

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

MDEQ Reference No. DOC-ERD-003

Mechanical Products, Inc.  
Jackson, Michigan

**Proceeding under the authority vested in the Attorney General by the State of Michigan**

**SECOND MODIFICATION  
OF THE  
ADMINISTRATIVE ORDER BY CONSENT AND AGREEMENT**

This Second Modification of the Administrative Order by Consent and Agreement ("Second Modification") is executed by and between the Michigan Department of Attorney General and the Michigan Department of Environmental Quality ("MDEQ"), collectively referred to as "the State," and MP Jackson, LLC (MP Jackson). This Second Modification shall be effective upon the signature of the Chief of the Remediation and Redevelopment Division, MDEQ. This Second Modification shall be executed in three (3) duplicate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. By execution of this Second Modification, the State and MP Jackson stipulate and agree to be bound by all the terms and conditions herein.

Unless otherwise defined herein, all terms used in this Second Modification shall have the same meaning as defined in the Administrative Order by Consent and Agreement, MDEQ Reference No. DOC-ERD-003, effective date May 10, 1991, or the First Modification, effective date June 22, 2006.

**RECITALS**

The Parties acknowledge the accuracy of the following facts and circumstances surrounding the making of this Second Modification:

1. On May 10, 1991, the Department of Attorney General for the State of Michigan, and on behalf of the Michigan Department of Natural Resources ("MDNR"), and Mechanical Products, Inc., entered into the Administrative Order by Consent and Agreement, File No. DOC-ERD-003 ("Agreement").
2. On June 22, 2006, the State, Mechanical Products, Inc., and MP Jackson entered into the First Modification of the Agreement ("First Modification").
3. The objectives of the State, Mechanical Products, Inc., and MP Jackson, in entering the First Modification were to: (a) incorporate changes to statutory citations set forth in the Agreement subsequent to the date of the Agreement; (b) remove the requirement for submittal of a feasibility study; and (c) establish a new schedule for response activities to reflect changed circumstances.

4. On August 22, 2006, Mechanical Products, Inc., was dissolved. As specified in the First Modification, on August 10, 1998, MP Jackson assumed all of the duties, obligations, and liabilities of Mechanical Products, Inc., and MP Jackson is the legal successor to Mechanical Products, Inc. MP Jackson continues to operate in Michigan under the assumed name of Mechanical Products Company.

5. In September 2006, pursuant to Section 7.1 of the Agreement, MDEQ notified Mechanical Products, Inc., that the MDEQ's designated project coordinator has been changed from Ms. Lori Aronoff to Mr. Leonard Lipinski.

6. In October 2006, MP Jackson retained a new environmental consultant, Ground Water Solutions, Inc.

7. Pursuant to the terms of the First Modification, MP Jackson continued performance of response activities, which have included groundwater monitoring and operation of the groundwater treatment system involving the use of an air stripper and the discharge of treated groundwater to the Grand River via a drainage ditch pursuant to a National Pollutant Discharge Elimination System permit.

8. Ground Water Solutions, Inc., prepared a report on the Effects of Source Area Soil Interim Response on Ground Water Quality dated June 29, 2007, in which Ground Water Solutions, Inc., concluded that soil concentrations of perchloroethylene (PCE) at the Site were reduced to below the direct contact criteria by *in-situ* chemical oxidation; and, based on groundwater monitoring, that the release of those organic compounds from the source has been reduced.

9. Ground Water Solutions, Inc., submitted a Subdrain 2 Underflow Assessment Report dated January 18, 2008, in which Ground Water Solutions, Inc., concluded that, based on hydraulic data during the period of monitoring for the report, the subdrain was an effective barrier to the migration of volatile organic compound (VOC)-impacted groundwater.

10. Ground Water Solutions, Inc., submitted a Preliminary Mixing Zone Determination Request dated April 8, 2008, in which Ground Water Solutions, Inc.: (1) concluded that there was no unacceptable chronic risk associated with groundwater migrating from the Site to the Grand River, and (2) requested MDEQ concurrence with the mixing zone analysis and approval to discontinue the groundwater extraction system on the Site.

11. On December 18, 2007, the MDEQ received a letter from MP Jackson, through its attorney, stating that it had limited financial means by which to continue to fund response activities at the Site. Upon request, MP Jackson provided additional information to the MDEQ regarding its current financial condition.

12. Based upon the financial information provided by MP Jackson, the MDEQ has determined that MP Jackson has a limited ability to pay for response activities at the Site.

13. In a September 3, 2008, letter, the MDEQ advised MP Jackson it has determined that the remaining known conditions present at the Site do not pose an unacceptable risk provided that MP Jackson performs decommissioning of the current remediation system, including the proper abandonment of monitoring wells, collection trenches and associated components; and places an MDEQ-approved restrictive covenant on the Site.

14. The State has concluded that this Second Modification is appropriate, based in part on the representations, information, and documentation provided by MP Jackson relating to its financial status; and that the response activities to be performed pursuant to this Second modification are necessary for the protection of public health, safety and welfare, and the environment.

TERMS OF AGREEMENT

Accordingly, in consideration of the recitals set forth above, the State and MP Jackson hereby agree that:

15. The term "remedial action" or "RA" is replaced with the term "response activity" throughout the entire Agreement.

16. The term "remedial action plan" or "RAP" is replaced with the term "response activity work plan" throughout the entire Agreement.

17. MP Jackson's obligation to submit a closure report or remedial action plan (RAP) and implement a RAP under Section VI (Implementation) of the Agreement shall be replaced with the following set of response activities:

MP Jackson shall deliver to the MDEQ for approval the following submissions, or commence or complete the following actions, as appropriate, in accordance with the following schedule:

SCHEDULE

<u>SUBMITTAL /MILESTONE</u>	<u>DUE DATE</u>
Submit a work plan and schedule for shut down and decommission of the remediation system at the Site, including proper abandonment of all monitoring wells, collection trenches, and associated components.	Within 60 days of the effective date of the Second Modification.
Implement the MDEQ-approved work plan to shut down and decommission the remediation system at the Site.	Upon MDEQ approval of the work plan in accordance with the schedule approved by the MDEQ.
Submit a final summary report detailing the shut down and decommission of the remediation system at the Site, including any supporting documentation necessary to demonstrate all required response activities have been performed.	Within 60 days of completion of the MDEQ-approved work plan.

SUBMITTAL /MILESTONE

DUE DATE

Submit a draft restrictive covenant for the property legally described in Attachment A.

Within 60 days of the effective date of the Second Modification.

Record the MDEQ-approved restrictive covenant with the Jackson County Register of Deeds.

Within 21 days of MDEQ approval of the restrictive covenant.

Submit a true copy of the recorded restrictive covenant.

Within 10 days after receipt of the recorded copy of the restrictive covenant from the Jackson County Register of Deeds

18. Section XXII (Reimbursement of Costs) is replaced in its entirety with the following language:

22.1 Within sixty (60) days of the effective date of the Second Modification, MP Jackson shall pay the MDEQ Twenty Thousand Dollars (\$20,000) to resolve all claims for past and future response activity costs incurred by the State associated with the Mechanical Products Site. All payments made pursuant to this Agreement shall be by certified check, made payable to the "State of Michigan – Environmental Response Fund," and shall be sent by first class mail to the Revenue Control Unit at the address listed below.

Revenue Control Unit  
Financial and Business Services Division  
Michigan Department of Environmental Quality  
P.O. Box 30657  
Lansing, MI 48909-8157

Via courier:

Revenue Control Unit  
Financial and Business Services Division  
Michigan Department of Environmental Quality  
Constitution Hall, 5<sup>th</sup> Floor, South Tower  
525 West Allegan Street  
Lansing, MI 48933-2125

22.2 To ensure proper credit, all payments made pursuant to this Agreement must reference the Mechanical Products Site, the MDEQ Reference No. DOC-ERD-003, and the RRD Account No. RRD2238.

22.3 A copy of all correspondence that is sent to the Revenue Control Unit shall also be provided to the MDEQ Project Coordinator.

19. Section XXIV (Certification and Termination) is removed in its entirety.

20. Section XXV (MDNR's Reservation of Rights) is amended with the addition of the following language:

25.3 The covenants not to sue apply only to those matters specified in Paragraph 26.1 of Section XXVI (Covenant Not to Sue). The State expressly reserves, and this Agreement is without prejudice to, all rights to take administrative action or to file a new action pursuant to any applicable authority against MP Jackson with respect to the release or threatened release of hazardous substances that occur during or after the performance of response activities required by this Agreement or any other violations of state or federal law for which MP Jackson has not received a covenant not to sue.

25.4 The State reserves the right to take action against MP Jackson if it discovers at any time that any material information, including but not limited to, any financial information and documentation provided by MP Jackson prior to or after entry of this Agreement, was false or misleading.

25.5 The State reserves the right to take action against MP Jackson for response activity costs and injunctive relief if the State determines that the performance of additional response activities is necessary to address any condition at the Site that poses an unacceptable risk and that MP Jackson's financial condition has improved such that it does have the ability to fund the necessary response activities at the Site.

21. Section XXVI (Covenant Not to Sue) is replaced in its entirety with the following language:

26.1 In consideration of the actions that will be performed and the payments that will be made by MP Jackson under the terms of this Agreement, and except as specifically provided for in this section and Section XXV (MDNR's Reservation of Rights), the State hereby covenants not to sue or to take further administrative action against MP Jackson for:

- (a) Response activities that MP Jackson performs pursuant to MDEQ-approved work plans under this Agreement.
- (b) Reimbursement by MP Jackson of Past and Future Response Activity Costs incurred and paid by the State as set forth in Paragraphs 22.1 of Section XXII (Reimbursement of Costs) of this Agreement.

26.2 The covenants not to sue shall take effect under this Agreement as follows:

- (a) With respect to MP Jackson's liability for response activities performed in compliance with MDEQ-approved work plans under this Agreement, the covenant not to sue shall take effect upon MDEQ approval of the final summary report of the shut down and decommission of the remediation system and receipt of the true copy of the recorded restrictive covenant submitted pursuant to Section VI (Implementation).
- (b) With respect to MP Jackson's liability for Past Response Activity Costs and Future Response Activity Costs, the covenant not to sue shall take effect upon the MDEQ's receipt of payment for those costs pursuant to Paragraph 22.1 of this Agreement.

26.3 The covenants not to sue extend only to MP Jackson and do not extend to any other person.

26.4 The covenants not to sue are conditioned upon the veracity and completeness of the financial information provided to the MDEQ by MP Jackson. If the financial information or documentation submitted by MP Jackson is determined to be false or inaccurate in the portrayal of MP Jackson's financial status, the covenants not to sue provided under Paragraph 26.1 of this Agreement shall be automatically null and void.

22. Except as specifically modified pursuant to this Second Modification, all terms, agreements, and conditions of the Agreement and the First Modification shall continue in full force and effect.

The State and MP Jackson agree to the recitals and the terms of agreement set forth in this Second Modification.

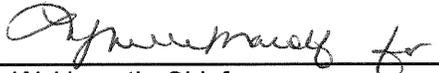
In the Matter of:

MDEQ Reference No. DOC-ERD-003

Mechanical Products, Inc.  
Jackson, Michigan

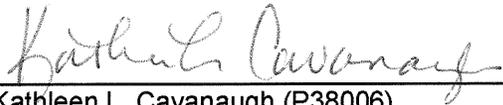
IT IS SO STIPULATED:

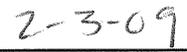
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

  
\_\_\_\_\_  
Andrew W. Hogarth, Chief  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality

  
\_\_\_\_\_  
Date

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL

  
\_\_\_\_\_  
Kathleen L. Cavanaugh (P38006)  
Assistant Attorney General  
Environment, Natural Resources, and Agriculture Division  
Michigan Department of Attorney General

  
\_\_\_\_\_  
Date

In the Matter of:

MDEQ Reference No. DOC-ERD-003

Mechanical Products, Inc.  
Jackson, Michigan

IT IS SO STIPULATED:

MP Jackson, LLC



\_\_\_\_\_  
Richard M. Regole, President

1/29/09

\_\_\_\_\_  
Date

ATTACHMENT A

**Property Address**

1824 River Street, Jackson, MI 492020

Parcel Number

000-08-27-226-005-00

Legal Description:

BEG AT NECOR OF SEC 27 TH S1011'W ALG E SEC LN 1504.67 FT TH S72024'W 631.61 FT ALG THE NLY LN OF 1-94 TH ON AN ARC OF A CURVE TO THE RIGHT THE SUB CHORD OF WH BEARS N88012'W 265.52 FT RADIUS 3719.83 FT ALG THE NLY LN OF 1-94 TO A PT ON THE ELY LN OF CONRAIL RR R/W LN FOR PL OF BEG OF THIS DESCN TH ON AN ARC OF A CURVE TO THE LEFT THE SUBCHORD OF WH BEARS S88012'E 265.52 FT RADIUS 3719.83 FT N72024'E 170.53 FT TO THE CEN LN OF RIVER ST TH N8016'W 532.6 FT TH N14048'W 588.37 FT TH N11043'W 482.18 FT ALG CEN LN OF RIVER ST TO A PT 94.38 FT S AT RT ANGLES FROM N LN OF SEC 27 TH W PAR TO N SEC LN 240.02 FT TO ELY LN OF CONRAIL RR TH S9015'W TO NELY LN OF CONRAIL RR R/W TH SELY ALG SD ELY R/W LN 1071.75 FT TO BEG. EXC BEG AT NE COR OF SEC 27 TH S1012'52"W 1504.54 FT ALG E SEC LN TH S72024'W 462.47 FT ALG THE NLY LN OF TO THE CEN OF RIVER ST TH N 8016'W 532.6 FT ALG CEN OF SD ST TH N 14048'W 58.98 FT ALG THE CEN OF SD ST TH S 78055'W 444.02 FT TO THE NELY R/W LN OF PENN CENTRAL RR BEING 50 FT AT RT ANGLES FROM THE CEN LN BETWEEN TRACKS, SD PT ALSO BEING THE PL OF BEG OF THIS EXCN TH N 78055'E 45 FT TH N 13048'W 65 FT TH S 78055'W 45 FT TO NELY R/W LN OF PENN CENTRAL RR TH SELY ALG R/W LN 65 FT TO BEG. BEING A PART OF THE UNNUMBERED PORTION OF THE PLAT OF RIVERSIDE