

ALLEN MATKINS LECK GAMBLE & MALLORY LLP
ROBERT D. WYATT (SBN 73240)
JAMES L. MEEDER (SBN 62114)
HENRY LERNER (SBN 077166)
Three Embarcadero Center, 12th Floor
San Francisco, California 94111
Telephone: (415) 837-1515
Facsimile: (415) 837-1516

Attorneys for Petitioner
BLACK & DECKER (U.S.), INC..

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of Cleanup and Abatement Order
No. R8-2005-0053

PETITION FOR REVIEW

Black & Decker (U.S.), Inc. ("Petitioner") hereby files this petition for review and request for a hearing by the State Water Resources Control Board ("State Board") of that certain Cleanup and Abatement Order No. R8-2005-0053 ("Order") issued by the Executive Officer of the California Regional Water Quality Control Board, Santa Ana Region, ("Regional Board") on February 28, 2005, as served on Petitioner on March 2, 2005. This petition for review is filed pursuant to the United States Constitution, the California Constitution, Water Code § 13320 and 23 CCR §§ 2050 et. seq. A copy of the Order and letter of transmittal are attached hereto as Exhibit A.

Petitioner does not seek a stay of the Order at this time for the reason that the Order does not require Petitioner to perform any action at this time.

Petitioner reserves its right to seek a stay of the Order by the State Board in the event the Executive Officer or the Regional Board itself orders Petitioner to perform some specific action in the future.

I. Name and Address of Petitioner

Petitioner can be contacted through its counsel of record.

II. The Regional Board Action for Which This Petition For Review is Sought

The Regional Board action for which this petition is filed is the issuance of a document labeled "Cleanup and Abatement Order No. R8-2005-0053" dated February 28, 2005 and served on Petitioner on March 2, 2005 by the Executive Officer.

III. The Date the Regional Board Acted.

The date of the Regional Board Executive Officer's issuance of the Order is February 28, 2005.

IV. Statement of the Reasons the Action is Inappropriate and Improper.

A. The Order is barred by the doctrine of collateral estoppel and res judicata by virtue of Regional Board Resolution No. R8-2003-0070 dated May 16, 2003 in the matter of Cleanup and Abatement Order No. R8-2002-0051.

B. As regards separate petitioner Emhart Industries, Inc., the Executive Officer failed to comply with the claims requirement of the Connecticut Business Corporations Code Act § 33-887.

C. The "findings of fact" set forth the February 28, 2005 Order are contrary to the evidence based upon a preponderance of the evidence in the record.

D. Black & Decker (U.S.), Inc. is not a "corporate successor" to the alleged liabilities of West Coast Loading Corporation and/or of Kwikset Locks Inc and/or Emhart Industries, Inc.

E. Water Code § 13304 may not be applied retroactively to parties which ceased to exist prior to the statute's enactment.

F. The Order is arbitrary and capricious in that it seeks to impose upon a single entity cleanup and abatement and alternative water supply obligations for actions or failures to act by multiple parties as evidenced by the Regional Board's administrative record.

G. Petitioner does not now have nor has it ever had a possessory interest in the property which is the subject of the Order and thus has no right, power or duty to conduct the actions contemplated but not yet required by the Order.

H. The Order is not a § 13304 action at all in that on its face it requires no action be taken by Petitioner.