

STATE OF MARYLAND  
DEPARTMENT OF THE ENVIRONMENT  
V.  
BLACK & DECKER (U.S.), INC.

ADMINISTRATIVE CONSENT ORDER

April 1995

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DEPARTMENT OF THE ENVIRONMENT

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v.

BLACK & DECKER (U.S.), INC.

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ADMINISTRATIVE CONSENT ORDER

This Administrative Consent Order ("Consent Order") is by and between Black & Decker (U.S.), Inc. ("Black & Decker") and the Maryland Department of the Environment (the "Department") through its Waste Management Administration (WAS), pursuant to the authority vested in the Secretary of the Department under applicable provisions of §§ 1-301, 7-201 et seq., and 9-301 et seq. of the Environment Article of the Annotated Code of Maryland. Black & Decker consents to and does not contest the Department's authority to enter into this Consent Order.

I. STATEMENT OF PURPOSE

A. In entering into this Consent Order, in order to protect human health and the environment, the mutual objective of the Department and Black & Decker is to provide for the remediation of soils, sediment, and ground waters at the property owned by Black & Decker at 626 Hanover Pike, Hampstead Maryland, (the "Property") and in such other surrounding areas as may be affected by contamination attributable to Black & Decker's operations (the "Surrounding Area"). (The Property and the Surrounding Area shall together be referred to herein as the "Site".)

B. This Consent Order shall become effective upon execution by the parties.

## II. PARTIES BOUND

A. This Consent Order shall apply to and be binding upon the Department, and its officers, representatives, agents, and successors, and Black & Decker, and its authorized representatives, agents, officers, directors, successors and assigns, and upon all persons, contractors and consultants acting under or on behalf of Black & Decker. No change in ownership or corporate status of Black & Decker or ownership of the Property will in any way alter Black & Decker's responsibilities under this Consent Order

B. In the event of any change in ownership or control of Black & Decker, either through a purchase of 20% or more of the stock of Black & Decker, sale of assets, or other transfer, Black & Decker shall notify the Department, in writing, within thirty (30) business days following the change, of the nature of the change and the effective date of the change. Black & Decker shall provide a copy of this Consent Order to any persons or entities acquiring greater than a 20% interest in Black & Decker, prior to the change in ownership or control.

C. In the event of any change in ownership or control of the Property, Black & Decker shall notify the Department, in writing, within thirty (30) business days following the change, of the name, address and telephone number of the transferee and the nature and effective date of the transfer or change. Black

& Decker shall further provide the Department with a copy of any indemnification agreement which may be executed in connection with such change no more than thirty (30) calendar days following its execution. Black & Decker shall provide a copy of this Consent Order to the transferee prior to the transfer.

D. Black & Decker shall provide a copy of this Consent Order to each contractor or consultant hired to perform any work required under the terms of this Consent Order, and shall condition all contracts entered into hereunder upon performance of all such work in conformity with the terms and conditions of this Consent Order. Black & Decker shall be responsible for ensuring that its contractors and subcontractors perform the work contemplated herein in accordance with this Consent Order. With regard to the activities undertaken pursuant to this Consent Order, each contractor and subcontractor shall be deemed to be in a contractual relationship with Black & Decker within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. §9607(b)(3).

### III. FINDINGS OF FACT

A. Black & Decker is a Maryland corporation registered to do business in Maryland. Black & Decker's principal office is located at 701 East Joppa Road in Towson, Maryland.

B. During the period from 1952 to 1987, Black & Decker owned and operated a power hand tool manufacturing facility ("the Facility") at the Property. Black & Decker's manufacturing process utilized certain hazardous substances, including paints, oils and trichloroethylene ("TCE") and other solvents, which were

stored on the Property in above ground and underground storage tanks. Since 1978, Black & Decker utilized a permitted wastewater treatment system, including two lagoons, identified as the East and West lagoons, located on the property, for treatment and storage of waste water generated by operations at the Facility.

C. During the period from 1983 to 1987, the focus of Facility activities gradually shifted from manufacturing to distribution. The Facility currently serves primarily as a distribution center with some continuing machining and assembly operations.

D. In April 1984, Carroll County Health officials sampled five (5) production wells on the Property to determine whether the production wells had been contaminated as a result of a gasoline spill at a nearby service station. Elevated levels of TCE (up to 72 parts per billion ("ppb")), and tetrachloroethylene ("PCE") (up to 1900 ppb), and other chlorinated hydrocarbons were detected in the production wells.

E. During the month of May 1984, The Maryland Department of Health and Mental Hygiene ("DHMH") inspected the Facility and conducted several samplings of soil and water on and off the Property. These sampling events confirmed the presence of TCE and PCE in the soils and surface water at certain locations on the Property. The sampling further detected the presence, up to 4 ppb, of PCE in the groundwater of a local dairy barn well ("the Leister Dairy Well") located west of the Property.

F. On May 2, 1984, DHMH issued a Site Complaint to Black & Decker for certain alleged water pollution and controlled hazardous substance violations. In May 1984, Black & Decker installed carbon filters on the potable water supply system at the Facility.

G. In June 1984, sampling by DHMH of the Facility's potable water supply prior to treatment detected 6 ppb of TCE and 3 ppb of PCE, in addition to several other volatile organic compounds ("VOCs") in the water supply.

H. On September 17, 1984, Black & Decker entered into a Consent Order with DHMH requiring Black & Decker to conduct a remedial investigation of the site, prepare and submit to the Waste Management Administration for approval a plan of needed remedial measures, and conduct the remediation approved by the agency. This Consent Order supplements but does not replace the 1984 Consent Order.

I. In March 1985, Geraghty and Miller submitted to the Department a report entitled "Groundwater Conditions at the Black & Decker Plant, Phase I." ("Geraghty and Miller Phase I Report") The Geraghty and Miller Phase I Report involved a compilation of past sampling data, and included a summary of the geology and hydrogeology of the Property. An area on the Property located southwest of the Facility, where the highest concentration of PCE was found in groundwater, was recommended for further study.

J. In September 1985, Geraghty and Miller conducted a follow up study, entitled "Phase II, Tasks 1-3, Investigation of Groundwater Conditions at the Black & Decker Plant" ("Geraghty

and Miller Phase II Report"), to further characterize the groundwater contamination on the Property and study the apparent source area identified in the Geraghty and Miller Phase I Report. Geraghty and Miller installed a total of twenty one (21) monitoring wells on the Property during Phase II investigations. Samples from some of these monitoring wells showed elevated levels of TCE and PCE in the groundwater. The Geraghty and Miller Phase II Report recommended further evaluation of the apparent source area and implementation of a groundwater recovery and treatment system.

K. In August 1986, BCM Eastern, Inc. ("BCM") performed a soil boring investigation of the area believed to be the location of the disposal of off-specification products identified in the Geraghty and Miller Phase II Report, and no significant levels of TCE or PCE were detected.

L. In December 1986, BCM engineers connected the five (5) production wells on the Property to an air stripping unit. The water treated by this unit continued to provide potable water for the Facility until the summer of 1994, when a new stripper began operation.

M. During 1985 and 1986, DHMH conducted several residential well samplings in the area surrounding the Property and varying levels of PCE and TCE were detected in several wells. The Leister Dairy Well contained up to 9 ppb of PCE. On October 26, 1987, Black & Decker voluntarily installed four (4) carbon filter units on the Leister Dairy farm well. Black & Decker continues to maintain these four units voluntarily.



N. In 1987, Black & Decker contracted with Roy F. Weston, Inc. ("Weston") to further investigate groundwater contamination and soil conditions at the Property. Weston's investigation was completed in two phases, Phase I and Phase II, and the combined report was submitted to the Department in April 1989 and entitled "Environmental Investigation Report, Black & Decker, Incorporated, Hampstead, Maryland Facility." ("Weston Environmental Report") Weston installed a total of seventeen (17) additional monitoring wells on the Property during this investigation.

O. Phase I of the Weston Environmental Report identified seven (7) possible source areas of groundwater and/or soil contamination. Of particular significance were soil samples taken from the underground Tank Farm 2 area, which indicated the presence of TCE (up to 2,400 ppb) and PCE in the soil (up to 380,000 ppb).

P. Phase II of Weston's Environmental Report further characterized the concentrations and distribution of contaminants in underground Tank Farm 1 and 2 soils. Weston concluded that Tank Farm 2 VOC soil contaminants, particularly PCE and TCE, were present at significant concentrations and quantities to potentially migrate into the groundwater. The Phase II investigation confirmed that the major constituents of concern in the groundwater are PCE and TCE. The Weston Environmental Report recommended remediation of underground Tank Farm 2 soils, and the expansion of the implementation of a groundwater recovery and treatment system.

Q. In December 1989, Weston submitted a work plan for soil and groundwater remediation to the Department entitled "Work Plan for Soil and Groundwater Remediation Design Investigation" ("Work Plan") which is attached hereto as Appendix A. Black & Decker responded to Department comments to the Work Plan in letters dated March 27, 1991 and August 23, 1991 which are included in Appendix A.

R. In February 1990, the Department conducted a Preliminary Assessment of the Site. The Preliminary Assessment further confirmed the presence of TCE and PCE in the soils of Tank Farm 1 and Tank Farm 2 and the sediment of Zone C. The Department recommended a high priority Screening Site Inspection.

S. In October 1991, the United States Environmental Protection Agency conducted a Site Inspection of the Site. The Site Inspection revealed groundwater concentrations of TCE and PCE exceeding drinking water standards.

T. Weston installed nine (9) recovery wells on the Property. In 1992, pump tests of seven recovery wells were conducted to determine if adequate containment of groundwater contamination could be achieved.

U. During the period from 1991 to 1993, Black & Decker applied for modification of its NPDES discharge permit, as well as air stripping tower and groundwater appropriations permits (attached hereto as Appendix C) for the construction of an expanded interim groundwater containment and treatment system ("Interim Groundwater Treatment System").

V. In January 1994, construction of the Interim Groundwater Treatment System designed to remediate dissolved phase contaminants in the groundwater was completed in accordance with Weston's "Groundwater Remediation System Construction Specifications", dated November 1992. The Interim Groundwater Treatment System has been operating since August of 1994.

W. In 1993 and 1994 Jos. A. Bank Clothiers, Inc., which owns a parcel of property to the south of the Black & Decker Property, through its consultant, collected and analyzed groundwater from two production wells for volatile organic compounds. This sampling revealed the presence of certain volatile organic compounds in these wells.

X. MDE has proposed this Site for inclusion in the State Deferral Pilot Program to allow the State to direct and perform oversight of the remedial actions at the Site.

Y. Black & Decker does not admit but expressly denies the foregoing Findings of Fact in this Section III.

#### IV. WORK TO BE PERFORMED

A. Black & Decker shall diligently pursue and comply with all necessary federal, State and local permits obtained, for all work pursuant to this Consent Order.

B. All work performed pursuant to this Consent Order shall be under the direct supervision of qualified personnel.

C. Within thirty (30) calendar days following the effective date of this Consent Order, Black & Decker shall notify

the Department in writing of the identity and qualifications of the contractor(s), subcontractor(s) and/or supervisory personnel retained to implement the terms and conditions of this Consent Order. Black & Decker shall notify the Department of any addition or other change in contractors, subcontractors, and/or supervisory personnel no later than fourteen (14) calendar days following such addition or change.

D. Black & Decker shall continue operating the Interim Groundwater Treatment System on the Property or the final remedy as determined by the Department with the intent to contain and reduce contaminants in the groundwater aquifer to the Aquifer Remediation Goals set forth in Appendix D, or as modified by the Department in accordance with Paragraphs I and N of this Section.

E. Within sixty (60) days following execution of this Consent Order, Black & Decker shall submit to the Department for approval a proposed Operational Plan for the Interim Groundwater Treatment System ("Operational Plan"), as approved by the Department, which shall be attached as Appendix E. The Operational Plan shall, at a minimum, include:

- (1) a detailed report describing the start-up and trial phase of the approved Interim Groundwater Treatment System;
- (2) a detailed description of proposed standard procedures for operating and monitoring the Interim Groundwater Treatment System;
- (3) a Site-specific health and safety plan that shall provide for, at a minimum, all necessary employee

training and protective and medical surveillance equipment;

(4) a proposed groundwater monitoring plan which shall:

(a) if adequate access, including the removal of pumps and other obstructions, is obtained, include periodic monitoring of:

(i) all wells identified in the document entitled "Weston's Response to Comments" attached as Appendix A; (ii) the Leister dairy well; (iii) the three residential wells on the Leister property; (iv) the Roberts well field municipal wells (Well #22 and #23); (v) wells RFW 1B, 2A, 2B, 3B, 12B, 13, 16, 17, 18, and 19; (vi) the two production wells located on Jos. A. Bank property; and (vii) a proposed monitoring well directly between the Black & Decker property and the Roberts well field municipal wells;

(b) provide for quarterly monitoring of wells identified in subparagraph 4(a) of this Section following execution of this Consent Order for a period of four years, at which time the frequency and number of wells monitored shall be reevaluated;

(c) provide for measuring and recording water level elevations of wells in accordance with the Water Level Monitoring Plan approved by the Maryland Department of Natural Resources as part of the Groundwater Appropriations Permit attached as Appendix C;

(d) include a plan to select indicator wells to serve as points of compliance for determining whether aquifer remediation goals have been met;

(e) establish a methodology and QA/QC sampling procedures to be utilized for all groundwater sampling events.

(5) include a plan for continued maintenance of all groundwater filtration treatment systems installed by Black & Decker in the well referred to in Paragraph III.M. above.

F. (Reserved)

G. Black and Decker shall, on a monthly basis, for the first six months of operation of the Interim Groundwater Treatment System, or the final remedy as determined by the Department and thereafter, on a quarterly basis, submit to the Department a Groundwater Monitoring Report containing the following information for each reporting period:

(1) the quantities of groundwater pumped, treated and discharged;

- (2) calculation of the quantities of contaminants removed from groundwater;
- (3) a summary of all sampling analyses;
- (4) an explanation of all operational or other problems encountered and the manner in which each problem was resolved;
- (5) copies of all reports submitted to the Department of Natural Resources in conjunction with the Groundwater Appropriations Permit attached as Appendix C;
- (6) recommendations for changes to the Interim Groundwater Treatment System or the final remedy as determined by the Department.

H. The Department reserves the right to require changes to the Interim Groundwater Treatment System and any sampling requirements the Department deems necessary to protect public health and the environment. It is not the intent of the Department, however, to require fundamental changes to the nature and scope of the Interim Groundwater Treatment System prior to the selection of the final remedy. The Department shall provide Black & Decker with written notification of any changes required pursuant to this Paragraph. Black & Decker shall implement all such changes within thirty (30) days following receipt of such notice, unless Black & Decker invokes the internal dispute resolution procedures pursuant to Section XIII.B.

I. In the event that any contaminant other than the contaminants specified in the Aquifer Remediation Goals set forth

in Appendix D, is detected at the Property and is determined by the Department to be a threat to human health or the environment, or for other good reason including technical impracticability, as provided in Section IV Paragraph N hereof, the Department may revise the Aquifer Remediation Goals to include cleanup standards for additional contaminants or to modify existing cleanup levels. If Black & Decker disputes the Department's determination, Black & Decker shall have the right to invoke the dispute resolution procedures in Section XIII.C.

J. Black & Decker shall submit to the Project Manager identified in Section IX hereof monitoring reports as required by the company's NPDES permit on a quarterly basis which shall include analytical results from a certified lab and the quantities treated for the preceding months.

K. Black & Decker shall give the Department notice five (5) full business days or as soon as practicable, whichever is shorter, prior to conducting any field investigations or sampling required under this Consent Order. The Department shall have the right to split all soil, sediment and water samples collected by Black & Decker under the terms of this Consent Order, and to agree to a lesser period of prior notification of sampling.

L. On June 1, 1995 and annually thereafter for the duration of operation of the Interim Groundwater Treatment System, or the final remedy as determined by the Department, Black & Decker shall submit to the Department an Annual Report containing the following information on the operation during the



preceding year: (1) a summary of the information contained in the DMRs; (2) a summary of all analysis of water samples collected under the terms of this Consent Order required under Paragraph G of this Section; (3) an explanation of all problems encountered and the manner in which they were resolved; (4) recommendations for continuation of, or changes to, the Interim Groundwater Treatment System or its operations including changes to the Aquifer Remediation Goals; and (5) a performance evaluation Section to evaluate whether the Interim Groundwater Treatment System or the final remedy as determined by the Department will meet the Aquifer Remediation Goals and achieve groundwater contamination containment.

M. The Interim Groundwater Treatment System or the final remedy as determined by the Department shall be operated until such time that sample analysis of groundwater from the approved indicator monitoring wells indicates that contaminant levels are at or below the Aquifer Remediation Goals set forth in Appendix D, or as modified in accordance with Section IV Paragraphs I and N hereof, for a period of two (2) years, i.e., eight (8) consecutive sampling events for all indicator monitoring wells and two (2) consecutive sampling events for the non-indicator monitoring wells. If the levels of contaminants remain at or below the Aquifer Remediation Goals set forth in Appendix D, or as modified in accordance with Section IV Paragraphs I and N hereof, for all indicator wells for a period of two (2) years; and the Department determines that the Site is within a United

States Environmental Protection Agency (EPA) acceptable range of risk to human health and the environment, the Interim Groundwater Treatment System or the final remedy as determined by the Department, may be shut down.

N. Following continuous operation of the Interim Groundwater Treatment System or the final remedy as determined by the Department, for a period of ten (10) years, or for a period of less than ten (10) years in the Department's discretion, and following implementation of the approved Supplemental Work Plan in accordance with Paragraph W of this Section IV., Black & Decker may petition the Department for a modification of one or more of the Aquifer Remediation Goals based on a demonstration that attainment of these goals is technically impracticable in accordance with Department and EPA approved guidance in effect at the time the modification is requested. The decision to review a petition for modification of the Aquifer Remediation Goals prior to August 30, 2004, shall be in the sole discretion of the Department and such decision shall not be subject to dispute resolution. Based upon its review of the petition, the Department may grant or deny the petition for modification of one or more of the Aquifer Remediation Goals. If MDE denies the petition, and Black & Decker has operated the Interim Groundwater Treatment System or the final remedy as determined by the Department for a period of ten years or longer, Black & Decker may invoke the internal dispute resolution procedures pursuant to

Section XIII.B. The petition shall, at a minimum, contain the following information:

1. a demonstration that the Interim Groundwater Treatment System or the final remedy has been operated and maintained in accordance with the requirements of this Consent Order;

2. all analytical results obtained pursuant to the requirements of this Consent Order;

3. statistical analysis and/or computer modeling approved by the Department, based upon an approved Site Conceptual Model, establishing that:

a. there will be no further statistically significant increase or decrease in the concentration level of the contaminant for which a waiver is requested; and

b. additional pumping and/or modification of the Interim Groundwater Treatment System or final remedy will not produce a statistically significant decrease, as determined using the control chart methodology described in 40 CFR § 264.97(h)(4) and (i)(3) and approved by the Department, in the concentration level or significantly reduce the mass of contaminants from the aquifer;

4. expert opinion based upon sound engineering and scientific principles and supporting documentation as to the best achievable levels to which the contamination will equilibrate if the Interim Groundwater Treatment System or final remedy is shut down; and

5. an assessment of any risk to human health and the environment if the Interim Groundwater Treatment System, or final remedy or any part thereof, is shut down. Any assessment for this purpose shall comply with Department and United States Environmental Protection Agency regulations, guidelines and policies in effect at the time of the assessment. The assessment shall include an analysis of the availability and effectiveness of institutional or other controls to preclude or minimize exposure to any remaining contaminants.

0. Prior to the Departments's approval of the shut down of the Interim Groundwater Treatment System or the final remedy as determined by the Department, Black & Decker, if the Department so requests, shall conduct and submit to the Department an assessment of risk to human health and the environment. Any assessment for this purpose shall comply with Department and United States Environmental Protection Agency regulations, guidelines and policies in effect at the time of the assessment. The assessment shall include an analysis of the availability and effectiveness of institutional or other controls to preclude or minimize exposure to any remaining contaminants.

After the Interim Groundwater Treatment System or the final remedy is shut down, sampling of the indicator monitoring wells to confirm the efficacy of the remediation for the contaminants set forth in Appendix D shall continue for the next five (5) years on a semi-annual basis for years one and two; and thereafter on an annual basis. Within thirty (30) calendar days

after Black & Decker receives sampling results from each sampling event, Black & Decker shall provide the Department with a report containing a summary of analytical results.

P. If at any time during the five (5) year sampling period, a contaminant level from a single sampling event from a single indicator monitoring well exceeds the levels at termination of pumping to a statistically significant degree as determined using the control chart methodology described in 40 C.F.R. 264.97(h)(4) and (i)(3) and approved by the Department, but remains below the Aquifer Remediation Goals set forth in Appendix D, the well shall be resampled on a quarterly basis until such time as the Department determines that quarterly monitoring is no longer necessary. If this additional sampling indicates that contaminant levels have exceeded the Aquifer Remediation Goals to a statistically significant degree, as determined using the control chart methodology described in 40 C.F.R. 264.97(h)(4) and (i)(3) and approved by the Department, the Department may require Black & Decker to resume operation of the Interim Groundwater Treatment System or the final remedy as determined by the Department and the concurrent sampling program. Within 30 days of receipt of the sampling results indicating exceedance of the Aquifer Remediation Goals, Black & Decker may submit for the Department's approval a plan for alternative action. In order to protect human health and the environment, the Department may require Black & Decker to resume operation of the Interim Groundwater Treatment System or the final remedy as

determined by the Department and sampling pending approval and implementation of any alternative plan. Black & Decker may request review of the Department's determination under this Paragraph P, pursuant to Section XIII.B.

Q. Following the five year sampling period, sampling of the indicator monitoring wells shall continue every five years for a 30 year period in accordance with § 300.430 (f)(4)(ii) of the National Contingency Plan (NCP). If, during this sampling period, the levels of any contaminant in a single indicator monitoring well exceed, to a statistically significant degree, as determined using the control chart methodology described in 40 C.F.R. 264.97(h)(4) and (i)(3) and approved by the Department, the levels at termination of pumping, but remain below the Aquifer Remediation Goals, the well shall be resampled on a quarterly basis until such time as the Department determines that quarterly monitoring is no longer necessary. If this additional sampling indicates that the contaminant levels have exceeded the Aquifer Remediation Goals to a statistically significant degree, as determined using the control chart methodology described in 40 C.F.R. 264.97(h)(4) and (i)(3) and approved by the Department, the Department may require Black & Decker to resume operation of the Interim Groundwater Treatment System or the final remedy as determined by the Department, and the concurrent sampling program. Within 30 days of receipt of the sampling results indicating exceedance of the Aquifer Remediation Goals, Black & Decker may submit for the Department's approval a plan for an