
(ABOVE SPACE RESERVED FOR RECORDER'S USE)

Return Document to: **Name of Official**
 MAHLE Engine components USA Inc.
 Address

Preparer Information: Office of Regional Counsel
 U.S. Environmental Protection Agency, Region 7
 11201 Renner Blvd.
 Lenexa KS 66219
 (913) 551-7471

Taxpayer Information: MAHLE Engine Components USA Inc.
 60428 Marne Road
 Atlantic, Iowa 50022

Grantor(s): MAHLE Engine Components USA Inc.
 60428 Marne Road
 Atlantic, Iowa 50022

Holder/Grantee: MAHLE Engine Components USA Inc.
 60428 Marne Road
 Atlantic, Iowa 50022

Legal Description: See Attachment 1

Commented [A1]: Please provide the EPA with Attachment 1.
A legal description should be included

ENVIRONMENTAL COVENANT

This Environmental Covenant (“Environmental Covenant”) is established by **MAHLE Engine Components USA Inc.** (MAHLE), which is both **Grantor and Holder** pursuant to the Iowa Code Chapter 455I, entitled the Uniform Environmental Covenants Act (“the Act”), for the purpose of subjecting the property described below to certain activity and use limitation in accordance with the terms and conditions as specified below and in the Act.

RECITALS:

This Environmental Covenant (Covenant) is entered into by and between MAHLE as “Grantor,” MAHLE as “Holder,” and the United States Environmental Protection Agency (EPA) as “Agency,” pursuant to Iowa’s Uniform Environmental Covenants Act (Act), Iowa Code sections 455I.1 – 455I.12. Grantor and Holder enter into this Covenant for the purpose of subjecting the property described below to certain activity and use limitations in accordance with the terms and conditions specified herein.

1. Affected Property. Grantor is the fee title owner of the property located at 60428 Marne Road in Atlantic, Iowa (the “Property”). The Property is legally described in Attachment 1.

2. Agency Action. The Property is the subject of an “environmental response project,” as defined in section 455I.2.5 of the Act at the Property, pursuant to a Memorandum of Understanding (MOU) entered into by MAHLE and EPA, dated September 1, 2001. This MOU was entered into and issued by EPA pursuant to Section 3008(h) of the Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(h).

The selected environmental response project or action is documented in a Final Decision dated September 10, 2020. The remedy selected for the facility includes continued extraction and treatment of contaminated groundwater, monitoring of the effectiveness of the extraction system, and establishing an environmental covenant. The administrative record for this project or action is available to the public and located at EPA Region 7, 11201 Renner Blvd., Lenexa, KS 66219. A description of the facility contamination is found in the Comprehensive Soil and Groundwater Contamination Nature and Extent Investigation Report dated May 18, 2018.

3. Risk Management and Institutional Controls. Following completion of the environmental response project, contamination will remain/remains at the Property which may present an unreasonable risk to public health and the environment if certain activities occur on the Property. As such, the Agency has determined that an Environment Covenant is necessary to manage the risk of future exposure by limiting specified activities at the Property and establishing affirmative obligations.

4. Identity of Grantor and Holder.

GRANTOR: MAHLE Engine Components USA Inc.

HOLDER: MAHLE Engine Components USA Inc.

AGENCY: United States Environmental Protection Agency

5. Representations and Warranties. Grantor warrants to the other signatories to this Covenant that Grantor:

- a. is the sole fee title owner of the Property; and
- b. holds sufficient fee title to the Property to grant the rights and interests described in this Covenant free of any conflicting legal and equitable claims.

6. Running with the Land. This Covenant is perpetual and runs with the Property, as provided in section 4551.9 of the Act, until modified or terminated. This Covenant is binding on Grantor and all successors in interest, assigns, and transferees acquiring or owning any right, title, lien or interest in the Property and their heirs, successors, assigns, grantees, executors, administrators, and devisees. The term “transferee,” as used in this Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, contract buyers, mortgagees, easement holders, and/or lessees.

7. Activity and Use Limitations and Terms. The Property is subject to the following activity and use limitations:

- a. The Property shall not be used, developed, or operated in any manner that will interfere with or prohibit the implementation of the environmental response project.
- b. The Property shall not be used for residential purposes, which for purposes of this Covenant include but are not limited to: single family homes, duplexes, multi-plexes, apartments, condominiums, schools, dormitories, retirement or senior/child-care centers, or any land use where persons can be expected to reside, unless approved by the Agency.
- c. Except for the purpose of investigation, or for other purposes approved by the Agency, extraction and use of the groundwater underlying the Property is prohibited.
- d. Installation of any new groundwater wells on the Property is prohibited, except for wells used for investigative or monitoring purposes and/or if approved by the Agency for other purposes, provided the wells comply with all applicable local, state, and federal laws and regulations and do not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, or federal laws or regulations.
- e. The epoxy sealed concrete floors located within the building(s) as shown on Attachment 2 must remain in place and be effectively maintained unless and until the Agency provides written approval for any modifications. This engineered barrier was put in place to ensure that the soil gas vapor from the subsurface contamination does not enter the building and to mitigate for potential exposure to indoor air concentrations of contaminants above levels that are unprotective of human occupant health.

Commented [A2]: If areas not already depicted on Attachment 1.

- f. To prevent or minimize exposures to soil gas vapor, any building or structure planned for human occupancy and that will be constructed in the future on the Property shall be constructed to include an appropriate vapor barrier or vapor mitigation system. Vapor barrier or mitigation systems in buildings constructed in the future on the Property shall be maintained so that the system continues to meet the intended function to protect human health from soil gas vapors.
- g. To ensure the protectiveness of the remedy, monitoring, maintenance, inspection and repair of the vapor barrier or mitigation systems while soil/groundwater contamination remains above the levels unprotective of human health shall be conducted on an annual basis. This information must be reported to the Agency every year on the anniversary date of the effective date of this Covenant in accordance with Section 8 below.

8. Compliance Reporting. One year from the effective date of this Covenant, and on an annual basis thereafter until such time as this Covenant is terminated, the then-current fee simple owner of the Property shall submit to the Agency written documentation verifying that the activity and use limitations remain in place and are being complied with.

9. Notice to Lessees. Grantor, any holder with a property interest sufficient to grant a lease of the Property, and any transferee shall incorporate the activity and use limitations of this Covenant, either in full or by reference, in any lease, license, or other instrument granting a right to possession of the Property.

10. Access to Property. Access to the Property is granted to the Agency, the Iowa Department of Natural Resources (IDNR), any Holder, and their respective authorized representatives for the purpose of monitoring compliance with this Covenant. The Agency, IDNR, and/or any Holder agree to provide the then-current owner of the Property reasonable notice prior to access and an explanation of the reasons for entry and the activities they plan to conduct.

11. Groundwater Hazard Statement Notice. Iowa Code section 558.69 requires the submission of a groundwater hazard statement and disclosure if “hazardous waste” exists on the Property as defined in Iowa Code subsections 455B.411(3), 455B.412(2) or section 455B.464 which is not being managed in accordance with IDNR rules, or if IDNR determines that a disposal site for solid waste exists on the Property that is potentially hazardous. The signatories and all subsequent transferees required to submit a groundwater hazard statement under Iowa Code section 558.69 shall make reference to this Covenant in substantially the following form:

THE INTEREST CONVEYED IS SUBJECT TO AN
ENVIRONMENTAL COVENANT, DATED [*date month, day, year*]
RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE _____
COUNTY RECORDER ON [*date month, day, year*] IN [*document, book and*
page, or parcel number].

THE ENVIRONMENTAL COVENANT CONTAINS THE
FOLLOWING ACTIVITY AND USE LIMITATIONS: [*language that describes*
the activity and use limitations exactly as it appears in the environmental
covenant.]

12. Modification and Termination. Any modification or termination of this Covenant shall comply with Iowa Code chapter 455I and applicable IDNR administrative rules. This Covenant may be modified or terminated by written consent of the Agency, the then-current fee simple title owner, and all original signatories (unless exempted under the provisions of Iowa Code section 455I.10(1)“c” in accordance with and subject to the provisions of Iowa Code section 455I.10). The termination or modification is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any modification or termination of this Covenant shall be in accordance with Iowa Code section 455I.9 and such additional terms as specified in this Covenant.

13. Enforcement. This Covenant may be enforced by the Agency and/or any Holder in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with Iowa Code section 455I.11. Additionally, the signatories to this Covenant expressly grant to IDNR the power to enforce this Covenant. Failure to exercise such rights of enforcement will in no event bar subsequent enforcement by any party, nor be deemed a waiver of any party’s right to take an enforcement action. No right of action will accrue for or on account of the failure by any person, corporation, or any other entity to exercise any right created by this Covenant or for imposing any provision, condition, restriction, or covenant which may be unenforceable.

14. Severability. If any provision of this Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

15. Governing Law. This Covenant shall be governed by and interpreted in accordance with the laws of the State of Iowa.

16. Recordation. Within thirty (30) days after the date of the final required signature upon this Covenant or any amendment or termination thereof, owner or transferee shall record this Covenant with the appropriate recorder of deeds for each county in which any portion of the Property is situated. Owner or transferee shall be responsible for any costs associated with recording this Covenant.

17. Distribution of Environmental Covenant. Within sixty (60) days of the effective date, the Grantor shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to all parties cited in Paragraph 19 below.

18. Effective Date. The effective date of this Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded with the Lee County, Iowa Register of Deeds.

19. Notice. Any notice, document, or other item required by this Covenant to be given to another party hereto shall be sent to:

If to Grantor/Transferee:

MAHLE Engine Components USA Inc.

60428 Marne Road
Atlantic, Iowa 50022

With a copy to:

Provide Name and Address if appropriate

If to Holder:

MAHLE Engine Components USA Inc.
60428 Marne Road
Atlantic, IA 50022

If to EPA:

Director, Land, Chemical and Redevelopment Division
U.S. Environmental Protection Agency – Region 7
11201 Renner Blvd.
Lenexa, KS 66219

If to IDNR:

Iowa Department of Natural Resources
Contaminated Sites Section Supervisor
Wallace State Office Building
502 E 9th Street
Des Moines, IA 50319

As to other governmental bodies:

Mayor of Atlantic
23 E 4th Street #A
Atlantic, Iowa 50022

County Executive
Cass County Board of Supervisors
5 West 7th Street
Atlantic, Iowa 50022

20. Subordination and Consent. By signing this Covenant, the signatories knowingly and intelligently acknowledge their consent to the terms hereof and agree to subordinate their interest in the Property.

21. Notice of Change in Ownership. Grantor and any holder with sufficient property interest to convey a possessory interest in the Property and any subsequent transferee with sufficient property interest shall reference and incorporate the terms of this Covenant into any subsequent instrument which conveys a possessory interest in the Property.

[The remainder of this page is intentionally left blank]

ACKNOWLEDGMENTS

GRANTOR AND HOLDERS:

MAHLE Engine Components USA Inc.:

By: _____

Its: _____

STATE OF _____)
COUNTY OF _____) ss

The foregoing instrument was acknowledged before me this ____ of _____, 2021,
by _____, who is the _____ of MAHLE
Engine Components USA Inc., and acknowledged said Environmental Covenant on behalf of
MAHLE Engine Components USA Inc.

(SEAL)

Notary Public

AGENCY:

Date

DeAndré Singletary
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

STATE OF KANSAS)
COUNTY JOHNSON) ss.

The foregoing instrument was acknowledged before me this ____ of _____, 2022,
by _____, who is the Director of the Land, Chemical and Redevelopment
Division of the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 7,
and acknowledged said Environmental Covenant on behalf of the UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY.

Notary Public

(SEAL)

ATTACHMENT 1
Legal Description

Commented [A3]: Need to obtain legal description from MAHLE.