

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

2012 SEP 28 P 2:47

REGIONAL HEARING
CLERK

In The Matter of:

Black and Decker (U.S.) Inc.,

Respondent,

Proceeding Under Section 3008 of
the Resource Conservation and
Recovery Act as amended.

**CONSENT AGREEMENT
AND
FINAL ORDER**

Docket No. RCRA-02-2011-7104

Docket No. RCRA-02-2012-7105

PRELIMINARY STATEMENT

These are civil administrative proceedings instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various statutes including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. §§ 6901 *et seq.* (referred to collectively as the "Act" or "RCRA"). The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling and management of hazardous waste at Title 40 of the Code of Federal Regulations ("C.F.R.") Parts 260-273 and 279.

On both June 30, 2011 and June 29, 2012, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (the "Region"), issued a Complaint and Notice of Opportunity for Hearing (the "2011 Complaint" and "2012 Complaint", respectively) to Respondent Black & Decker Corporation (U.S.) Inc. (hereinafter "B&D" or "Respondent"). Each Complaint alleged that B&D violated requirements of the authorized New York hazardous waste program.

The Complainant and B&D agree to simultaneously settle both the 2011 and 2012 Complaints, by entering into this Consent Agreement and Final Order ("CA/FO"). The Complainant and B&D further agree that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving the claims in each of the Complaints without further litigation. This CA/FO is being issued pursuant to, and under authority of, 40 C.F.R. § 22.18(b). No adjudicated Findings of Fact or Conclusions of Law, in either an administrative or judicial forum, have been made. The following constitute EPA's Findings of Fact and Conclusions of Law based on information of which Complainant was aware as of August 2012, and the recitation below of such findings and conclusions is not intended, nor is it to be construed, as Respondent either admitting or denying such findings and conclusions.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is B&D.
2. Respondent was at all times relevant to the Complaint, and remains, an "owner" and/or "operator" of a "facility" located at 200 State St., Brockport, New York (the "Facility") (EPA ID No. NYD002221919), as those terms are defined in 6 New York Codes, Rules and Regulations ("NYCRR") § 370.2(b).
3. Respondent is a "person" as that term is defined in Section 1004 (15) of the Act, 42 U.S.C. § 6903(15), and 6 NYCRR § 370.2(b).
4. The property described in Paragraph 2 constitutes a "facility" within the meaning of 6 NYCRR § 370.2(b).
5. Respondent is the wholly owned subsidiary of Black & Decker Corporation (hereafter referred to as "B&D Parent").
6. The Black & Decker Corporation is the wholly owned subsidiary of Stanley Black & Decker, Inc, which is located in New Britain, Connecticut (hereafter referred to as "Stanley B&D").

Past Regulatory Filings/Change of Ownership

7. The Facility was formerly owned and operated by General Electric Corporation ("GE"), and is currently owned by JMT Properties.
8. On or about August 18, 1980, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, GE notified EPA that it managed hazardous waste at the Facility.
9. On November 19, 1980, pursuant to 40 C.F.R. § 270.13, GE submitted a Part A hazardous waste permit application to EPA for the Facility.
10. Pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), the Facility received interim status based on GE's submission of a Section 3010 Notification and Part A permit application.
11. On or about October 1, 1984, Respondent submitted a revised Part A application to EPA indicating that B&D was the new owner and operator of the interim status Facility as of September 1, 1984.
12. The corporate address of B&D that was listed in the NYS Permit, described in Paragraph 15 below, was 701 E. Joppa Road, Towson, Maryland.

13. The hazardous waste units at the Facility include six surface impoundments and one sludge drying bed.
14. Closure of the units described in Paragraph 13 was completed in August 1987 in accordance with a New York State (“NYS”) approved closure plan.
15. Respondent and JMT Properties were jointly issued a NYS Part 373 Post-Closure Permit (the “NYS Permit”) in 1994 for the post-closure care of the units described in Paragraph 13.
16. JMT Properties (“JMT”) currently is a nonresidential building operator and/or property owner.
17. JMT is located at 200 State St., Brockport, NY 14420.
18. Since the issuance of the NYS Permit described in Paragraph 15, New York State Department of Environmental Protection (“NYSDEC”) has dealt exclusively with Respondent or B&D Parent concerning financial assurance issues under the NYS Permit.
19. The NYS Permit described in Paragraph 15 is currently in effect.
20. The NYS Permit described in Paragraph 15 was in effect from 2008 to 2011, during the time period relevant to the alleged violations cited in both the 2011 and 2012 Complaints.
21. In or about March 12, 2010, the B&D Parent became the wholly-owned subsidiary of Stanley Works, and Stanley Works changed its name to Stanley Black & Decker, Inc.

Relevant Regulatory Obligations

22. New York State’s final status standards for owners and operators of hazardous waste facilities are set forth in 6 NYCRR Subpart 373-2.
23. Module I – Standard Conditions, section (A), page I-1, (hereafter “Module I”) of the NYS Permit described in Paragraph 15 states that “the Permittee must comply with all terms and conditions of this Permit. This Permit consists of the condition contained herein.....and the applicable regulations contained in 6 NYCRR Parts 370 through 374, 621 and 624.”
24. Module I of the NYS Permit incorporates by reference the requirements of 6 NYCRR § 373-2.8.
25. Module II – General Facility Conditions, section (H), page II-2, (hereafter called “Module II”) of the NYS Permit described in Paragraph 15 sets forth financial assurance requirements for Post-Closure Care.
26. Module II of the NYS Permit incorporates by reference the requirements of 6 NYCRR § 373-2.8.

27. Module II states that the Permittee shall demonstrate continuous compliance with 6 NYCRR § 373-2.8(f) for post-closure care by providing documentation of financial assurance to the Commissioner, in accordance with the wording in 6 NYCRR § 373-2.8(j) in at least the amount of the Permittee's most recent post-closure cost estimate, prepared in accordance with 6 NYCRR § 373-2.8(e)(1).
28. Module II-2H of the NYS Permit sets out the requirement for Financial Assurance for Post-Closure Care which states in part that "the Permittee shall demonstrate continuous compliance with 6 NYCRR § 373-2.8(f) for post-closure care by providing documentation of financial assurance to the Commissioner..."
29. Pursuant to 6 NYCRR § 373-2.8(f)(5)(v), owners or operators using the financial test and corporate guarantee must submit updated financial information with the items specified in 6 NYCRR § 373-2.8(f)(5)(iii) to NYSDEC within 90 days after the close of each succeeding fiscal year.
30. 6 NYCRR § 373-2.8 requires owners and operators of final status facilities to maintain financial assurance for post-closure for each hazardous waste management unit using one or more of the financial mechanisms specified therein. These mechanisms include the submission of a financial test and corporate guarantee for post-closure care, in accordance with the requirements set forth in 6 NYCRR § 373-2.8(f)(5).
31. Pursuant to 6 NYCRR § 373-2.8(f)(5), which terms are defined in 6 NYCRR § 373-2.8(b), an owner or operator of a facility may satisfy financial requirements by demonstrating that the owner or operator passes a financial test. To pass this test, the owner or operator must meet the criteria set forth in either 6 NYCRR § 373-2.8(f)(5)(i)(a) or (b)
32. On or about March 25, 2008, pursuant to 6 NYCRR § 373-2.8, B&D Parent submitted a corporate guarantee for B&D to NYSDEC as financial assurance for post-closure care at Respondent's Facility for the fiscal year ending December 31, 2008.
33. For the fiscal year ending December 31, 2008, Respondent did not pass the financial test as specified by 6 NYCRR § 373-2.8(f)(5).
34. Respondent's failure to satisfy the requirements for financial assurance for the fiscal year ending December 31, 2008, constitutes a violation of the NYS Permit which incorporates the requirements of 6 NYCRR § 373-2.8(f).
35. On or about March 24, 2009, pursuant to 6 NYCRR § 373-2.8, B&D Parent submitted a corporate guarantee for B&D to NYSDEC as financial assurance for post-closure care at Respondent's Facility for the fiscal year ending December 31, 2009.
36. For the fiscal year ending December 31, 2009, Respondent did not pass the financial test as specified by 6 NYCRR § 373-2.8(f)(5).

37. Respondent's failure to satisfy the requirements for financial assurance for the fiscal year ending December 31, 2009, constitutes a violation of the NYS Permit.
38. On or about June 25, 2010, pursuant to 6 NYCRR § 373-2.8, B&D Parent submitted a corporate guarantee for B&D, using data from financial statements from the fiscal year ending December 31, 2009.
39. Respondent failed to submit updated information concerning its financial test and corporate guarantee to NYSDEC by March 31, 2010.
40. For the fiscal year ending December 31, 2010, Respondent did not pass the financial test as specified by 6 NYCRR § 373-2.8(f)(5).
41. Respondent's failures to submit updated financial information to NYSDEC by March 31, 2010 and to satisfy the requirements for financial assurance for the fiscal year ending December 31, 2010, constitute violations of the NYS Permit.
42. For the fiscal year ending December 31, 2011, Respondent failed to submit updated information required for its use of a financial test and corporate guarantee to NYSDEC by March 31, 2011.
43. Respondent failed to demonstrate continuous compliance with the NYS Permit for post-closure care by providing documentation of financial assurance by March 31, 2011.
44. On or about August 5, 2011, Respondent commenced using a letter of credit for the amount of \$1,128,000 to satisfy its requirements for financial assurance.

EPA and B&D Activities

45. On or about December 1, 2009, EPA issued to the Respondent a combined Notice of Violation ("NOV") and Information Request Letter ("IRL").
46. On or about February 25, 2010, a duly authorized representative of the Respondent submitted its Response to the combined NOV and IRL and Respondent supplemented its Response at various times thereafter.
47. EPA issued a Complaint to the Respondent on June 30, 2011.
48. In the 2011 Complaint, EPA included two counts in which it alleged Respondent had violated Subtitle C of RCRA by failing to submit updated financial information concerning Respondent's financial test and corporate guarantee to NYSDEC within 90 days after the close of B&D's fiscal years 2009 and 2010.
49. In accordance with the EPA Regional Judicial Officer's ("RJO") grant of extensions, Respondent has not filed an Answer to the 2011 Complaint.

50. On or about July 28, 2011, EPA issued to the Respondent a second IRL.
51. On or about October 5, 2011, a duly authorized representative of the Respondent submitted its response to the second IRL.
52. EPA issued a second Complaint to the Respondent on June 29, 2012.
53. In the 2012 Complaint, EPA alleged Respondent had violated Subtitle C of RCRA by failing to satisfy the requirements for financial assurance for post closure care of its facility for the 2008, 2009, 2010, and 2011 fiscal years which is a violation of Module II of the NYS Permit.
54. In accordance with the RJO's grant of extensions, Respondent has not filed an Answer to the 2012 Complaint.
55. The Parties have agreed to resolve the allegations in the two Complaints in one settlement.

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling these matters expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional allegations of the Complaints; (b) consents to the assessment of the civil penalty as set forth below; (c) consents to making full payment of the civil penalty in accordance with the terms and conditions set forth below; (d) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (e) waives its right to contest or appeal the Final Order.

Based upon the foregoing, and pursuant to Section 3008 of RCRA and 40 C.F.R. § 22.18, it is hereby agreed as follows:

1. Respondent shall maintain continuous and timely financial assurance for post-closure care at the Facility as required by its NYS permit which incorporates by reference the requirements of 6 NYCRR § 373-2.8.
2. Respondent hereby certifies, at the time of its signature to this document that, to the best of its knowledge and belief, it is in compliance with all applicable requirements of RCRA including New York's authorized hazardous waste regulations.
3. B&D shall pay a civil penalty to EPA in the total amount of **NINETY-NINE THOUSAND AND SIX HUNDRED AND SIX DOLLARS (\$99,606)**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is

made by check, then the check shall be made payable to the **Treasurer, United States of America**, and shall be mailed to:

**U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000**

The check shall be identified with a notation thereon listing the following: ***IN THE MATTER OF BLACK & DECKER (U.S.) INC***, and shall bear thereon both the **Docket Number RCRA-02-2011-7104** and **Docket Number RCRA-02-2012-7105**.

Alternatively, if B&D chooses to make the payment by EFT, then B&D shall provide the following information to its remitter bank:

- 1) Amount of Payment.
- 2) SWIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045.**
- 3) Account Code for Federal Reserve Bank of New York receiving payment: **68010727.**
- 4) Federal Reserve Bank of New York ABA routing number: **021030004.**
- 5) Field Tag 4200 of the Fedwire message should read **D 68010727 Environmental Protection Agency.**
- 6) Name of Respondent: **Black & Decker (U.S.) Inc.**
- 7) Case Numbers: **RCRA-02-2011-7104 and RCRA-02-2012-7105.**

Payment shall be received (if made by check) or effected (if implemented by EFT) on or before forty-five (45) calendar days of the Effective Date of this CA/FO.

Whether the payment is made by check or by EFT, B&D shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

**Jeannie M. Yu, Esq.
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, Room 1635
New York, New York 10007-1866**

and

Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, Room 1631
New York, New York 10007-1866

- a. Failure to pay the requisite amount in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.
 - b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C § 3717, on the overdue amount from the date said payment was required to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.
 - c. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the deadline for payment.
4. Respondent admits the jurisdictional allegations of the Complaints, and neither admits nor denies the Findings of Fact and Conclusions of Law in this Consent Agreement.
 5. This CA/FO is being voluntarily and knowingly entered into by the parties to resolve (upon full payment of the civil penalty herein) the civil and administrative claims alleged in both the 2011 Complaint and the 2012 Complaint, subject to the limitations in 40 CFR § 22.31(a).
 6. Respondent hereby waives its right to seek or to obtain any hearing or other administrative or judicial review of any part or provisions of this consent agreement and/or the accompanying final order, and/or on the EPA's Findings of Fact and Conclusions of Law, above.
 7. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms.
 8. Respondent consents to the issuance of the accompanying Final Order.
 9. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.

10. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
11. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action, suit or proceeding to enforce this CA/FO or any of its terms and conditions.
12. Respondent waives its right to request a hearing on the Complaints, this Agreement, or the Final Order included herein, including any right to contest any allegations or findings of fact or conclusions of law contained within these documents.
13. Respondent voluntarily waives any right or remedy it might have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and reply to any memorandum or other communication addressed to, the Regional Administrator of EPA, Region 2, or the Deputy Regional Administrator of EPA, Region 2, where the purpose of such discussion, memorandum or other communication is to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
14. Each party hereto shall bear its own costs and fees in this matter.
15. Respondent agrees that all terms of settlement are set forth herein.
16. Complainant shall mail to Respondent (to the representative designated below) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk:

Marian C. Hwang, Esq.
Attorney for Black & Decker (U.S.) Inc,
Miles & Stockbridge, P.C.
10 Light Street
Baltimore, Maryland 21202
17. Each signatory of this Consent Agreement certifies that he or she is duly and fully authorized to enter into the terms of this Consent Agreement and to legally bind the party on behalf of which he or she signs this Consent Agreement.

RESPONDENT:

BLACK & DECKER (U.S.) INC.

BY: Debi J. Geyer
Authorizing Signature

NAME: DEBI J. GEYER
(PLEASE PRINT)

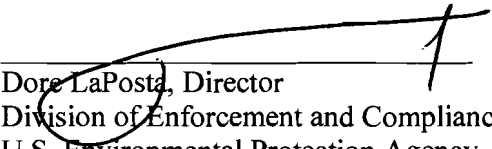
TITLE: VICE PRESIDENT EHS

DATE: SEPT. 20, 2012

In the Matter of Black & Decker (U.S.) Inc. Docket Number RCRA-02-2011-7104 and
Docket Number RCRA-02-2012-7105

COMPLAINANT:

**UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY REGION 2**



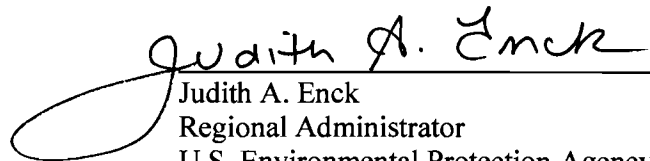
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

DATE: SEPTEMBER 25, 2012

In the Matter of Black & Decker (U.S.) Inc. Docket Number RCRA-02-2011-7104 and
Docket Number RCRA-02-2012-7105

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement. Said Consent Agreement having been duly accepted and entered into by the parties, is hereby ratified, incorporated by reference herein, and issued pursuant to Section 3008 of RCRA and 40 C.F.R. § 22.18(b) (3), as an Order, effective immediately upon filing with the Regional Hearing Clerk of EPA, Region 2.

A handwritten signature in black ink that reads "Judith A. Enck". The signature is written in a cursive style with a large, looping initial "J". A horizontal line is drawn across the signature.

Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

SEP 26 2012

In the Matter of Black & Decker (U.S.) Inc. Docket Number RCRA-02-2011-7104 and
Docket Number RCRA-02-2012-7105

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket numbers, in the following manner to the respective addressees below:

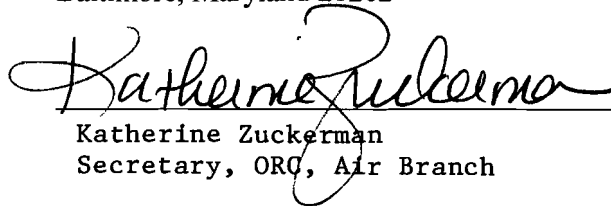
Original and One Copy
By Hand:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

Marian C. Hwang, Esq.
Attorney for Black & Decker (U.S.) Inc,
Miles & Stockbridge, P.C.
10 Light Street
Baltimore, Maryland 21202

Dated: Sept 28, 2012


Katherine Zuckerman
Secretary, ORC, Air Branch