



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

FINAL DECISION
AND
RESPONSE TO COMMENTS

for

FORMER BALDWIN HARDWARE CORPORATION

841 EAST WYOMISSING BOULEVARD
READING, PENNSYLVANIA

EPA ID NO. PAD 002350833

Prepared by
Office of Pennsylvania Remediation
Land and Chemicals Division
August 2017

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

FINAL DECISION AND RESPONSE TO COMMENTS

I. PURPOSE

The United States Environmental Protection Agency (EPA) is issuing this Final Decision and Response to Comments (FDRTC) under the authority of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976 and the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. §§ 6901 *et seq.* to the Former Baldwin Hardware Corporation (Baldwin) facility located at 841 East Wyomissing Boulevard, Pennsylvania (Facility or Site).

The 28-acre Site is located in Reading, Pennsylvania. It is bounded to the east by railroad tracks, beyond which lies Schlegel Park. To the south of the Site is an industrial complex, to the west is East Wyomissing Boulevard, and to the north is a high school.

On March 30, 2017, EPA issued a Statement of Basis (SB) which described the information gathered during environmental investigations at the Site, and the Proposed Remedy for the Site. The SB is hereby incorporated into this FDRTC by reference and made a part hereof as Attachment A. The Final Remedy for the Site consists of: operation, monitoring and maintenance of a groundwater recovery and treatment system; operation, monitoring, and maintenance of a soil vapor mitigation system; and compliance with and maintenance of land and groundwater use restrictions.

II. PUBLIC COMMENT PERIOD

On March 31, 2017, EPA published the SB in the Reading Eagle and on EPA Region III's website and announced the commencement of a thirty (30) day public comment period in which it requested comments from the public on the Proposed Remedy in the SB. On May 1, 2017, EPA published a notice in the Reading Eagle extending the public comment period until May 15, 2017.

By letter dated May 15, 2017, Stephen J. Axtell, Esq., submitted comments on behalf of his client, Stanley Black & Decker (SBD), a former owner and operator of the Site.

III. RESPONSE TO COMMENTS

EPA's responses to the comments submitted by SBD are hereby incorporated into this FDRTC and made a part hereof as Attachment B.

IV. FINAL REMEDY

EPA's Final Remedy consists of the following components:

A. Soils

Because volatile organic compounds (VOCs) remain in soils under the Central Unit above levels appropriate for industrial and residential use, the Final Remedy requires land use restrictions to restrict activities that may result in exposure to those contaminants. The Final Remedy incorporates the existing floors in the Central Unit as a "cap" to eliminate exposures to trichloroethylene (TCE) remaining in the subsurface. The Final Remedy requires an inspection and maintenance program to assure the integrity of the floors in the Central Unit for this purpose.

The Final Remedy requires that land use restrictions be implemented at the Facility to prohibit the following: residential uses and use of the Central Unit unless the integrity of the floor of that building is inspected and maintained.

In addition, SBD or the then-current owner shall provide EPA with a coordinate survey, as well as a metes and bounds survey, of the Facility boundary, the Central Unit, and the Lower Unit. Mapping the extent of the land-use restrictions will allow for presentation in a publicly accessible mapping program such as Google Earth® or Google Maps®.

B. Indoor Air

As elevated levels of VOCs remain in soil vapor under the Central and Lower Units, the Final Remedy requires that soil vapor mitigation systems (SVMSs) be operated, maintained and monitored in buildings located above the Central and Lower Units to meet EPA's Indoor Air standards. In addition, the Final Remedy requires that a SVMS be installed in any new structures constructed above the Central or Lower Unit, unless it is demonstrated to EPA that vapor intrusion does not pose unacceptable risk to human health and EPA provides written approval that no vapor control system is needed.

The following Indoor Air use restrictions are required to be implemented at the Facility:

- 1) Operate, monitor, and maintain the SVMSs as required by the EPA-approved *Soil Vapor Mitigation Systems Operation, Maintenance and Monitoring Plan*, dated May 2016, to ensure TCE is at or below 8 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) in indoor air;
- 2) No Facility building may be used or occupied unless such building has a SVMS system in operation, or unless it is demonstrated to EPA that operation of a SVMS is not needed in such building and EPA provides prior written approval to discontinue operation of the SVMS; and
- 3) Prohibit construction of new structures above the Central Unit and the Lower Unit unless a SVMS is installed in each such structure, or unless it is demonstrated to EPA that installation of a SVMS is not needed to protect human health and EPA provides prior written approval to not install a SVMS.

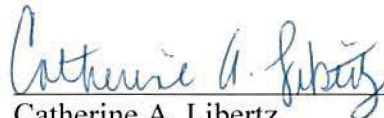
C. Groundwater

Groundwater at the Facility contains VOCs above EPA's drinking water standards, known as National Primary Drinking Water Standard Maximum Contaminant Levels (MCLs) promulgated pursuant to Section 42 U.S.C. §§ 300f et seq. of the Safe Drinking Water Act and codified at 40 CFR Part 141. The Final Remedy requires 1) operation, monitoring and maintenance of a modified groundwater recovery and treatment system as stated in the EPA-approved *Groundwater Hydraulic Containment System Operation, Maintenance, and Monitoring Plan*, dated January 2016, and until TCE is at or below 5 micrograms per liter (ug/l) consistently in all wells; and 2) compliance with, and maintenance of, groundwater use restrictions, including a prohibition on potable use of Facility groundwater, to prevent exposure to contaminants while levels remain above drinking water standards.

V. DECLARATION

Based on the Administrative Record compiled for the Corrective Action at the Former Baldwin Hardware Corporation Facility, EPA has determined that the Final Remedy selected in this Final Decision and Response to Comments is protective of human health and the environment.

Date: 8-24-17



Catherine A. Libertz
Acting Director
Land and Chemicals Division
US EPA, Region III

Attachment A: Statement of Basis, dated March 30, 2017

Attachment B: Response to Comments

Attachment C: SBD's Comments on Statement of Basis, dated May 15, 2017

Attachment A

Statement of Basis, dated March 30, 2017



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

STATEMENT OF BASIS

FORMER BALDWIN HARDWARE CORPORATION

841 EAST WYOMISSING BOULEVARD
READING, PENNSYLVANIA

EPA ID NO. PAD002350833

Prepared by
Office of Pennsylvania Remediation
Land and Chemicals Division
March 2017

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List of Acronyms

AOC	Areas of Concern
AR	Administrative Record
EPA	Environmental Protection Agency
FDRTC	Final Decision Response to Comments
GPRA	Government Performance and Results Act
MCL	Maximum Contaminant Level
PADEP	Pennsylvania Department of Environmental Protection
RCRA	Resource Conservation and Recovery Act
RSL	Regional Screening Level
SB	Statement of Basis
VOC	Volatile Organic Compound

Section 1: Introduction

The United States Environmental Protection Agency (EPA) has prepared this Statement of Basis (SB) to solicit public comment on its proposed remedy for the former Baldwin Hardware Corporation (Baldwin) facility located at 841 East Wyomissing Boulevard, Pennsylvania (Facility or Site).

EPA's proposed remedy consists of the operation, monitoring and maintenance of soil vapor mitigation systems as well as a groundwater recovery and treatment system. EPA is also proposing to require maintaining the integrity of concrete slab floors of occupied buildings. In addition, EPA's proposed remedy requires the implementation of land-and groundwater-use restrictions through institutional controls (ICs). ICs are non-engineered instruments such as administrative and/or legal controls that minimize the potential for human exposure to contamination and/or protect the integrity of the remedy by limiting land or resource use. EPA proposes to implement the final remedy for the Facility through an enforceable document such as an order and/or environmental covenant.

The Facility is subject to the Corrective Action Program under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976, and the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. Sections 6901 to 6992k. The Corrective Action Program is designed to ensure that certain facilities subject to RCRA have been investigated and that all releases of hazardous waste and hazardous constituents have been remediated. The Commonwealth of Pennsylvania (the Commonwealth) is not authorized for the Corrective Action program under Section 3006 of RCRA. Therefore, EPA retains primary authority in the Commonwealth for the Corrective Action Program.

The Administrative Record (AR) for the Facility contains all documents, including data and quality assurance information, on which EPA's proposed remedy is based. See Section 8, Public Participation, for information on how you may review the AR. Information on the Corrective Action Program as well as a fact sheet for the Facility can be found by navigating through the EPA website <https://www.epa.gov/hwcorrectiveactionsites/corrective-action-programs-around-nation#3>.

Section 2: Facility Background

The Site is a 28-acre property in Reading, Pennsylvania, formerly occupied by Baldwin from 1956 to 2014. Baldwin's manufacturing processes included metal plating and acid etching which produced hardware plated with chrome, bronze, brass, zinc and nickel. Manufacturing as well as vapor degreasing and wastewater treatment generated primarily metal wastes such as lead and nickel, and volatile organic compounds (VOCs) such as trichloroethylene (TCE).

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The Facility was comprised of three units: Central Unit, Lower Unit and Administration Unit. The Central Unit housed the majority of the manufacturing process. As the business expanded, additional buildings were added to the Central Unit, eventually numbering 1-12. The Lower Unit, which consists of buildings 50, 51, and 51A, was used for storage, shipping and plating operations. The Central Unit is connected to the Lower Unit; together they occupy 260,000 sq. ft. The Administration Unit is a detached building that housed the sales, marketing and engineering departments. No manufacturing operations were associated with the Administration Unit.

The Site is bounded to the east by railroad tracks, beyond which lies Schlegel Park. To the south of the Site is an industrial complex, to the west is East Wyomissing Boulevard and to the north is a high school.

2.1 Site Ownership

In 1956, Baldwin Hardware began operations at its Reading location. In 1982, Baldwin Hardware became a wholly owned subsidiary of Masco Corporation. On September 30, 2003, The Black & Decker Corporation purchased the shares of Baldwin, which continued to own and operate the Facility as an indirect, wholly-owned subsidiary of The Black & Decker Corporation. On March 12, 2010, The Stanley Works acquired The Black & Decker Corporation and changed its name from The Stanley Works to Stanley Black & Decker, Inc. The Facility continued to be owned and operated by Baldwin, which was then an indirect, wholly-owned subsidiary of Stanley Black & Decker, Inc. On December 17, 2012, Stanley Black & Decker, Inc. sold the shares of Baldwin to Spectrum Brands, Inc. Immediately prior to the December 17, 2012 sale, Stanley Black & Decker, Inc. caused Baldwin to transfer title of the Facility to SBD, an indirect, wholly-owned subsidiary of Stanley Black & Decker, Inc., and for Baldwin to lease the Facility from SBD. Subsequently, SBD sold the Facility to TMAP Realty, LLC on July 1, 2015. Currently the Facility (buildings and parking lots) is used by a car dealership.

Section 3: Summary of Environmental Investigations

3.1 Environmental Investigations

Baldwin had used two unlined surface impoundments at the Facility for the storage of electroplating wastewater treatment sludges. These impoundments were closed in 1984 under oversight of the Pennsylvania Department of Environmental Resources, predecessor to Pennsylvania Department of Environmental Protection (PADEP). Groundwater sampling showed TCE contamination, presumed released from the surface impoundments. In 1987, Baldwin and EPA entered into an Administrative Order on Consent (Consent Order) pursuant to Section 3008(h) of the Resource Conservation and Recovery Act. Under the Consent Order, the Facility installed a groundwater recovery and treatment system and network of monitoring wells to verify that TCE was hydraulically controlled onsite and that the removed groundwater properly treated.

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During due diligence sampling initiated by the sale of the Facility property to The Black & Decker Company in October 2003, additional contamination was found in groundwater, soil and soil vapor at the Facility. Since the sale of the Facility property, a number of Facility-wide and more focused investigations have been completed involving various environmental media: January-August 2004 (groundwater (GW), soil, soil vapor); November 2005 (GW); May 2007 (GW); July 2008 (soil, GW); June-August 2009 (soil vapor); May-August 2013 (GW); November 2014 (soil); February 2015 (indoor air); February 2016 (indoor air and soil vapor). The cumulative results of these investigations is discussed below.

3.1.1 Central Unit

Both the soil and soil vapor investigations overall showed two primary TCE release areas within the footprint of the Central Unit. TCE-impacted soils overlying shallow bedrock under Buildings 3 and 12 directly relate to the locations of former vapor degreasers. The most heavily impacted soils are encountered at 0-4 feet below the building floor. In the 2004 investigation, under Building 3, the maximum TCE soil vapor concentration was found to be 1,300,000 micrograms per cubic meter of air (ug/m^3), and 280,000 ug/m^3 under Building 12. The soil vapor contamination, has spread widely under the buildings. The soil vapor was investigated again in 2009 and results similar to 2004 were reported.

In soils under Building 3, the maximum TCE concentration was found to be 93 milligrams per kilogram (mg/kg), and 1000 mg/kg under Building 12, which is above the EPA allowable risk range of 1×10^{-4} to 1×10^{-6} for an industrial exposure scenario. The soil contamination is very localized to the areas very near the degreasers.

When VOC contamination is located beneath building slabs or basement floors the potential for vapor intrusion into the building is the primary pathway for exposure. In 2016, Black and Decker conducted paired indoor air and soil vapor sampling within the occupied space and beneath the floor of the Central Unit.

This is EPA's recommended protocol for evaluating the risk posed by subslab VOC contamination since contaminant source concentrations can be directly compared to concentrations within the occupied space. In this case, indoor air values were found to be below EPA's health-based standard of 8 ug/m^3 . The subslab results showed TCE above guidelines for potential vapor intrusion, however the soil vapor results were lower than their respective 2004 values; Building 3 had a maximum soil vapor result of 57,000 ug/m^3 and Building 12 showed a maximum result of 68,000 ug/m^3 .

3.1.2 Lower Unit

Under Buildings 50 and 51, TCE in soil vapor was detected in 2004 (maximum 360,000 ug/m^3). Solvents were not used in the plating processes associated with Buildings 50 and 51 and no VOC-related wastes or raw materials were known to have been stored there. Given the location of the Lower Unit relative to upslope release areas in the Central Unit, the presence of

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TCE in soil vapor beneath the Lower Unit can be attributed to lateral dispersion through permeable zones at the surface of the overburden soil. TCE has not been detected at elevated levels in soils beneath the Lower Unit. However, as significant TCE was found in the soil vapor, a subsurface depressurization system has been installed under Buildings 50 and 51 to prevent vapor intrusion into the buildings.

3.1.3 Other TCE in Soil

An additional area with TCE-contaminated soil was identified southeast of Building 51, near Production Well 5. The highest concentration of TCE and associated degradation products found was at a depth of 12 feet. Minimal soil impacts were found above and below this depth, suggesting the contamination was a result of placement of solvent impacted material during construction of the Building 51 in the early 1980s. TCE was found in only three samples and at a maximum concentration of 3 mg/kg. This contamination does not pose an exposure threat to workers at this depth and is not expected to migrate to groundwater.

An area of TCE soil contamination at a depth of 52 feet below ground surface was found near PW-6, a new recovery well. TCE was found in soil at a maximum concentration of 8 mg/kg. As soil above this depth has not been impacted by TCE, and this depth is close to the saturated zone, this contamination is understood to be from groundwater periodically discharging into the overburden bedrock fractures during times of significant rain events and high water table elevation. There is no expected worker exposure to this contamination as it is far below ground surface.

3.1.4 Groundwater

Numerous monitoring wells, observation wells and piezometers have been installed at the Site since the mid-1980s for the assessment of groundwater flow and groundwater quality within the bedrock and overburden aquifers. In 1988, Baldwin installed and continuously operated a groundwater recovery and treatment system for the TCE plume found downgradient of the closed unlined surface impoundments. Initiated by the sale of the Facility property in 2003, additional environmental investigation was conducted across the Site, including groundwater.

Baldwin conducted a Site-wide groundwater investigation in 2004. At that time, Baldwin installed numerous groundwater monitoring wells and piezometers to assess more detailed groundwater characteristics than the then-current groundwater recovery and treatment system provided. Baldwin has installed a total of over 50 wells and piezometers across the Site. Additional investigations were performed between 2004 and 2013, and provided a clearer picture of the TCE plume and flow zones. The resulting data was used for design modifications to the recovery system to ensure capture of the newly discovered contamination and enhance efficiency of the treatment system.

The primary constituent detected in groundwater beneath the Site remains TCE, with significantly lower concentrations of daughter products, such as 1,2-dichloroethene. The highest

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concentrations of TCE have consistently been detected in observation wells and piezometers located within the southeastern portion of the Site near production well PW-5 and MW-20 (830 ug/l of TCE in 2013). With respect to the vertical distribution of TCE, the highest concentrations are present in the upper portion of the bedrock aquifer within the zone approximately 60 to 100 feet below grade. A significant decrease in concentrations has been detected in monitoring wells and piezometers screened below these depths.

For all environmental investigations conducted at the Facility, groundwater concentrations were screened against federal Maximum Contaminant Levels (MCLs) promulgated pursuant to the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., and codified at 40 CFR Part 141, or if there was no MCL, EPA Region III Screening Levels (RSL) for tap water for chemicals. Soil concentrations were screened against EPA RSLs for residential soil and industrial soil. EPA also has RSLs to protect groundwater from contaminants migrating through soil. Soil concentrations were also screened against those soil-to-groundwater RSLs.

3.2. Summary of Remedial Activities Completed

3.2.1 Soil Vapor Mitigation System

A Soil Vapor Mitigation System (SVMS) was designed and installed under each of Buildings 3, 12 and one system was installed jointly under buildings 50 and 51 as these buildings adjoin and share a common wall. The systems will be operated to mitigate vapor intrusion hazards where data from investigation activities indicates the potential for intrusion of vapors into the overlying structure, using a commercial-and industrial-use scenario.

The SVMSs are intended to eliminate the soil vapor-to-indoor air exposure pathway by maintaining a negative pressure environment beneath portions of the concrete floor. Each SVMS is comprised of PVC piping installed through the slab floor and a fan connected with the piping. When the SVMS is on, the fan applies a vacuum beneath the slab and the vapors in the soil beneath the building are directed to an outdoor enclosure which houses the fan and granular activated carbon. The vapors are directed through the activated carbon to remove any contaminants before the air is released through a stack.

The systems were installed and pilot testing was completed in 2015 and 2016. Pilot testing involved collection of subslab vacuum measurements throughout each SVMS to confirm the presence of a negative pressure environment. Approximately 35 permanent vacuum measurement points have been installed for long-term monitoring. Once full build-out is completed for the interiors of Buildings 3, 12 and 50/51, a round of indoor air sampling will take place to confirm indoor air values are below EPA's health-based standard of 8 ug/m³. A report detailing construction and system testing and operational data will be submitted to EPA once all startup testing is completed.

The design and operation of the SVMS is detailed in the *Soil Vapor Mitigation Systems Operation, Maintenance and Monitoring Plan*, dated May 2016, and approved by EPA on January 24, 2017.

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3.2.2 Modified Groundwater Recovery and Treatment System

Modifications to the groundwater recovery and treatment system required under the 1987 Consent Order were necessary to capture the additional groundwater contamination found during the 2004 and subsequent groundwater investigations. These modifications will also accommodate Site renovation plans by the current Facility property owner, ensure continuous operation of the system, and reduce future maintenance requirements associated with aging equipment. Modifications include construction of new underground utility lines for plumbing and electric; replacement of the existing air-stripping tower with a new low profile unit; installation of fully automated controls and remote telemetry; activation of a new production well to promote further improvements in groundwater quality; and, construction of a new building for treatment system components.

As part of the proposed upgrades, production wells PS-2 and PW-4 will be eliminated from the recovery well network due to declining mass removal rates. Recovery wells PS-1 and PW-3 had previously been removed from the recovery system for operational issues. A new bedrock recovery well designated PW-6 was installed in August 2013 at a location where persistently high levels of TCE and other compounds have been detected in groundwater near the southeast property boundary. PW-6 is expected to increase VOC mass removal from the groundwater by drawing contamination from the shallow bedrock zone, where the newly found contamination is centered. PW-5 will continue to draw from a deeper zone, as in the previous groundwater recovery system. These two wells will operate continuously through startup and long-term operation of the system.

The new groundwater recovery and treatment system was activated in December 2016. Preliminary data will be collected to evaluate performance of the new air-stripper and to verify initial hydraulic containment of the VOC plume within the bedrock and overburden aquifers. A full year of startup testing and operational data gathering will result in a construction completion report to be submitted to EPA. This will enable EPA and the Facility to verify long-term efficiency and plume control.

The details of design and operation of the groundwater recovery and treatment system is detailed in the *Groundwater Hydraulic Containment System Operation, Maintenance, and Monitoring Plan*, dated January 2016, and approved by EPA on March 21, 2016.

3.3 Environmental Indicators

Under the Government Performance and Results Act (GPRA), EPA has set national goals to address RCRA corrective action facilities. Under GPRA, EPA evaluates two key environmental clean-up indicators (EIs) for each facility: (1) Current Human Exposures Under Control, and (2) Migration of Contaminated Groundwater Under Control. The Facility met the Human Health EI on September 18, 2006 and the Groundwater EI on August 27, 2007.

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Section 4: Corrective Action Objectives

EPA's Corrective Action Objectives (CAO) for the specific environmental media at the Facility are the following:

1. Soils

EPA's CAO for soil is to prevent human exposure to contaminants found at concentrations above the EPA allowable risk range of 1×10^{-4} to 1×10^{-6} for an industrial-exposure scenario.

2. Indoor Air

EPA's CAO for Indoor Air is to prevent exposure to VOCs above EPA's Indoor Air Standard for TCE of 8 ug/m³.

3. Groundwater

EPA expects final remedies to return usable groundwater to its maximum beneficial use. EPA has determined that maximum beneficial use of the Facility groundwater is for potable purposes. Therefore, EPA's CAO for Facility-wide groundwater is to achieve EPA's drinking water standard, otherwise known as MCLs, or the relevant tap water standards and to prevent exposure to contaminants while contaminant levels remain above drinking water standards. TCE is the primary contaminant that, Site-wide, exceeds its applicable MCL in Facility groundwater. The MCL for TCE is 5 ug/l.

Section 5: Proposed Remedy

1. Introduction

Under this proposed remedy, some contaminants remain in the soil, soil vapor and groundwater at the Facility above levels appropriate for residential or industrial use. EPA's proposed remedy requires compliance with, and maintenance of, the Central and Lower Unit vapor mitigation systems and compliance with, and maintenance of, the modified groundwater recovery and treatment system. To eliminate or reduce further the contaminants that remain in the soil, soil vapor and groundwater at the Facility and to prevent human exposure to the contaminants while they remain in the soil, soil vapor and groundwater at the Facility above levels appropriate for residential uses, EPA proposes to require the maintenance and inspection of the integrity of the Central and Lower Unit floors and land and groundwater use restrictions.

A. Soils

Because VOCs remain in soils under the Central Unit above levels appropriate for industrial and residential use, EPA's proposed remedy requires land use restrictions to restrict activities that may result in exposure to those contaminants. EPA's proposed remedy

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incorporates the existing floors in the Central Unit as a “cap” to eliminate exposures to TCE remaining in the subsurface. The remedy proposes an inspection and maintenance program to assure the integrity of the floors in the central unit for this purpose.

EPA is proposing land-use restrictions be implemented at the Facility to prohibit the following: residential uses and use of the Central Unit unless the integrity of the floor of that building is inspected and maintained.

In addition, SBD shall provide EPA with a coordinate survey, as well as a metes and bounds survey, of the Facility boundary; the Central Unit, and the Lower Unit. Mapping the extent of the land-use restrictions will allow for presentation in a publicly accessible mapping program such as Google Earth® or Google Maps®.

B. Indoor Air

As elevated levels of VOCs remain in soil vapor under the Central and Lower Units, EPA’s proposed remedy requires that vapor mitigation systems be operated, maintained and monitored in buildings located in the Central and Lower Units to meet EPA’s Indoor Air standards. In addition, EPA proposes that a vapor intrusion control system be installed in any new structures constructed above the Central or Lower Unit, unless is demonstrated to EPA that vapor intrusion does not pose unacceptable risk to human health and EPA provides written approval that no vapor control system is needed.

EPA is proposing the following Indoor Air use restrictions be implemented at the Facility:

- 1) Operate, monitor, and maintain the SVMS systems as stated in the EPA-approved *Soil Vapor Mitigation Systems Operation, Maintenance and Monitoring Plan*, dated May 2016, to ensure TCE is at or below 8 ug/m³ in indoor air;
- 2) Prohibit use of the Facility buildings unless the SVMS systems are in operation; and
- 3) Prohibit construction of new structures above the Central Unit and the Lower Unit unless a vapor intrusion mitigation system is installed.

C. Groundwater

Groundwater at the Facility contains VOCs above EPA’s drinking water standards, known as MCLs. EPA’s proposed remedy requires 1) operation, monitoring and maintenance of a modified groundwater recovery and treatment system as stated in the EPA-approved *Groundwater Hydraulic Containment System Operation, Maintenance, and Monitoring Plan*, dated January 2016, until TCE is at or below 5ug/l consistently in all wells; and 2) compliance with, and maintenance of, groundwater-use restrictions, including a prohibition on potable use of Facility groundwater, to prevent exposure to contaminants while levels remain above drinking water standards.

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Section 6: Evaluation of Proposed Remedy

This section provides a description of the criteria EPA used to evaluate the proposed remedy consistent with EPA guidance. The criteria are applied in two phases. In the first phase, EPA evaluates three decision threshold criteria as general goals. In the second phase, for those remedies that meet the threshold criteria, EPA then evaluates seven balancing criteria.

Threshold Criteria	Evaluation
1) Protect human health and the environment	<p>EPA's proposed remedy is protective of human health and the environment. The primary human health and environmental threats posed by the remaining VOC contamination in Facility soils are direct exposures to the contamination and vapor intrusion into occupied buildings. EPA's proposed remedy requires the operation/monitoring/maintenance of the vapor mitigation systems and the groundwater recovery and treatment system, that the integrity of the floors be maintained and the compliance with and maintenance of land and groundwater use restrictions at the Facility.</p>
2) Achieve media cleanup objectives	<p>The soils with elevated levels of VOCs are beneath the Central Unit. Although they exceed direct contact and soil to groundwater non-residential standards, these soils do not pose a human health or environmental exposure risk because they are contained under buildings. EPA's proposed remedy requires that the integrity of the floors of those buildings be maintained.</p> <p>Soil vapor beneath the Central and Lower Units exceeds standards for potential intrusion into the occupied spaces above. EPA's proposed remedy requires that soil vapor mitigation systems be operated to ensure compliance with EPA's Indoor Air standards. The proposed remedy also requires a land-use restriction for EPA approval for any construction of occupied buildings.</p> <p>Groundwater contamination at the Facility is above MCLs, therefore EPA's proposed remedy requires that the groundwater recovery and treatment system be operated to ensure VOC capture, as well as treatment of recovered</p>

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	groundwater, until MCLs are met. In addition, EPA's proposes remedy require groundwater use restrictions until MCLs are met.
3) Remediating the Source of Releases	In all remedy decisions, EPA seeks to eliminate or reduce further releases of hazardous wastes or hazardous constituents that may pose a threat to human health and the environment. The remaining VOCs in soil and soil vapor are limited to beneath the footprints of the Central Unit and the Lower Unit. The floors provide impermeable covers that eliminate direct contact exposures and prevent water infiltration and potential leaching of VOCs into the groundwater. The potential threat of this contamination is vapor intrusion into indoor air of the Units. The vapor mitigation systems will be operated to ensure compliance with EPA's Indoor Air standards until such time as it can be demonstrated that conditions no longer pose a risk for vapor intrusion. Contaminated groundwater will be remediated with a modified groundwater recovery and treatment system. The groundwater system will be operated until the Facility demonstrates that the TCE MCL has been attained in all monitoring wells.

Balancing Criteria	Evaluation
4) Long-term effectiveness	The proposed remedy will protect human health and the environment over the long term by controlling exposure to contamination remaining in soils, soil vapor and groundwater. EPA's proposed remedy requires operation/monitoring/maintenance of the vapor mitigation systems and the modified groundwater system to ensure EPA standards are met. EPA's proposed remedy also requires that the integrity of the Central Unit and the Lower Unit floors be maintained and the compliance with, and maintenance of, land-and groundwater-use restrictions at the Facility. EPA anticipates that the land-and groundwater-use restrictions will be implemented through an environmental covenant to be recorded with the deed for the Facility property. The environmental covenant will be inseparable from the land with the land and as such, will be enforceable by EPA and the State against future land owners.

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5) Reduction of toxicity, mobility, or volume of the Hazardous Constituents	The proposed remedy reduces the toxicity, mobility or volume of VOCs in soils, soil vapor and groundwater at the Facility. There are no direct exposures to the soils and soil vapor beneath the Central Unit and the Lower Unit. The respective floors operate as caps for each Unit to minimize any potential migration of the contamination from its existing location to groundwater. The potential for soil vapor migration into the occupied buildings is alleviated by the soil vapor mitigation systems. The modified groundwater recovery and treatment system minimizes potential migration of contaminants and reduces the volume of the source material.
6) Short-term effectiveness	EPA's proposed remedy does not involve any additional activities, such as construction or excavation that would pose short-term risks to workers, residents, and the environment. In addition, EPA anticipates that the land-and groundwater-use restrictions will be fully implemented shortly after the issuance of the Final Decision and Response to Comments (FDRTC).
7) Implementability	EPA's proposed remedy is readily implementable. The soil vapor mitigation systems and modified groundwater recovery and treatment system are constructed and operating. EPA anticipates that the land-and groundwater-use restrictions will be fully implemented shortly after the issuance of the FDRTC.
8) Cost	EPA's proposed remedy is cost effective. The soil vapor mitigation systems and groundwater recovery and treatment system are already operating. The continuing costs will be operational, monitoring and maintenance. The cost in implementing ICs at the Facility is minimal.
9) Community Acceptance	EPA will evaluate community acceptance of the proposed remedy during the public comment period for this SB and will describe community acceptance in the FDRTC.
10) State/Support Agency Acceptance	EPA will evaluate State acceptance of the proposed remedy during the public comment period and will describe the State's position in the FDRTC.

Section 7: Financial Assurance

The previous groundwater recovery and treatment system was constructed pursuant to EPA's 1987 Consent Order and Closure/Post Closure requirements under PADEP. Under PADEP oversight, MASCO filed financial instruments appropriate for continued operation of the recovery and treatment system with PADEP. EPA has asked SBD to provide updated Cost Estimates for the vapor mitigation systems and the modified groundwater recovery and treatment

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system. EPA will evaluate that information to determine if adjustments need to be made to the existing instruments.

Section 8: Public Participation

Interested persons are invited to comment on EPA's proposed remedy. The public comment period will last thirty (30) calendar days from the date that notice is published in a local newspaper. Comments may be submitted by mail, fax, or electronic mail to Ms. Linda Matyskiela at the contact information listed below.

A public meeting will be held upon request. Requests for a public meeting should be submitted to Ms. Linda Matyskiela in writing at the contact information listed below. A meeting will not be scheduled unless one is requested.

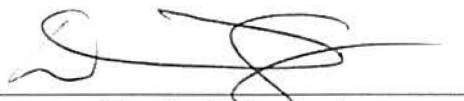
The Administrative Record contains all the information considered by EPA for the proposed remedy at this Facility. The Administrative Record is available at the following location:

U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103
Contact: Ms. Linda Matyskiela (3LC20)
Phone: (215) 814-3420
Fax: (215) 814-3113
Email: Matyskiela.Linda@epa.gov

Attachment:

Figure 1: Map of Facility

Date: 03-30-2017



DAVID CAMPBELL
for / Catherine A. Libertz
Acting Director
Land and Chemicals Division
US EPA, Region III

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Section 9: Index to Administrative Record

Administrative Order on Consent to Baldwin Hardware Corporation, April 13, 1987

Groundwater Monitoring and Progress Reports – dated February 1989 through February 2017

Overburden Groundwater Characterization Report, dated September 14, 2009

Phase II/III Environmental Site Assessment Report, dated December 2009

Hydrogeologic Investigation Report and Proposed Modifications to Hydraulic Containment System, dated December 2013.

Groundwater Hydraulic Containment System Operation, Maintenance, and Monitoring Plan, dated January 2016.

Supplemental Soil Investigation Report, dated April 2016.

Site Management Plan, dated May 2016

Soil Vapor Mitigation Systems Operation, Maintenance and Monitoring Plan, dated May 2016.

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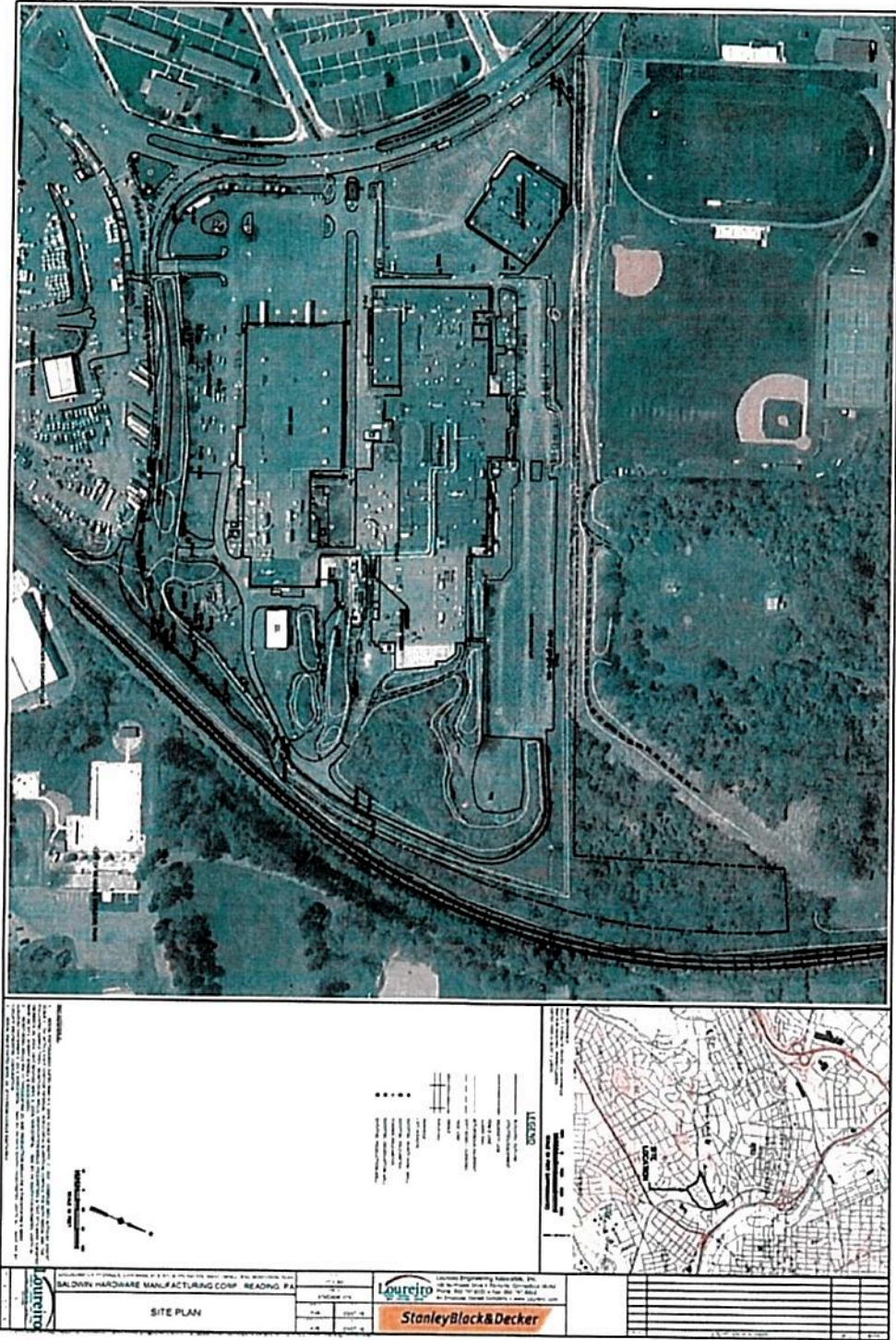
Attachment

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Figure 1: Map of Facility



Statement of Basis

Former Baldwin Hardware Corporation

Attachment B
Response to Comments

ATTACHMENT B TO FINAL DECISION AND RESPONSE TO COMMENTS FOR THE FORMER BALDWIN HARDWARE CORPORATION

Response to Comments

On May 15, 2017, EPA received one comment letter from Stephen J. Axtell, Esq., on behalf of his client, Stanley Black & Decker (SBD), a former owner and operator of the Baldwin Site. Excerpts from the comments in the letter are set forth below. Please see Attachment C for a complete copy of the comment letter.

I. General Comments

1. “SBD generally objects to the need to modify the existing corrective action plan for this site, as embodied in the existing and currently effective Administrative Order on Consent dated April 13, 1987 (“1987 AOC”).”

EPA Response:

As is explained in more detail in the responses in Section II, “Specific Comments,” below, the remedy implemented by the 1987 AOC is not sufficient to address current conditions at the Site.

2. “ ... the Agency lacks the authority under RCRA or other statutory authority to expand the potential obligations of SBD to account for unknown and as yet unplanned future potential developments at a property SBD no longer owns and controls...”

EPA Response:

The goal of EPA’s remedy selection process is to select remedies that are protective of human health and the environment and that maintain protection over time. In this FDRTC, EPA has selected the Final Remedy it determined will address contamination at the Site and protect human health and the environment in the long-term. EPA will implement the Final Remedy in accordance with the appropriate legal authorities.

EPA has the authority under RCRA § 3008(h) to require, or prohibit, certain activities and also to require as part of corrective action that proprietary and/or governmental controls be used to ensure long-term protectiveness. In all cases, EPA strives to ensure that the parties responsible for the contamination at a site conduct the actions necessary to clean up the contamination and otherwise protect human health and the environment in the long-term. At facilities such as this Site, where the cleanup action leaves residual contamination in the soil and contaminants remain in the groundwater while the long-term pumping and treating of groundwater is being conducted, EPA relies on use restrictions to supplement the engineering controls to help ensure protection of human health and the environment.

If such use restrictions are needed on property that is not owned by the responsible party, EPA generally requires that the responsible party use “best efforts” to obtain access and to implement the use restrictions. In cases where the responsible party is unable to implement the use

restrictions on the property of concern despite exercising its “best efforts,” EPA will assist in obtaining cooperation or agreements to implement the required use restrictions.

II. Specific Comments

1. The proposed land and groundwater use restrictions (ICs) are “moot and unnecessary” because: “a. There currently exists a recorded Environmental Covenant (“EC”) on the property, which substantially includes the proposed ICs set forth in EPA’s Statement... SBD has installed and been operating the modified groundwater system, and has installed [vapor mitigation systems] VMS in two buildings at the Site. b. ... the EC was negotiated between SBD and [the current owner] TMAP when the property was sold, ... EPA should neither interfere with the EC already recorded on the property nor interfere with the contractual duties and obligations agreed to by the parties. c. ... the existing 1987 AOC with EPA requires the ongoing operation and maintenance of the groundwater recovery system.”

EPA Response:

1.a. To insure that the required use restrictions remain protective in the long-term, EPA looks to have ICs enforceable by EPA and/or the state. The existing EC is not enforceable by EPA and may be terminated by the parties without EPA’s knowledge or consent. Therefore, EPA’s Final Remedy requires that the restrictions be implemented through an enforceable mechanism.

1.b. EPA’s Final Remedy does not require that the existing EC, or any other private contractual arrangement, be altered in any way.

1.c. Operating and maintaining a groundwater remediation system does not make moot the need for groundwater use restrictions. For clarification, the 1987 AOC requires operation and maintenance of a groundwater treatment system to remediate contaminants found in the bedrock aquifer. Based on additional groundwater contamination found during groundwater investigations conducted in 2004 and subsequent groundwater investigations, contaminants are also present in the overburden aquifer. In December 2016, SBD activated a modified groundwater recovery and treatment system to address the contamination found in both the overburden and bedrock aquifers. EPA’s Final Remedy requires the operation, monitoring and maintenance of the modified groundwater remediation system until EPA’s drinking water standards for trichloroethylene (TCE) are met.

It will take time for the modified groundwater recovery and treatment system to attain drinking water standards. Until the drinking water standards are attained, EPA is requiring groundwater use restrictions to prevent human exposure to those contaminants. In addition, the modified groundwater recovery and treatment system does not directly address on-site soils that contain contaminants above both industrial and residential use standards. The primary exposure concerns associated with those soils is dermal contact and the potential for vapor intrusion into on-site buildings. Rather than requiring excavation and off-site disposal of that contaminated soil, EPA’s Final Remedy allows for those soils to remain in place as long as use restrictions are implemented to limit potential human exposure.

2. "... Based on the EC, VMSs and 1987 AOC, there is no present or potential threat to human health or the environment, there is no existing potential exposure pathway, no human or environmental receptors will be exposed, and there is no imminent and substantial endangerment. Accordingly, SBD questions EPA's statutory authority to require any further use restrictions or ICs at the Site, and/or to seek a corrective action order pursuant to Section 3008(h) of RCRA."

EPA Response:

EPA determined that its Final Remedy is protective of human health and the environment. The Final Remedy consists of the operation and maintenance of the vapor mitigation systems and the modified groundwater recovery and treatment system, along with the implementation of land and groundwater use restrictions. While those components eliminate or reduce the human health and environmental threats posed by the remaining VOC contamination at the Site, EPA will incorporate them into an enforceable mechanism to insure that they remain protective in the long-term. EPA has the authority to require such corrective action or other response measures necessary to protect human health or the environment at facilities, such as the Site, where there is a release or threat of a release of a hazardous waste into the environment. Specifically, EPA has the authority under RCRA § 3008(h) to issue an order that requires, or prohibits, certain activities at a facility, and also requires as part of corrective action that proprietary and/or governmental controls are used to ensure long-term protectiveness.

3. "While the Statement is silent as to which party would bear the responsibility and cost for the installation, operation or maintenance of any VMS for future development and construction at the Site, SBD objects to any requirement that SBD would be responsible for future and continued installation, operation and maintenance of a VMS. Such requirement is typically determined to be the developer's or future owner's obligation..."

EPA Response:

While EPA agrees that the SB is silent as to which party will be responsible for implementing the Final Remedy at the Site, EPA may determine to require that SBD take certain actions to implement the remedy. As stated above, EPA strives to ensure that the parties responsible for the contamination at a site conduct the actions necessary to clean up that contamination and otherwise protect human health and the environment in the long-term. EPA will not get involved with any private party contractual agreements concerning those obligations.

4. "... it is not feasible for SBD to comply with the proposed ICs, and to notify EPA of the Site's ongoing activities, operations or planned development. The onus and burden of complying with the ICs should be on the current owner, operator and developer. SBD is not the owner or operator of the Site."

EPA Response:

Please see EPA's response to Comment 2 under Section I, "General Comments," above.

5. "... EPA could consider filing a deed notice for owners, operators or future developers of the Site only with respect to the ICs and without obligating SBD for any future development or continuing obligations – other than those set forth in the 1987 AOC or to which SBD has already agreed to do."

EPA Response:

Please see EPA's response to Comment 2 under Section I, "General Comments," above.

6. "SBD contends that the balancing criteria set forth at pages 10-11 of the Statement are either not applicable to RCRA, and/or when evaluated do not warrant the need for an order or environmental covenant. As noted above, the existing EC, VMSs and 1987 AOC already satisfy the requirements of long-term effectiveness, reduction of toxicity, mobility or volume of hazardous constituents, short-term effectiveness and implementability."

EPA Response:

On April 29, 1991, EPA issued the Guidance on RCRA Corrective Action Decision Documents: Statement of Basis and Response to Comments (SB Guidance). The SB Guidance sets forth, among other things, the criteria to be evaluated in the selection of the proposed remedy. These criteria include those listed in the Statement of Basis for the Site. As stated in EPA Response to Comment 2 under this Section II, "Specific Comments," above, even if elements of the Final Remedy are currently being implemented voluntarily by SBD and/or other parties, EPA will exercise its authorities to require implementation of the Final Remedy through enforceable mechanisms.

7a. "The 2nd paragraph of Section 3.1.4 at p.4 incorrectly characterizes the overburden studies and data to have been 'used for the design of modifications to the recovery system to ensure capture of the newly discovered contamination and enhance efficiency.' Aquifer studies conducted in 2013 confirmed groundwater capture within the area of 'newly discovered groundwater contamination.' As noted below in the response to comment 7B, modifications to the hydraulic containment system plumbing and electric were necessary in response to closure of the Baldwin facility. Although data from prior studies was evaluated during placement of a replacement recovery well to enhance efficiency of the hydraulic containment system with respect to mass removal, the change in pumping wells was not necessary to ensure effective capture of the plume."

EPA Response:

EPA agrees that data from the 2013 groundwater studies were used in the design of the modified groundwater recovery and treatment system. However, EPA disagrees that the modified groundwater recovery and treatment system was not necessary to ensure effective capture of the plume. The original groundwater treatment system was designed to remediate contaminants found in the bedrock aquifer. Subsequent groundwater investigations found that contaminants are also present in the overburden aquifer. In December 2016, SBD activated the modified groundwater recovery and treatment system to address the contamination found in both the overburden and bedrock aquifers.

7b. “The 1st sentence in Section 3.2.2 (Modified Groundwater Recovery and Treatment System), incorrectly states that ‘Modifications were necessary to capture the additional groundwater contamination.’ To be accurate, SBD notes that the modifications were intended to relocate system piping from the building to a shed as a result of the sale of the Site to TMAP. The modifications were not intended ‘to capture additional groundwater contamination.’ As a secondary objective, the modifications plan included a change in the recovery well network to promote an increase in mass removal from targeted locations within the existing capture zone.”

EPA Response:

The data presented in the groundwater studies performed from 2004 to 2013 show that contamination at all vertical and horizontal strata was not being captured by the original hydraulic containment system. Drawdown tests of the new recovery wells show some distinct capture areas different than the capture areas of the original recovery wells. Additional testing of the original recovery wells under a variety of aquifer conditions would be needed to prove an exact overlap of capture area with the new recovery well. EPA agrees that the new recovery well network will promote and increase removal of contaminants within the existing capture zone.

7c. “Item 3 of Section 4 (Corrective Action Objectives for groundwater) overstates the scope of the objective vis-à-vis the specific remedies being proposed, which should be limited only to the proposed ICs based on the objective to prevent exposure to contaminants. The proposed ICs have no impact to and are not related to the purpose of the groundwater recovery system. Thus references to EPA’s ‘expect[ation regarding] final remedies to return usable groundwater to its maximum beneficial use’ or to return groundwater for potable purposes, or to achieve MCLs is misleading, misplaced, inappropriate, and inconsistent with the 1987 AOC. In summary, the draft/proposed objectives set forth in the Statement are not consistent with the objectives set forth in either the Statement or the 1987 AOC, and, as stated, are not necessary to support EPA’s proposed ICs.”

EPA Response:

EPA final cleanup goals consist of protecting human health and the environment, achieving media cleanup goals and controlling the source of release. The goal of achieving media cleanup standards at the Site would be met by returning “usable” groundwater to its maximum beneficial use. The aquifer beneath the Site is a potential drinking water source, therefore EPA’s final remedy goal is to clean up the groundwater to drinking water standards. Protecting human health and the environment during the cleanup of groundwater at the Site involves the implementation of ICs to eliminate exposure to the groundwater. Controlling the source of the release is accomplished by the operation of the modified groundwater recovery and treatment system. The ICs and operation of the modified groundwater recovery and treatment system are the components of the Final Remedy which achieve the Corrective Action Objective of cleaning up the groundwater to drinking water standards.

8. **“In Section [5.]1.A., Paragraph 3 of the Statement of Basis, the Agency indicates its intention to require that ‘SBD shall provide EPA with a coordinate survey....’ SBD objects and would like to point out that a presentation of the property boundaries and restricted areas could be generated from aerial view without incurring substantial costs for a metes and bounds and coordinates survey. ... SBD may be willing, despite this objection, to perform these surveying tasks if the value of and need for doing so can be explained.”**

EPA Response:

EPA relies on institutional controls to implement land and water use restrictions that are required to protect the public and site workers. Institutional controls are only effective if the restrictions and the geographic extent of the restrictions are clearly and accurately defined. The geographic data of the Facility boundary, the Central Unit and the Lower Unit required under Section 5.1.A, may be provided by either SBD or the current property owner. This information may be provided in the form of metes and bounds descriptions, such as from the property deed; CAD drawings; KML files or other geographic survey. Documents already provided by SBD to EPA appear to contain figures generated by a CAD program; therefore the survey information required under Section 5.1.A appears readily available and of minimal cost to provide to EPA. Nevertheless, the Final Remedy has been amended slightly from the proposed remedy to specify that this information may be provided by either SBD or the then-current owner.

9. **“In Section 5,1.B., related to Indoor Air, the Statement provides: ‘EPA is proposing the following Indoor Air use restrictions be implemented at the Facility: 1) Operate, monitor, and maintain the SVMS systems; ... 2) Prohibit use of the Facility buildings unless the SVMS systems are in operation.’ SBD objects to these proposed restrictions for several reasons. First, elements of these restrictions are impractical in light of the fact SBD does not own the property Second, the restrictions are expressed in a manner more broadly than necessary and if applied at all, should be restricted to the specific areas where vapor mitigation is ongoing (Bldgs. 3, 3A, 1A, 2 and 12 of the Central Unit and Bldgs. 50 and 51 of the Lower Unit). Third, the restrictions appear to be absolute prohibitions that do not account for the unavoidable fact that systems such as these must be periodically inactive for short periods due to maintenance and repairs... Importantly, SBD strenuously objects to the absolute language chosen for subparagraph 2....”**

EPA Response:

With respect to the first objection, please note that, as indicated in EPA’s response to Comment 2 under Section I, “General Comments,” above, EPA will determine the appropriate method(s) for implementation of the Final Remedy. Second, EPA’s stated Corrective Action Objective for indoor air is to prevent exposure to VOCs above EPA’s Indoor Air Standard for TCE of 8 ug/m³. The Final Remedy requires operation of SVMSs in accordance with the EPA-approved *Soil Vapor Mitigation Systems Operation, Maintenance and Monitoring Plan*, dated May 2016. As discussed in that plan, the SVMSs were designed to mitigate VOCs in areas with high subslab soil vapor readings. Figures in that plan show the high subslab soil vapor readings and the effective operational area of the SVMS to be Bldgs 3, 3A, 1A, 2, 12, 50, and 51. EPA has determined that effective control of the subslab vapor under these buildings by operation of the

SVMSs will prevent exposure to VOCs above 8ug/m³ in indoor air in buildings above both the Central Unit and Lower Unit.

Third, EPA agrees that routine maintenance and associated shut-down of the SVMS are necessary components of proper operation of the equipment. There is discussion of various shut-down and maintenance scenarios in Section 7 of the EPA-approved *Soil Vapor Mitigation Systems Operation, Maintenance and Monitoring Plan*, dated May 2016 (SVMS Plan). The Final Remedy requires operation of the SVMSs in accordance with that EPA-approved SVMS Plan. In addition, the SVMS Plan also allows for the EPA-approved shut-down of a SVMS if it can be shown to EPA's satisfaction that conditions in a Facility building no longer pose a risk for VOC exposure from indoor air. EPA has clarified in the Final Remedy that operation of a SVMS may be discontinued if it is demonstrated to EPA that operation of the SVMS is no longer needed and EPA provides prior written approval to discontinue operation of the SVMS.

10. "The Statement of Basis indicates the Agency would prohibit construction of new structures...unless a vapor intrusion mitigation system were to be installed. This assertion is apparently made without condition and without acknowledging the possibility that assessment techniques might be applied at a future point when such . . . measures might be unnecessary. SBD asks that the Agency bear in mind that SBD does not control the property and its future use. . . ."

EPA Response:

EPA has clarified in the Final Remedy that new structures will require a SVMS unless a demonstration is made to EPA that operation of a SVMS is not needed and EPA provides prior written approval that no vapor control system is needed. With respect to SBD's statement that it does not control the property and its future use, please note, as explained in EPA's response to Comment 2 under Section I, "General Comments," above, that EPA will determine the appropriate method(s) for implementation of the Final Remedy.

Attachment C

SBD's Comments on Statement of Basis, dated May 15, 2017

May 15, 2017

*Via Email (Matyskiela.Linda@epa.gov), Telecopier 215.814.3113
And FedEx*

Ms. Linda Matyskiela (3LC20)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

RE: Comments on Statement of Basis - Former Baldwin Hardware Corporation - 841 E.
Wyomissing Blvd., Reading, PA ("Site") - EPA ID No. PAD002350833

Dear Linda:

On behalf of my client, Stanley Black & Decker ("SBD"), a former owner and operator of the above-referenced site, I write to provide U.S. Environmental Protection Agency ("EPA" or "the Agency") with SBD's comments on the above-referenced Statement of Basis, dated March, 2017 ("Statement") and transmitted to my client on April 4, 2017.

SBD generally objects to the need to modify the existing corrective action plan for this site, as embodied in the existing and currently effective Administrative Order on Consent dated April 13, 1987 ("1987 AOC"). SBD asserts that the 1987 AOC has been implemented effectively and at great cost and effort by SBD and other responsible parties, and with the modifications already taken by SBD, will improve the operation of the groundwater recovery system at the Site and entails sufficient mandates and authorities to see this remedial action through to a conclusion that will result in achievement of all reasonable and authorized remedial objectives set forth in the AOC. Thus, SBD generally opposes any effort by the Agency to replace the 1987 AOC and/or significantly modify and significantly increase the corrective action burdens to be imposed. SBD further asserts that the Agency lacks the authority under RCRA or other statutory authority to expand the potential obligations of SBD to account for unknown and as yet unplanned future potential developments at a property SBD no longer owns and controls, with no tangible pathway to a concrete remedial endpoint. SBD also has numerous objections, comments and questions concerning the specifics of the Statement of Basis that has been issued. Those comments, objections and questions are set forth below. SBD reserves the right to expand, modify or add to these comments, objections and questions as we learn more about the Agency's proposed course of action. SBD looks forward to working cooperatively with the Agency to resolve this matter.

Specific Comments, Questions and Objections Concerning Statement of Basis

Ms. Linda Matyskiela (3LC20)

May 15, 2017

Page 2

1. EPA proposes to require certain land- and groundwater-use restrictions and institutional controls (collectively “ICs”) through either an order or environmental covenant. For reasons set forth below, the proposed ICs are moot and unnecessary.
 - a. There currently exists a recorded Environmental Covenant (“EC”) on the property, which substantially includes the proposed ICs set forth in EPA’s Statement. For example the EC prohibits use of groundwater for potable purposes, prohibits residential uses at the Site, requires that any future disturbance of soils (as would occur with redevelopment) must be handled in compliance with applicable laws, which would encompass the need for any potential vapor mitigation system (“VMS”). As also acknowledged in the Statement, SBD has installed and been operating the modified groundwater system, and has installed VMS in two buildings at the Site.
 - b. Further, the EC was negotiated between SBD and TMAP when the property was sold. At that time, TMAP was fully aware of the Site conditions, and the parties negotiated their respective mutual duties and obligations between them. EPA should neither interfere with the EC already recorded on the property nor interfere with the contractual duties and obligations agreed to by the parties, wherein the VMSs were installed and are operating at the Site. This principle is consistent with § 107(e) of CERCLA, 42 U.S.C. § 9607(e), which has been construed to afford parties the right to negotiate between themselves the mutual duties and obligations required under CERCLA. See, *Mardan Corp. v. C.G.C. Music, Ltd.*, 804 F.2d 1454 (9th Cir. 1986). Likewise, EPA should not be interfering here with the contractual rights and duties of the parties that have already been negotiated and put in place, as reflected in the existing VMSs and EC recorded for the Site.
 - c. Lastly, the existing 1987 AOC with EPA requires the ongoing operation and maintenance of the groundwater recovery system.
 2. As set forth above, the existing EC and VMSs, along with the 1987 AOC address all potential concerns, including threats, exposure pathways and receptors. Based on the EC, VMSs and 1987 AOC, there is no present or potential threat to human health or the environment, there is no existing potential exposure pathway, no human or environmental receptors will be exposed, and there is no imminent and substantial endangerment. Accordingly, SBD questions EPA’s statutory authority to require any further use restrictions or ICs at the Site, and/or to seek a corrective action order pursuant to Section 3008(h) of RCRA.
 3. While the Statement is silent as to which party would bear the responsibility and cost for the installation, operation or maintenance of any VMS for future development and construction
-

Ms. Linda Matyskiela (3LC20)

May 15, 2017

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at the Site, SBD objects to any requirement that SBD would be responsible for future and continued installation, operation and maintenance of a VMS. Such requirement is typically determined to be the developer's or future owner's obligation. See, environmental covenant for the Former Elf Atochem Atofina Site in Bensalem, Pennsylvania, where the obligation was pressed upon the developer, not the former owner and responsible party. See also EPA's guidance document on "Institutional Controls – A Site manager's Guide" ("Guide") at page 4, which specifically addresses how site managers can ensure protectiveness in the event of a property transfer. The section contemplates, in the event of a property transfer, that EPA either negotiate an agreement with the new owner or put into place informational devices or proprietary controls which would run with the land. It does not contemplate placing affirmative requirements to install new engineering controls on past owners. The Guide provides:

For example, most enforcement agreements are only binding on the signatories, and the property restrictions are not transferred through a property transaction. For example, if a PRP under CERCLA signs a CD or receives a UAO and then sells his or her property; many types of ICs would not be enforceable against the next owner. This could jeopardize the protectiveness of the remedy. One possible solution to this problem is to ensure that the enforcement tool contains provisions requiring EPA or state notification and/or approval prior to a property transfer. In this instance, EPA could negotiate an agreement with the new owner. Another solution is to require signatories of an enforcement document to implement additional long-term institutional controls such as information devices or proprietary controls (i.e., layering).

4. Further, it is not feasible for SBD to comply with the proposed ICs, and to notify EPA of the Site's ongoing activities, operations or planned development. The onus and burden of complying with the ICs should be on the current owner, operator and developer. SBD is not the owner or operator of the Site.

5. As suggested by EPA's Guide, alternatively EPA could consider filing a deed notice for owners, operators or future developers of the Site only with respect to the ICs and without obligating SBD for any future development or continuing obligations – other than those set forth in the 1987 AOC or to which SBD has already agreed to do.

6. SBD contends that the balancing criteria set forth at pages 10-11 of the Statement are either not applicable to RCRA, and/or when evaluated do not warrant the need for an order or environmental covenant. As noted above, the existing EC, VMSs and 1987 AOC already satisfy the requirements of long-term effectiveness, reduction of toxicity, mobility or volume of hazardous constituents, short-term effectiveness and implementability.

Ms. Linda Matyskiela (3LC20)

May 15, 2017

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7. Without waiving SBD's above objections to the Statement, which SBD believes is not necessary, to the extent such Statement is issued, SBD sets forth the following specific comments 7-10. EPA's Statement of Basis also includes several statements which SBD asserts require clarification and/or correction:

- a. The 2nd paragraph of Section 3.1.4 at p. 4 incorrectly characterizes the overburden studies and data to have been "used for the design of modifications to the recovery system to ensure capture of the newly discovered contamination and enhance efficiency." Aquifer studies conducted in 2013 confirmed groundwater capture within the area of "newly discovered groundwater contamination." As noted below in the response to comment 7B, modifications to the hydraulic containment system plumbing and electric were necessary in response to closure of the Baldwin facility. Although data from prior studies was evaluated during placement of a replacement recovery well to enhance efficiency of the hydraulic containment system with respect to mass removal, the change in pumping wells was not necessary to ensure effective capture of the plume.
 - b. The 1st sentence in Section 3.2.2 (Modified Groundwater Recovery and Treatment System), incorrectly states that "Modifications were necessary to capture the additional groundwater contamination." To be accurate, SBD notes that the modifications were intended to relocate system piping from the building to a shed as a result of sale of the Site to TMAP. The modifications were not intended "to capture additional groundwater contamination." As a secondary objective, the modifications plan included a change in the recovery well network to promote an increase in mass removal from targeted locations within the existing capture zone.
 - c. Item 3 of Section 4 (Corrective Action Objectives for groundwater) overstates the scope of the objective vis-a-vis the specific remedies being proposed, which should be limited only to the proposed ICs based on the objective to prevent exposure to contaminants. The proposed ICs have no impact to and are not related to the purpose of the groundwater recovery system. Thus references to EPA's "expect[ation regarding] final remedies to return usable groundwater to its maximum beneficial use" or to return groundwater for potable purposes, or to achieve MCLs is misleading, misplaced, inappropriate, and inconsistent with the 1987 AOC. In summary, the draft/proposed objectives set forth in the Statement are not consistent with the objectives set forth in either the Statement or the 1987 AOC, and, as stated, are not necessary to support EPA's proposed ICs.
-

Ms. Linda Matyskiela (3LC20)
May 15, 2017
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8. In Section 1.A., Paragraph 3 of the Statement of Basis, the Agency indicates its intention to require that “SBD shall provide EPA with a coordinate survey, as well as a metes and bounds survey, of the Facility boundary; the Central Unit, and the Lower Unit. Mapping the extent of the land-use restrictions will allow for presentation in a publicly accessible mapping program such as Google Earth® or Google Maps®.” SBD objects and would like to point out that a presentation of the property boundaries and restricted areas could be generated from an aerial view without incurring substantial costs for a metes and bounds and coordinates survey. In the case of the former Baldwin facility, the primary restricted areas (Central and Lower Units) are readily identifiable by a lay-person without the need for a metes and bounds or coordinates survey. In the event EPA proceeds with the Statement of Basis, SBD may be willing, despite this objection, to perform these surveying tasks if the value of and need for doing so can be explained.

9. In Section 5, 1.B., related to Indoor Air, the Statement provides: “EPA is proposing the following Indoor Air use restrictions be implemented at the Facility: 1) Operate, monitor, and maintain the SVMS systems as stated in the EPA-approved *Soil Vapor Mitigation Systems Operation, Maintenance and Monitoring Plan*, dated May 2016, to ensure TCE is at or below 8 ug/m3 in indoor air; 2) Prohibit use of the Facility buildings unless the SVMS systems are in operation;” SBD objects to these proposed restrictions for several reasons. First, elements of these restrictions are impractical in light of the fact SBD does not own the property and cannot exert the level of activity control these restrictions state or imply. Second, the restrictions are expressed in a manner more broadly than necessary and if applied at all, should be restricted to the specific areas where vapor mitigation is ongoing (Bldgs. 3, 3A, 1A, 2 and 12 of the Central Unit and Bldgs. 50 and 51 of the Lower Unit). Third, the restrictions appear to be absolute prohibitions that do not account for the unavoidable fact that systems such as these must be periodically inactive for short periods due to maintenance and repairs. There is no reason to believe that these ordinary and necessary periods of temporary shutdown should require the impacted buildings be vacated during those periods. Importantly, SBD strenuously objects to the absolute language chosen for subparagraph 2, which would appear to foreclose the possibility that one or more of the VMS systems might be deactivated in the future when it can be demonstrated that the need for vapor mitigation is no longer necessary. The EPA-approved *Soil Vapor Mitigation Systems Operation, Maintenance and Monitoring Plan*, dated May 2016 discusses the possibility of deactivation if it can be demonstrated that there is no longer a vapor intrusion risk. SBD asserts that if this provision is retained, it should be modified to account for the possibility of system deactivation where a reasonable demonstration can be made that vapor mitigation is no longer necessary, or for routine maintenance and repairs.

10. The Statement of Basis indicates the Agency would prohibit construction of new structures above the Central Unit and the Lower Unit unless a vapor intrusion mitigation system

Ms. Linda Matyskiela (3LC20)
May 15, 2017
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were to be installed. This assertion is apparently made without condition and without acknowledging the possibility that assessment techniques might be applied at a future point when such construction is contemplated to demonstrate that vapor mitigation controls and measures might be unnecessary. SBD asks that the Agency bear in mind that SBD does not control the property and its future use. SBD further asserts that it should not be asked to address indefinitely the potential new risks related to conditions it has effectively addressed arising from land use decisions of parties it does not control. Perhaps the desired Agency objective can be achieved if this provision were modified to require that the property owner make an assessment of the potential for soil vapor intrusion prior to commencing new construction in these areas of the site.

As stated above, SBD objects to the Agency's proposal to abandon the 1987 AOC and substitute new and expanded mandates where, in our view, the 1987 AOC, existing VMSs and EC are functioning effectively to achieve its intended purpose under RCRA. SBD asks that the Agency reconsider moving forward with this proposal and allow for additional dialogue among the parties before taking further regulatory action. We look forward to working with you cooperatively to resolve this matter.

Very truly yours,



Stephen J. Axtell