

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Program for an
Inactive Hazardous Waste Disposal
Site under Article 27, Title 13
of the Environmental Conservation Law
by

235 Metro Park Associates, LLC

Respondent.

**ORDER ON CONSENT
and
ADMINISTRATIVE
SETTLEMENT**

Index # B8-0778-08-03

Site #828150

WHEREAS,

1. A. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 3, Title 3 of the ECL.

C. This Order on Consent and Administrative Settlement ("Order & Settlement Agreement") is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13 and ECL § 3-0301, and resolves Respondent's liability to the State as provided at 6 NYCRR § 375-1.5(b)(5).

2. 235 Metro Park Associates, LLC, is entering into this Order & Settlement Agreement concerning the New York State Inactive Hazardous Waste Disposal Site known as Fischbach & Moore Electric, Inc. which is located at 235 Metro Park, Brighton, Monroe County, New York. (hereinafter the "Site"). 235 Metro Park Associates, LLC, the current owner of the Site, is a New York State limited liability company with offices at 240 Ambassador Drive, Rochester New York. Exhibit "A" is a map of the Site showing its general location.

3. The Site is currently listed in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State* as Site Number 828150 with a Classification "2" pursuant to ECL 27-1305.

4. Respondent consents to the issuance of this Order & Settlement Agreement without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; and/or (ii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

5. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order & Settlement Agreement, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order & Settlement Agreement, and agrees not to contest the validity of this Order & Settlement Agreement or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order & Settlement Agreement.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Initial Submittal

Within thirty (30) Days after the effective date of this Order & Settlement Agreement, Respondent shall submit to the Department a Records Search Report prepared in accordance with Exhibit "B" attached hereto. The Records Search Report can be limited if the Department notifies Respondent that prior submissions satisfy specific items required for the Records Search Report.

II. Development, Performance, and Reporting of Work Plans

A. Work Plans

All activities at the Site that comprise any element of an Inactive Hazardous Waste Disposal Site Remedial Program shall be conducted pursuant to one or more Department-approved work plans ("Work Plan" or "Work Plans") and this Order & Settlement Agreement, and all activities shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, as required under CERCLA, 42 U.S.C. § 9600 *et seq.* The Work Plan(s) under this Order & Settlement Agreement shall address both on-Site and off-Site conditions and shall be developed and implemented in accordance with 6 NYCRR § 375-1.6(a). All Department-approved Work Plans shall be incorporated into and become enforceable parts of this Order & Settlement Agreement. Upon approval of a Work Plan by the Department, Respondent shall

implement such Work Plan in accordance with the schedule contained therein. Nothing in this Subparagraph shall mandate that any particular Work Plan be submitted.

Each Work Plan submitted shall use one of the following captions on the cover page:

1. Site Characterization ("SC") Work Plan: a Work Plan whose objective is to identify the presence of any hazardous waste disposal at the Site;
2. Remedial Investigation/Feasibility Study ("RI/FS") Work Plan: a Work Plan whose objective is to perform a Remedial Investigation and a Feasibility Study;
3. Interim Remedial Measure ("IRM") Work Plan: a Work Plan whose objective is to provide for an Interim Remedial Measure;
4. Remedial Design/Remedial Action ("RD/RA") Work Plan: a Work Plan whose objective is to provide for the development and implementation of final plans and specifications for implementing the remedial alternative set forth in the Record of Decision ("ROD"); or
5. Site Management Plan: a Work Plan whose objective is to identify and implement the institutional and engineering controls required for the Site, as well as any necessary monitoring and/or operation and maintenance of the remedy.

B. Submission/Implementation of Work Plans

1. (a) The Feasibility Study Report shall be submitted to the Department within sixty (60) Days after the effective date of this Order & Settlement Agreement. Respondent has submitted an Interim Remedial Measure Work Plan dated January 23, 2007, and a Remedial Work Plan dated February 21, 2007. In accordance with subparagraph II.E.1 of this Order and Settlement Agreement the Department will review and respond in writing to these submittals following which Respondent will comply with subparagraph II.E.2.

(b) The Department may request that Respondent submit additional or supplemental Work Plans for the Site. Within thirty (30) Days after the Department's written request, Respondent shall advise the Department in writing whether it will submit and implement the requested additional or supplemental Work Plan or whether it elects to terminate this Order & Settlement Agreement pursuant to Paragraph XIII. If Respondent elects to submit and implement such Work Plan, Respondent shall submit the requested Work Plan within sixty (60) Days after such election. If Respondent elects to terminate this Order & Settlement Agreement or fails to make a timely election, this Order & Settlement Agreement shall terminate pursuant to Paragraph XIII.

(c) Respondent may opt to propose one or more additional or supplemental Work Plans (including one or more IRM Work Plans) at any time, which the Department shall review for appropriateness and technical sufficiency.

(d) Any request made by the Department under Subparagraph II.B.1.(b) shall be subject to dispute resolution pursuant to Paragraph XII.

2. A Professional Engineer must stamp and sign all Work Plans other than SC or RI/FS Work Plans.

3. During all field activities conducted under this Order & Settlement Agreement, Respondent shall have on-Site a representative who is qualified to supervise the activities undertaken in accordance with the provisions of 6 NYCRR § 375-1.6(a)(3).

C. Modifications to Work Plans

The Department shall notify Respondent in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan as set forth in Subparagraph II.A or to ensure that the Remedial Program otherwise protects human health and the environment. Upon receipt of such notification, Respondent shall, subject to Respondent's right to terminate pursuant to Paragraph XIII, provide written notification as provided at 6 NYCRR 375-§ 1.6(d)(3) as to whether it will modify the Work Plan, or invoke dispute resolution pursuant to Paragraph XII.

D. Submission of Final Reports and Periodic Review Reports

1. In accordance with the schedule contained in a Work Plan, Respondent shall submit a final report as provided at 6 NYCRR § 375-1.6(b) and a final engineering report as provided at 6 NYCRR § 375-1.6(c).

2. Any final report or final engineering report that includes construction activities shall include "as built" drawings showing any changes made to the remedial design or the IRM.

3. In the event that the final engineering report for the Site requires Site management, Respondent shall submit a periodic review report by the 1st Day of the month following the eighteenth month after the start of the Site management. Such periodic review report shall be signed by a Professional Engineer or by such other qualified environmental professional as the Department may find acceptable and shall contain a certification as provided at 6 NYCRR § 375-1.8(h)(3). Respondent may petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a statement by a Professional Engineer

that such controls are no longer necessary for the protection of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

E. Review of Submittals other than Progress Reports and Health and Safety Plans

1. The Department shall make a good faith effort to review and respond in writing to each submittal Respondent makes pursuant to this Order & Settlement Agreement within sixty (60) Days. The Department's response shall include an approval, modification or disapproval of the submittal, in accordance with 6 NYCRR § 375-1.6(d)(1). All Department-approved submittals shall be incorporated into and become an enforceable part of this Order & Settlement Agreement in accordance with § 375-1.6(d)(2)(i).

2. If the Department requests modification or disapproves a submittal, or provides a Department modified submittal, it shall specify the reasons for its requested modification or disapproval in writing in accordance with 6 NYCRR § 375-1.6(d)(3) or (4), as appropriate. Within fifteen (15) Days after the date of the Department's written notice that Respondent's submittal has been disapproved or a modification was requested, or a Department modified submittal was provided, Respondent shall, subject to Respondent's right to terminate pursuant to Paragraph XIII in the event the rejected submittal is a Work Plan submitted prior to the Department's approval of the RD/RA Work Plan, elect as provided at 6 NYCRR § 375-1.6(d)(3) or (4), as appropriate. If Respondent elects to modify the submittal, or accept a Department modified submittal, Respondent shall, within thirty (30) Days after such election, make a revised submittal that addresses all of the Department's stated reasons for requesting modification of the submittal or disapproval of the first submittal, or accept a Department modified submittal. In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order & Settlement Agreement unless it invokes dispute resolution pursuant to Paragraph XII and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order & Settlement Agreement.

3. Within thirty (30) Days after the Department's approval of a final report, Respondent shall submit such final report, as well as all data gathered and drawings and submittals made pursuant to such Work Plan, in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondent shall submit such document in an alternative format acceptable to the Department.

F. Notification Requirement

Respondent shall provide the results of any testing of real property conducted pursuant to this Order & Settlement Agreement as required by the provisions of ECL § 27-2403.

G. Department's Issuance of a ROD

Respondent shall cooperate with the Department and provide reasonable assistance, consistent with the Citizen Participation Plan, in soliciting public comment on the proposed remedial action plan ("PRAP"), if any. After the close of the public comment period, the Department shall select a final remedial alternative for the Site in a ROD. Nothing in this Order & Settlement Agreement shall be construed to abridge any rights of Respondent, as provided by law, to judicially challenge the Department's ROD.

H. Release and Covenant Not to Sue

Upon the Department's issuance of a Certificate of Completion as provided at 6 NYCRR § 375-1.9 and § 375-2.9, Respondent shall obtain the benefits conferred by such provisions, subject to the terms and conditions described therein.

III. Progress Reports

Respondent shall submit written progress reports to the parties identified in Subparagraph XI.A.1 by the 10th Day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in an approved Work Plan. Such reports shall, at a minimum, include: all actions taken pursuant to this Order & Settlement Agreement during the reporting period and those anticipated for the upcoming reporting period; all approved modifications to work plans and/or schedules; all results of sampling and tests and all other data received or generated by or on behalf of Respondent in connection with the Site during the reporting period, including quality assurance/quality control information; information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, and efforts made to mitigate such delays; information regarding activities undertaken in support of the Citizen Participation Plan during the reporting period and those anticipated for the upcoming reporting period.

IV. Penalties and Force Majeure

A. 1. Respondent's failure to comply with any term of this Order & Settlement Agreement constitutes a violation of this Order & Settlement Agreement, the

ECL, and 6 NYCRR Part 375. Nothing herein abridges Respondent's right to contest any allegation that it has failed to comply with this Order & Settlement Agreement.

2. Payment of any penalties shall not in any way alter Respondent's obligations under this Order & Settlement Agreement.

B. 1. Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order and Settlement Agreement as a result of any Force Majeure Event as provided at 6 NYCRR 375-1.5(b)(4). Respondent must use best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation, the failure of Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order & Settlement Agreement.

2. Respondent shall notify the Department in writing within five (5) Days of the onset of any Force Majeure Event. Failure to give such notice within such five (5) Day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.

3. Respondent shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought is warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondent complied with the requirements of Subparagraph IV.B.2 regarding timely notification.

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for a period of time equivalent to the time lost because of the Force majeure event, in accordance with 6 NYCRR § 375-1.5(4).

5. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order & Settlement Agreement pursuant to Subparagraph IV.B, Respondent shall be in violation of this Order & Settlement Agreement unless it invokes dispute resolution pursuant to Paragraph XII and Respondent's position prevails.

V. Entry upon Site

A. Respondent hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site (or areas in the vicinity of the Site which may be under the control of Respondent) by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order & Settlement Agreement, and by any agent, consultant, contractor, or other person so authorized by the Commissioner or his designee, all of whom shall abide by the health and safety rules in effect for the Site, for inspecting, sampling, copying records related to the contamination at the Site, testing, and any other activities necessary to ensure Respondent's compliance with this Order & Settlement Agreement. Upon request, Respondent shall (i) provide the Department with suitable work space at the Site, including access to a telephone and the internet, to the extent available, and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Order & Settlement Agreement. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department. In the event Respondent is unable to obtain any authorization from third-party property owners necessary to perform its obligations under this Order & Settlement Agreement, the Department may, consistent with its legal authority, assist in obtaining such authorizations.

B. The Department shall have the right to take its own samples and scientific measurements and the Department and Respondent shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of any such sampling and scientific measurements available to Respondent.

VI. Payment of State Costs

A. On or before November 15, 2008, Respondent shall pay to the Department the sum of \$53,647.88 which shall represent reimbursement for past State Costs as provided at 6 NYCRR § 375-1.5(b)(3) and as set forth on the cost summary attached as Exhibit "C". State Costs included in Exhibit "C" include all Department personal and non-personal service costs through June 25, 2008, but do not include all Department of Health ("DOH") costs for that period. Respondent acknowledges that all past State Costs are not itemized on the cost summary and that additional charges shall be billed at a later date for State Costs incurred prior to the effective date of this Order & Settlement Agreement, for past Department personal and non-personal service costs after June 25, 2008, and any DOH costs after September 30, 2003.

B. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for State Costs, other than those identified in Subparagraph VI.A,

for work performed at or in connection with the Site through and including the Termination Date, as provided at 6 NYCRR § 375-1.5(b)(3).

C. Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3)(ii).

D. Such invoice shall be sent to Respondent at the following address:

Jules Mussinger
235 Metro Park Associates, LLC
240 Ambassador Drive
Rochester, New York 14610

E. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7012

F. Each party shall provide written notification to the other within ninety (90) Days of any change in the foregoing addresses.

G. Respondent may contest costs invoiced pursuant to Paragraph VI.B as provided at 6 NYCRR § 375-1.5(b)(3)(v) and (vi).

VII. Reservation of Rights

A. Except as provided at 6 NYCRR § 375-1.9 and § 375-2.9, nothing contained in this Order & Settlement Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Except as otherwise provided in this Order & Settlement Agreement, Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Respondent, and further reserves all rights respecting the enforcement of this Order & Settlement Agreement, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order & Settlement Agreement or Respondent's

compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law, including but not limited to rights to cost recovery under CERCLA § 107(a), 42 U.S.C. § 9607(a) or of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

VIII. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, the Trustee of the State's natural resources, and their representatives and employees harmless as provided by 6 NYCRR § 375-2.5(a)(3)(i).

IX. Public Notice

A. Within thirty (30) Days after the effective date of this Order & Settlement Agreement, Respondent shall provide notice as required by 6 NYCRR § 375-1.5(a). Within sixty (60) Days of such filing, Respondent shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy.

B. If Respondent proposes to transfer by sale or lease the whole or any part of Respondent's interest in the Site, or becomes aware of a proposed or actual transfer of the whole or any part of the Site by any other person, Respondent shall, not fewer than forty-five (45) Days before the date of transfer, or immediately if less than forty-five (45) Days before the date of transfer, notify the Department in writing of the identity of the transferee and of the nature and proposed or actual date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order & Settlement Agreement.

X. Environmental Easement

A. If a Department-approved final engineering report for the Site relies upon one or more institutional and/or engineering controls, Respondent (or the owner of the Site) shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL § 27-1318(b), ECL Article 71, Title 36, and 6 NYCRR § 375-1.8(h)(2). Upon acceptance of the Environmental Easement by the State, Respondent shall comply with the requirements of 6 NYCRR § 375-1.8(h)(2).

B. If the ROD provides for no action other than implementation of one or more institutional controls, Respondent shall cause an environmental easement to be recorded under the provisions of Subparagraph X.A. If Respondent does not cause such environmental easement to be recorded in accordance with 6 NYCRR § 375-1.8(h)(2), Respondent will not be entitled to the benefits conferred by 6 NYCRR § 375-1.9 and § 375-2.9.

XI. Communications

A. All written communications required by this Order & Settlement Agreement shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows (telephone numbers and e-mail addresses are provided for reference only):

1. Communication from Respondent shall be sent to:

Bart Putzig
Regional Hazardous Waste Remediation Engineer
Division of Environmental Remediation
New York State Department of Environmental Conservation
6274 East Avon-Lima Road
Avon, New York 14414
bxputzig@gw.dec.state.ny.us
(2 bound copies and 1 electronic copy on disc)

with copies to:

Gary Litwin
Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216
(518) 402-7850
gal09@health.state.ny.us
(2 bound copies)

Maura C. Desmond
Senior Attorney
Office of General Counsel Superfund and Brownfields, Western Field Unit
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203-2915
mcdesmon@gw.dec.state.ny.us

2. Communication to be made from the Department shall be sent to:

Donald W. O'Brien, Esq.
Woods Oviatt Gilman LLP
700 Crossroads Building
2 State Street
Rochester, New York 14614

B. The Department and Respondent reserve the right to designate additional or different addressees for communication upon written notice to the other.

C. Each party shall notify the other within ninety (90) Days after any change in the addresses in this Paragraph XI or in Paragraph VI.

XII. Dispute Resolution

In the event disputes arise under this Order & Settlement Agreement, Respondent may, within fifteen (15) Days after Respondent knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR § 375-1.5(b)(2). Nothing contained in this Order & Settlement Agreement shall be construed to authorize Respondent to invoke dispute resolution with respect to the remedy selected by the Department in the ROD or any element of such remedy, nor to impair any right of Respondent to seek judicial review of the Department's selection of any remedy.

XIII. Termination

A. This Order & Settlement Agreement will terminate upon the earlier of the following events:

1. Respondent's election to terminate pursuant to Subparagraphs II.B.1.b, II.C or II.E.2 so long as such election is made prior to the Department's approval of the RD/RA Work Plan. In the event of termination in accordance with this Subparagraph XIII.A.1, this Order & Settlement Agreement shall terminate effective the 5th Day after the Department's receipt of the written notification terminating this Order & Settlement Agreement or the 5th Day after the time for Respondent to make its election has expired, whichever is earlier, provided, however, that if there are one or more Work Plan(s) for which a final report has not been approved at the time of Respondent's notification of its election to terminate this Order & Settlement Agreement pursuant to Subparagraphs II.B.1.b or II.E.2 or its failure to timely make such an election pursuant to Subparagraphs II.B.1.b or II.E.2, Respondent shall promptly complete the activities required by such previously approved Work Plan(s) consistent with the schedules contained therein. Thereafter, this Order & Settlement Agreement shall terminate effective the 5th Day after the Department's approval of the final report for all previously approved Work Plans; or

2. The Department's written determination that Respondent has completed all phases of the Remedial Program (including Site Management and monitoring), in which event the termination shall be effective on the 5th Day after the date of the Department's approval of the final report relating to the final phase of the Remedial Program.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs VI, VII and VIII shall survive the termination of this Order & Settlement Agreement and any violation of such surviving Paragraphs shall be a violation of this Order & Settlement Agreement, the ECL, and 6 NYCRR Part 375, subjecting Respondent to penalties as provided under Paragraph IV so long as such obligations accrued on or prior to the Termination Date.

C. If the Order & Settlement Agreement is terminated pursuant to Subparagraph XIII.A.1, neither this Order & Settlement Agreement nor its termination shall affect any liability of Respondent for remediation of the Site and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA, nor shall it affect any defenses to such liability that may be asserted by Respondent. Respondent shall also ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which existed before any activities under this Order & Settlement Agreement were commenced. Further, the Department's efforts in obtaining and overseeing compliance with this Order & Settlement Agreement shall constitute reasonable efforts under law to obtain a voluntary commitment from Respondent for any further activities to be undertaken as part of a Remedial Program for the Site.

XIV. Miscellaneous

A. Respondent agrees to comply with and be bound by the provisions of 6 NYCRR Subparts § 375-1 and § 375-2; the provisions of such Subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Order & Settlement Agreement to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Order & Settlement Agreement.

B. The Department may exempt Respondent from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Order & Settlement Agreement in accordance with 6 NYCRR § 375-1.12(b), (c), and (d).

C. 1. Respondent shall use best efforts to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Respondent's obligations under this Order & Settlement Agreement, including all Department-approved Work Plans and the schedules contained therein. If, despite

Respondent's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Respondent shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Respondent in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Respondent to modify the Work Plan pursuant to 6 NYCRR § 375-1.6(d)(3) to reflect changes necessitated by Respondent's inability to obtain such interest.

3. In accordance with 6 NYCRR § 375-1.6(a)(4) Respondent shall allow the Department to attend and shall notify the Department at least seven (7) Days in advance of any field activities as well as any pre-bid meetings, job progress meetings, the substantial completion meeting and inspection, and the final inspection and meeting; nothing in this Order shall be construed to require Respondent to allow the Department to attend portions of meetings where privileged matters are discussed.

D. The paragraph headings set forth in this Order & Settlement Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order & Settlement Agreement.

E. 1. The terms of this Order & Settlement Agreement shall constitute the complete and entire agreement between the Department and Respondent concerning the implementation of the activities required by this Order & Settlement Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order & Settlement Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department or any staff of the Department shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order & Settlement Agreement. In the event of a conflict between the terms of this Order & Settlement Agreement and any Work Plan submitted pursuant to this Order & Settlement Agreement, the terms of this Order & Settlement Agreement shall control over the terms of the Work Plan(s). Respondent consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Order & Settlement Agreement.

2. i. Except as set forth herein, if Respondent desires that any provision of this Order & Settlement Agreement be changed, Respondent shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XI.A.1.

ii. If Respondent seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph XI.A.1.

iii. Requests for a change to a time frame set forth in this Order & Settlement Agreement shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Respondent promptly.

F. 1. If there are multiple parties signing this Order & Settlement Agreement, the term "Respondent" shall be read in the plural, the obligations of each such party under this Order & Settlement Agreement are joint and several, and the insolvency of or failure by any Respondent to implement any obligations under this Order & Settlement Agreement shall not affect the obligations of the remaining Respondent(s) under this Order & Settlement Agreement.

2. If Respondent is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Order & Settlement Agreement are joint and several and the insolvency or failure of any general partner to implement any obligations under this Order & Settlement Agreement shall not affect the obligations of the remaining partner(s) under this Order & Settlement Agreement.

3. Notwithstanding the foregoing Subparagraphs XIV.F.1 and 2, if multiple parties sign this Order & Settlement Agreement as Respondents but not all of the signing parties elect to implement a Work Plan, all Respondents are jointly and severally liable for each and every obligation under this Order & Settlement Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Respondents electing to perform additional work shall be jointly and severally liable under this Order & Settlement Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Order & Settlement Agreement relative to the activities set forth in such Work Plan(s). Further, only those Respondents electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph II.H.

G. Respondent shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by 6 NYCRR § 375-1.5(b)(5).

H. Unless otherwise expressly provided herein, terms used in this Order & Settlement Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

I. Respondent's obligations under this Order & Settlement Agreement represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

J. Respondent and Respondent's successors and assigns shall be bound by this Order & Settlement Agreement. Any change in ownership or corporate status of

Respondent shall in no way alter Respondent's responsibilities under this Order & Settlement Agreement.

K. This Order & Settlement Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

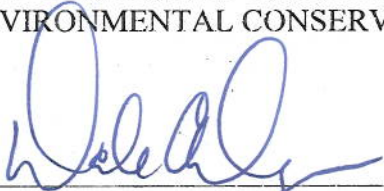
L. The effective date of this Order & Settlement Agreement is the 10th Day after it is signed by the Commissioner or the Commissioner's designee.

DATED:

SEP 30 2008

ALEXANDER B. GRANNIS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



Dale A. Desnoyers, Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order & Settlement Agreement, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order & Settlement Agreement.

235 Metro Park Associates, LLC

By:

Title:

Date:

STATE OF

COUNTY OF

) ss:

On the 10th day of October, in the year 2008, before me, the undersigned, personally appeared Jules M. Singer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of individual taking acknowledgment

NOTARY PUBLIC-STATE OF FLORIDA
P. Joyce Arrien
Commission # DD411267
Expires: MAR. 24, 2009
Bonded Thru Atlantic Bonding Co., Inc.

EXHIBIT "A"

Map of Site



EXHIBIT "B"

RECORDS SEARCH REPORT

1. Detail all environmental data and information within Respondent's or Respondent's agents' or consultants' possession or control regarding environmental conditions at or emanating from the Site.

2. A comprehensive list of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and of areas immediately surrounding the Site which are or might be affected by contamination at the Site, including all available topographic and property surveys, engineering studies, and aerial photographs.

3. A concise summary of information held by Respondent and Respondent's attorneys and consultants with respect to:

(i) a history and description of the Site, including the nature of operations;

(ii) the types, quantities, physical state, locations, methods, and dates of disposal or release of hazardous waste at or emanating from the Site;

(iii) a description of current Site security (i.e. fencing, posting, etc.); and

(iv) the names and addresses of all persons responsible for disposal of hazardous waste, including the dates of such disposal and any proof linking each such person responsible with the hazardous wastes identified.

EXHIBIT "C"
COST SUMMARY

EXHIBIT I

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
 DIVISION OF ENVIRONMENTAL REMEDIATION
 BUREAU OF PROGRAM MANAGEMENT

COST SUMMARY

SITE NAME: FISCHBACH & MOORE ELECTRIC, INC.
 SITE NO.: 828150 & V00492-8

<u>COST CATEGORY</u>	<u>AMOUNTS</u>	<u>EXHIBIT NO.</u>
DIRECT PERSONAL SERVICES	\$30,622.50	
FRINGE	\$12,583.96	
INDIRECT	\$14,408.56	
<i>PERSONAL SERVICES SUBTOTAL</i>	<i>\$57,615.02</i>	II.A & II.B
CONTRACTUAL	\$3,234.00	III
TRAVEL	\$0.00	
OTHER NPS	\$0.00	
<i>NON-PERSONAL SERVICES SUBTOTAL</i>	<i>\$3,234.00</i>	
DEC TOTAL	\$60,849.02	
 DOH PS AND NPS SUBTOTAL	 \$2,798.86	 IV*
MINUS DOH CREDIT FROM PREVIOUS BILL (IF APPLICABLE)	N/A	
DOH TOTAL	\$2,798.86	
 MINUS PAYMENT RECEIVED	 (\$10,000.00)	
<i>DEC & DOH TOTAL</i>	<i>\$53,647.88</i>	
 COST CAP (IF APPLICABLE)	 N/A	
GRAND TOTAL	\$53,647.88	

*Exhibit IV reflects available DOH costs which are through 9/30/03.