSMENT REPORT**

No later than February 15th of the fifth year after the effective date of this Consent Order and every five (5) years thereafter until receipt of a joint approval by EPA and PADEP of a Certification of Completion pursuant to Section VI.D.4, below, of this Consent Order, Respondent shall submit to EPA and PADEP a Corrective Measures Five-Year Assessment Report. Said Report shall contain an evaluation of the past and projected future effectiveness of the Corrective Measures in achieving and maintaining the media cleanup standards set forth in the FDRTC.

### **D. COMPLETION OF CORRECTIVE MEASURES**

1. After Respondent has determined that the Corrective Measures have been fully implemented in accordance with the EPA- and PADEP-approved CMI Design Report, Respondent shall notify EPA and PADEP in writing and request EPA's and PADEP's approval to discontinue the Corrective Measure(s) in accordance with Section VI.L.1 of this Consent Order. The request shall explain the basis for Respondent's conclusion and include all available documentation supporting such conclusion.

2. Upon receipt of EPA's and PADEP's joint approval of Respondent's request to discontinue all Corrective Measures, Respondent may discontinue such Corrective Measures, except that Respondent shall continue to monitor the groundwater in accordance with the EPA- and PADEP-approved CMI Design Report. Respondent shall submit the results of such post-construction monitoring with the Quarterly and Annual Progress Reports in accordance with Section VI.L. (WORK TO BE PERFORMED: SUBMISSIONS/EPA AND PADEP APPROVAL) of this Consent Order.

3. If at any time during the post-construction monitoring program, EPA and/or PADEP determine that the level of any hazardous constituent and/or hazardous waste in the soils has increased above the media cleanup standards set forth in the FDRTC for such hazardous constituent and/or hazardous waste, and it is determined by EPA and PADEP that such increase is related to the Marjol Facility, EPA and PADEP may determine that Alternative and/or Supplemental Corrective Measures need to be initiated to achieve the established media cleanup standards. EPA and PADEP shall issue a joint notification to Respondent, in writing of, any such determination. Any decision by EPA and PADEP to require Alternative and/or Supplemental Corrective Measures shall be made pursuant to applicable EPA regulations and consistent with guidance regarding selection of corrective measures under Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

4. If, after the post-construction monitoring program is completed to EPA's and PADEP's satisfaction, the established media cleanup standards for soil have been maintained and all other aspects of the Corrective Measures Construction and Operation and Maintenance ("O&M") have been completed, Respondent shall submit a Certification of Completion for all Corrective Measures to EPA and PADEP for review and approval in accordance with Section VI.L.1 of this Consent Order. The Certification of Completion shall provide documentation sufficient to support a determination that media cleanup standards set forth in the FDRTC have been maintained and shall include all available documentation supporting such a determination.

#### **E. HEALTH AND SAFETY PLAN**

Concurrent with the submission of the CMI Work Plan, the Respondent shall submit to EPA and PADEP a CMI Health and Safety Plan developed and/or revised in accordance with the provisions of the Scope of Work for a Health and Safety Plan. Respondent shall implement the Health and Safety Plan.

#### **F. CORRECTIVE MEASURES OPERATION AND MAINTENANCE ("O&M")**

The Respondent shall perform the O&M activities in accordance with the timetable set forth in the EPA- and PADEP-approved CMI Design Report and the EPA- and PADEP-approved O&M Plan.

#### **G. USE RESTRICTIONS**

Commencing on the effective date of this Consent Order and continuing thereafter, the Respondent shall comply with the following:

- a. Respondent shall not use the Facility or allow a third party to use the Facility in any manner that would interfere with or adversely affect the integrity or protectiveness of the corrective measures to be implemented pursuant to this Consent Order.
- b. Respondent shall not use the Facility or allow a third party to use the Facility for any purpose which might interfere with, obstruct, or disturb the performance, support, or supervision of the Work, including any Operation and Maintenance activities, taken pursuant to this Consent Order.
- c. No drilling, construction and/or placement of new groundwater wells at the Facility for the purposes of (i) drinking, bathing, washing, or any other human contact; and (ii) no commercial or industrial uses of the groundwater at the Facility shall be permitted without the prior written approval of EPA and PADEP.
- d. No digging, excavation, drilling, breaching or any other disturbance of the cap

and/or containment area at the Facility shall be permitted without the prior written approval of EPA and PADEP.

e. Any structure or building that is proposed to be placed on top of all or a portion of the cap and/or containment area at the Facility must be approved by EPA and PADEP prior to its construction.

f. Respondent shall notify EPA and PADEP, in writing, of any anticipated land use changes at the Facility that may affect the final Corrective Measures set forth in the FDRTC to be implemented pursuant to this Consent Order. Such land use changes shall be submitted for EPA's and PADEP's review and approval at least thirty (30) days prior to the commencement of any such land use changes at the Facility.

## **H. SUCCESSORS-IN-INTEREST**

### **1. Notice to Successors-in-Title**

a. With respect to any property owned or controlled by Respondent that is located within the Facility, within thirty (30) days after the effective date of this Consent Order, Respondent shall submit to EPA and PADEP for review and approval a notice to be filed with the Recorder of Deeds, Lackawanna County, Commonwealth of Pennsylvania ("Title Notice"), which shall provide notice to all successors-in-interest that such property is part of the Facility, that EPA selected Corrective Measures for the Facility on December 1, 2000, and that EPA, PADEP and Respondent have entered into this Consent Order requiring Respondent to implement the Corrective Measures selected by EPA in the FDRTC for the Facility. Such Title Notice shall identify the administrative docket number of this Consent Order and the effective date of this Consent Order. Such Title Notice shall recite the Respondent's obligations to comply with the requirements of Section VI.G (WORK TO BE PERFORMED: USE RESTRICTIONS), above, and to provide access to the Facility pursuant to Section IX (ON-SITE AND OFF-SITE ACCESS) of this Consent Order. The form of such Title Notice shall comply with applicable Commonwealth and Lackawanna County recordation requirements and practices. The Respondent shall record the Title Notice within ten (10) days of receipt of EPA's approval of such Title Notice. The Respondent shall not modify or terminate such Title Notice without prior written approval of EPA and PADEP which approval shall not be unreasonably withheld. The Respondent shall provide EPA and PADEP with a certified copy of the recorded Title Notice within ten (10) days of recording such Title Notice.

b. Within thirty (30) days after the approval of the CMI Design Report, Respondent shall submit to EPA and PADEP for review and approval a revised notice to be filed with the Recorder of Deeds, Lackawanna County, Commonwealth of Pennsylvania ("Revised Title Notice"). This Revised Title Notice shall describe any property owned or controlled by Respondent that is located in the areas within the Facility where contaminants will be permanently placed and shall contain the same information to all successors-in-interest as described in subparagraph a. of this Section VI.H.1., above. The form of this Revised Title

Notice shall comply with applicable Commonwealth and Lackawanna County recordation requirements and practices. The Respondent shall record the Revised Title Notice within ten (10) days of receipt of EPA's approval of such Revised Title Notice. The Respondent shall not modify or terminate such Revised Title Notice without prior written approval of EPA and PADEP, which approval shall not be unreasonably withheld. The Respondent shall provide EPA and PADEP with a certified copy of the recorded Revised Title Notice within ten (10) days of recording such Revised Title Notice.

c. At least thirty (30) days prior to any Conveyance, Respondent shall give the grantee(s) or transferee(s)-in-interest written notice of this Consent Order, including a written description of the use restriction requirements set forth in Section VI.G (WORK TO BE PERFORMED: USE RESTRICTIONS) and the access requirements set forth in Section IX (ON-SITE AND OFF-SITE ACCESS) of this Consent Order. At least thirty (30) days prior to such Conveyance, Respondent shall also give written notice to EPA and PADEP of the proposed Conveyance, which notice shall include the name(s), address(es) and telephone number(s) of the grantee(s) or transferee(s)-in-interest, and the date on which notice of this Consent Order, and the description of use restriction requirements set forth in Section VI.G (WORK TO BE PERFORMED: USE RESTRICTIONS) of this Consent Order were given to the grantee(s). In addition, Respondent shall provide EPA and PADEP with copies of all agreement(s) or contract(s), including but not limited to indemnification agreement(s) or contract(s), executed in connection with such conveyance, transfer or assignment, within thirty (30) days of the effective date of such agreement(s).

## 2. **Assignment or Transfer of Property or Interest in the Property**

a. **Continuing Obligation.** In the event of any Conveyance, Respondent shall continue to be bound by all terms and conditions, and subject to all benefits, of this Consent Order, including its obligation to provide or secure access pursuant to Section IX (ON-SITE AND OFF-SITE ACCESS) of this Consent Order. In no event shall such conveyance, transfer, lease, or assignment release or otherwise affect Respondent's obligation to comply with all provisions of this Consent Order, unless EPA, PADEP, and Respondent agree, in writing, to such a modification of this Consent Order.

b. **Reservation of Easement and Restrictive Covenant.** In the event of any Conveyance, the Respondent shall expressly reserve in the deed or other instrument effecting the Conveyance an irrevocable and permanent easement and restrictive covenant which (i) grants Respondent, with EPA and PADEP as Respondent's authorized representatives, access to the Facility for the purpose of carrying out their obligations under this Consent Order; and (ii) imposes upon the subsequent grantee the restrictions set forth in Section VI.G (WORK TO BE PERFORMED: USE RESTRICTIONS) of this Consent Order. Thereafter, Respondent shall enforce the terms of any such easement and restrictive covenant reserved pursuant to this Section VI.H.2.b against all subsequent grantees of any conveyance, transfer or assignment of any interest in the Facility property.

## **I. CONTRACTOR REVIEW**

1. All Work performed pursuant to this Consent Order shall be under the direction and supervision of a qualified professional with expertise in the relevant aspects of hazardous waste site investigation and remediation. Respondent has selected, and EPA and PADEP have accepted, Advanced GeoServices Corp. and Barbara Forslund as its supervising professional firm and qualified professional engineer, respectively. Within fifteen (15) calendar days after the effective date of this Consent Order, Respondent shall submit to EPA and PADEP, in writing, the names, titles, and qualifications of the professional project coordinator, engineers, geologists, contractors and subcontractors (hereinafter “contractors”) to be used in carrying out the terms of this Consent Order. Within fifteen (15) calendar days of retaining any other contractors to be used in carrying out the terms of this Consent Order, Respondent shall submit to EPA and PADEP, in writing, the names, titles and qualifications of any such additional contractors. Notwithstanding Respondent’s selection of any qualified contractor, nothing herein shall relieve Respondent of its obligation to comply with the terms and conditions of this Consent Order.

2. EPA and PADEP shall have the right to disapprove at any time the use of any contractor and/or Project Coordinator selected by Respondent pursuant to paragraph 1, immediately above, paragraph 3, immediately below and Section XII, paragraph A (PROJECT COORDINATORS), below, of this Consent Order. This disapproval shall not be subject to review under Dispute Resolution (Section XV) of this Consent Order or otherwise. Within fifteen (15) calendar days of receipt from EPA of a joint written notice disapproving the selection of any contractor, or any such additional time as determined by EPA and PADEP, in their sole discretion, not subject to Dispute Resolution (Section XV), considering the scope of duties of the contractor required to be replaced, Respondent shall notify EPA and PADEP, in writing, of the names, titles and qualifications of the personnel who will replace the personnel disapproved by EPA and PADEP.

3. Respondent shall notify EPA and PADEP, in writing, at least fifteen (15) calendar days prior to voluntarily replacing a professional engineer, geologist, contractor or subcontractor to be used in carrying out the terms of this Consent Order, and shall submit to EPA and PADEP, in writing, the names, titles, and qualifications of such replacement personnel.

## **J. ADDITIONAL WORK**

1. EPA and PADEP may determine that certain tasks and deliverables, including, but not limited to, investigatory work, or engineering evaluation, or procedure/methodology modifications, require additional work. These tasks and deliverables may or may not have been in the CMI Work Plan or other EPA- and PADEP-approved document(s). Furthermore, at any time during or after the implementation of the Corrective Measures specified in the FDRTC, EPA and PADEP may determine that the soil lead cleanup standards set forth in the FDRTC have not been met and/or that the continued implementation of the Corrective Measures are not

likely to achieve such standards. In that event, EPA and PADEP may determine that additional work is necessary to perform supplemental and/or alternative Corrective Measures pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), applicable EPA regulations, consistent with applicable EPA guidance and pursuant to applicable PADEP regulations and/or policy.

2. EPA and PADEP may issue a joint request, in writing, that Respondent perform such additional work. Such request shall specify the basis and reasons for EPA's and PADEP's request that additional work is necessary.

3. Within fifteen (15) calendar days after the receipt of such request, Respondent shall have the opportunity to meet or confer with EPA and PADEP to discuss the request to perform the additional work. In the event that Respondent agrees to perform such additional work, Respondent shall submit to EPA and PADEP for review and approval a work plan for the additional work. Such work plan shall be submitted within forty-five (45) days of receipt of EPA's and PADEP's determination that additional work is necessary, or otherwise in accordance with a later alternative schedule established by EPA and PADEP. Upon EPA's and PADEP's approval of a work plan, the work plan shall be incorporated into and become enforceable under this Consent Order, and Respondent shall implement it in accordance with the schedule and provisions contained therein.

4. If Respondent declines to perform the additional work, EPA and PADEP reserve the right to order Respondent to perform such additional work; to perform such additional work itself and seek to recover all costs of performing such additional work from Respondent; and/or to take any other appropriate action under RCRA, CERCLA, HSCA, or any other legal authority. Respondent reserves all rights it may have to defend any such action(s).

#### **K. INTERIM MEASURES ("IM")/SITE STABILIZATION**

1. In the event Respondent identifies an immediate threat to human health and/or the environment, or discovers new releases of hazardous waste and/or hazardous constituents not previously identified which present such a threat, Respondent shall notify the EPA and PADEP Project Coordinators, orally, within 48 hours of discovery and notify EPA and PADEP, in writing, within three (3) calendar days of such discovery summarizing the immediacy and magnitude of the threat(s) to human health and/or the environment. Upon written request of EPA and PADEP, Respondent shall submit to EPA and PADEP an IM Workplan in accordance with the IM Scope of Work. If EPA and PADEP determine that immediate action is required, the EPA and/or PADEP Project Coordinator may orally authorize Respondent to act prior to EPA's and PADEP's receipt of the IM Workplan.

2. If EPA and/or PADEP identify an immediate or potential threat to human health and/or the environment, or discover new releases of hazardous waste and/or hazardous constituents not previously identified which present such a threat, EPA and PADEP will issue a joint notification to Respondent in writing. Within ten (10) days of receiving such joint notification, Respondent shall submit to EPA and PADEP an IM Work Plan in accordance with the IM Scope of Work. If EPA and PADEP determine that immediate action is required, the EPA Project Coordinator may orally require Respondent to act prior to Respondent's receipt of EPA's and PADEP's written notification.

3. All IM Work Plans shall ensure that the interim measures are designed to mitigate immediate or potential threats to human health and/or the environment, and should be consistent with, and easily integrated into the Corrective Measures set forth in the FDRTC.

4. Each IM Work Plan shall be developed in accordance with the IM Scope of Work and shall include the following sections as appropriate and approved by EPA and PADEP: Interim Measures Objectives; Public Involvement Plan; Data Collection Quality Assurance; Data Management; Design Plans and Specifications; Operation and Maintenance; Project Schedule; Interim Measures Construction Quality Assurance, and; Reporting Requirements. Concurrent with submission of an IM Work Plan, Respondent shall submit to EPA and PADEP an IM Health and Safety Plan.

5. Upon receipt of EPA and PADEP approval of an IM Work Plan, Respondent shall implement the EPA- and PADEP-approved IM Work Plan in accordance with the requirements and schedules contained therein.

#### **L. SUBMISSIONS/EPA AND PADEP APPROVAL**

1. EPA and PADEP will review documents submitted pursuant to this Consent Order (hereinafter collectively referred to as "Submissions"). A joint response will be issued by EPA and PADEP notifying Respondent, in writing, of the approval or disapproval of the Submission(s) or any part thereof (except for Health and Safety Plans and Progress Reports which will be submitted for review but not approval). In the event of a disapproval, EPA and PADEP shall specify in writing any deficiencies in the Submission(s). Such disapproval shall not be subject to the dispute resolution procedures of Section XV (DISPUTE RESOLUTION), below. Notwithstanding any notice of disapproval, Respondent shall implement, at the direction of EPA, any action required by any non-deficient portion of the Submission(s).

2. Except as otherwise provided in Section VI.A, above, within thirty (30) calendar days of receipt of EPA's and PADEP's comments on a Submission, or fifteen (15) calendar days in the case of an IM Workplan, Respondent shall submit to EPA and PADEP for approval a revised Submission which responds to and/or corrects any deficiencies identified by EPA and PADEP. In the event that EPA and PADEP disapprove the revised Submission, EPA and PADEP reserve the right to revise or prepare such Submission and to seek to recover from Respondent the costs thereof, in accordance with the Comprehensive Environmental Response,

Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. § 9601 *et seq.*, as amended, the Hazardous Sites Cleanup Act (“HSCA”), 35 P.S. §§ 6020.101 *et seq.*, and any other applicable laws, and/or to take any other appropriate action under RCRA, CERCLA, HSCA or any other legal authority. Any Submission prepared by Respondent that is approved or revised by EPA and PADEP under this Consent Order shall be deemed incorporated into and made an enforceable part of this Consent Order. Any revision, approval or disapproval of a revised Submission shall be subject to Dispute Resolution under Section XV of this Consent Order. Except as provided in the fourth sentence in paragraph VI.L.1, above, the submission of a revised plan within the deadlines established shall not waive the right of Respondent to invoke the dispute resolution provisions in Section XV of this Consent Order.

3. On May 15th, August 15th and November 15th of the first and second year during which this Consent Order is effective, Respondent shall submit to EPA and PADEP a Quarterly Progress Report for the first, second and third calendar quarters, respectively, which contains the information required in the Scope of Work for CMI. Thereafter, such reports shall be annual as provided below, until the submission of the first Corrective Measure Five-Year Assessment Report by Respondent.

4. On February 15th of each year during which this Consent Order is effective, Respondent shall submit to EPA and PADEP an Annual Progress Report which contains the information described in the Scope of Work for CMI and for the previous calendar year. Respondent shall not be required to submit an Annual Progress Report in any year a Corrective Measure Five-Year Assessment Report is submitted pursuant to Section VI.C. (WORK TO BE PERFORMED: FIVE (5) YEAR ASSESSMENT REPORT) of this Consent Order.

5. After the first five-year assessment, all reports shall be submitted to EPA and PADEP by Respondent every other year during which this Consent Order is effective, on February 15th of that year.

## **VII. QUALITY ASSURANCE**

Throughout all sample collection and analysis activities, Respondent shall use EPA- and PADEP-approved quality assurance/quality control (“QA/QC”), and chain-of-custody procedures, as specified in the EPA- and PADEP-approved Work Plans. In addition, Respondent shall:

A. Ensure that laboratories used for analyses by Respondent perform such analyses according to the EPA methods included in “Test Methods for Evaluating Solid Waste” (SW-846, November 1986, Third Edition as updated) or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall submit all protocols to be used for analyses to EPA and PADEP for approval pursuant to Section VI.L (WORK TO BE PERFORMED: SUBMISSIONS EPA/PADEP APPROVAL), above, at least thirty (30) calendar days prior to the commencement of such analyses.

B. Ensure that laboratories used by Respondent for analyses participate in a QA/QC program equivalent to that which is followed by EPA. As part of such a program, and upon request by EPA and PADEP, such laboratories shall perform analyses of samples provided by EPA and PADEP to demonstrate the quality of the analytical data.

C. Inform EPA and PADEP at least fifteen (15) calendar days in advance of any laboratory analysis required by this Consent Order regarding which laboratory will be used by Respondent and ensure that EPA and PADEP personnel and/or EPA and PADEP authorized representatives are allowed reasonable access to the laboratory(ies), records, and personnel utilized by Respondent for analysis of samples collected pursuant to this Consent Order.

### **VIII. PUBLIC REVIEW OF ADMINISTRATIVE RECORD**

The Administrative Record supporting the issuance of this Consent Order will be available for public review during business hours at the following location:

U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103  
Telephone Number: (215) 814-3416  
Attn: Ms. Maureen T. Essenthier (3WC22)

The Administrative Record, including the index to the Administrative Record, is incorporated in this Consent Order and made a part hereof. The index to the Administrative Record is set forth at Attachment F of this Consent Order. Respondent has no obligations under this Section VIII.

### **IX. ON-SITE AND OFF-SITE ACCESS**

A. EPA, PADEP and/or their authorized representatives shall have the authority to enter and freely move about all property at the Facility at reasonable times during the effective dates of this Consent Order for the purposes of, inter alia: interviewing Facility personnel and contractors; inspecting records, operating logs, and contracts related to work undertaken pursuant to the Consent Order consistent with Section X (SAMPLING AND DATA/DOCUMENT AVAILABILITY); reviewing the progress of Respondent in carrying out the terms of this Consent Order; conducting such tests, sampling or monitoring as EPA, PADEP or their Project Coordinators deem necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to EPA and PADEP by Respondent. Respondent shall permit EPA, PADEP and their authorized representatives to inspect and copy records, files, photographs, documents, and other writings, in its possession or

under its control, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Order.

B. To the extent that work required by this Consent Order, or by any approved Work Plan prepared pursuant hereto, must be done on property not owned or controlled by Respondent, Respondent shall use its best efforts to obtain site access agreement(s) from the present owner(s) and/or lessee(s) of such property, as appropriate, at least forty-five (45) calendar days prior to performance of any offsite work on property not owned or controlled by Respondent that is required by the approved CMI Work Plan pursuant to this Consent Order. For the purposes of this paragraph IX.B., “best efforts” shall include, at a minimum; a) a certified letter from Respondent to the present owner(s) or lessee(s) of such property, as appropriate, requesting agreements to permit Respondent, EPA, PADEP and their authorized representatives access to such property; and b) prompt communication by the Respondent with the property owner(s) or lessee(s) to inform them of the nature of the work to be done on their property, the time it will take, the disturbance (if any) that will occur, and the restoration (if necessary) to be done when the work is finished. In the event that such agreements for access are not obtained within forty-five (45) calendar days after receipt of EPA and PADEP approval of any Work Plan pursuant to this Consent Order which requires work on property which is not owned or controlled by Respondent, Respondent shall notify EPA and PADEP, in writing, within seven (7) calendar days after failure to obtain such agreements, regarding both the efforts undertaken to obtain access and the failure to obtain such agreements. In the event that Respondent fails to obtain access, after using best efforts as described in this paragraph IX.B., EPA and/or PADEP may decide, such decision being in their unreviewable discretion, to assist Respondent in obtaining off-site access for Respondent.

C. Nothing in this Consent Order limits or otherwise affects EPA's and PADEP's rights of access and entry pursuant to applicable law, including, but not limited to, RCRA, CERCLA, and HSCA.

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

A. Respondent shall submit to EPA and PADEP the results of all sampling and/or tests or other data generated by, or on behalf of, Respondent in accordance with the requirements of this Consent Order and the Attachments appended hereto and incorporated herein.

B. Respondent shall notify EPA and PADEP, in writing, at least fifteen (15) calendar days in advance of any field activities, such as well drilling, installation of equipment, or sampling. EPA and PADEP, in their sole discretion and not subject to Dispute Resolution (Section XV), may agree to a shorter notice period upon receipt of a written request by Respondent. At the request of EPA and PADEP, Respondent shall provide or allow EPA and/or PADEP or their authorized representatives to take split or duplicate samples of all samples collected by the Respondent pursuant to this Consent Order. Nothing in this Consent Order shall limit or otherwise affect EPA's authority to collect samples pursuant to applicable law, including,

but not limited to, RCRA and CERCLA.

C. Respondent may assert a business confidentiality claim covering all or part of any information submitted to EPA pursuant to this Consent Order in the manner described in 40 C.F.R. § 2.203(b). Any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made in accordance with 40 C.F.R. § 2.204(e)(4). Information subject to a confidentiality claim shall be disclosed only to the extent allowed by, and in accordance with, the procedures set forth in 40 C.F.R. Part 2, Subpart B. Respondent may also assert confidentiality claims to PADEP pursuant to Section 502(c) of the SWMA, 35 P.S. § 6018.502(c), and 25 PA Code § 92.63. If no such confidentiality claim accompanies the information when it is submitted to EPA and/or PADEP, it may be made available to the public without further notice to Respondent. Respondent shall not assert any confidentiality claim with regard to any physical, sampling, monitoring, or analytical data sampled pursuant to this Consent Order.

D. If Respondent asserts a privilege with respect to any document which EPA and/or PADEP seeks to inspect or copy pursuant to this Consent Order, the Respondent shall provide to EPA and/or PADEP within seven (7) days from the date of the request to inspect or copy such document with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the nature and basis of the privilege asserted by the Respondent. For the purposes of this Consent Order, privileged documents are those documents exempt from discovery by the United States in litigation in Federal court in cases in which the United States is a party. However, no document, record, or information created, generated or collected pursuant to the terms of this Consent Order shall be withheld on the grounds that it is privileged.

## **XI. RECORD PRESERVATION**

Respondent shall preserve, during the pendency of this Consent Order and for a minimum of at least six (6) years after its termination, at least one copy of all non-identical data, records and documents in its possession or in the possession of its divisions, officers, directors, employees, agents, contractors, successors, and assigns which relate in any way to this Consent Order or to hazardous waste management and/or disposal at the Facility. After six (6) years, Respondent shall make such records available to EPA and PADEP for inspection or shall provide copies of such records to EPA and PADEP. Respondent shall notify EPA and PADEP at least thirty (30) calendar days prior to the proposed destruction of any such records, and shall provide EPA and PADEP with a reasonable opportunity to inspect, copy and/or take possession of any such records. Respondent shall not destroy any record to which EPA and/or PADEP has requested access for inspection and/or copying until EPA and/or PADEP has obtained such access or withdrawn its request for such access. Nothing in this Section XI shall in any way limit the authority of EPA under Section 3007 of RCRA, 42 U.S.C. § 6927, or the authority of

PADEP under HSCA, or any other access or information gathering authority.

## **XII. PROJECT COORDINATORS**

A. EPA hereby designates Maureen T. Essenthier as the EPA Project Coordinator. PADEP hereby designates Leonard Zelinka as the PADEP Project Coordinator. Respondent hereby designates James F. Cronmiller as its Project Coordinator. Addresses and telephone numbers for the Project Coordinators are provided in Section XIII.A, below. Each Project Coordinator shall be responsible for overseeing the implementation of the Consent Order. The EPA Project Coordinator will be EPA's primary designated representative at the Facility. To the maximum extent possible, all communications between Respondent, EPA and PADEP and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators.

B. Each party agrees to provide at least seven (7) calendar days written notice to the other party prior to changing a Project Coordinator. Respondent's legal counsel shall not serve as Respondent's Project Coordinator.

C. The absence of the EPA and PADEP Project Coordinator(s) from the Facility shall not be cause for the delay or stoppage of work, unless this work cannot proceed without the EPA and/or PADEP Project Coordinator's on-site review and/or approval.

## **XIII. NOTIFICATION**

A. Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices, or other submissions relating to or required under this Consent Order shall be in writing and/or by electronic submission shall be sent as follows:

1. Two copies (or possibly three copies if such is requested by EPA and PADEP) of all documents to be submitted to EPA shall be sent to:

Ms. Maureen T. Essenthier (3WC22)  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, Pennsylvania 19103  
(215) 814-3416 (Telephone)  
(215) 814-3113 (Facsimile)  
[essenthier.maureen@epa.gov](mailto:essenthier.maureen@epa.gov)

2. Documents submitted to Respondent shall be sent to:

Mr. James F. Cronmiller  
Director, Corporate Environmental Affairs  
Gould Electronics Inc.  
34929 Curtis Boulevard, Suite 100  
Eastlake, Ohio 44095  
(440) 953-5044 (Telephone)  
(440) 953-5008 (Facsimile)  
Email: [j.cronmiller@gould.com](mailto:j.cronmiller@gould.com)

w/copy to:

Ms. Barbara Forslund  
Senior Project Consultant  
Advanced GeoServices Corp.  
1055 Andrew Drive, Suite A  
West Chester, PA 19382-4293  
(610) 840-9100 (Telephone)  
(610) 840-9199 (Facsimile)  
Email: [blforslund@advancedgeoservices.com](mailto:blforslund@advancedgeoservices.com)

3. One copy of all documents to be submitted to PADEP shall be sent to

Mr. Leonard Zelinka through  
Mr. Ronald Brezinski  
Environmental Cleanup Program Manager  
Commonwealth of Pennsylvania  
Department of Environmental Protection  
Northeast Regional Office  
2 Public Square  
Wilkes Barre, PA 18711-0790  
(570) 826-5441 (Mr. Zelinka)  
(570) 826-2511 (Telephone)  
(570) 820-4907 (Facsimile)  
Email: [robrezinsk@state.pa.us](mailto:robrezinsk@state.pa.us)

B. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Consent Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Consent Order shall be certified by a responsible corporate officer or a duly authorized representative of a responsible corporate officer. A "responsible corporate officer" means: (a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. A person is a "duly authorized representative" only if: (1) the authorization is made in writing by a person described above; (2) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (3) the written authorization is submitted to the Project Coordinators designated by EPA in Section XII (PROJECT COORDINATOR) of this Consent Order.

C. The certification required by paragraph B, above, shall be in the following form:

I certify that the information contained in or accompanying this **[type of submission]** is true, accurate, and complete.

As to [the/those identified portion(s)] of this **[type of submission]** for which I cannot personally verify **[its/their]** accuracy, I certify under penalty of law that this **[type of submission]** and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons

who manage the system, or those persons directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature : \_\_\_\_\_

Name : \_\_\_\_\_

Title : \_\_\_\_\_

#### **XIV. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

A. Unless there has been a written modification of a compliance date by EPA and PADEP, or excusable delay as defined below in Section XVI (FORCE MAJEURE AND EXCUSABLE DELAY) in the event that Respondent fails to comply with any requirement set forth in this Consent Order, Respondent shall pay stipulated penalties, as set forth below, upon receipt of written demand by EPA and PADEP. Compliance by Respondent shall include commencement or completion of any activity, plan, study or report required by this Consent Order in accordance with the requirements of the Consent Order and within the specified time schedules in and approved under this Consent Order. Stipulated penalties shall accrue as follows:

1. For failure to commence, perform or complete work as prescribed in this Consent Order: \$750 per day for one to seven days or part thereof of noncompliance and \$2,000 per day for each day of noncompliance, or part thereof, thereafter;
2. For failure to submit any draft or final plans, plans, or reports as required by this Consent Order: \$750 per day for one to seven days or part thereof of noncompliance, and \$2,000 per day for each day of noncompliance, or part thereof, thereafter;
3. For failure to submit quarterly progress reports as required by this Consent Order: \$500 per day for one to seven days or part thereof of noncompliance, and \$1,000 per day for each day of noncompliance, or part thereof, thereafter;
4. For failure to submit other deliverables as required by this Consent Order: \$700 per day for one to seven days or part thereof of noncompliance, and \$2,000 per day for each day of noncompliance, or part thereof, thereafter;
5. For any failure to comply with the provisions of this Consent Order after receipt of notice of noncompliance by EPA: \$1,000 per day for each day of noncompliance, or part thereof, hereafter, in addition to any stipulated penalties

imposed for the underlying noncompliance;

6. For any failure to comply with this Consent Order not described in subparagraphs 1 through 5, above; \$1000 per day for each day of noncompliance, or part thereof.

B. All penalties shall begin to accrue on the date that complete performance is due or a violation occurs, and shall continue to accrue through the final day of or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order.

C. All penalties owed to EPA and PADEP under this Section XIV shall be due within thirty (30) calendar days of receipt of a demand for payment unless Respondent invokes the dispute resolution procedures under Section XV (DISPUTE RESOLUTION), below. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest shall begin to accrue on the unpaid balance at the end of the thirty (30) calendar day period and shall accrue at the United States Tax and Loan Rate. In addition, a penalty charge of six percent (6%) will be assessed on any unpaid balance which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty be required, it will be assessed from the first day payment is due.

D. All penalties owed to EPA and PADEP under this Section XIV shall be paid by cashier's or certified check with one-half of the total amount of each penalty made payable to the Treasurer of the United States of America and remitted in the manner specified in paragraph E, below, of this Section XIV, and one-half of the total amount of the total amount of each penalty made payable to the Commonwealth of Pennsylvania Hazardous Sites Cleanup Fund and remitted in the manner specified in paragraph E, below, of this Section XIV.

E. All penalty payments to EPA shall be made by cashier's or certified check payable to the Treasurer of the United States of America and shall be remitted to:

U.S. Environmental Protection Agency  
Region III  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251-6515

All penalty payments to PADEP shall be made by cashier's or certified check payable to the Pennsylvania Hazardous Sites Cleanup Fund and shall be remitted to:

Manager  
Environmental Cleanup Program  
Commonwealth of Pennsylvania  
Department of Environmental Protection  
2 Public Square  
Wilkes-Barre, Pennsylvania 18771-0790

All payments to EPA shall reference the name of the Facility, Respondent's name and address, and the EPA Docket Number of this Consent Order. Copies of the transmittal of payment to EPA shall be sent simultaneously to the EPA Project Coordinator and the Regional Hearing Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. All payments to PADEP shall reference the name of the Facility. Copies of the transmittal of payment to PADEP shall be sent simultaneously to the PADEP Project Coordinator.

F. Respondent may dispute EPA's and/or PADEP's demand for payment of stipulated penalties for any alleged violation of this Consent Order by invoking the dispute resolution procedures below under Section XV (DISPUTE RESOLUTION). Stipulated penalties and interest shall continue to accrue, but need not be paid, for any alleged noncompliance which is the subject of dispute resolution during the period of such dispute resolution. To the extent that Respondent does not prevail upon resolution of the dispute, Respondent shall remit within fifteen (15) calendar days of receipt of such resolution any outstanding penalty payment, including any accrued interest, in the manner described above in Paragraph E of this Section XIV. To the extent Respondent prevails upon resolution of the dispute, no penalties shall be payable. Notwithstanding the above, to the extent that Respondent does not prevail upon resolution of a dispute, EPA and PADEP, in their sole and unreviewable discretion, after consideration of the nature of the dispute, Respondent's assertions relative to the matter in dispute, and any other relevant matter, may forego collection of all or a portion of EPA and/or PADEP's stipulated penalty demand and any accrued interest.

G. Except as provided in paragraph E of this Section XIV, immediately above, neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Respondent's obligation to comply with the requirements of this Consent Order.

H. The stipulated penalties set forth in this Section XIV shall not preclude EPA or PADEP from pursuing any other remedies or sanctions which may be available to them by reason of Respondent's failure to comply with any of the requirements of this Consent Order. In the event statutory penalties are imposed by a court for violations for which Respondent is concurrently liable for stipulated penalties pursuant to this Section XIV, Respondent shall be entitled to an offset by EPA to the total amount of statutory penalties imposed by the court by the total amount of stipulated penalties previously paid for such violations.

## **XV. DISPUTE RESOLUTION**

A. Unless expressly otherwise provided herein, if Respondent disagrees, in whole or in part, with any EPA and PADEP disapproval, modification or other determination, decision or directive made by EPA and PADEP pursuant to this Consent Order or required thereunder, Respondent shall notify EPA and PADEP in writing of its objections, and the basis therefor, within twenty (20) calendar days of receipt of EPA's and PADEP's disapproval, decision, or directive (hereafter referred to as the "initial objection"). Such notice shall set forth the specific

points of the dispute, the position which Respondent asserts should be adopted as consistent with the requirements of this Consent Order, the basis for Respondent's position, and any matters which it considers necessary for EPA's and PADEP's determination. EPA, PADEP, and Respondent shall have an additional fifteen (15) calendar days from the receipt by EPA and PADEP of the notification of objection, during which time representatives of EPA, PADEP, and Respondent may confer in person or by telephone to resolve any disagreement. If an agreement is reached, the resolution shall be written and signed by an authorized representative of each party. In the event that resolution is not reached within the fifteen (15) calendar day period, EPA and PADEP will furnish to Respondent, in writing, their decision on the pending dispute. The decision will be made as promptly as the issues allow. Thereafter, Respondent shall have seven (7) calendar days to respond to the decision, provide arguments or information in response, and request reconsideration, withdrawal or amendment of EPA and PADEP's decision (hereafter referred to as the "reconsideration process"). EPA and PADEP shall respond to any such request in writing. If there is a disagreement between EPA and PADEP, the provisions of Section XVI (EPA/PADEP DISPUTE RESOLUTION), below, shall be invoked and the decision provided to Respondent shall be that resulting from the process set forth in that Section XVI. Thereafter, EPA or PADEP may pursue whatever remedies they may have under law, including the right to seek judicial enforcement of this Consent Order.

B. Except as provided in paragraphs C and F of Section XIV (DELAY in PERFORMANCE/STIPULATED PENALTIES), the existence of a dispute, as defined in this Section XV, and EPA's and PADEP's consideration of matters placed into dispute, shall not excuse, toll or suspend any compliance obligation or deadline required pursuant to this Consent Order during the pendency of the dispute resolution process.

C. For the initial objection submitted by Respondent, the decision maker for EPA under this Section XV shall be Paul Gotthold, Region III Chief of the Pennsylvania Operations Branch of the Waste and Chemicals Management Division or his successor. The decision maker for PADEP shall be Ronald Brezinski, Environmental Cleanup Program Manager or his successor.

D. For the reconsideration process requested by Respondent, the decision maker for EPA under this Section XV shall be James Burke, Region III Director of the Waste and Chemicals Management Division or his successor. The decision maker for PADEP shall be Gary Greenfield, Assistant Regional Director or his successor.

E. Notwithstanding any other provisions of this Consent Order, no action or decision by EPA, including, without limitation, decisions of the Region III Director of the Waste and Chemicals Management Division, pursuant to this Consent Order, shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel Respondent's compliance with this Consent Order.

F. EPA and PADEP, in their unreviewable discretion, may extend any compliance obligation or deadline required by this Consent Order during the pendency of the dispute

resolution process.

## **XVI. EPA/PADEP DISPUTE RESOLUTION**

In the event that PADEP disagrees with any EPA approval, disapproval, decision or determination made pursuant to this Consent Order, PADEP will notify EPA in writing within fourteen (14) days from PADEP's receipt of such decision. PADEP shall, in writing, identify the matter in dispute and its position regarding the matter in dispute and the reasons therefor. Within fourteen (14) days from receipt of PADEP's written notice of dispute, EPA Region III will engage in meaningful discussions with PADEP Regional and Central office staff regarding the dispute. Following this, a decision will be made by the Region III Director of the Waste and Chemicals Management Division or his designee articulating EPA's position. During the pendency of a dispute between EPA and PADEP, Respondent's obligations regarding the matter(s) directly related to the dispute are suspended until the dispute between EPA and PADEP has been resolved. If a dispute under this Section XVI is not resolved to PADEP's satisfaction, PADEP reserves the right to withdraw from this Consent Order and proceed under any authority available under state law. EPA and PADEP will retain their rights available under law, including the right to seek judicial enforcement of this Consent Order.

## **XVII. FORCE MAJEURE AND EXCUSABLE DELAY**

A. Respondent shall perform the requirements of this Consent Order in the manner and within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure. Respondent shall have the burden of proving such a force majeure event. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of Respondent, which cannot be overcome by due diligence and which delays or prevents performance in the manner or by a date required by this Consent Order. Such events do not include: increased costs of performance, changed economic circumstances, reasonably foreseeable weather conditions or weather conditions which could have been overcome by due diligence, or failure to obtain federal, state, or local permits.

B. Respondent shall notify EPA and PADEP, in writing, within ten (10) calendar days after it becomes or should have become aware of any event which Respondent claims constitutes a force majeure. Such notice shall include, 1) an estimate of the anticipated length of delay, including necessary demobilization and remobilization; 2) the cause(s) for the delay; 3) measures taken or to be taken to prevent or minimize the delay; 4) an estimated timetable for implementation of these measures; 5) the threat or potential threat, if any, to human health or the environment caused by the delay or disruption, and 6) if Respondent asserts that the event is a force majeure, the facts and reasoning supporting that assertion. Failure to comply with the notice provision of this Section XVII shall constitute a waiver of Respondent's rights to assert a force majeure claim with respect to such event. In addition to the above notification requirements, Respondent shall undertake all reasonable actions to prevent or to minimize any delay in achieving compliance with any requirement of this Consent Order after it becomes or reasonably should have become aware of any event which may delay such compliance.

C. If EPA and PADEP determine that the failure to comply or delay has been or will be caused by a force majeure, the time for performance of that requirement of this Consent Order may be extended, upon EPA and PADEP approval, for a period equal to the delay resulting from such force majeure. This shall be accomplished through a modification to the Consent Order pursuant to Section XXIV (SUBSEQUENT MODIFICATION), paragraph C. Such an extension shall not alter the schedule for performance or completion of any other tasks required by this Consent Order, unless these tasks are also specifically altered by amendment of the Consent Order. In the event that EPA, PADEP and Respondent cannot agree that any delay or failure has been or will be caused by a force majeure, or if there is no agreement on the length of the extension, Respondent may invoke the dispute resolution procedures set forth in Section XV (DISPUTE RESOLUTION), above.

## **XVIII. RESERVATION OF RIGHTS**

A. EPA and PADEP expressly reserve all rights and defenses that they may have, including the right to disapprove of Work performed by Respondent pursuant to this Consent Order, to require that Respondent correct and/or perform any Work disapproved by EPA and

PADEP, and to request that Respondent perform tasks in addition to those stated in the Scope(s) of Work, Work Plans, or this Consent Order.

B. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including any which may pertain to Respondent's failure to comply with any of the requirements of this Consent Order, including, without limitation, the assessment of penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2). This Consent Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory or common law authority of the United States, except as specifically set forth hereon.

C. PADEP specifically reserves all of its rights to institute civil, criminal, equitable, and administrative proceedings for past, existing, and further violations of any environmental law or regulation by Respondent or any other person. PADEP expressly reserves all rights to disapprove Work performed by Respondent in a manner not in accordance with this Consent Order. If Respondent at any time fails to comply with any provision of this Consent Order, in addition to any other remedy or action that the PADEP may pursue in accordance with law, PADEP may initiate any response action under the Hazardous Sites Cleanup Act, the Act of October 18, 1988, Act No. 108 ("HSCA"). Respondent agrees that failure to comply with this Consent Order constitutes a failure to comply with an "enforcement action" as referenced in Section 1301 of HSCA.

D. Compliance by Respondent with the terms of this Consent Order shall not relieve Respondent of its obligation to comply with RCRA or any other applicable local, state, or federal laws and regulations.

E. The signing of this Consent Order and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement action pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), or any other authority, should EPA determine that such action is warranted.

F. This Consent Order is not intended to be, nor shall it be construed as, a permit. This Consent Order does not relieve Respondent of any obligation(s) to obtain and comply with any local, state, or federal permits.

G. EPA and PADEP reserve the right to perform any portion of the Work consented to herein or to conduct any additional site characterization, feasibility study, and response/corrective actions it deems necessary to protect public health and/or welfare and/or the environment. EPA may exercise its authority under RCRA, CERCLA or any other authority to undertake or require the performance of response actions at any time. EPA reserves any right it has to seek reimbursement from Respondent for costs incurred by the United States in connection with any such response actions, and PADEP reserves its rights to seek reimbursement from Respondent for costs incurred by the Commonwealth of Pennsylvania. Notwithstanding

compliance with the terms of this Consent Order, Respondent is not released from liability, if any, for the costs of any response actions taken by EPA or PADEP. Notwithstanding the foregoing, Respondent reserves all defenses and any rights it may have to defend against any such claim by EPA and/or PADEP.

H. Respondent agrees not to raise as a defense or jurisdictional bar in response to an EPA claim the pendency of an actual or potential State law claim or enforcement activity.

I. EPA reserves whatever rights it may have under CERCLA or any other law, or in equity, to recover from Respondent any costs incurred by EPA in overseeing the implementation of this Consent Order.

J. If EPA and/or PADEP determine that Respondent's activities, whether or not in compliance with this Consent Order, has caused or will cause a release or threatened release of hazardous wastes, hazardous constituents, hazardous substances, pollutants, or contaminants, which threaten or may pose a threat to human health and/or the environment, EPA and/or PADEP may direct Respondent to stop further implementation of this Consent Order for such period of time as may be needed to abate any such release or threatened release and/or undertake any action which EPA and/or PADEP determine is necessary to abate such release or threatened release. Any directive to stop Work under this paragraph XVIII.J. shall extend the schedule(s) under the approved Work Plan(s).

K. Because this Consent Order was entered with the consent of all parties, Respondent expressly waives its right to request a public hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b).

L. Respondent reserves all defenses to any claim or action under this Section XVIII not expressly waived or otherwise agreed to in this Section XVIII.

## **XIX. OTHER CLAIMS**

Nothing in this Consent Order 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, or other entity for any liability it may have arising out of, or relating in any way, to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

## **XX. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Respondent shall obtain or require its authorized representatives to obtain all permits and approvals necessary under such laws and regulations.

## **XXI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT**

Respondent agrees to indemnify and save and hold harmless the United States Government, its officials, agencies, departments, agents, employees, contractors, subcontractors and representatives, from any and all claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of Respondent or its officers, directors, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Consent Order. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondent or the United States under its various contracts.

Respondent shall not be responsible for indemnifying the EPA for claims or causes of action solely from or on account of acts or omissions of EPA.

## **XXII. NOTICE OF NON-LIABILITY OF EPA AND PADEP**

Neither the United States nor EPA and PADEP shall be deemed a party to any contract or Conveyance involving Respondent and relating to activities at the Facility nor shall the United States or EPA and PADEP be held liable for any claim or cause of action arising from or on account of any act, or omission of Respondent, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Consent Order.

## **XXIII. COST ESTIMATES AND PERFORMANCE GUARANTEE**

### **A. Cost Estimates**

1. Within thirty (30) days of the effective date of this Consent Order Respondent shall submit to EPA a detailed written estimate of the cost of performing the Work (“Initial Cost Estimate”) described in Section VI.A. (WORK TO BE PERFORMED; CORRECTIVE MEASURES IMPLEMENTATION), and Attachment B (“FDRTC”). The Initial Cost Estimate must be based upon current dollars and costs that would be incurred by an independent third party in performing the Work described in Section VI (WORK TO BE PERFORMED) of this Consent Order and the FDRTC. The Initial Cost Estimate must describe the total cost of the Work activities described in Section VI (WORK TO BE PERFORMED) for the entire period this Consent Order is effective, including operation and maintenance costs, costs of performing

any interim measures, and any necessary long term monitoring costs and shall include 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.

2. Within sixty (60) days after Respondent’s receipt of EPA’s and PADEP’s approval of the Final CMI Design Report required under Section VI (WORK TO BE PERFORMED) of this Consent Order, Respondent shall submit to EPA a revised detailed written estimate(s) (“Revised Cost Estimate”), in current dollars adjusted for inflation and/or discount rates based upon the procedures described in Section XXIII.A.1., above, and based upon costs that would be incurred by an independent third party, of the cost of performing the Work required under Section VI (WORK TO BE PERFORMED) of this Consent Order.

3. Beginning February 15, 2007, and thereafter on August 15<sup>th</sup> and February 15<sup>th</sup> of each succeeding year, Respondent must submit to EPA an estimated cost of the remaining Work to be performed, in current dollars and based upon costs that would be incurred by an independent third party as required by this Consent Order which will include adjustments for inflation and discount rates (“Current Revised Cost Estimate”) based upon the procedures described in Section XXIII.A.1., above. If an adjustment is made to any such Revised Cost Estimate for inflation and/or discount rates, an explanation shall be provided with each submittal.

4. The Revised Cost Estimate and/or the Current Revised Cost Estimate required to be submitted pursuant to paragraphs XXIII.A.2 and A.3, above, shall reflect any adjustments caused by the Respondent’s agreement to perform any additional Work pursuant to Section VI.J.3. (WORK TO BE PERFORMED; ADDITIONAL WORK) requested by EPA and PADEP or by any other conditions that have increased the cost of the Work to be performed under this Consent Order (e.g., change in contractor).

5. Respondent shall submit the Initial Cost Estimate, Revised Cost Estimate and all Current Revised Cost Estimates to EPA for review and approval. EPA, in consultation with PADEP, will review each cost estimate and notify Respondent in writing of EPA’s approval, disapproval, or modification of the cost estimate.

**B. Performance Guarantee**

1. In order to secure the full and final completion of the Work in accordance with this Consent Order, within sixty (60) days of the effective date of this Consent Order or within sixty (60) days of EPA’s approval of the Initial Cost Estimate required under paragraph XXIII.A., above, whichever date is later, Respondent shall establish financial security for the benefit of the United States in an amount at least equal to the Initial Cost Estimate. Thereafter, Respondent shall maintain financial security for the full and final completion of the Work in an amount equal to the Revised Cost Estimate and all subsequent Current Revised Cost Estimates (“Financial Assurance”) required under paragraph XXIII.A. Respondent may use one or more of the financial assurance mechanisms described in subparagraphs B.1.a. through B.1.f., below.

Respondent shall submit draft financial assurance instruments and related documents to EPA, concurrently with Respondent's submission of the Initial Cost Estimate, for EPA's review and approval.

a. 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 EPA, in consultation with PADEP. The trust agreement shall provide that the trustee shall make payments from the fund, (1) as Respondent shall direct in writing to pay invoices submitted by Respondent from the fund for Work expenditures made by approved contractors engaged by Respondent. Respondent must only direct payment of invoices for which Respondent has submitted a certification, in the form provided in Section XIII (NOTIFICATION) of the Consent Order, or (2) in the event of a failure of performance as described below in paragraph B.6., to pay any other person whom EPA and PADEP determine has performed or will perform the Work required by this Consent Order at the direction of EPA and PADEP. Respondent shall submit the draft trust agreement for EPA's review and approval within thirty (30) days of the effective date of this Consent Order, or within thirty (30) days of submittal of the Initial Cost Estimate to EPA, whichever date is later. Said trust agreement shall be submitted in accordance with Section VI.L. (WORK TO BE PERFORMED: SUBMISSIONS/EPA AND PADEP APPROVAL) of this Consent Order.

b. A surety bond unconditionally guaranteeing performance of the Work or payment, at the direction of EPA and PADEP, into a standby trust fund which meets the requirements of the trust fund described in subparagraph B.1.a. immediately 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.

c. One or more irrevocable letters of credit, payable at the direction of EPA, in consultation with PADEP, into a standby trust fund which meets the requirements of the trust fund described in subparagraph B.1.a. above. The letter(s) of credit must be issued by one or more financial institution(s) (i) that have the authority to issue letters of credit, and (ii) 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 Respondent and 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 Respondent and EPA have received the notice, as evidenced by the return receipts.

d. A policy of insurance that (i) provides EPA with rights as a beneficiary, which is acceptable to EPA; and (ii) is issued by an insurance carrier that (a) has the authority to issue insurance policies in the applicable jurisdiction(s), and (b) whose insurance operations are regulated and examined by a Federal or State agency. The insurance policy shall be issued for a

face amount at least equal to the Initial Cost Estimate, Revised Cost Estimates, and/or Current Revised Cost Estimates of the Work to be performed under this Consent Order, whichever is the most current estimate, except where costs not covered by the insurance policy are covered by another financial assurance instrument, as permitted in Paragraph 5 of this Section XXIII. The policy shall provide that the insurer shall make payments as the Respondent shall direct in writing (i) to reimburse Respondent for expenditures made by Respondent for Work performed in accordance with this Consent Order, or (ii) to pay any other person whom EPA, in consultation with PADEP, determines has performed or will perform the Work in accordance with this Consent Order, 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) the Respondent is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) of the U.S. Code; or (2) EPA, in consultation with PADEP, notifies the insurer of Respondent's failure to perform, under Paragraph 5 of this Section XXIII.

e. A corporate guarantee to perform the Work executed in favor of EPA and PADEP by one or more parent company(ies) or subsidiary(ies) of Respondent, or by one or more unrelated companies that have a substantial business relationship with Respondent (as defined in 40 C.F.R. § 264.141(h); provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA, in consultation with PADEP, that it satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f).

f. A written guarantee to perform the Work executed in favor of EPA and PADEP by Respondent; provided, however, that Respondent must demonstrate to the satisfaction of the United States it satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f).

g. If the Respondent seeks to post financial assurance for completion of the Work by means of a corporate guarantee or financial test pursuant to subparagraph B.1.e. or B.1.f. above of this Section XXIII, the Respondent shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these forms of financial assurance, including, but not limited to: (i) the initial submission of required reports and statements from the guarantors' chief financial officer and independent certified public accountant; (ii) the annual re-submission and certification of such reports and statements within ninety (90) days after the close of each of the guarantors' fiscal years; and (iii) the notification of EPA and PADEP within ninety (90) days after the close of any of the guarantors' fiscal years in which any such guarantor no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). Respondent shall also notify EPA and PADEP within thirty (30) days after Respondent becomes aware of any change in financial condition that will result in the inability to satisfy the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1).

2. Respondent may combine more than one mechanism in subparagraphs B.1.a., B.1.b., B.1.c. and B.1.d. under this Consent Order. If Respondent chooses to use more than one mechanism it may not use mechanisms in subparagraphs B.1.e. or B.1.f. Any proposed

combination of financial assurance mechanisms must be submitted to EPA, in consultation with PADEP, for review and approval.

3. All financial assurance instruments provided pursuant to this Section XXIII shall meet the requirements of subsection B.1 of this section, and shall be consistent with 40 C.F.R. § 264.143 and 40 C.F.R. § 264.151 to the extent appropriate to the Work required by this Consent Order. The financial assurance instrument(s) provided pursuant to this Section XXIII (including, without limitation, the original versions of letters of credit and other negotiable instruments issued for EPA's and PADEP's benefit) shall be submitted by Respondent to the EPA Project Coordinator in accordance with Section XIII (NOTIFICATION) of this Consent Order.

4. Whenever (i) the Revised Cost Estimate and/or the Current Revised Cost Estimate or (ii) the revised cost resulting from changes to the design of the remedy or additional Work agreed to by Respondent exceeds the amount of Financial Assurances already provided pursuant to this Section XXIII by more than 5%, the Respondent shall, within sixty (60) days thereafter, obtain and present to EPA, for review and approval and in consultation with PADEP, a revised form of financial assurance (and otherwise acceptable under this Section XXIII) that reflects such cost increase.

5. 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 this Consent Order, EPA, in consultation with PADEP, shall issue a written notification to Respondent of such incapacity. Thereafter, unless Respondent is able to secure proper performance of the guarantee from the institution to satisfy EPA, within sixty (60) days of receipt of such notification, Respondent shall submit to EPA, in consultation with PADEP, for approval, an alternative form of financial assurance for the performance of the Work that meets the requirements of Section XXIII, subsection B.1 of this Consent Order. Respondent's inability to post financial assurance for completion of the Work shall in no way excuse performance of any other requirements of this Consent Order, including, without limitation, the Respondent's obligation to complete the Work in accordance with the terms hereof.

6. Performance Failure

a. All financial assurance instruments provided pursuant to this Section XXIII shall provide EPA with immediate access to resources, whether in cash or in kind services, to continue and complete the Work in the event EPA and PADEP determine that Respondent (i) has ceased implementation of any portion of the Work, (ii) is significantly or repeatedly deficient or late in its performance of the Work, or (iii) is implementing the Work in a manner which may cause an endangerment to human health and/or the environment. Upon making such determination, EPA, in consultation with PADEP, may issue a written notice ("Performance Failure Notice") to both the Respondent and the financial assurance provider of Respondent's failure to perform. The notice will specify the grounds upon which such a notice was issued and

will provide the Respondent with a period of ten (10) days within which to remedy the circumstances giving rise to the issuance of such notice. Failure by the Respondent to remedy the relevant Performance Failure to EPA's satisfaction before the expiration of the ten-day notice period specified in this paragraph shall trigger EPA's right to have immediate access to and benefit of the financial assurance provided pursuant to subparagraphs B.1.a, B.1.b, B.1.c, B.1.d, or B.1.e. At any time after the expiration of the ten-day notice period, EPA, in consultation with PADEP, may both order Respondent to cease performance of the Work and direct the financial assurance provider to immediately (i) deposit into a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument (ii) or arrange for performance of the Work in accordance with this Consent Order.

b. Upon the expiration of the ten-day notice period, Respondent may invoke the procedures set forth in Section XV (DISPUTE RESOLUTION), to dispute EPA's and PADEP's determination that any of the circumstances described in clauses (i), (ii), or (iii) of paragraph 6.a., immediately above, had occurred. If EPA and PADEP have determined that any of the circumstances described in clauses (i), (ii), or (iii) of paragraph 6.a. above has occurred, and if EPA and PADEP are nevertheless unable after reasonable efforts to secure the resources (whether in cash or in kind services) necessary to continue and complete the Work from the financial assurance instrument(s) posted by Respondent pursuant to this Section XXIII, then, upon receiving written notice from EPA, Respondent shall (in the event Respondent does not prevail in Dispute Resolution set forth in Section XV (DISPUTE RESOLUTION) of this Consent Order), secure the resources available under the financial assurance mechanism, or deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount equal to the estimated cost of the remaining Work to be performed as of such date, as provided in a cost estimate submitted by Respondent and approved by EPA, in consultation with PADEP.

c. If Respondent disputes EPA's determination under subparagraph 6.a., to the extent that EPA identifies an immediate or potential threat to human health and/or the environment and determines that immediate action is warranted, EPA will direct the trustee to make any appropriate payments from the trust fund to address such threat. Otherwise, EPA will direct the Trustee to not make any payments from the trust fund, pending resolution of the dispute. If Respondent prevails in dispute resolution, all funds in the trust fund, including any interest that accrued on the funds, shall be returned to the financial assurance provider to the extent that (a) the financial assurance provider is the Respondent, or (b) the financial assurance provider is a third party who has agreed to continue providing financial assurance to the Respondent, as it had prior to EPA's direction to deposit funds in a trust fund pursuant to subparagraph 6.a., above.

#### 7. Reduction of Amount of Financial Assurance.

Concurrent with the submission of the Current Revised Cost Estimate identified in Section A. subparagraph 3 of this Section XXIII, above, if the Respondent believes that the estimated cost to complete the remaining Work has decreased below the amount of the Financial

Assurance mechanism and/or mechanisms selected by Respondent, the Respondent may, at the time of submittal of the Current Revised Cost Estimate, submit a written request to EPA to reduce the current amount of Financial Assurance to an amount no less than the Current Revised Cost Estimate. If EPA, in consultation with PADEP, decides to accept such a proposal, EPA shall issue a notification to the Respondent of such decision in writing. After receiving EPA's written acceptance, Respondent may reduce the amount of the financial assurance in accordance with and to the extent permitted by such written acceptance.

8. Release of Financial Assurance.

If Respondent receives written notice from EPA and PADEP in accordance with Section XXVI (TERMINATION AND SATISFACTION) hereof that the Work has been fully and finally completed in accordance with the terms of this Consent Order, or if EPA and PADEP otherwise so notify Respondent in writing, Respondent may petition EPA to allow the release or discontinuance of the financial assurance required hereunder. Respondent shall submit a written proposal for such release to EPA which shall specify the basis for the requested release (e.g., full and final completion of the Work, etc.). If EPA, in consultation with PADEP, decides to accept such a proposal, EPA shall notify the Respondent 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 EPA.

**XXIV. SUBSEQUENT MODIFICATION**

A. This Consent Order may only be amended in writing by mutual agreement of EPA, PADEP, and Respondent. Any such amendment shall be in writing, shall be signed by all parties, shall have as its effective date the date on which it is signed by EPA and PADEP, and shall be incorporated into this Consent Order by reference.

B. Any reports, plans, specifications, schedules, other submissions and attachments required by this Consent Order are, upon written approval by EPA and PADEP, incorporated into this Consent Order by reference. Any noncompliance with such EPA- and PADEP-approved reports, plans, specifications, schedules, submissions and attachments shall be considered a violation of this Consent Order and shall subject Respondent to the stipulated penalty provisions included in Section XIV (DELAY IN PERFORMANCE/STIPULATED PENALTIES).

C. Minor modifications in the Work Plans, studies, techniques, procedures, designs or schedules utilized in carrying out this Consent Order and necessary for the completion of the project may be made by written agreement of the EPA and PADEP Project Coordinators. Such modifications shall have as an effective date the date on which the agreement is signed by the EPA and PADEP Project Coordinators. In emergency situations, minor modifications may be agreed to by oral agreement of the Project Coordinators, subject to written confirmation by the Project Coordinators within seven (7) days of such oral agreement.

D. No informal advice, guidance, suggestions, or comments by EPA and PADEP regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent shall be construed as relieving Respondent of its obligation to obtain written approval, if and when required by this Consent Order.

#### **XXV. SEVERABILITY**

If any provision or authority of this Consent Order or the application of this Consent Order to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provision to other parties or circumstances and the remainder of this Consent Order shall not be affected thereby and shall remain in full force.

#### **XXVI. TERMINATION AND SATISFACTION**

The provisions of this Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA and PADEP that Respondent has demonstrated, to the satisfaction of EPA and PADEP, that the terms of this Consent Order, including any additional tasks determined by EPA and PADEP to be required pursuant to this Consent Order, have been satisfactorily completed. This notice shall not, however, terminate Respondent's obligations to comply with any continuing obligations hereunder including, but not limited to, Sections XI (RECORD PRESERVATION), XVIII (RESERVATION OF RIGHTS), XIX (OTHER CLAIMS), XX (OTHER APPLICABLE LAWS), XXI (INDEMNIFICATION OF THE UNITED STATES GOVERNMENT), XXII (NOTICE OF NON-LIABILITY OF EPA AND PADEP), and XXVIII (ATTORNEYS' FEES).

#### **XXVII. SURVIVABILITY/PERMIT INTEGRATION**

A. Subsequent to the issuance of this Consent Order, Respondent may request, and EPA may issue, a RCRA permit for the Facility that incorporates the requirements of this Consent Order by reference into the permit.

B. No requirement of this Consent Order shall terminate upon the issuance of a RCRA permit for the Facility unless such requirement is expressly replaced by a requirement in the permit.

#### **XXVIII. ATTORNEYS' FEES**

The Respondent shall bear its own costs and attorneys' fees.

#### **XXIX. EFFECTIVE DATE**

The effective date of this Consent Order shall be the date on which a fully executed, true and correct copy of this Consent Order is received by Respondent.

**IT IS SO AGREED AND ORDERED:**

DATE: July 12, 2006

BY: original signed  
JAMES J. BURKE, DIRECTOR  
WASTE AND CHEMICALS MANAGEMENT  
DIVISION  
U. S. ENVIRONMENTAL PROTECTION  
AGENCY, REGION III

**IT IS SO AGREED:**

DATE: June 19, 2006

BY: original signed  
THOMAS N. RICH  
CHIEF ADMINISTRATIVE OFFICER  
GOULD ELECTRONICS INC.

**IT IS SO AGREED AND ORDERED:**

DATE: July 7, 2006

BY: original signed  
MICHAEL D. BEDRIN  
REGIONAL DIRECTOR  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION  
WILKES-BARRE OFFICE