

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

ADMINISTRATIVE CONSENT ORDER

April 1995

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v.
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STATE OF MARYLAND
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

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 Q, pursuant to Section XIII.B.

R. Within three (3) months following execution of this Consent Order, Black & Decker shall provide to the Department the names and last known addresses of past and present employees holding the position of plant manager and of other past and present managerial employees who may have knowledge of waste disposal practices at the facility.

S. If at any time after the effective date of this Consent Order, Black & Decker discovers the presence at the Site of a hazardous substance indicating a previously unknown area of historic disposal or contamination then Black & Decker shall notify the Department no later than ten business days following the discovery. In consultation with the Department, Black & Decker shall, within sixty (60) calendar days following written notification by the Department to do so, submit to the Department for review and approval a proposed plan to define the nature and extent of the contamination from the hazardous substance and to provide for its remediation. The plan shall be implemented within ninety (90) days following approval by the Department, or such other time as may be agreed to by the parties. If Black &

Decker disputes the Department's determination of the need for additional investigation or remediation, Black & Decker shall invoke the Dispute Resolution procedures set forth in Section XIII.C.

T. Black & Decker shall commence remediation of Tank Farm 2 soils (a) by means of the low temperature thermal treatment unit in accordance with the Work Plan attached as Appendix A as soon as the unit is available but no later than twelve (12) months following execution of this Consent Order, or (b) by alternative means, as described in the Weston letter dated April 10, 1995 attached hereto, as soon as the Department approves the alternative(s), and the design and construction efforts are completed. Within four (4) months following execution of this Consent Order Black & Decker shall submit a Soil Remediation Plan to MDE for approval, setting forth schedules and goals for soil remediation. The Soil Remediation Plan, and 1995 Weston letter, shall be attached hereto as Appendix F. If Black & Decker decides to propose an alternative means of soil remediation, the Soil Remediation Plan shall include a description of the proposed alternative(s). If Black & Decker disputes either (1) the Department's approval of an alternative means of soil remediation, or (2) the Department's disapproval of a Soil Remediation Plan that sets forth the remedial approach(es) described in the Weston letter dated March 30, 1995, then Black & Decker may invoke the Dispute Resolution procedures set forth in Section XIII. C. All disputes relating

to the Soil Remediation Plan, other than those described in the previous sentence, shall be resolved as provided in IV.AA. Commencement of soil remediation activities by any means shall be contingent on Black & Decker's obtaining all permits necessary for operation. Black & Decker shall operate the soil remediation system in accordance with and for so long as necessary under the Soil Remediation Plan approved by MDE and any amendments thereof.

U. Within sixty (60) days following execution of this Consent Order, Black & Decker shall submit to the Department, for review and approval, a Supplemental Remedial Work Plan ("Supplemental Work Plan"). The Supplemental Work Plan shall include, but not be limited to, the following information:

- (1) a statement of the problems and potential problems posed by the Site and the objectives of the Supplemental Work Plan;
- (2) a comprehensive summary of known Site conditions;
- (3) development of a site conceptual model, including a discussion of fracture location identification, bedrock topography, and contaminant migration characterizations in order to characterize the horizontal and vertical extent of contamination, in accordance with EPA or Department approved guidance;
- (4) plans to conduct further investigation associated with a brush pile area located on the western portion of the Facility, for the purpose of identifying additional potential surface and subsurface contaminant sources,

and for the purpose of characterizing the extent of groundwater contamination;

- (5) a site-specific health and safety plan that shall provide, at a minimum, for all necessary employee training and protective equipment, medical surveillance equipment, and standard operating procedures;
- (6) a description of proposed sampling methodologies and respective QA/QC sampling procedures; and
- (7) plans to conduct bi-annual surface water and sediment sampling of the east and west lagoons for a one-year period following execution of this Consent Order.

V. The Supplemental Work Plan shall be incorporated as approved by the Department into this Consent Order as Appendix G. Black & Decker shall commence implementation of the Supplemental Work Plan within thirty (30) calendar days following approval by the Department, unless a later implementation date is previously approved in writing by the Department.

W. Within sixty (60) days following execution of this Consent Order, Black & Decker shall submit to the Department for approval a Site Management Plan that includes time frames and milestones for implementation and completion of each phase of the Supplemental Work Plan and a reporting schedule for reporting to the Department on the progress of the Supplemental Work Plan.

X. Following the completion by Black & Decker of the investigation and activities set forth in the Supplemental Work Plan, and the Department's review thereof, Black & Decker shall

submit to the Department an evaluation of the remedial alternatives and the Department shall determine the final remedy in accordance with State and federal law and regulations. Within thirty (30) business days of receipt of notice from the Department of the selection of the final remedy, Black & Decker shall inform the Department in writing whether or not it agrees to perform the final remedy.

If the final remedy as determined by the Department requires response actions in addition to those actions Black & Decker is performing under this Administrative Consent Order at the time of remedy selection, and Black & Decker elects to perform the additional actions it shall submit for approval by the Department a plan for any additional response actions (Additional Response Plan) required to implement the final remedy. The Additional Response Plan shall be submitted to the Department within ninety (90) days of the date of the Department's notification to Black & Decker of the remedy selection. Upon the Department's approval of the Additional Response Plan, Black & Decker shall implement the Plan in accordance with the schedule contained therein.

If the final remedy as determined by the Department requires response actions in addition to those actions Black & Decker is performing under this Administrative Consent Order at the time of remedy selection, and Black & Decker elects not to perform those additional actions, Black & Decker may invoke the dispute resolution provisions of Section XIII. C. The parties acknowledge that the Department may notify the U.S. EPA of any invocation of dispute resolution regarding the selection of the

final remedy, and that based on such notice, the U.S. EPA may determine that the Site is not qualified to participate in the pilot deferral program. In the event that the U.S. EPA determines that the Site is not qualified to participate in the pilot deferral program, the Department and Black & Decker may, by mutual agreement, terminate the dispute resolution process.

Y. Once the Department has determined the final remedy, and Black & Decker is implementing the final remedy in accordance with the Department's determination, in the event that the Department requires a subsequent change in the final remedy that requires Black & Decker to perform additional response actions other than those described in the final remedy, Black & Decker may invoke the dispute resolution procedures set forth in XIII.C.

Z. Within thirty (30) days following execution of this Consent Order, Black & Decker shall submit to the Department for review and approval, a Community Outreach Program, which shall, at a minimum, include plans for: (1) periodic community meetings, led by the Department and with Black & Decker's presence and support, for the purpose of disseminating information concerning remedial actions at the Site to interested citizens; (2) establishing a repository or clearinghouse of key documents relating to the remedial efforts at the Site; and (3) providing assistance to the Department in periodic dissemination of information about the progress of the remedial action. The approved Community Outreach Program shall be attached as Appendix H.

AA. The Department reserves the right to request changes to all plans to be submitted pursuant to this Consent Order, including but not limited to the Operational Plan for the Interim Groundwater Treatment System ("Operational Plan") and all the plans included therein as described in Section IV.F, the Supplemental Remedial Work Plan ("Supplemental Work Plan"), the Quality Assurance Project Plan, ("QAPP"), the Community Outreach Program, the Site Management Plan, the Soil Remediation Plan, and the Site Health and Safety Plan and to make determinations pursuant to Section IV Paragraphs H, N, P and Q. Black & Decker shall use the procedures set forth in Section XIII.B to dispute the Department's determinations, changes and decisions pursuant to this Consent Order, except where another Section of this Consent Order is specifically referenced.

V. REIMBURSEMENT OF COSTS

A. Black & Decker shall reimburse the Department for all response costs incurred in connection with implementation of this Consent Order, as provided by Code of Maryland Regulations ("COMAR") 26.14.01.04.

B. The Department shall submit to Black & Decker on a quarterly basis an accounting of all response costs incurred by the Department. Black & Decker shall, unless contested in accordance with Paragraph C of this Section, within thirty (30) calendar days following receipt of the accounting from the Department, remit a check for the full amount of those costs made payable to the State Hazardous Substance Control Fund.

Thereafter, interest shall begin to accrue at a rate of the current annualized treasury bill on the unpaid balance. Checks should specifically reference the Black & Decker Hampstead facility and be addressed to:

Maryland Department of the Environment
Fiscal Services Division
Cash Receipts Unit
2500 Broening Highway
Baltimore, Maryland 21224
Attn: Mr. Jack Kerns

C. Black & Decker may contest payment of any costs identified in the accounting provided under Paragraph B of this Section if Black & Decker determines that the Department has made an accounting error or if Black & Decker alleges that a cost item that is included represents costs that are inconsistent with COMAR 26.14.01.04. Such objection shall be made within thirty (30) days following receipt of the accounting and in accordance with Sections VIII and XIII.C hereof. Any such objection shall specifically identify the contested costs and the basis for objection. In the event of an objection, Black & Decker shall within the thirty (30) day period pay all uncontested costs identified in the accounting to the Department in the manner described in Paragraph B of this Section. Black & Decker shall send to the Department, as provided in Section VIII, a copy of the transmittal letter and check paying the uncontested costs. Failure to initiate the dispute resolution procedures set forth in Section XIII.C within the thirty (30) day period following receipt of the accounting shall be a waiver of Black & Decker's right to initiate dispute resolution with respect to that issue.

If the Department prevails in the dispute, then within thirty (30) days following the resolution of the dispute, Black & Decker shall pay the sums due (with accrued interest) to the Department in the manner described in Paragraph B of this Section. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIII.C. shall be the exclusive mechanisms for resolving disputes regarding Black & Decker's obligation to reimburse the Department for costs related to this Consent Order.

D. The Department reserves its right to bring an action against Black & Decker pursuant to Section 107 of CERCLA, 42 U.S.C. Section 9607, and/or Sections 7-218 through 7-224 of the Environment Article of the Annotated Code of Maryland for recovery of all response costs incurred by the Department related to implementation of this Consent Order and not reimbursed by Black & Decker, as well as any other costs incurred by the Department in connection with response actions conducted at the Site pursuant to federal or State law. Black & Decker reserves its rights to raise any or all claims or defenses available under federal and state law.

VI. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

A. In consideration of the actions that will be performed by Black & Decker and the payments that will be made by Black & Decker under the terms of this Consent Order, the Department covenants not to sue or take administrative action against Black & Decker for performance of the work required under Section IV.

This covenant not to sue is conditioned upon complete and satisfactory performance by Black & Decker of its obligations under this Consent Order. This covenant not to sue shall take effect upon execution of this Consent Order, and shall continue in effect throughout the term of this Consent Order and following completion thereof, unless Black & Decker fails to perform. This covenant not to sue extends only to Black & Decker, its authorized representatives, agents, officers, directors, successors and assigns, and to all persons, contractors, and consultants acting under or on behalf of Black & Decker, and does not extend to any other person.

B. The Department reserves the right in order to fulfill its statutory duties, to perform the work and other activities it deems appropriate, and to commence administrative or judicial proceedings against Black & Decker or any other person to perform work and for recovery of all costs incurred by the Department in the event the Department determines that additional response actions related to the Site are necessary in order to protect the public health or the environment.

VII. COVENANTS BY BLACK & DECKER

Black & Decker hereby covenants not to sue and agrees not to assert any claims or causes of action against the State with respect to the Site or this Consent Order or any claims arising out of the work performed at the Site under this Consent Order. This covenant shall not preclude, where the State has waived its sovereign immunity, any action by Black & Decker to address

damages for negligence or wilful misconduct by the State that is brought pursuant to any statute other than the Environment Article, Maryland Annotated Code, or CERCLA, 42 U.S.C. § 9601 et seq.

VIII. NOTICES

All notices, reports and writings required by this Consent Order shall be submitted to the following representatives of the parties:

A. Black & Decker (U.S.), Inc.
Linda Biagioni
Vice President
Environmental Affairs
The Black & Decker Corporation
701 East Joppa Road
Towson, Maryland 21286

cc: Thomas E. Lynch, III
30 West Patrick Street
P.O. Box 688
Frederick, Maryland 21701-6903

B. Maryland Department of the Environment
State Deferral Project Manager
Black & Decker Hampstead Facility
Waste Management Administration - ERRP/Site Assessment
2500 Broening Highway
Baltimore, Maryland 21224

IX. PROJECT COORDINATORS

All obligations to be performed by Black & Decker pursuant to this Consent Order shall be under the direction and supervision of a Project Coordinator appointed by Black & Decker. The Project Coordinator shall be a person qualified to supervise the activities to be performed hereunder. Prior to initiation of any work under this Consent Order, Black & Decker shall notify

the Department in writing of the name and title of the Project Coordinator. In the event of a change in the Project Coordinator, Black & Decker shall notify the Department within five (5) business days of the change.

X. SITE ACCESS

A. In the event that implementation of this Consent Order requires access to property not owned or controlled by Black & Decker, Black & Decker shall use its best efforts to secure access agreements from the owners. Black & Decker shall notify the Department immediately in writing of any failure to obtain access necessary for the implementation of this Consent Order. The Department may, in its sole discretion, take steps to secure access in accordance with applicable law. Black & Decker shall reimburse the Department in accordance with the procedures in Section V for costs incurred by the Department in obtaining access.

B. The Department and its authorized representatives, including its oversight representatives, after prior notice shall have the authority to enter the Property at all reasonable times for the purpose of, inter alia, conducting inspections; reviewing operating logs and contracts related to the implementation of this Consent Order; observing Black & Decker's progress in implementing this Consent Order; conducting such tests as the Department deems necessary; collecting soil, water and/or air samples; and verifying data submitted to the Department by Black & Decker. The Department and its representatives shall observe

and comply with Black & Decker's safety measures when on the Property. Black & Decker shall permit the Department and/or its authorized representatives to inspect and obtain a copy of all records, files, photographs, or other documents, including all sampling and monitoring data, not already in the Department's possession which in any way pertain to work undertaken pursuant to this Consent Order, except for privileged documents, subject to the requirements of Paragraph C of this Section.

C. Black & Decker may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by the State in actions involving the State of Maryland. If Black & Decker asserts such a privilege, Black & Decker shall provide the Department with the following: a description of the contents of the document, record, or information; and the nature and basis of the privilege asserted by Black & Decker. However, no documents, records or information created, generated or collected pursuant to the requirements of the Consent Order shall be withheld on the grounds that they are privileged. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data evidencing conditions at or around the Site.

XI. FORCE MAJEURE AND NOTIFICATION OF DELAY

A. Black & Decker shall perform the requirements of this Consent Order within the time limits and manner set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure event. The burden of proving a force majeure event shall rest with Black & Decker. A force majeure event is defined as any event arising from causes not reasonably foreseeable and/or beyond the control of Black & Decker, which cannot be overcome by Black & Decker's best efforts to avoid the delay, and which delays or prevents performance by a date or manner required by this Consent Order. The requirement that Black & Decker exercise "best efforts to avoid the delay" includes using best efforts to: (1) anticipate an event which may cause delay prior to its occurrence; and (2) minimize the delay to the greatest extent reasonably practicable. Force majeure events do not include increased costs of performance, changed economic circumstances, or difficulties caused by reasonably foreseeable weather conditions which could have been overcome by best efforts.

B. Black & Decker shall notify the Department of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order. Such notification shall be made orally as soon as possible, but no later than three (3) business days after Black & Decker or any of its agents or contractors becomes aware of such delay, and in writing no later than ten (10) business days after Black & Decker or any of its agents or contractors become aware of such a delay or anticipated delay. The written

notification shall describe fully the nature of the delay, the reason(s) the delay is beyond the control of Black & Decker (if applicable), the actions that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay and the timetable according to which the actions to mitigate, prevent and/or minimize the delay will be taken. Black & Decker shall adopt all reasonable measures to avoid and minimize any such delay.

C. Any such delay that results from a force majeure event that cannot be overcome by Black & Decker's best efforts to avoid the delay shall not be deemed to be a violation of its obligation(s) under this Consent Order, and shall not make Black & Decker liable for stipulated penalties provided in Section XII hereof. To the extent a delay is caused by a force majeure event, the schedule affected by the delay shall be extended for the time necessary to complete the work on a reasonably expedited basis. Except as provided in the previous sentence, an extension of time for performance of the obligation(s) affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation.

D. In the event that the Department and Black & Decker cannot agree that any delay in achieving compliance with the requirements of this Consent Order has been or will be caused by a force majeure event, the dispute shall be resolved in accordance with the Internal Dispute Resolution provisions of Section XIII.B of this Consent Order. In any such dispute, Black & Decker shall have the burden of proving that the delay was

caused by a force majeure event which could not have been overcome by Black & Decker's best efforts, and that Black & Decker took all reasonable measures to avoid and minimize the delay.

E. The failure of Black & Decker to comply with the notice requirements of this Section shall constitute a waiver of Black & Decker's right to claim force majeure for that event.

XII. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

A. For each day, or any portion thereof, that Black & Decker fails to submit a report or document or otherwise fails to comply with the requirements of this Consent Order at the time and in the manner set forth herein, unless excused under Section XI, or unless otherwise resolved, Black & Decker shall be liable for, and shall pay, to the Department, upon demand, the stipulated penalties set forth below. Payment shall be due and owing within thirty (30) calendar days following receipt of the Department's demand letter unless Black & Decker invokes the Internal Dispute Resolution procedures under Section XIII.B. Interest at the rate of the current annualized treasury bill rate shall begin to accrue on the unpaid balance at the end of the thirty-day (30) period, in conformance with regulations of the United States Treasury.

B. Checks for payment of the stipulated penalties shall specifically reference the Black & Decker Hampstead Facility, be ~~made~~ payable to the State Hazardous Substance Control Fund, and be addressed to:

Maryland Department of the Environment
Fiscal Services Division
Cash Receipts Unit
2500 Broening Highway
Baltimore, Maryland 21224
Attn: Mr. Jack Kerns

C. Stipulated penalties shall accrue in the amount of \$250 for each calendar day of violation for the first ninety (90) days, and thereafter \$500 for each day of violation. All penalties begin to accrue on the day after complete performance is due or the day a violation occurs, and continue to accrue through the final day of correction of the noncompliance or completion of performance. No modification of the time for performance shall be effective unless approved in writing by the Department.

D. The stipulated penalties set forth in this Section do not preclude the Department from pursuing other remedies or sanctions available to the Department for failure to comply with the requirements of this Consent Order, but the Department agrees not to seek both stipulated penalties and any applicable civil penalties arising from statutory rights, for the same violation of this Consent Order.

XIII. DISPUTE RESOLUTION

A. Except as set forth in Section XIII.C the dispute resolution procedures of Section XIII.B, Internal Dispute Resolution, shall be the exclusive mechanism for Black & Decker to raise and resolve disputes arising under or with respect to this Consent Order. Nothing herein shall be construed to

prohibit the Department from exercising any other remedy available at law or in equity to enforce the terms of this Consent Order, nor to preclude Black & Decker from raising any defenses thereto.

B. Internal Dispute Resolution. With respect to any disputes that arise concerning the performance of work under this Consent Order, including but not limited to changes to plans and treatment systems, proposed modifications of the Aquifer Remediation Goals, operation of the Groundwater Treatment System or final remedy, force majeure, or stipulated penalties, the dispute shall be considered to have arisen when one party notifies the other in writing of its objections. The Department, through the Director of the Waste Management Administration, and Black & Decker shall have fourteen (14) calendar days to negotiate to reach agreement. If the parties cannot reach agreement on any issue within the fourteen (14) day period, the Department, in its discretion, may allow an additional seven (7) calendar days for informal negotiations. At the conclusion of the fourteen (14) or twenty-one (21) day period, the Department shall issue a written statement of decision to Black & Decker. Receipt of the Statement shall constitute "resolution" of the dispute. Upon resolution of the dispute, Black & Decker shall perform the work, make the payment, or take whatever action the Department's resolution of the dispute requires in accordance with the Department's decision.

C. With respect only to disputes concerning Section IV. I, the addition of other contaminants to the Aquifer Remediation

Goals, IV. S, the remediation of contamination from previously unknown areas of historic disposal or contamination, IV. Y, a requirement by the Department that Black & Decker perform response actions in addition to those prescribed in the final remedy, IV. T, disputes relating to the limited issues regarding soil remediation as described in IV. T, IV. X, dispute over the Department's selection of the final remedy, and V. C, disputes relating to the accounting of the Department's costs or an assertion that such costs were incurred inconsistent with law or regulation, the following procedures shall govern:

1. Any dispute which arises under or with respect to this Consent Order shall in the first instance be the subject of informal negotiations between the Department and Black & Decker. The dispute shall be considered to have arisen when one party sends the other a written Notice of Dispute.

2. The Department and Black & Decker shall have thirty (30) days following receipt of a Notice of Dispute to reach agreement. If the parties cannot reach agreement on the disputed issue within the thirty (30) day period, the Department, in its discretion, may allow an additional (15) days to reach agreement. At the conclusion of the thirty (30) or forty-five (45) day period, the position advanced by the Department shall be considered binding on Black & Decker, unless within fifteen (15) days following conclusion of the informal dispute resolution procedures in this subparagraph C.2, Black & Decker serves on the Department a written Statement of Position on the matter in dispute which shall include, but not be limited to, any factual

data, analysis, opinion or other supporting documentation relied upon by Black & Decker.

3. Within fifteen (15) days following receipt of Black & Decker's Statement of Position, the Department will serve on Black & Decker its Statement of Position which shall include, but not be limited to, any factual data, analysis, opinion, or other supporting documentation relied upon by the Department. Within ten (10) days of receipt of the Department's Statement of Position, Black & Decker may serve on the Department a Reply Statement of Position with supporting documents.

4. A Record for Review shall be maintained by the Department and shall contain all Statements of Position, including all supporting documentation submitted pursuant to this Section XIII.C. and this Consent Order with Appendices, including all Work Plans.

5. The Director of the Waste Management Administration of the Maryland Department of the Environment shall issue a written Statement of Decision to Black & Decker resolving the dispute based on the Record for Review compiled pursuant to Paragraph XIII.C.4.

6. The parties agree that, only in disputes arising out of paragraphs of this Consent Order that expressly provide for review pursuant to this Section XIII.C., any such Statement of Decision described in Paragraph XIII.C.5 shall be a Final Order of the Department pursuant to § 7-262 of the Environment Article of the Annotated Code of Maryland, appealable under Subtitle 2 of Title 7 of the Maryland Rules of Civil Procedure.

Judicial review of the Department's decision shall be based upon the Record for Review compiled pursuant to Paragraph XIII.C.4 of this Section. In any such appeal, the rules governing such appeals shall apply.

7. Receipt of the Statement of Decision shall be binding on Black & Decker unless, within fifteen (15) days following receipt of the written decision, Black & Decker files with the appropriate court and serves on the Department a Petition for Judicial Review in accordance with Subtitle 2 of Title 7 of the Maryland Rules of Civil Procedure.

D. Unless it prevents the performance of an obligation, the invocation of dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Black & Decker under this Consent Order not directly in dispute. Invocation of dispute resolution will not cause stipulated penalties to accrue, unless Black & Decker invokes dispute resolution in bad faith.

XIV. INDEMNIFICATION

Black & Decker agrees to indemnify and save and hold harmless the State of Maryland, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of wilful misconduct or negligent performance of acts or omissions of Black & Decker or its agents, employees, representatives, independent contractors, receivers, trustees and assigns in implementing this Consent Order.

XV. MISCELLANEOUS PROVISIONS

A. Black & Decker agrees to preserve during the pendency of this Consent Order and for a minimum of six (6) years following completion of the work required under this Consent Order, the original or one legible copy of all records and documents in its possession or in the possession of any of its divisions, officers, directors, and employees that relate in any way to the implementation of this Consent Order, and investigations by Black & Decker or any other person within Black & Decker's control and supervision of hazardous substance contamination and/or geological or hydrogeological conditions at the Site. Black & Decker shall instruct its agents, accountants, contractors, consultants or attorneys to retain for the period of time stated above, copies of all such documents which are in their possession. At the Department's specific request, Black & Decker shall obtain from such agents copies of the necessary documents, but in no way does this waive any privilege rights held by Black & Decker with regard to such documents. Following the six-year (6) period, Black & Decker shall notify the Department at least sixty (60) calendar days prior to the destruction of any document(s). The Department shall have the option of taking possession of any documents, except for privileged material, subject to the requirements of Paragraph B of Section X, designated for destruction and shall notify Black & Decker in writing of its decision.

B. Any reports, plans, schedules or other submissions required by this Consent Order, and any modifications thereto,

upon approval by the Department, are incorporated into this Consent Order. Any noncompliance with such approved reports, plans, schedules or other submissions shall be deemed non-compliance with this Consent Order. This Consent Order may only be modified by mutual agreement of Black & Decker and the Department. Any such modification shall be in writing and shall be effective only when executed by the Department.

C. In performing responsibilities, exercising discretion, and making determinations under this Consent Order, Black & Decker and the Department shall each act reasonably and in good faith to the end of achieving the parties' joint goal of remediation of the Property, and protecting human health and the environment.

XVI. OTHER CLAIMS

Neither the State of Maryland, nor any agency thereof, shall be liable for any injuries or damages to persons or property from acts or omissions of Black & Decker, its employees, agents, representatives, contractors, consultants, receivers, trustees, or assigns in implementing this Consent Order, nor shall the State of Maryland, nor any agency thereof, be held as a party to any contract entered into by Black & Decker in implementing the terms and conditions of this Consent Order.

XVII. CHOICE OF LAW

This Consent Order shall be governed by and construed in accordance with Maryland law.

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

DATE: _____

BY: Charles E. Fenton

MARYLAND DEPARTMENT OF THE ENVIRONMENT

DATE: 4-13-95

BY: RW Collins

Richard Collins
Director, Waste Management
Administration

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