Allen Matkins
www.allenmatkins.com

Allen Matkins Leck Gamble & Mallory LLP
Attorneys at Law
Three Embarcadero Center, 12th Floor | San Francisco, CA 94111-4074
Telephone: 415.837.1515 | Facsimile: 415.837.1516

Robert D. Wyatt
E-mail: rwyatt@allenmatkins.com
Direct Dial: 415.273.7420 File Number: E2602-005/SF664261.01

December 29, 2005

VIA ELECTRONIC MAIL
AND FIRST CLASS MAIL

Elizabeth Miller Jennings, Esq.
Senior Staff Counsel
State Water Resources Control Board
Office of Chief Counsel
1001 I Street, 22 Floor
Sacramento, CA 95814

Re: **PETITION FOR REVIEW, REQUEST FOR HEARING, WATER CODE SECTIONS 13267 AND 13304 CLEANUP AND ABATEMENT ORDER NO. R8-2005-0053, AS AMENDED DECEMBER 2, 2005, ISSUED BY THE EXECUTIVE OFFICER OF THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD TO BLACK & DECKER INC.**

Dear Ms. Jennings:

Enclosed please find the Petition for Review and Request for Evidentiary Hearing of Black & Decker Inc. in the above referenced matter. On behalf of Black & Decker Inc., we request that this Petition be held in abeyance pending further notification.

By copy of this letter to Mr. Gerald Thibeault, Executive Officer of the Santa Ana Regional Water Quality Control Board, I hereby request that the administrative record for this matter be prepared and delivered to the State Board, with a copy delivered to the undersigned.

Please do not hesitate to contact me should you have any questions.

Very truly yours,

Robert D. Wyatt

RDW:wl

Enclosure
cc: Gerard J. Thibeault, Executive Oficer SARWQCB
Jorge A. Leon, Esq., SWRCB, OCC

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 INC..

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of Cleanup and Abatement Order No. R8-2005-0053, as Amended	**PETITION FOR REVIEW**

Black & Decker 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 Amended Cleanup and Abatement Order No. R8-2005-0053 ("Amended Order") issued on December 2, 2005 by the Executive Officer of the California Regional Water Quality Control Board, Santa Ana Region, ("Regional Board"). 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 Amended Order and letter of transmittal are attached hereto as Exhibit A.

Petitioner reserves its right to seek a stay of the Amended Order by the State Board.

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 "Amended Cleanup and Abatement Order No. R8-2005-0053" dated December 2, 2005 and served on Petitioner on December 2, 2005 by the Executive Officer. That Amended Order adds Black & Decker Inc. as an alleged discharger.

III. The Date the Regional Board Acted.

The date of the Regional Board Executive Officer's issuance of the Amended Order is December 2, 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 in the December 2, 2005 Amended Order are contrary to the evidence based upon a preponderance of the evidence in the record.

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

E. Water Code §§ 13267 and 13304 may not be applied retroactively to parties which ceased to exist prior to those statutes' enactment.

F. The Amended Order is arbitrary and capricious in that it seeks to impose upon a single entity investigative 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 Amended Order and thus has no right, power or duty to conduct the actions required by the Amended Order.

H. The Order is subject to a Plea in Abatement in that the gravamen of the Amended Order, i.e., (a) whether West Coast Loading Corporation ("WCLC") discharged perchlorate to waters of the state, and, if so, (b) whether Petitioner is statutorily obligated to WCLC or any other party for such alleged liability as is presently the subject of litigation, including consolidated cases pending in the U.S. District Court, Central District of California, Eastern Division, in Riverside, California. (*City of Rialto v. U. S. Department of Defense, et al.*, Case No. 04cv00079.)

I. On February 10, 2005, Emhart Industries, Inc. provided Regional Board staff a Field Investigation Report prepared by ENVIRON International at the request of USEPA and in consultation with Regional Board staff which concludes the former WCLC facility is not a source of contamination in the Rialto/Colton groundwater basin.

J. The Regional Board has not conducted an evidentiary hearing complying with minimal constitutional due process requirements on the allegations set forth in the Amended Order.

K. Black & Decker Inc. is a Delaware Corporation which does not do business in California and which is not subject to the Regional Board's jurisdiction under Water Code Sections 13254 and 13304.

V. Petitioner is Aggrieved.

Petitioner is aggrieved for the reasons set forth in paragraphs III and IV above.

VI. Petitioner's Requested Action by the State Board.

Petitioner respectfully requests that the State Board provide a full and impartial evidentiary hearing on the Amended Order pursuant to the United States Constitution, the California Constitution, Water Code § 13320, 23 CCR § 648 et seq. and Government Code § 11400 et. seq., after full opportunity for discovery, and rescind the Amended Order. This petition for review and request for hearing is requested to be held in abeyance by the State Board pending further actions, if any, by the Executive Officer or the Regional Board.

VII. Statement of Points and Authorities.

Petitioner will provide a detailed statement of points and authorities in the event the Executive Officer or the Regional Board take further action which necessitate Petitioner requesting the State Board to convert this petition to active status.

VIII. List of Interested Persons.

A list of "interested persons" is attached to the Amended Order attached here to as Exhibit A.

IX. Statement of Transmittal of Petition to the Regional Board.

A copy of this petition has been transmitted to the Executive Officer of the Regional Board on December 29, 2005.

X. Request to Regional Board for Preparation of the Administrative Record.

By copy of this amended petition to the Executive Officer of the Regional Board, Petitioner hereby requests the preparation of the administrative record herein.

Respectfully submitted,

Date: December 29, 2005

by: _____
Robert D. Wyatt
Allen Matkins Leck Gamble & Mallory
Attorneys for Petitioner Black & Decker Inc.

cc: Gerard J. Thibeault, Executive Officer, RWQCB, Region 8
Jorge A. Leon, Esq., OCC, SWRCB

California Regional Water Quality Control Board
Santa Ana Region

Alan C. Lloyd, Ph.D.
Agency Secretary

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 – FAX (951) 781-6288 – TTY (951) 782-3221
http://www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

December 2, 2005

Mr. Robert D. Wyatt
Allen Matkins Leck Gamble & Mallory LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074

Ms. Linda H. Biagioni
Vice President, Emhart Industries, Inc.
Vice President for Environmental Affairs, Black & Decker Corporation
701 East Joppa Road
Towson, MD 21286

Ms. Lorraine M. Sedlak
Director, Health, Safety and Environmental
Kwikset Corporation
19701 DaVinci
Lake Forest, CA 92610

AMENDED CLEANUP AND ABATEMENT ORDER NO. R8-2005-0053

Dear Mr. Wyatt, Ms. Biagioni and Ms. Sedlak:

Enclosed is Amended Cleanup and Abatement Order No. R8-2005-0053 issued to Kwikset Locks, Inc., Emhart Industries, Inc., Kwikset Corporation, Black & Decker Inc., and Black & Decker (U.S.), Inc. It is our understanding that Mr. Wyatt represents all of the named parties. If this is incorrect, please provide us with revised information. The Order was issued on February 28, 2005, and has been amended under the Executive Officer's delegated authority. This amendment is being issued consistent with the Notice of Public Hearing dated October 17, 2005, as modified by Ted Cobb, Legal Advisor to the Board, at the Prehearing Conference on November 4, 2005.

If you have any questions, please contact Kurt Berchtold, Assistant Executive Officer, at (951) 782-3286, or Jorge Leon, Senior Staff Counsel, at (916) 341-5180.

Sincerely,

Gerard J. Thibeault
Executive Officer

Exhibit "A"

Enclosure: Amended Cleanup and Abatement Order No. R8-2005-0053

cc (w/enclosure):
Regional Board
Ted Cobb, SWRCB – OCC
Joanne Schneider, Staff Advisory Team
Jorge Leon, SWRCB – OCC
Phil Wyels, SWRCB – OCC
Interested Parties (mailing list attached)

BEFORE THE
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

AMENDED CLEANUP AND ABATEMENT ORDER	)	Order No. R8-2005-0053
ISSUED TO: KWIKSET LOCKS, INC., EMHART INDIUSTRIES, INC., KWIKSET CORPORATION, BLACK & DECKER INC., AND BLACK & DECKER (U.S.), INC.	)	Issued Pursuant to Water Code Section 13267 and 13304

THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SANTA ANA REGION (HEREINAFTER REGIONAL BOARD), FINDS THAT:

1. In February 1951, Kwikset Locks, Inc. (KLI), a manufacturer of household door locks, formed the West Coast Loading Corporation (WCLC).

2. During 1951 and 1952, WCLC (as a subsidiary of KLI) constructed a manufacturing plant on 160 acres of property, consisting of the southwest quarter of Section 21, Township 1 North, Range 5 West, San Bernardino Base and Meridian in the City of Rialto, County of San Bernardino, State of California. From 1951 to 1957, WCLC (as a subsidiary of KLI) wholly owned and occupied this property.

3. During the period from 1952 to 1957, WCLC used the 160-acre property for the manufacture of explosive cartridges, photoflash cartridges, flares, ground burst simulators, and other incendiary devices. WCLC manufactured many of these products under subcontract to KLI for use by the military, under KLI's contract with the U.S. Government. WCLC also processed chemicals at the Rialto site for use by other government contractors in the manufacture of solid rocket propellant. WCLC also processed chemicals for the manufacture of flares and other products containing perchlorate for non-defense purposes.

4. From 1952 (or earlier) to 1957, various chemicals were delivered, stored, and used for WCLC's manufacturing activities at the 160-acre site. The chemicals that were used, stored, and processed at WCLC during their occupancy of the site included ammonium perchlorate, potassium perchlorate, potassium chlorate, aluminum, iron oxide, and various

compounds of nitrate, lead, and barium, as well as trichloroethylene (TCE) and other organic solvents.

5. WCLC's records indicate that very large amounts of perchlorate salts were handled at the facility. For example, a purchase order dated September 2, 1955, and delivery confirmations show that 47,000 pounds of potassium perchlorate were purchased from Western Electrochemical Co., Henderson, Nevada, and delivered to Rialto for use by WCLC.

6. As a further example, invoices and purchase orders, dated March 8, 1957, indicate that Grand Central Rocket Company received 43,250 pounds of ammonium perchlorate from WCLC after WCLC processed (i.e., dried) the ammonium perchlorate to a moisture content of 0.03% or less. The purchase orders state that Grand Central Rocket Company had supplied the material to WCLC. These business records for the work done under contract with Grand Central Rocket Company demonstrate that the handling, drying, and storage of very large amounts of perchlorate salts occurred at the WCLC site. The stringent requirements for low moisture are specific to the requirements for use of ammonium perchlorate as an oxidizer in the manufacture of solid propellant materials. Grand Central Rocket Company was in the business of manufacturing solid rocket propellant for use in military weapons systems during 1957, concurrent with the date of the purchase orders and the WCLC invoices for the 43,250 pounds of ammonium perchlorate.

7. WCLC's records included "standard operating procedures" (SOPs) for processing potassium perchlorate for use in WCLC products. WCLC's SOPs for the drying of potassium perchlorate state that potassium perchlorate powder was moved from barrels to uncovered trays, and then screened to remove lumps. The open trays were then moved to an oven in a different building using a hand-truck. Sacks were then filled with potassium perchlorate and stored indoors after drying was complete.

8. WCLC documents and deposition testimony from former WCLC employees establish a multi-step process for the manufacture of photoflash cartridges, including drying, screening, a second round of drying, weighing, mixing, and loading. Each of these steps involved the handling, processing and/or movement of potassium perchlorate in order to mix photoflash powder. The drying, screening, weighing, mixing, and loading all took place in different rooms. WCLC documents further reveal that approximately 4%, by weight, of the perchlorate used to make photoflash cartridges was expected to be lost during the manufacturing process. WCLC documents show that WCLC used about 50,000 pounds of perchlorate for the manufacture of photoflash cartridges during the period from 1952 to 1957. Therefore, WCLC expected that 2,000 pounds

of perchlorate would have been lost during the manufacturing process for these cartridges at the site.

9. It is reasonable to conclude that some spillage would have occurred during the handling, drying, screening, weighing, mixing, loading, transporting, and storage of ammonium perchlorate and potassium perchlorate at WCLC. Also, given the very fine nature of the dried, screened perchlorate powder, it is reasonable to conclude that the process of transporting perchlorate from room to room and the physical movement of the perchlorate powder during the drying, screening, weighing, mixing, and loading processes would result in the mobilization of perchlorate powder into the air, and subsequent deposition onto floors, walls, ceilings, and other surfaces.

10. This conclusion is supported by numerous pages throughout the SOPs and the "standard non-operating procedures" for chemical handling at the WCLC facility, which include requirements for sweeping up spilled powder, wiping spillage with wet rags, and wet-mopping of spills and powder deposited on various surfaces during processing. These written procedures include specific instructions for cleaning up spills of chemicals from tabletops, floors and sink areas, and disposing of soiled rags, towels, filters and cups into "slop crocks" that were stored in the WCLC work rooms and magazines ("igloos" or "bunkers"). The site janitor's job included sweeping the buildings, burning of scrap and explosive materials, and disposal of trash and metal cans at WCLC's on-site dump.

11. It is reasonable to conclude that the extensive written procedures were developed because spillage and surface accumulation of chemical products, including perchlorate salts, was expected to occur, and routinely did occur, during processing of those products at the WCLC facility. Testimony and WCLC documents reveal that the spillage and/or accumulation of perchlorate salts on equipment, walls, floors, and ceilings led to at least one significant explosion. Testimony of former employees of WCLC that was provided during depositions that were conducted beginning in 2004, verifies that, in the buildings that were used by WCLC for weighing, screening, drying, mixing and loading perchlorate salts, the equipment, floors, walls, and ceilings were washed with rags and water-wet mops to remove chemical dust at least 4 times per shift, as specified in the SOPs.

12. Deposition testimony of former WCLC employees also indicates that the mops used for cleaning the chemical residue were rinsed with water in buckets, and the contents of the buckets were dumped onto the bare ground outside of the buildings. Based on the use of perchlorate salts in these buildings, the water that was routinely dumped on the ground would have contained perchlorate. Further testimony from WCLC employees

indicates that the metal trays that were used by WCLC employees for the screening and drying of perchlorate were taken outdoors to be cleaned. The residual perchlorate salts that remained on the trays were rinsed from the trays onto the bare ground, using a faucet and water hose.

13. It is also reasonable to conclude, and former WCLC employees have testified, that during the period from 1952 to 1957, WCLC stored and disposed of chemical-soiled rags, cans, and other wastes at the site, as directed by WCLC's written procedures. This conclusion is based upon WCLC's records and the deposition testimony of former WCLC employees, as well as staff's collective knowledge and experience in the oversight of investigation and cleanup activities at numerous industrial sites throughout the Santa Ana Region where chemicals, including perchlorate salts and volatile organic compounds (VOCs) such as TCE, were used during the 1950s and 1960s. Standard industrial practices at such facilities in the 1950s and 1960s typically resulted in some spillage and on-site disposal of chemical products. Deposition testimony from former WCLC employees indicates that WCLC operated an on-site laundry, used for the washing of the soiled rags. Since the 160-acre site was not sewered, any disposal of chemicals to sinks, drains, and floor drains would have entered on-site septic systems and gone to groundwater. The laundry drain apparently discharged directly onto the bare ground.

14. According to WCLC's "Safety Regulations for Handling Azides, Styphnates, and Similar Explosives," (dated January 3, 1954 and approved by WCLC's Executive Vice-President and General Manager, Gerald D. Linke), the used sponges and cleaning rags, cleaning water and other waste liquids generated from operations, including mixing photoflash powder containing perchlorate, were to be "taken to the disposal pit south of the plant site and drained into the ground."

15. In addition to the explosives and incendiary devices that were manufactured and the large amounts of perchlorate salts that were stored and handled at the site, WCLC owned "igloos" on adjacent land located southwest of the 160-acre property. WCLC leased space in the igloos to other parties, and also reserved space in the igloos for shared use by WCLC, expressly for the storage of explosives. Many explosives are known to contain perchlorate salts, so it is reasonable to conclude that perchlorate salts were stored in the igloos by WCLC.

16. Deposition testimony of former WCLC employees indicates that drums of organic solvents, including TCE, were stored at various locations at WCLC during its period of operation. When the solvent was needed, a drum of the liquid was placed horizontally onto a metal or wooden "cradle", and the liquid was then dispensed through a spigot. Former WCLC employees

have testified that, when solvent was being dispensed from the drums, it was common for some amount of solvent to drip or flow from the spigot into a metal can on the floor below the spigot. When the can became full, employees would take the can and "toss it out the back door" onto the bare ground.

17. Former WCLC employees have also testified that rags soaked in TCE were used to clean at least one of the chemical mixers by hand at WCLC. The rags were dipped into a bucket of TCE, and excess solvent was squeezed out of the rags periodically throughout the workday. According to deposition testimony, employees took the solvent-soaked rags outside of the mixer building to wring excess TCE from the rags onto the bare ground. Eyewitness testimony from at least one former WCLC employee describes the disposal of empty solvent drums. The drums were disposed of on-site at WCLC by crushing them with heavy equipment, digging large holes in the ground and then burying the drums. It is reasonable to conclude that some chemical residue of the solvent would have been in the drums, and that this residual solvent may have leaked onto the ground, and discharged or threatened to discharge into the groundwater below.

18. The following findings describe the corporate history of WCLC, and explain the legal liability of KLI, Emhart Industries, Inc., Kwikset Corporation, Black & Decker Inc. and Black & Decker (U.S.), Inc. for WCLC's discharges to waters of the state. Various legal theories apply to each named party supporting the conclusion that each is responsible for WCLC's discharges. These theories include express merger, de facto merger, express assumption of liability, and continuation of the name and product line:

    a. In February 1951, KLI formed WCLC as a subsidiary to conduct work at the Rialto location. On July 3, 1957, WCLC was merged with KLI. According to a July 1, 1957 KLI Board of Directors resolution, quoted in KLI's Certificate of Ownership filed with the State of California, KLI assumed "all the liabilities and obligations" of WCLC, and "shall be liable therefore in the same manner as if it had itself incurred such liabilities and obligations."

    b. On July 1, 1957, American Hardware Corporation (AHC), a Connecticut corporation, acquired KLI and its subsidiaries, including WCLC. This is a key transaction in resolving the other named parties' liabilities for WCLC's conduct. While numerous documents regarding the KLI transfer to AHC have been uncovered during the investigation, a reported June 1957 agreement between AHC and KLI has not been produced by the named parties. That document would likely shed additional light on the precise nature of the acquisition of KLI by AHC.

Nonetheless, numerous other contemporaneous documents, some examples of which are described below, have been uncovered and make plain that the transfer from KLI to AHC was, in fact and in law, a merger.

c. On July 19, 1957, KLI sold the 160-acre Rialto property to B.F. Goodrich. KLI ceased its manufacturing activities in Rialto, but continued operating as a "division" of AHC, doing business in Anaheim, California, producing Kwikset's well-known product line of household door locks.

d. On June 30, 1958, KLI was dissolved. AHC assumed the liabilities of KLI and WCLC, and continued producing the Kwikset product line at the former KLI Anaheim facility.

e. An important document that explains the nature of the AHC purchase of KLI is the "Minutes of Regular Meeting of the Board of Directors, The American Hardware Corporation," dated June 5, 1958. During that meeting, the Directors took action related to the purchase of KLI. One action was to approve modification of a loan to secure the purchase of KLI. Another action taken by the Directors related to the dissolution of KLI. The minutes state, in part:

> "WHEREAS, the Board of Directors of KWIKSET LOCKS, INC. ADOPTED A Plan of Dissolution to be effected by the distribution and transfer of all of the assets and business to this corporation as the owner and holder of all of the issued and outstanding shares of capital stock upon the condition that this corporation expressly assume and guarantee in good faith to pay all debts, liabilities and obligations of KWIKSET LOCKS, INC. in existence on the date of such distribution and transfer of its assets and business, contingent or otherwise known or unknown...
> ***
> "NOW, THEREFORE, BE IT RESOLVED, that the President or any Vice President, and the Secretary or Assistant Secretary of this corporation, be and they are hereby authorized and directed in the name of and on behalf of this corporation (a) to execute and deliver to KWIKSET LOCKS, INC., an appropriate form of assumption agreement expressly assuming all obligations and liabilities of KWIKSET LOCKS, INC., as aforesaid..."

The AHC Directors minutes make clear that AHC expressly intended to assume responsibility for the obligations – known and unknown – of KLI. This transaction results in AHC's liability for KLI's, and, by

extension, WCLC's liabilities. That liability was then transferred forward to the other named entities by the series of corporate transactions that are described below.

f. Another contemporaneous document, IRS Form 7004, "Application for Automatic Extension of Time," was submitted to the IRS on behalf of KLI by C. K. Nelson, Assistant Treasurer, on September 15, 1958. This document contains KLI's stated reason for the requested extension: "**The corporation was merged with another corporation** as of June 30, 1958." (emphasis added).

g. Another contemporaneous tax form, IRS Form 843, "Claim," dated November 28, 1961, was submitted on behalf of "KLI, Transferor" and "American Hardware Corporation, Transferor." In Schedule A, the following statement is contained in the second paragraph:

> "Kwikset Locks, Incorporated was substantially a **wholly-owned subsidiary of American Hardware Corporation** as of January 1, 1958. On June 30, 1958, Kwikset Locks, Inc. was dissolved. **All the assets and liabilities were transferred to the parent corporation**, and operations were continued as Kwikset Division of the American Hardware Corporation." (emphasis added).

h. AHC merged with Emhart Manufacturing Company, a Delaware Corporation, in April 1964. The surviving corporation in the merger was AHC, under a new corporate name, "Emhart Corporation," as of June 30, 1964.

i. Emhart Corporation became Emhart Industries, Inc. (EII), on May 4, 1976.

j. Kwikset Corporation was incorporated in California in 1985 as a wholly-owned subsidiary of EII, and was capitalized using the net assets of the Kwikset Division of EII. Kwikset Corporation thus retains the name, product line, and assets of the former KLI and Kwikset Division (of AHC and later of EII). Moreover, Kwikset Corporation is the entity that has custody and possession of historical documents of WCLC, KLI, and AHC.

k. EII was acquired by Black & Decker (U.S.), Inc., a subsidiary of the Black & Decker Corporation, in 1989. Black & Decker (U.S.), Inc. participated in an arrangement in 1998 to resolve certain insurance liabilities related to KLI. In doing so, Black & Decker (U.S.), Inc. held itself out as having authority over KLI's insurance affairs. The exercise of such authority is tantamount to an admission by Black & Decker

(U.S.), Inc. that it has accepted the liabilities as well as any benefits attendant to the exercise of control over the affairs of KLI.

l. EII is in the process of winding up its business and affairs, having filed a Certificate of Dissolution in the State of Connecticut in 2002.

m. AHC's purchase of KLI was more than a mere stock purchase and assumption of known liabilities, as EII has claimed. It constitutes a complete merger. A merger, unlike a purchase, results in the assumption of the liabilities and assets of the merged corporation by the surviving corporation. The documents noted above in e., f. and g., contemporaneously prepared at or around the time of the 1957 AHC acquisition, demonstrate that KLI and AHC understood and believed the 1957 purchase of KLI to be a "merger," with the result that AHC assumed all of KLI's liabilities both known and unknown. In addition, a Kwikset Corporation publication, entitled "Kwikset A Black & Decker Company Employee Handbook," contains the following quotation:

> "In 1957, Kwikset Locks, Inc. merged with the American Hardware Corporation of New Britain, Connecticut and subsequently became known as the Kwikset Division." Moreover, the Black & Decker website, as it appeared in 2002, indicated under "Company History" that KLI was merged into AHC. Notably, during the investigation of this matter in 2002, and shortly after this fact was pointed out to Kwikset's and EII's representatives, the website was changed to remove this statement."

19. Black & Decker (U.S.), Inc., by virtue of its status as parent corporation of EII and having received the stock of EII upon dissolution, is a legal successor to EII's and WCLC's liabilities under this order.

20. At the time of EII's dissolution, Black & Decker Inc. (a Delaware corporation) held itself out as a guarantor of the liabilities of EII. On that basis, Black & Decker Inc. is, by extension, a successor of WCLC.

21. KLI, EII, Kwikset Corporation, Black & Decker Inc. and Black & Decker (U.S.), Inc., are the corporate successors of WCLC, and are legally liable for discharges of pollutants caused by WCLC. WCLC and its legal successors have caused or permitted, or are causing or permitting, waste, i.e., perchlorate, to be discharged to waters of the state, and have created, or threaten to create, a condition of pollution or nuisance.

22. Perchlorate salts are highly soluble and dissociate in water to form perchlorate ions. There are currently no state or federal drinking water standards for perchlorate. However, the California Office of

Environmental Health Hazard Assessment has established a Public Health Goal (PHG) for perchlorate of 6 parts per billion (ppb). The PHG is the level of perchlorate in drinking water that does not cause or contribute to adverse health effects. Perchlorate is currently present in the Rialto, Riverside - B, and Chino North Groundwater Management Zones. The West Valley Water District, the Fontana Water Company, and the Cities of Rialto and Colton had limited or ceased the use of 22 municipal water supply wells that contain perchlorate (several of these wells have been put back into operation after having perchlorate treatment systems installed).

23. TCE and other VOCs have been detected in groundwater in the Rialto Groundwater Management Zone, at concentrations above the California Department of Health Services maximum contaminant levels (MCLs).

24. Municipal water supply wells in the Rialto, Riverside - B, and Chino North Groundwater Management Zones have been, or are likely to be, affected by the perchlorate and VOC pollution in these basins. Regional Board staff is currently attempting to identify all parties that may have discharged perchlorate in this area.

25. The beneficial uses of the Rialto, Riverside - B, and Chino North Groundwater Management Zones include:

    A. Municipal and domestic supply,
    B. Agricultural supply,
    C. Industrial service supply, and
    D. Industrial process supply.

26. California Water Code Section 13304 allows the Regional Board to recover reasonable expenses from responsible parties for overseeing cleanup and abatement activities. It is the Regional Board's intent to recover such costs for regulatory oversight work conducted in accordance with this order.

27. This enforcement action is being taken by a regulatory agency to enforce a water quality law. Such action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.) in accordance with Section 15321, Article 19, Division 3, Title 14, California Code of Regulations.

28. It is reasonable to conclude that the WCLC activities described in Findings 1 –17, above, have led to the presence of perchlorate and VOC's in the soil and the groundwater in the vicinity of the former WCLC site. A soil and groundwater investigation is necessary to define the vertical and lateral extent of the perchlorate and VOCs that are discharging, have been discharged, or threaten to be discharged, from the former WCLC facility.

California Water Code Section 13267 authorizes the Regional Board to require a technical or monitoring report from one who has or is suspected of discharging wastes to the waters of the State.

29. It is appropriate to order KLI, EII, Kwikset Corporation, Black & Decker Inc. and Black & Decker (U.S.), Inc., to clean up and abate the effects of the discharge of perchlorate and VOCs from property that was formerly owned and controlled by their corporate predecessors, WCLC and KLI.

30. The former 160-acre WCLC property now consists of numerous separate parcels, with multiple landowners. Since 1964, continuing through the present, various tenants involved in pyrotechnics have occupied portions of the site.

31. Orders have been issued to former tenants or former owners of the 160-acre parcel and the adjacent property where WCLC's igloos (bunkers) were located. Additional orders may be issued, if Regional Board staff obtains additional information indicating that other specific tenants or owners have also discharged perchlorate that is present in the groundwater.

IT IS HEREBY ORDERED THAT, pursuant to Section 13267 and 13304, Article 1, Chapter 5, Division 7, of the California Water Code, KLI, EII, Kwikset Corporation, Black & Decker Inc. and Black & Decker (U.S.), Inc., shall cleanup and abate the effects of the discharges at the Rialto properties as follows:

1. By 60 days from the date the Regional Board affirms this Order, submit a work plan and time schedule to define the lateral and vertical extent of the perchlorate and VOCs in the soil and groundwater at the 160-acre site that are discharging, have been discharged, or threaten to be discharged, from the former WCLC facility. The work plan must include a proposal for advancing a sufficient number of soil borings at locations where perchlorate or VOCs were discharged, including borings to groundwater, and collecting representative samples from the borings, to characterize the presence of perchlorate and VOCs in the soil. The work plan must also include a proposal for drilling a sufficient number of groundwater monitoring wells, and collecting groundwater samples from discrete vertical intervals, to characterize the presence of perchlorate and VOCs in the groundwater. The work plan, subject to the approval of the Executive Officer, shall be implemented in accordance with the time schedule approved by the Executive Officer.

2. By 60 days from the date the Regional Board affirms this Order, submit a work plan and time schedule to define the lateral and vertical extent of the perchlorate and VOCs in the groundwater downgradient of the 160-acre site and upgradient of West Valley Water District Well No. 22. The work

plan must include a proposal for drilling a sufficient number of groundwater monitoring wells, and collecting groundwater samples from discrete vertical intervals in the various water bearing zones, to characterize the extent of perchlorate and VOCs in groundwater in this area. The work plan, subject to the approval of the Executive Officer, shall be implemented in accordance with the time schedule approved by the Executive Officer.

3. Prepare and implement any additional work plans that the Executive Officer deems necessary to sufficiently characterize the lateral and vertical extent of perchlorate and VOCs that are discharging, have been discharged, or threaten to be discharged, from the former WCLC facility, in the areas described in Items 1 and 2, above. The work plans, subject to the approval of the Executive Officer, shall be implemented in accordance with the time schedules approved by the Executive Officer.

4. If, based on the information obtained from implementing the work plans described in Items 1, 2 or 3, above, the Executive Officer determines that interim remedial action is necessary, in the areas described in Items 1 or 2, above, to clean up or contain (abate) the perchlorate or VOCs that are discharging, have been discharged, or threaten to be discharged from the former WCLC facility, submit an interim remedial action plan, including an implementation schedule, to cleanup or abate the effects of the perchlorate and VOCs that are discharging, have been discharged, or threaten to be discharged, from the former WCLC facility. The interim remedial action plan and implementation schedule shall be submitted within 60 days of the Executive Officer's notification of the requirement to submit an interim remedial action plan. The interim remedial action plan, subject to the approval by the Executive Officer, and following a public meeting to receive comments on the interim remedial action plan, shall be implemented in accordance with the time schedule approved by the Executive Officer.

5. If, based on the information obtained from implementing the work plans described in Items 1, 2 or 3, above, or any other information that is generated by other parties, the Executive Officer determines that additional groundwater characterization or interim remedial action is necessary downgradient of West Valley Water District Well No. 22 to clean up or abate the effects of the perchlorate and VOCs that are discharging, have been discharged, or threaten to be discharged from the former WCLC facility, submit a work plan for further characterization or an interim remedial action plan, as directed by the Executive Officer. The work plan or interim remedial action plan shall be submitted within 60 days of the Executive Officer's notification of the requirement to submit the work plan or interim remedial action plan. The work plan for further characterization, subject to the approval of the Executive Officer, shall be

implemented in accordance with the time schedule approved by the Executive Officer. The interim remedial action plan, in part, shall provide for replacement water service, which may include wellhead treatment, for any water supply wells the Executive Officer determines have been impacted, or are threatened to be impacted, by discharges from the former WCLC facility. The interim remedial action plan, subject to the approval by the Executive Officer, and following a public meeting to receive comments on the interim remedial action plan, shall be implemented in accordance with the time schedule approved by the Executive Officer.

6. When the Executive Officer determines that the lateral and vertical extent of the perchlorate and VOCs in soil and groundwater that are discharging, have been discharged, or threaten to be discharged, from the former WCLC facility have been adequately characterized, submit a feasibility study and a final remedial action plan to cleanup or abate the effects of the perchlorate and VOCs that are discharging, have been discharged, or threaten to be discharged, from the former WCLC facility. The final remedial action plan may contain any interim remedial actions that have been implemented. The feasibility study and remedial action plan shall be submitted within 120 days of the Executive Officer's request for a feasibility study and remedial action plan. When requested by the Executive Officer, and following a public meeting to receive comments on the remedial action plan, implement the remedial action plan in accordance with the time schedule approved by the Executive Officer.

This Order, originally issued on February 28, 2005, is hereby amended under the Executive Officer's delegated authority.

Gerard J. Thibeault
Executive Officer

December 2, 2005

BEFORE THE
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

AMENDED CLEANUP AND ABATEMENT ORDER	Order No. R8-2005-0053
ISSUED TO: KWIKSET LOCKS, INC., EMHART INDIUSTRIES, INC., KWIKSET CORPORATION, BLACK & DECKER INC., AND BLACK & DECKER (U.S.), INC.	Issued Pursuant to Water Code Section 13267 and 13304

~~For~~
~~Emhart Industries, Inc.~~
~~and~~
~~Black & Decker (U.S.), Inc.~~
~~and~~
~~Black & Decker Inc.?~~
~~and~~
~~Black & Decker....~~

~~Corporate Successors of the~~
~~West Coast Loading Corporation~~

~~Formerly Located on the 160-Acre Property Bounded Approximately by~~
~~Casa Grande Park Avenue on the North, Locust Avenue on the East,~~
~~the Extension of Alder Avenue on the West, and~~
~~the Extension of Summit Avenue on the South,~~
~~City of Rialto, San Bernardino County~~

THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SANTA ANA REGION (HEREINAFTER REGIONAL BOARD), FINDS THAT:

1. In February 1951, Kwikset Locks, Inc. (KLI), a manufacturer of household door locks, formed the West Coast Loading Corporation (WCLC).

2. During 1951 and 1952, WCLC (as a subsidiary of KLI) constructed a manufacturing plant on 160 acres of property, consisting of the southwest quarter of Section 21, Township 1 North, Range 5 West, San Bernardino

Base and Meridian in the City of Rialto, County of San Bernardino, State of California. From 1951 to 1957, WCLC (as a subsidiary of KLI) wholly owned and occupied this property.

3. During the period from 1952 to 1957, WCLC used the 160-acre property for the manufacture of explosive cartridges, photoflash cartridges, flares, ground burst simulators, and other incendiary devices. WCLC manufactured many of these products under subcontract to KLI for use by the military, under KLI's contract with the U.S. Government. WCLC also processed chemicals at the Rialto site for use by other government contractors in the manufacture of solid rocket propellant. WCLC also processed chemicals for the manufacture of flares and other products containing perchlorate for non-defense purposes.

4. From 1952 (or earlier) to 1957, various chemicals were delivered, stored, and used for WCLC's manufacturing activities at the 160-acre site. The chemicals that were used, stored, and processed at WCLC during their occupancy of the site included ammonium perchlorate, potassium perchlorate, potassium chlorate, aluminum, iron oxide, and various compounds of nitrate, lead, and barium, as well as trichloroethylene (TCE) and other organic solvents.

5. WCLC's records indicate that very large amounts of perchlorate salts were handled at the facility. For example, a purchase order dated September 2, 1955, and delivery confirmations show that 47,000 pounds of potassium perchlorate were purchased from Western Electrochemical Co., Henderson, Nevada, and delivered to Rialto for use by WCLC.

6. As a further example, invoices and purchase orders, dated March 8, 1957, indicate that Grand Central Rocket Company received 43,250 pounds of ammonium perchlorate from WCLC after WCLC processed (i.e., dried) the ammonium perchlorate to a moisture content of 0.03% or less. The purchase orders state that Grand Central Rocket Company had supplied the material to WCLC. These business records for the work done under contract with Grand Central Rocket Company demonstrate that the handling, drying, and storage of very large amounts of perchlorate salts occurred at the WCLC site. The stringent requirements for low moisture are specific to the requirements for use of ammonium perchlorate as an oxidizer in the manufacture of solid propellant materials. Grand Central Rocket Company was in the business of manufacturing solid rocket propellant for use in military weapons systems during 1957, concurrent with the date of the purchase orders and the WCLC invoices for the 43,250 pounds of ammonium perchlorate.

7. WCLC's records included "standard operating procedures" (SOPs) for processing -potassium perchlorate for use in WCLC products. WCLC's SOPs for the drying of potassium perchlorate state that potassium perchlorate powder was moved from barrels to uncovered trays, and then screened to remove lumps. The open trays were then moved to an oven in a different building using a hand-truck. Sacks were then filled with potassium perchlorate and stored indoors after drying was complete.

8. WCLC documents and deposition testimony from former WCLC employees establish a multi-step process for the manufacture of photoflash cartridges, including drying, screening, a second round of drying, weighing, mixing, and loading. Each of these steps involved the handling, processing and/or movement of potassium perchlorate in order to mix photoflash powder. The drying, screening, weighing, mixing, and loading all took place in different rooms. WCLC documents further reveal that approximately 4%, by weight, of the perchlorate used to make photoflash cartridges was expected to be lost during the manufacturing process. WCLC documents show that WCLC used about 50,000 pounds of perchlorate for the manufacture of photoflash cartridges during the period from 1952 to 1957. Therefore, WCLC expected that 2,000 pounds of perchlorate would have been lost during the manufacturing process for these cartridges at the site.

9. It is reasonable to conclude that some spillage would have occurred during the handling, drying, screening, weighing, mixing, loading, transporting, and storage of ammonium perchlorate and potassium perchlorate at WCLC. Also, given the very fine nature of the dried, screened perchlorate powder, it is reasonable to conclude that the process of transporting perchlorate from room to room and the physical movement of the perchlorate powder during the drying, screening, weighing, mixing, and loading processes would result in the mobilization of perchlorate powder into the air, and subsequent deposition onto floors, walls, ceilings, and other surfaces.

10. This conclusion is supported by numerous pages throughout the SOPs and the "standard non-operating procedures" for chemical handling at the WCLC facility, which include requirements for sweeping up spilled powder, wiping spillage with wet rags, and wet-mopping of spills and powder deposited on various surfaces during processing. These written procedures include specific instructions for cleaning up spills of chemicals from tabletops, floors and sink areas, and disposing of soiled rags, towels, filters and cups into "slop crocks" that were stored in the WCLC work rooms and magazines ("igloos" or "bunkers"). The site janitor's job

included sweeping the buildings, burning of scrap and explosive materials, and disposal of trash and metal cans at WCLC's on-site dump.

11. It is reasonable to conclude that the extensive written procedures were developed because spillage and surface accumulation of chemical products, including perchlorate salts, was expected to occur, and routinely did occur, during processing of those products at the WCLC facility. Testimony and WCLC documents reveal that the spillage and/or accumulation of perchlorate salts on equipment, walls, floors, and ceilings led to at least one significant explosion. Testimony of former employees of WCLC that was provided during depositions that were conducted beginning in 2004, verifies that, in the buildings that were used by WCLC for weighing, screening, drying, mixing and loading perchlorate salts, the equipment, floors, walls, and ceilings were washed with rags and water-wet mops to remove chemical dust at least 4 times per shift, as specified in the SOPs.

12. Deposition ~~T~~testimony of former WCLC employees also indicates that the mops used for cleaning the chemical residue were rinsed with water in buckets, and the contents of the buckets were dumped onto the bare ground outside of the buildings. Based on the use of perchlorate salts in these buildings, the water that was routinely dumped on the ground would have contained perchlorate. Further testimony from WCLC employees indicates that the metal trays that were used by WCLC employees for the screening and drying of perchlorate were taken outdoors to be cleaned. The residual perchlorate salts that remained on the trays were rinsed from the trays onto the bare ground, using a faucet and water hose.

13. It is also reasonable to conclude, and former WCLC employees have testified, that during the period from 1952 to 1957, WCLC stored and disposed of chemical-soiled rags, cans, and other wastes at the site, as directed by WCLC's written procedures. This conclusion is based upon WCLC's records and the deposition testimony of former WCLC employees, as well as staff's collective knowledge and experience in the oversight of investigation and cleanup activities at numerous industrial sites throughout the Santa Ana Region where chemicals, including perchlorate salts and volatile organic compounds (VOCs) such as TCE, were used during the 1950s and 1960s. Standard industrial practices at such facilities in the 1950s and 1960s typically resulted in some spillage and on-site disposal of chemical products. Deposition ~~T~~testimony from former WCLC employees indicates that WCLC operated an on-site laundry, used for the washing of the soiled rags. Since the 160-acre site was not sewered, any disposal of chemicals to sinks, drains, and floor drains would have entered on-site septic systems and gone to

groundwater. The laundry drain apparently discharged directly onto the bare ground.

14. According to WCLC's "Safety Regulations for Handling Azides, Styphnates, and Similar Explosives," (dated January 3, 1954 and approved by WCLC's Executive Vice-President and General Manager, Gerald D. Linke), the used sponges and cleaning rags, cleaning water and other waste liquids generated from operations, including mixing photoflash powder containing perchlorate, were to be "taken to the disposal pit south of the plant site and drained into the ground."

15. In addition to the explosives and incendiary devices that were manufactured and the large amounts of perchlorate salts that were stored and handled at the site, WCLC owned "igloos" on adjacent land located southwest of the 160-acre property. WCLC leased space in the igloos to other parties, and also reserved space in the igloos for shared use by WCLC, expressly for the storage of explosives. Many explosives are known to contain perchlorate salts, so it is reasonable to conclude that perchlorate salts were stored in the igloos by WCLC.

16. Deposition ~~T~~testimony of former WCLC employees indicates that drums of organic solvents, including TCE, were stored at various locations at WCLC during its period of operation. When the solvent was needed, a drum of the liquid was placed horizontally onto a metal or wooden "cradle", and the liquid was then dispensed through a spigot. Former WCLC employees have testified that, when solvent was being dispensed from the drums, it was common for some amount of solvent to drip or flow from the spigot into a metal can on the floor below the spigot. When the can became full, employees would take the can and "toss it out the back door" onto the bare ground.

17. Former WCLC employees have also testified that rags soaked in TCE were used to clean at least one of the chemical mixers by hand at WCLC. The rags were dipped into a bucket of TCE, and excess solvent was squeezed out of the rags periodically throughout the workday. According to deposition testimony, employees took the solvent–soaked rags outside of the mixer building to wring excess TCE from the rags onto the bare ground. Eyewitness testimony from at least one former WCLC employee describes the disposal of empty solvent drums. The drums were disposed of on-site at WCLC by crushing them with heavy equipment, digging large holes in the ground and then burying the drums. It is reasonable to conclude that some chemical residue of the solvent would have been in the drums, and that this residual solvent may have leaked onto the

ground, and discharged or threatened to discharge into the groundwater below.

~~16.~~18. The following findings ~~explain~~ describe the corporate history of WCLC, and ~~specifically describe~~ explain the ~~direct~~ legal ~~successorship~~liability ~~from WCLC to~~ of KLI, Emhart Industries, Inc., Kwikset Corporation, Black & Decker Inc. and Black & Decker (U.S.), Inc. for WCLC's discharges to waters of the state. Various legal theories apply to each named party supporting the conclusion that each is responsible for WCLC's discharges. These theories include express merger, de facto merger, express assumption of liability, and continuation of the name and product line:

a. ~~a.~~ In February 1951, KLI formed WCLC as a subsidiary to conduct work at the Rialto location. On July 3, 1957, WCLC was merged with KLI. According to a July 1, 1957 KLI Board of Directors resolution, quoted in KLI's Certificate of Ownership filed with the State of California, KLI assumed "all the liabilities and obligations" of WCLC, and "shall be liable therefore in the same manner as if it had itself incurred such liabilities and obligations."

b. On July 1, 1957, American Hardware Corporation (AHC), a Connecticut corporation, acquired KLI and its subsidiaries, including WCLC. This is a key transaction in resolving the other named parties' liabilities for WCLC's conduct. While numerous documents regarding ~~corporate~~ the KLI transfers to AHC ~~and mergers involving these entities~~ have been uncovered during the investigation ~~of this matter~~, a reported June 1957 agreement between AHC and KLI has not been produced by ~~Emhart Industries, Inc~~the named parties. That document ~~may~~ would likely shed additional light on the precise nature of the acquisition of KLI by AHC. ~~However~~Nonetheless, numerous other contemporaneous documents, some examples of which are described below, have been uncovered and ~~assist in understanding the legal effect of the transaction~~ make plain that the transfer from KLI to AHC was, in fact and in law, a merger.

~~b. On July 3, 1957, WCLC was merged with KLI. According to a July 1, 1957 KLI Board of Directors resolution, quoted in KLI's Certificate of Ownership filed with the State of California, KLI assumed "all the liabilities and obligations" of WCLC, and "shall be liable therefor in the same manner as if it had itself incurred such liabilities and obligations." KLI remained under the control of AHC.~~

c. ~~c.~~ On July 19, 1957, KLI sold the 160-acre Rialto property to B.F. Goodrich. KLI ceased its manufacturing activities in Rialto, but

continued operating as a "division" of AHC, doing business in Anaheim, California, producing Kwikset's well-known product line of household door locks.

d. ~~d.~~ On June 30, 1958, KLI was dissolved. AHC assumed the liabilities of KLI and WCLC, and continued producing the Kwikset product line at the former KLI Anaheim facility.

e. ~~e.~~ An important document that explains the nature of the AHC purchase of KLI is the "Minutes of Regular Meeting of the Board of Directors, The American Hardware Corporation," dated June 5, 1958. During that meeting, the Directors took action related to the purchase of KLI. One action was to approve modification of a loan to secure the purchase of KLI. Another action taken by the Directors related to the dissolution of KLI. The minutes state, in part:

> "WHEREAS, the Board of Directors of KWIKSET LOCKS, INC. ADOPTED A Plan of Dissolution to be effected by the distribution and transfer of all of the assets and business to this corporation as the owner and holder of all of the issued and outstanding shares of capital stock upon the condition that this corporation expressly assume and guarantee in good faith to pay all debts, liabilities and obligations of KWIKSET LOCKS, INC. in existence on the date of such distribution and transfer of its assets and business, contingent or otherwise known or unknown...
> ***
> "NOW, THEREFORE, BE IT RESOLVED, that the President or any Vice President, and the Secretary or Assistant Secretary of this corporation, be and they are hereby authorized and directed in the name of and on behalf of this corporation (a) to execute and deliver to KWIKSET LOCKS, INC., an appropriate form of assumption agreement expressly assuming all obligations and liabilities of KWIKSET LOCKS, INC., as aforesaid..."

The AHC Directors minutes make clear that AHC expressly intended to assume responsibility for the obligations – known and unknown – of KLI. This transaction results in AHC's liability for KLI's, and, by extension, WCLC's liabilities. That liability was then transferred forward to the other named entities by the series of corporate transactions that are described below.

f. Another contemporaneous document, IRS Form 7004, "Application for Automatic Extension of Time," was submitted to the IRS on behalf of KLI by C. K. Nelson, Assistant Treasurer, on September 15, 1958. This document contains KLI's stated reason for the requested extension: "**The corporation was merged with another corporation** as of June 30, 1958." (emphasis added).

g. ~~f.~~ Another contemporaneous tax form, IRS Form 843, "Claim," dated November 28, 1961, was submitted on behalf of "KLI, Transferor" and "American Hardware Corporation, Transferor." In Schedule A, the following statement is contained in the second paragraph:

> "Kwikset Locks, Incorporated was substantially a **wholly-owned subsidiary of American Hardware Corporation** as of January 1, 1958. On June 30, 1958, Kwikset Locks, Inc. was dissolved. **All the assets and liabilities were transferred to the parent corporation**, and operations were continued as Kwikset Division of the American Hardware Corporation." (emphasis added).

h. ~~g.~~ AHC merged with Emhart Manufacturing Company, a Delaware Corporation, in April 1964. The surviving corporation in the merger was AHC, under a new corporate name, "Emhart Corporation," as of June 30, 1964.

i. ~~h.~~ Emhart Corporation became Emhart Industries, Inc.~~,~~ (EII), on May 4, 1976.

j. ~~i.~~ Kwikset Corporation was incorporated in California in 1985 as a wholly-owned subsidiary of ~~Emhart Industries, Inc.~~EII, and was capitalized using the net assets of the Kwikset Division of ~~Emhart Industries, Inc~~ EII. Kwikset Corporation thus retains the name, product line, and assets of the former KLI and Kwikset Division (of AHC and later of EII). Moreover, Kwikset Corporation is the entity that has custody and possession of historical documents of WCLC, KLI, and AHC.

k. ~~j. Emhart Industries, Inc.,~~EII was acquired by Black & Decker (U.S.), Inc., a subsidiary of the Black & Decker Corporation, in 1989. Black & Decker (U.S.), Inc. participated in an arrangement in 1998 to resolve certain insurance liabilities related to KLI. In doing so, Black & Decker (U.S.), Inc. held itself out as having authority over KLI's insurance affairs. The exercise of such authority is tantamount to an admission by Black & Decker (U.S.), Inc. that it has accepted the liabilities as well

as any benefits attendant to the exercise of control over the affairs of KLI.

l. ~~k. Emhart Industries, Inc.,~~EII is in the process of winding up its business and affairs, having filed a Certificate of Dissolution in the State of Connecticut in 2002.

m. ~~l.~~ AHC's purchase of KLI was more than a mere stock purchase and assumption of known liabilities ~~only~~, as ~~Emhart~~ EII has claimed. It constitutes a complete merger. A merger, unlike a purchase, results in the assumption of the liabilities and assets of the merged corporation by the surviving corporation. The documents noted above in e., f. and ~~g~~f., contemporaneously prepared at or around the time of the 1957 AHC acquisition, demonstrate that KLI and AHC understood and believed the 1957 purchase of KLI to be a "merger," with the result that AHC assumed all of KLI's liabilities both known and unknown. In addition, a Kwikset Corporation publication, entitled "Kwikset A Black & Decker Company Employee Handbook," contains the following quotation:

> "In 1957, Kwikset Locks, Inc. merged with the American Hardware Corporation of New Britain, Connecticut and subsequently became known as the Kwikset Division." Moreover, the Black & Decker website, as it appeared in 2002, indicated under "Company History" that KLI was merged into AHC. Notably, during the investigation of this matter in 2002, and shortly after this fact was pointed out to Kwikset's and ~~Emhart's~~ EII's representatives, the website was changed to remove this statement."

19. ~~16.~~ Black & Decker (U.S.), Inc., by virtue of its status as parent corporation of ~~Emhart~~ EII and having received the stock of ~~Emhart~~ EII upon dissolution, is a legal successor to ~~Emhart's~~ EII's and WCLC's liabilities under this order.

20. At the time of EII's dissolution, Black & Decker Inc. (a Delaware corporation) held itself out as a guarantor of the liabilities of EII. On that basis, Black & Decker Inc. is, by extension, a successor of WCLC.

21. ~~17.~~ KLI, ~~Emhart Industries, Inc.~~ EII, Kwikset Corporation, Black & Decker Inc. and Black & Decker (U.S.), Inc., are the corporate successors of WCLC ~~and KLI~~, and are legally liable for discharges of pollutants caused by WCLC ~~and KLI~~. WCLC ~~and KLI,~~ and ~~their~~ its legal successors~~,~~ have caused or permitted, or are causing or permitting, waste, i.e.,

perchlorate, to be discharged to waters of the state, and have created, or threaten to create, a condition of pollution or nuisance.

22. ~~18.~~ Perchlorate salts are highly soluble and dissociate in water to form perchlorate ions. There are currently no state or federal drinking water standards for perchlorate. However, the California Office of Environmental ~~Department of~~ Health Hazard Assessment ~~Services (DHS)~~ has established a ~~drinking water Action Level (AL)~~Public Health Goal (PHG) for perchlorate of 6 parts per billion (ppb). ~~An~~The ~~AL~~ PHG is a ~~temporary safe drinking water~~the level of perchlorate in drinking water that does not cause or contribute to adverse health effects~~is based on limited studies that have been performed~~. Perchlorate is currently present in the Rialto, Riverside - B, and Chino North Groundwater Management Zones. The West Valley Water District, the Fontana Water Company, and the Cities of Rialto and Colton had limited or ceased the use of 22~~0~~ municipal water supply wells that ~~exceeded the AL for~~contain perchlorate (several of these wells have been put back into operation after having perchlorate treatment systems installed).

23. TCE and other VOCs have been detected in groundwater in the Rialto Groundwater Management Zone, at concentrations above the California Department of Health Services maximum contaminant levels (MCLs).

24. ~~19.~~ Municipal water supply wells in the Rialto, Riverside - B, and Chino North Groundwater Management Zones have been, or are likely to be, affected by the perchlorate and VOC pollution in these basins. Regional Board staff is currently attempting to identify all parties that may have discharged perchlorate in this area.

25. ~~20.~~ The beneficial uses of the Rialto, Riverside - B, and Chino North Groundwater Management Zones include:

A. Municipal and domestic supply,
B. Agricultural supply,
C. Industrial service supply, and
D. Industrial process supply.

26. ~~21.~~ California Water Code Section 13304 allows the Regional Board to recover reasonable expenses from responsible parties for overseeing cleanup and abatement activities. It is the Regional Board's intent to recover such costs for regulatory oversight work conducted in accordance with this order.

27. ~~22.~~ This enforcement action is being taken by a regulatory agency to enforce a water quality law. Such action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.) in accordance with Section 15321, Article 19, Division 3, Title 14, California Code of Regulations.

28. ~~23.~~ It is reasonable to conclude that the WCLC activities described in Findings 1 –17, above, have led to the presence of perchlorate and VOC's in the soil and the groundwater in the vicinity of the former WCLC site. A soil and groundwater investigation is necessary to define the vertical and lateral extent of the perchlorate and VOCs that are discharging, have been discharged, or threatens to be discharged, from the former WCLC facility ~~and from the former WCLC igloos (bunkers)~~. California Water Code Section 13267 authorizes the Regional Board to require a technical or monitoring report from one who has or is suspected of discharging wastes to the waters of the State.

29. ~~24.~~ It is appropriate to order KLI, ~~Emhart Industries, Inc~~EII~~.~~, Kwikset Corporation, Black & Decker Inc. and Black & Decker (U.S.), Inc., to clean up and abate the effects of the discharge of perchlorate and VOCs from property that was formerly owned and controlled by their corporate predecessors, WCLC and KLI.

30. ~~25.~~ The former 160-acre WCLC property now consists of numerous separate parcels, with multiple landowners. Since 1964, continuing through the present, various tenants involved in pyrotechnics have occupied portions of the site.

31. ~~26.~~ Orders have been issued to former tenants or former owners of the 160-acre parcel and the adjacent property where WCLC's igloos (bunkers) were located. Additional orders may be issued, if Regional Board staff obtains additional information indicating that other specific tenants or owners have also discharged perchlorate that is present in the groundwater.

IT IS HEREBY ORDERED THAT, pursuant to Section 13267 and 13304, Article 1, Chapter 5, Division 7, of the California Water Code, KLI, ~~Emhart Industries, Inc~~EII~~.~~, Kwikset Corporation, Black & Decker Inc. and Black & Decker (U.S.), Inc., shall cleanup and abate the effects of the discharges at the Rialto properties as follows:

1. By 60 days from the date the Regional Board affirms this Order, ~~Prepare and~~ submit a work plan and time schedule to define the lateral and vertical

extent of the perchlorate and VOCs in the soil and groundwater at the 160-acre site that are~~is~~ discharging, have~~s~~ been discharged, or threatens to be discharged, from the former WCLC facility~~ and from the former WCLC igloos (bunkers)~~. The work plan must include a proposal for advancing a sufficient number of soil borings at locations where perchlorate or VOCs were discharged, including borings to groundwater, and collecting representative samples from the borings, to characterize the presence of perchlorate and VOCs in the soil. The work plan must also include a proposal for drilling a sufficient number of groundwater monitoring wells, and collecting groundwater samples from discrete vertical intervals, to characterize the presence of perchlorate and VOCs in the groundwater. The work plan, subject to the approval of the Executive Officer, shall be implemented in accordance with the time schedule approved by the Executive Officer.

2. By 60 days from the date the Regional Board affirms this Order, submit a work plan and time schedule to define the lateral and vertical extent of the perchlorate and VOCs in the groundwater downgradient of the 160-acre site and upgradient of West Valley Water District Well No. 22. The work plan must include a proposal for drilling a sufficient number of groundwater monitoring wells, and collecting groundwater samples from discrete vertical intervals in the various water bearing zones, to characterize the extent of perchlorate and VOCs in groundwater in this area. The work plan, subject to the approval of the Executive Officer, shall be implemented in accordance with the time schedule approved by the Executive Officer.~~date for this work plan and time schedule will be established by future action of the Regional Board.~~

~~2.~~3. Prepare and implement any additional work plans that the Executive Officer deems necessary to sufficiently characterize the lateral and vertical extent of perchlorate and VOCs that are~~is~~ discharging, have~~s~~ been discharged, or threaten~~s~~ to be discharged, from the former WCLC facility, in the areas described in Items 1 and 2, above~~ and from the former WCLC igloos (bunkers)~~. The work plans, subject to the approval of the Executive Officer, shall be implemented in accordance with the time schedules approved by the Executive Officer.

~~3.~~4. If, based on the information obtained from implementing the work plans described in Items 1, 2 or 3, above, ~~After~~ the Executive Officer determines that interim remedial action is necessary, in the areas described in Items 1 or 2, above, to clean up or contain (abate) the perchlorate or ~~the lateral and vertical extent of perchlorate and~~ VOCs that are~~is~~ discharging, have~~s~~ been discharged, or threatens to be discharged from the former WCLC facility~~ and bunkers have been sufficiently defined~~, submit an ~~detailed~~

interim remedial action plan, including an implementation schedule, to cleanup or abate the effects of the perchlorate and VOCs ~~that~~ that are~~is~~ discharging, have~~s~~ been discharged, or threaten~~s~~ to be discharged, from the former WCLC facility ~~and bunkers~~. ~~The remedial action plan shall provide for replacement water service, which may include wellhead treatment, for any water supply wells determined by the Executive Officer, based on investigations conducted pursuant to Items 1 and 2, above, to be affected by the discharges.~~ The interim remedial action plan and implementation schedule shall be submitted within 60 days of the Executive Officer's notification ~~to Emhart Industries, Inc., and Black & Decker (U.S.), Inc., that the definition of the extent of perchlorate and VOCs is sufficiently complete to initiate cleanup or abatement activities~~notification of the requirement to submit an interim remedial action plan. The interim remedial action plan, ~~and schedule shall be~~ subject to the approval by the Executive Officer, and following a public meeting to receive comments on the interim remedial action plan, shall be implemented in accordance with the time schedule approved by the Executive Officer.

5. If, based on the information obtained from implementing the work plans described in Items 1, 2 or 3, above, or any other information that is generated by other parties, the Executive Officer determines that additional groundwater characterization or interim remedial action is necessary downgradient of West Valley Water District Well No. 22 to clean up or abate the effects of the perchlorate and VOCs that are discharging, have been discharged, or threaten to be discharged from the former WCLC facility, submit a work plan for further characterization or an interim remedial action plan, as directed by the Executive Officer. The work plan or interim remedial action plan shall be submitted within 60 days of the Executive Officer's notification of the requirement to submit the work plan or interim remedial action plan. The work plan for further characterization, subject to the approval of the Executive Officer, shall be implemented in accordance with the time schedule approved by the Executive Officer. The interim remedial action plan, in part, shall provide for replacement water service, which may include wellhead treatment, for any water supply wells the Executive Officer determines have been impacted, or are threatened to be impacted, by discharges from the former WCLC facility. The interim remedial action plan, subject to the approval by the Executive Officer, and following a public meeting to receive comments on the interim remedial action plan, shall be implemented in accordance with the time schedule approved by the Executive Officer.

6. When the Executive Officer determines that the lateral and vertical extent of the perchlorate and VOCs in soil and groundwater that are discharging,

have been discharged, or threaten to be discharged, from the former WCLC facility have been adequately characterized, submit a feasibility study and a final remedial action plan to cleanup or abate the effects of the perchlorate and VOCs that are discharging, have been discharged, or threaten to be discharged, from the former WCLC facility. The final remedial action plan may contain any interim remedial actions that have been implemented. The feasibility study and remedial action plan shall be submitted within 120 days of the Executive Officer's request for a feasibility study and remedial action plan. When requested by the Executive Officer, and following a public meeting to receive comments on the remedial action plan, implement the remedial action plan in accordance with the time schedule approved by the Executive Officer.

~~4.Implement the remedial action plan in 3. , above, as approved by the Executive Officer.~~

This Order, is originally issued on February 28, 2005, is hereby amended under the Executive Officer's delegated authority ~~to issue a Cleanup and Abatement Order~~.

Gerard J. Thibeault
Executive Officer

~~February 28~~December 2, 2005