

**North Carolina Department of Environmental Quality  
Division of Waste Management**

Operator:	Black & Decker Corporation	)	<b>Administrative Order</b>
	1701 East Joppa Road	)	<b>in Lieu of Post-Closure Permit</b>
	Towson, Maryland 21286	)	
		)	<b>Docket Number 2021-059</b>
		)	
Re:	Former Black & Decker Plant	)	
	1758 South Fayetteville Street	)	
	Asheboro, North Carolina	)	
	EPA ID # NCD 003 236 437	)	

**ADMINISTRATIVE ORDER IN LIEU OF POST-CLOSURE PERMIT  
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The Black & Decker Corporation (the Permittee) and the North Carolina Department of Environmental Quality, Division of Waste Management (the Division), acting through its Hazardous Waste Section (the Section) (collectively the Parties) enter into this Administrative Order in Lieu of Post-Closure Permit (Order) for the Former Black & Decker Plant located at 1758 South Fayetteville Street in Asheboro, Randolph County, North Carolina. Facility location is shown on the topographic map in the Figures Section of this document.

**I. Statement of Purpose**

- A. This Order concerns the application to the Facility of the North Carolina Solid Waste Management Act (the Act) contained in Chapter 130A of the North Carolina General Statutes and the rules promulgated thereunder and codified in Subchapter 13A of Title 15A of the North Carolina Administrative Code (the State Hazardous Waste Rules), and the federal Resource Conservation Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*, to the Facility. The purpose of this Order is to provide an enforceable Order in lieu of a post-closure permit, including corrective actions to be taken, for the facility located at 1758 South Fayetteville Street in Asheboro, Randolph County, North Carolina (the Facility) in a manner that is consistent with State and federal laws and rules.
  
- B. The Parties stipulate that the objectives for completion of the work required by this Order are: (1) to identify all releases of hazardous waste, hazardous constituents, and petroleum constituents; (2) to remove imminent threats to human health and the environment through source removal or treatment; (3) to characterize the Facility’s geologic and hydrogeologic conditions and determine the extent of contamination; (4) to perform corrective action at the Facility, and beyond the Facility boundaries as necessary, to include, at a minimum, establishing remediation goals for the Facility and conducting remediation to meet those goals; (5) to implement and maintain a comprehensive monitoring program until remediation is complete; (6) to provide opportunities for public participation; and (7) to provide financial assurance for assessment and remediation.
  
- C. This document constitutes an Order of the Secretary of the Department of Environmental Quality for the purposes of N.C.G.S. § 130A-18(a).
  
- D. Therefore, to further the public interest the Parties enter into this Order.

**II. Jurisdiction**

- A. The Division has authority pursuant to N.C.G.S. § 130-290, *et seq.*, to require corrective action by owners and operators with respect to facilities at which hazardous wastes were generated and treatment, storage, or disposal has occurred.
  
- B. Although this Order requires corrective action mandated by 40 CFR 264.101 and 265.121, incorporated by reference in 15A NCAC 13A .0109(g) and .0110(g), the Permittee stipulates to issuance of this Order without a hearing and to compliance with the terms of the Order. The Permittee further stipulates that they will not contest the Section’s jurisdiction to issue the Order, to require compliance with the Order, to compel compliance with the Order in any subsequent enforcement proceeding, either administrative or judicial, or to impose sanctions for any violation of the Order.

**III. Stipulations of Fact**

A. Authority of the Hazardous Waste Section

1. The United States Environmental Protection Agency (EPA) has authorized North Carolina to operate the State RCRA Hazardous Waste Program in accordance with the Act and the Rules.
2. The North Carolina Department of Environmental Quality (the Department or DEQ) is authorized and required to enforce the laws and rules governing the management of solid waste, including hazardous waste. The Secretary has delegated this authority and responsibility to the Director of the Division. The Director has issued a sub-delegation of this authority and responsibility to the Chief of the Hazardous Waste Section.

B. Black & Decker Corporation (Black & Decker) Corporate Information

1. Black & Decker Corporation (Black & Decker) is a corporation organized under the laws of Maryland and is authorized to do business in this State.
2. Black & Decker purchased the Facility from General Electric Company on April 27, 1984. As a former owner and operator, Black & Decker is responsible for the Facility's ongoing environmental remedial activities.
3. Stanley acquired Black & Decker in November 2009 to form the Stanley Black & Decker entity.
4. Stanley Black & Decker signed a RCRA Part A permit application on February 14, 2022, confirming regulatory status as operator.

C. Schwarz & Schwarz, LLC, Corporate Information

1. Schwarz & Schwarz, LLC (S&S), is a limited liability company organized under the laws of the North Carolina and is authorized to do business in this State.
2. Schwarz & Schwarz is the current owner of the property, having purchased the Facility from Black & Decker in December 2000. Although Schwarz & Schwarz is the current owner of the Facility, they did not contribute to contamination at the Facility and are not a party to this Administrative Order. The property is leased to Expressions Scrubs and Shoes (retail establishment) and Jackson Furniture Industries (i.e., Jackson Catnapper) (furniture manufacturing company).
3. Schwarz & Schwarz signed a RCRA Part A permit application on February 21, 2022, confirming regulatory status as property owner.

D. Facility Information (Physical)

1. The Facility is located on 57.3 acres at 1758 South Fayetteville Street in Asheboro, Randolph County, North Carolina (north 35° 40' 53.76" latitude and west 79° 49' 12.00" longitude). The Facility includes one single-story manufacturing building, approximately 320,000 square feet in

size, which has been expanded several times since construction in 1964. Several shipping docks are present on the west and south side of the main manufacturing building. Two unoccupied support structures are also present, a boiler room located in the central portion of the site and a historic lift station along the northern site boundary. A parking lot measuring approximately 155,000 square feet is located along the southwestern portion of the manufacturing building. The remainder of the Facility (i.e., to the north, west, and south) is undeveloped.

2. The Facility is located on Highway 220 Business, South, approximately one-quarter mile south of US Highway 64. The area surrounding the Facility is a mix of commercial and residential properties. The Facility is bounded on the north by the Asheboro Municipal Golf Course. Residential properties are located to the south and west. Various commercial properties are located to the east across South Fayetteville Street.
3. Site topography slopes gently toward the west-northwest. Surface elevation across the site ranges from approximately 839 feet above mean sea level in the southeast to 803 feet above mean sea level in the southwest. Bordering the Site to the north and to the west is an unnamed perennial creek that is a tributary of the Little River. The Little River is approximately 2.5 miles from the Site. The Little River empties into the Pee Dee River approximately 62 miles downstream. In addition to the perennial creek, there is an east-southeast to west-northwest trending drainage feature located approximately 1,000 feet southwest of the main building and a man-made pond which is present on the western portion of the Site.
4. The Facility is situated within the Piedmont Physiographic Province in North Carolina. The Piedmont Province is an area of varied topography that ranges from lowlands to peaks and ridges of moderate altitude and relief. The metamorphic and igneous rocks of this province range in age from Precambrian to Paleozoic and have been sheared, fractured, and folded. Included in this province, however, are sedimentary basins that formed along rifts in the Earth's crust and contain shale, sandstone, and conglomerate of early Mesozoic age, interbedded locally with basaltic lava flows and minor coal beds. The sedimentary rocks and basalt flows are intruded in places by diabase dikes and sills.
5. Within the Piedmont Province, the site is located in the "Carolina Slate Belt." The Carolina Slate Belt includes volcanic and sedimentary rocks of Late Proterozoic to Cambrian age that are metamorphosed to lower greenschist facies and intruded by a variety of plutons. The belt extends 600 kilometers from Virginia to Georgia and reaches a maximum width of 140 kilometers in central North Carolina. Rocks of the Carolina Slate Belt in the Albemarle-Asheboro region are mildly deformed and metamorphosed; the dominant structures are open folds plunging southwest and the regional metamorphism is chlorite or biotite grade.
6. The state geologic map (NC Geologic Survey, 1985) depicts the Asheboro area underlain by felsic metavolcanic rocks and metamudstones/meta-argillites interbedded with metasandstone, metaconglomerate, and metavolcanic rock.
7. Soils encountered at the Site are predominantly comprised of silt with variable amounts of clay and/or sand. The soils generally appeared to be saprolitic metavolcanics. Relic structures, where discernable, typically were poorly preserved, especially at shallower sample depths. The

unconsolidated overburden (regolith) transitions to a partially weathered bedrock zone, which in turn, is underlain by competent bedrock. Depth to top of bedrock (unweathered to slightly weathered) ranges from 2 to 57 feet below ground surface. Bedrock outcrops are present at several locations in the creek bed.

8. Groundwater is present in the unconsolidated overburden (regolith) and fractured bedrock. The greater mass of water is present in the saprolitic and partially weathered bedrock units until it is discharged to a surface water body.
9. There is no confining layer, and the aquifer units are interconnected. Depth to groundwater in the unconsolidated overburden ranges from approximately five feet below ground surface on the eastern portion of the Facility to approximately 20 feet below ground surface on the western portion of Facility. Groundwater in the unconsolidated overburden flows to the west-northwest, toward the creek. The hydraulic conductivity in the overburden was estimated to be 0.134 feet per day.
10. Groundwater flow in the bedrock aquifer unit is restricted to fracture zones. Fractures observed in recovered bedrock cores were most numerous at 50 – 52 feet below ground surface. The hydraulic conductivity was estimated to be ~1.24 feet per day.
11. Borehole geophysical measurements conducted in 2001 indicated a low number of conductive features in the underlying bedrock with a total of six water-conductive fractures encountered in the two boreholes measured. Effective porosities calculated from the MW-15D rock core indicated that the porosity, or void space, decreases to near zero at a depth of 41.5 feet below ground surface. Flow rates also decreased steadily with depth until “no flow” was observed at 60 feet below groundwater surface in MW-14D.

E. Facility Information (Operation/Waste Generation and Disposal)

1. The Facility was built in 1945 and operated as a furniture manufacturing factory until 1952, when it was sold to General Electric Company. General Electric Company used the Facility to manufacture electric blankets and small household appliances.
2. Black & Decker purchased the 57.3-acre Site from General Electric Company on April 27, 1984, and continued manufacturing small household appliances.
3. Black & Decker conducted manufacturing operations at the Site from 1984 to 2000. The Facility was classified as “small electric kitchen appliance manufacturing” (Standard Industrial Classification Code 3634). Small electrical appliances, such as blankets, toaster ovens, coffee makers, spotlights, and scumbusters, were produced at the Facility. Manufacturing processes included plastic injection molding, punch pressing, painting, degreasing, and assembly.
4. Degreasing solvents and waste oils were the primary wastes generated from the manufacturing processes. Managed hazardous waste included: trichloroethene (hazardous waste code F001); tetrachloroethene (hazardous waste code D039); and 1,1-dichloroethene (hazardous waste code D029).

5. Releases of chlorinated volatile organic compounds (CVOC) were detected while conducting a Limited Site Assessment prior to offering the property for sale. Black & Decker submitted a report to the Underground Storage Tank Section of the Department of Environmental Quality on February 11, 1999. A letter summarizing the results was submitted to the Groundwater Section of the Hazardous Waste Section on March 16, 1999.
6. Representatives for the Hazardous Waste Section conducted a site visit on July 21, 1999, to evaluate regulatory status. It was later determined that a release of hazardous waste had occurred from two decreasing units, resulting in creation of RCRA regulated units.
7. A Phase II Facility Investigation was completed in April 2001 by Black & Decker. The Phase II Facility Investigation was completed as part of an initial site investigation for sale of the facility, Black & Decker focused on several areas of potential concern, including the two degreaser areas designated as Degreaser North (DGN) and Degreaser South (DGS). The two degreaser areas were impacted by release of CVOCs to subsurface soil, groundwater, and adjacent surface water bodies.
8. The full horizontal extent of groundwater contamination has not been determined, although it is known to extend at least 850 feet northwest of DGS and approximately 600 feet northwest of the DGN and the east central area of manufacturing building. The vertical extent of contamination has also not been fully determined. Groundwater contamination is present primarily as perchloroethylene (PCE), trichloroethene (TCE), cis-1,2-dichloroethene, 1,2-dichloroethane, and 1,1-dichloroethene.
9. In late 1999 and early 2000, approximately 770 tons of VOC-impacted soils were excavated from the DGN and DGS area. Soils were excavated to a depth of approximately 11 feet below grade and initially treated onsite with a low temperature thermal desorption unit, and then subsequently transported offsite for treatment at an enclosed bio-treatment facility. The excavated areas were reported lined with a vapor barrier, backfilled with compacted crushed stone, and restored concrete flooring.
10. Four horizontal air sparging (AS) and four horizontal soil vapor extraction (SVE) wells were installed with a total well footage of approximately 4,500 feet. Installation was completed in December 2000 and the system became active in January 2001. A groundwater monitoring program was implemented to evaluate remediation system performance.
11. The AS/SVE remediation system removed over 470 pounds of VOCs, primary TCE, from the soil and groundwater from beneath the building from December 2000 through August 2004. The system removed 50 pounds of VOCs per month on average at startup. Throughout 2004, mass removal rates declined to less than 0.1 pound removed per month. Consequently, it was concluded that the AS/SVE system achieved its goal. Notice was provided to the Hazardous Waste Section that the AS/SVE remedy was complete. Operation ceased on August 31, 2004. Monitored natural attenuation with semi-annual monitoring of groundwater and surface water was recommended as a remedial strategy. Routine semi-annual groundwater monitoring has been consistently performed since release identification in the late 1990's.
12. Four areas of concern were identified by Black & Decker as potential source areas of

contamination. The four areas include the two degreaser areas, designated as Degreaser North (DGN) and Degreaser South (DGS), and were identified by the Hazardous Waste Section as RCRA regulated units. A third degreaser area located in the central portion of the facility's northern building was identified by a tenured facility worker and was designated as the Central AOC. Included in the Central AOC is an above ground storage tank with an estimated capacity of 1,500 gallons and a former exterior drum staging area. A fourth AOC, designated the Southwest AOC, was identified in the vicinity of monitoring well MW-23.

13. The Parties' current understanding of the geology and hydrogeology of the Facility is based on the following documents:

*Remediation Site Work Plan*, approved December 15, 1999

*Remediation Report*, February 2000

*Phase II Facility Investigation Report*, April 2001

*Semi-Annual Groundwater Monitoring Reports*, April 2002 to Present

*Remedial Investigation Report*, March 13, 2017

*Indoor Air Quality Assessment Work Plan*, September 16, 2021

14. Based on the above-referenced documents and all other record information about the Facility, the Parties concur that the potential contaminant pathways of concern at the Facility known at the present time include (a) ground water to potable wells; (b) ground water to surface water; and (c) ground water to indoor air. The known contaminants of concern at the Facility include TCE and its degradation products.
15. The Facility has taken certain actions, described below, to address the groundwater to potable wells, surface water, and indoor air pathways of contamination in and around the Facility. These actions are documented in the reports referenced above in Paragraph III.E.13 of this Order.
- a. Groundwater to Potable Well
- A potable well survey was conducted in the vicinity of the Facility on January 11, 2012, including visual inspection of the adjacent commercial/industrial properties and neighborhoods within one-half mile of the Facility. Private well heads and/or suspect well houses were not observed during the survey and water meters were noted throughout the area, indicating that drinking water is supplied by the City of Asheboro. One water supply well, located cross gradient from the Facility, was identified on the Asheboro Municipal Golf Course property to the north. Eight wells were identified at the Oliver Rubber facility, which is situated approximately 0.4 miles upgradient of the Facility. The eight wells are reportedly monitoring wells. Thus, the groundwater to potable well pathway is deemed incomplete.
- b. Groundwater to Surface Water
- Surface water in the vicinity of the Facility includes (1) an unnamed perennial creek to the north and west; (2) an east-southeast to west-northwest trending drainage feature located approximately 1,000 feet southwest of the main building; and (3) a man-made pond which is present on the western portion of the Site.

Surface water samples were collected in October 2016 from 17 monitoring stations, including seven routine sampling stations and ten supplemental sampling stations. Trichloroethene (TCE) was measured above the 15A NCAC Subtitle 02B Surface Water Standards in samples located along two segments of the tributary that coincide with groundwater contaminant plumes. Sample results indicate that contaminated groundwater is discharging to surface water at concentrations exceeding regulatory standards.

An interim groundwater extraction system consisting of three recovery wells was installed and began operation during October 2021. The system was installed to provide hydraulic capture of the plume, thereby mitigating surface water discharge conditions to the north.

c. Groundwater to Indoor Air

A vapor intrusion assessment was performed between 2013 and 2016 to assess the potential for indoor air intrusion in structures located within 100 feet of a groundwater contaminant plume characterized by elevated concentrations of chlorinated volatile organic compounds. Four exterior soil gas monitoring points were installed and monitored on a quarterly basis beginning in September 2013, and ending in December 2014, to establish a baseline. Two locations were characterized by elevated levels of trichloroethene (TCE). Vapor intrusion mitigation measures were recommended in lieu of collecting sub-slab or indoor air samples.

Additional quarterly soil gas monitoring was performed from March 2015 to December 2015, confirming the earlier findings. Consequently, the SVE system was repaired and reactivated in February 2017 to depressurize the building slab and remove potential accumulated VOC mass from the vadose zone. Approximately 2,400 additional pounds of TC have been removed since reactivation.

Indoor air quality samples were collected on December 7, 2021. Trichloroethene and 1,1,2-trichloroethane were the only constituents to exceed regulatory standards. Indoor air concentrations were inserted into the Division of Waste Management Risk Calculator. The cancer risk and hazard quotient were not exceeded for non-residential workers. Confirmation indoor air samples were collected beginning on February 28, 2022 and ending on March 1, 2022. A report summarizing the results of the February sampling event was submitted to the HWS on April 14, 2022. Initial review confirms the December sampling results.

**IV. Conclusions of Law and Determinations**

Based upon the foregoing stipulations of fact and all other information available on the effective date of this Order, the Section concludes and determines that:

A. Definitions

1. "Hazardous wastes" shall mean those hazardous wastes defined in N.C.G.S. § 130A-290(a)(8) and 40 CFR Part 261, adopted by reference in 15A NCAC 13A .0106(a) through .0106(e).
2. "Hazardous constituents" shall mean those constituents listed in Appendix VIII to 40 CFR Part 261, adopted by reference in 15A NCAC 13A .0106(e), or any constituent identified in

Appendix IX to 40 CFR Part 264, adopted by reference in 15A NCAC 13A .0109(a), or under N.C.G.S. § 130A-294.

3. “Landfill” shall have the meaning given in N.C.G.S. § 130A-290(a)(16).
  4. The term “Facility” shall have the meaning given in 40 CFR 260.10, adopted by reference in 15A NCAC .0102(b).
  5. The terms “disposal” and “treatment” shall have the meanings given in N.C.G.S. § 130A-290(a)(6) and (a)(42), respectively.
  6. The term “Facility boundary” as used in this Order is the furthestmost extent of the property owned and used by Black & Decker.
  7. The term “Active Portion” shall have the meaning given in 40 CFR 260.10, adopted by reference in 15A NCAC .0102(b).
  8. The term “Corrective Action” shall mean all activities, including activities conducted beyond the Facility boundary, that are proposed or implemented to facilitate assessment, monitoring, and active or passive remediation of releases of hazardous waste or hazardous constituents to soil, groundwater, surface water, or the atmosphere associated with Hazardous Waste Management Units (HWMUs), Solid Waste Management Units (SWMUs), and/or Areas of Concern (AOCs) located at the Facility.
- B. Status of Black & Decker
1. Black & Decker is a person as defined in N.C.G.S. § 130A-290(a)(22).
  2. Black & Decker is an operator as defined in N.C.G.S. § 130A-290(a)(21).
- C. Application of RCRA Standards
1. Pursuant to 40 CFR Part 261, Appendix VII, incorporated by reference in 15A NCAC 13A .0106(e), spent TCE is a listed hazardous waste assigned the EPA waste code of F001.
  2. Pursuant to 40 CFR 262.34, incorporated by reference in 15A NCAC 13A .0107(c), a large quantity generator of hazardous waste that stores the waste for less than 90 days in a container or a tank and, therefore is not required to obtain a RCRA permit or obtain interim status, must nonetheless comply with the rules set forth in 40 CFR, Part 265, Subpart I, interim status regulations for use and management of containers, and the applicable parts of Subpart J, interim status regulations for tank systems. Pursuant to this regulation, Black & Decker control was required to comply with 40 CFR Part 265, Subpart I, and applicable parts of Subpart J, throughout the time it operated the Facility.
  3. In accordance with 40 CFR 265.196, incorporated by reference in 15A NCAC 13A .0110(j), if a generator using a tank to accumulate hazardous waste determines that there is a leak or spill, and the generator cannot meet the requirements for returning the tank system to service, the tank system

must be closed in accordance with 40 CFR 265.197. Black & Decker could not meet these requirements to return to service the tank systems; therefore, the systems and areas of contamination were required to be closed pursuant to the standards of 40 CFR 265.197.

4. In accordance with 40 CFR 265.197, incorporated by reference in 15A NCAC 13A .0110(j), at closure of a tank system, if the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated the tank system is then “considered to be a landfill” and the owner or operator must close the tank system and perform post-closure care in accordance with closure and post-closure care requirements at 40 CFR 265.310 that apply to landfills. Black & Decker demonstrated that not all contaminated soils could be practicably removed or decontaminated, and that waste residue remained after soil removal; therefore, Black & Decker is required to close the tank system, and perform post-closure care, pursuant to 40 CFR 265.310, adopted by reference in 15A NCAC 13A .0110(n).
5. A “landfill” is also a “land disposal facility”; therefore, the owner and operator are subject to all the requirements for landfills set out in 40 CFR Part 265, Subparts G and H, adopted by reference in 15A NCAC 13A .0110(g) and (h).
6. The groundwater monitoring requirements of 40 CFR Part 265, adopted by reference in 15A NCAC 13A .0110, also apply to a generator’s facility where a tank system has been designated a landfill until a post-closure permit or an administrative order in lieu of a post-closure permit is issued.
7. Additionally, 40 CFR 270.1(c), adopted by reference in 15A NCAC 13A .0113(a), requires that owners and operators of landfills that certify closure after January 26, 1983, must have post-closure permits, unless it demonstrates closure by removal (i.e., clean closure). Based on the foregoing and pursuant to 40 CFR 270.1(c), incorporated by reference in 15A NCAC 13A .0113(a), Black & Decker as operator is required to have a post-closure permit or an administrative order in lieu of post-closure permit for the Facility.
8. Pursuant to 40 CFR 265.121, incorporated by reference in 15A NCAC 13A .0110(g), owners and operators who are subject to the requirement to obtain a post-closure permit under 40 CFR 270.1(c), incorporated by reference in 15A NCAC 13A .0113(a), but who obtain enforceable documents in lieu of a post-closure permit, as provided under 40 CFR 270.1(c)(7), incorporated by reference in 15A NCAC 13A .0113(a), must comply with the following requirements:
  - a. The requirements to submit information about the Facility in 40 CFR 270.28, incorporated by reference in 15A NCAC 13A .0113(b);
  - b. The requirements for Facility-wide corrective action in 40 CFR 264.101, incorporated by reference in 15A NCAC 13A .0109(g);
  - c. The requirements of 40 CFR 264.91 through 264.100, incorporated by reference in 15A NCAC 13A .0109(g).

9. As substantiated in the reports submitted by Black & Decker, as referenced in Paragraph III. E.13, the Section has determined that a release has occurred at the Facility, and that one or more solid waste management unit(s) and areas of concern may have contributed to the release. Therefore, as provided in 40 CFR 264.90(f), incorporated by reference in 15A NCAC 13A .0109(g), the Facility is eligible to be remediated under the corrective action requirements of 40 CFR 264.101, incorporated by reference in 15A NCAC 13A .0109(g), and is not required to comply separately with the requirements of 40 CFR 264.91 through 264.100.
10. The Section has determined that, as much as can be determined given the present understanding of the Facility and the existing contamination, Black & Decker's compliance with the provisions of this Order related to groundwater monitoring and corrective action for releases to groundwater shall protect human health and the environment, as required by 40 CFR 264.90(f), incorporated by reference in 15A NCAC 13A .0109(g). The Parties agree that additional monitoring and corrective action may be required as a result of the additional characterization that shall be completed pursuant to this Order. The Parties agree to conduct additional monitoring and corrective action to the extent that the Section determines it is necessary based on the results of such additional characterization.
11. Based on the request and representations of Black & Decker, this Order is being issued at the discretion of the Chief of the Section in lieu of a post-closure permit, pursuant to N.C.G.S. § 130A, Article 9; 40 CFR 270.1(c)(7), incorporated by reference in 15A NCAC 13A .0113(a); 40 CFR 265.121, incorporated by reference in 15A NCAC 13A .0110(g); and all applicable portions of 40 CFR Parts 124, 264, 265, and 270, incorporated by reference in 15A NCAC 13A .0105, .0109, .0110, and .0113.

**D. Integration of Order**

1. This Order supersedes any prior agreement, verbal or written, which may have been entered into prior to the date of execution of the agreement.

**E. Acceptance of Previous Work**

1. The Section acknowledges that Black & Decker may have completed some of the tasks required by this Order and that some of the information and data required by this Order may be available. This previous work may be used to meet the requirements of this Order.
2. All previously conducted corrective action activities will be recognized by the Section as appropriate, but not necessarily sufficient, in the development and implementation of any further activities under this Order.

**F. Responsibility Issues**

1. Black & Decker accepts full responsibility for satisfactory completion of all required tasks and activities in accordance with the terms and conditions of this Order.

**V. Scope of Work**

- A. Black & Decker submitted a Part A application on February 21, 2022, which fully meets the requirements of 40 CFR 270.28, incorporated by reference in 15A NCAC 13A .0113(b). The Part A application includes the signature(s) by the appropriate corporate officer(s) for Black & Decker (Operator) and for Schwarz and Schwarz (Property Owner).
- B. Black & Decker shall complete the characterization activities, monitoring, and corrective action measures at the Facility as described herein. In conducting any such Work, Black & Decker shall prepare appropriate workplans and reports for Section approval.
- C. All actions required pursuant to this Order shall be in accordance with applicable local, state, and federal laws and regulations. Black & Decker shall undertake corrective action activities in accordance with the Act, the State Hazardous Waste Rules, and EPA and Department guidelines as appropriate and applicable at the time the Work is undertaken.
- D. If documents submitted to the Section include any work that would constitute the practice of engineering as defined by N.C.G.S. Chapter 89C, the signature and seal of a professional engineer is required. If documents submitted include any work that would constitute the practice of geology as defined by N.C.G.S. Chapter 89E, the signature and seal of a licensed geologist is required. If any work is to be done on a well that would constitute well contractor activities as defined in N.C.G.S. Chapter 87, a certified well contractor shall be employed to perform the work.
- E. Any standard, requirement, criteria, or limitation under an environmental law or facility siting law promulgated by North Carolina that is more stringent than any federal standard, requirement, criteria, or limitation with respect to any hazardous waste or constituent is applicable to the Work to be done at this Facility; e.g., the groundwater standards promulgated at title 15A North Carolina Administrative Code Subchapter 2L, shall apply to releases at the Facility and beyond the Facility boundary.
- F. Facility Site Conceptual Model (SCM)
  - 1. A Facility site Conceptual Model (SCM) is required, and it shall include, at a minimum, the following:
    - a. the geologic/hydrogeologic conditions at the Facility;
    - b. the sources, types, and distribution of contaminants and any breakdown products;
    - c. a holistic overview of the sources of contamination, including known or potential pathways of migration, and known or potential receptors;
    - d. the actual extent of migration beyond the Facility boundary;
    - e. possible environmental and human health risks.

The SCM(s) may include maps, cross-sections, flownets, narrative, data tables, groundwater flow models, contaminant transport models, and any other information needed to gain a full understanding of the Facility.

2. Black & Decker shall submit an updated SCM within ninety (90) calendar days of a written request from the Section. Black & Decker shall also submit a modified or updated SCM when either determines there is a need for a new SCM. Submissions of updated SCMs shall occur pursuant to this Paragraph until the Section determines (a) that corrective action at the facility is completed or (b) that further updates of the SCM are no longer necessary. After review of the updated SCM, the Section shall notify Black & Decker in writing that the SCM has been approved or that there are material deficiencies in the SCM. After receiving written notification from the Section of any material deficiencies in the SCM, Black & Decker shall submit to the Section, within a mutually-agreed-to time period, information or material sufficient to correct such deficiencies.
3. The SCM shall be an adaptable model of the Facility that is used to develop hypotheses regarding the location and movement of contamination at the Facility and the potential impacts that may occur to human health and the environment. Black & Decker shall use EPA and Division guidance documents appropriate and applicable at the time the work is undertaken in developing any updated SCM.
4. Using the SCM as a guide, Black & Decker shall conduct such further Facility investigations and assessments deemed necessary for the development and implementation of a Facility-wide corrective measures program. The SCM shall guide corrective actions taken pursuant to this Order.
5. Additional Facility investigations required by this Order may include further investigation and characterization of the sources, nature, extent, direction, rate, movement, and concentration of hazardous waste or hazardous constituents that have been or are likely to be released into the environment from the Facility, and the collection and analysis of relevant Facility hydrogeologic and chemical data.

**G. Further Facility Characterization to be Performed**

Although a significant amount of work has been performed at the Facility, Black & Decker shall complete the investigation of contaminated environmental media, design and implement remedial action(s), if required, and continue environmental monitoring, as appropriate. Specifically, Black & Decker shall complete, at a minimum, the following:

1. Assist the USEPA in completing a RCRA Facility Assessment (RFA) Report identifying the solid waste management units (SWMUs) and areas of concern (AOCs).
2. Fully investigate the SWMUs and AOCs identified in the RFA Report as requiring further action (i.e., confirmatory sampling or investigation);
3. Complete the vapor intrusion investigation and implement any necessary mitigation actions;
4. Determine the extent of contamination in all environmental media, including both the horizontal and vertical extents, where appropriate;

5. If deemed necessary, conduct an additional well survey to determine if there are any impacted wells downgradient of the Facility;
6. Continue to monitor in accordance with the most recently approved Sampling and Analysis Plan;
7. Submit, upon request from the Section, any items not included in the electronic data file, that are required for a Post-Closure Permit complete determination.

H. Facility Characterization Workplans/Quarterly Progress Reports

1. Within sixty (60) calendar days following a request by the Section, Black & Decker shall submit a Facility characterization workplan based upon the SCM outlining the activities that shall be undertaken to address the items in Paragraphs V.F-V.G. The workplan shall include a schedule of implementation. The schedule of implementation shall include the submission of quarterly progress reports to the Section in accordance with Paragraph V.H.4.
2. The Section will either accept or provide comments on the proposed Facility characterization workplan. Within thirty (30) calendar days of receiving notice from the Section of any deficiency in the Facility characterization workplan, Black & Decker shall submit to the Section information or material sufficient to correct such deficiency. Black & Decker shall implement the workplan within thirty (30) calendar days of receiving concurrence from the Section.
3. If Black & Decker determines that additional work is required to complete the Facility characterization after the completion of the work outlined in the workplan, then Black & Decker shall perform those additional tasks according to a schedule mutually agreed upon by the Parties. Such work shall also conform to the requirements of this Order.
4. Black & Decker shall submit quarterly reports on the progress of the Facility characterization. These reports shall include:
  - a. A description of the portion of the Facility characterization completed;
  - b. Summaries of findings;
  - c. Summaries of any deviations from the approved Facility characterization workplan(s) during the reporting period;
  - d. Summaries of any significant contacts with local community public interest groups or state government;
  - e. Summaries of any problems or potential problems encountered during the reporting period;
  - f. Actions taken to rectify problems;
  - g. Changes to relevant personnel;
  - h. Projected work for the next reporting period; and
  - i. Copies of laboratory/monitoring data including QA/QC data.

I. Facility Characterization Reports

1. Black & Decker shall prepare and submit to the Section Draft and Final Facility Characterization Reports for the investigations conducted pursuant to the workplans and the work performed as part of the Facility investigation. Black & Decker shall submit the Draft Facility Characterization Reports to the Section for review in accordance with the schedule in the approved Facility Characterization Workplan(s). Black & Decker shall submit the Final Facility Characterization Report to the Section according to the schedule set out in the Section's comments on the Draft Facility Characterization Report. Any Draft and Final Facility Characterization Reports shall include an analysis and summary of all required investigations of the HWMU, SWMUs and AOCs and the investigation results. The summary shall describe the type and extent of contamination at the Facility, including sources and migration pathways, and a description of actual or potential receptors. The Reports shall also describe the extent of contamination in relation to background levels indicative of the area.
2. The Section shall review the Final Facility Characterization Report and notify Black & Decker of the need for further investigative action and/or the need for a remediation program in accordance with 40 CFR 264.101, incorporated by reference in 15A NCAC 13A .0109(g). Black & Decker shall prepare and implement any further investigative action required by the Section according to a schedule approved by the Section. Remediation shall be conducted using the procedures specified in this Order.

J. Facility Monitoring Program

1. Black & Decker shall continue to implement the existing program to monitor contamination in and around the Facility. The monitoring program may be modified as additional investigative information becomes available. The approved monitoring program shall be continued until such time as the Section determines remediation is complete. Any request to modify the existing monitoring program shall be made, approved, and implemented pursuant to Paragraphs V.J.3 through V.J.5.
2. Additional Facility characterization may require modifications to the monitoring program. If the Section determines the monitoring program or any aspect of the monitoring program is inadequate to monitor conditions at the Facility, then the Section shall notify Black & Decker in writing. Within thirty (30) calendar days of receiving written notification from the Section, Black & Decker shall develop and submit an amended monitoring program for the Facility.
3. If Black & Decker seek to modify the existing monitoring program, then Black & Decker shall submit to the Section a written explanation of the proposed modification. The proposed modification shall include an updated SCM.
4. The Section will approve, disapprove, or provide comments on any proposed modification to the monitoring program. Within thirty (30) calendar days of receiving notice from the Section of any deficiency in a proposed modification to the monitoring program, Black & Decker shall submit to the Section information or material sufficient to correct such deficiency. Black & Decker shall

implement the modified monitoring program within thirty (30) calendar days of receiving approval from the Section.

**K. Interim Measures**

1. If, prior to implementation of a final remedy, the Section determines that there is a need to modify the existing interim remedial measures or to implement additional interim remedial measures, in order to minimize or prevent the further migration of contaminants and to limit human and environmental exposure to contaminants while long-term corrective action remedies are evaluated and implemented as necessary, then Black & Decker shall prepare an Interim Measures Workplan (IM Workplan) and take any other appropriate measures as authorized and directed by the Section.
2. The IM Workplan shall ensure that the proposed interim measures are designed to mitigate any current or potential threat(s) to human health or the environment and to be consistent with and integrated into any long-term corrective measures program at the Facility. The IM Workplan shall include a discussion of: (a) the objectives of the interim measures program; (b) the required Facility procedures for the implementation of any modification to the existing interim remedial measure or additional interim measures (including any designs, plans, or specifications); and (c) the schedule for the implementation of the modification to or addition of interim measures.
3. The IM Workplan shall be approved by the Section in writing prior to its implementation. If the Section disapproves the IM Workplan, the Section shall either (a) notify Black & Decker in writing of the IM Workplan's deficiencies and specify a due date for the submission of a revised IM Workplan; (b) revise the IM Workplan and notify Black & Decker of the revisions and the start date of the schedule within the approved IM Workplan; or (c) conditionally approve the IM Workplan and notify Black & Decker of the conditions upon which interim measures shall be implemented. Black & Decker shall implement any required modification to or addition of interim measures in accordance with the Section's directions.
4. Black & Decker shall give notice to the Section as soon as possible of any proposed changes to the IM Workplan. Such modifications shall be implemented only with the Section's approval and shall conform to the requirements of this Order.
5. If the time required for the completion of any modification to or addition of an interim measure is more than one (1) year, Black & Decker shall provide the Section with progress reports at intervals specified in the approved IM Workplan. The progress reports shall contain the following information at a minimum: (a) a description of the portion of the interim measures completed; (b) summaries of any material deviations from the IM Workplan during the reporting period; (c) summaries of any problems or potential problems encountered during the interim period; (d) projected work for the next reporting period; and (e) copies of all laboratory/monitoring data generated during the reporting period.
6. Black & Decker shall prepare and submit a final Interim Measures Report (IM Report) to the Section within ninety (90) calendar days of the completion of any interim measure. The IM Report shall contain the following information at a minimum: (a) a description of the interim measures that were implemented; (b) summaries of the results of such interim measures; (c) summaries of

any problems encountered; (d) summaries of the accomplishments and effectiveness of interim measures; and (e) copies of all relevant laboratory/monitoring data.

L. Remedial Strategy

1. Black & Decker shall at all times provide a remedial strategy that sets out a plan for developing and evaluating remedies for the impacted areas at the Facility and beyond the Facility boundary after considering: (a) the SCM; (b) contaminants of concern; (c) the nature and extent of contamination; (d) the rate of contaminant movement; (e) the amount of time required to remediate the Facility; (f) media and receptors impacted; and (g) other relevant information gathered during Facility characterization activities. The level of detail and specificity related to the remedial technologies being considered for the Facility shall increase as Black & Decker obtains more information on Facility characterization. The remedial strategy is due no later than sixty (60) days following issuance of this Administrative Order.
2. Black & Decker shall also update an existing remedial strategy upon written request from the Section and at any other time Black & Decker deems appropriate. Within thirty (30) calendar days of receiving written notice from the Section of any deficiency in a proposed remedial strategy, Black & Decker shall submit to the Section information or material sufficient to correct such deficiency. When the Section determines that a remedial strategy has been amended appropriately, then the Section shall notify Black & Decker in writing of its approval.
3. A remedial strategy shall at all times be consistent with appropriate and applicable EPA guidance. A remedial strategy shall be designed to meet the remedial goals for the Facility. The Section's remedial goals for the Facility include protection of all receptors as well as unrestricted use for the soil and ground water, as required by the standards in 15A NCAC Subchapter 2L. If Black & Decker determines that alternate cleanup levels would be protective of human health and the environment, then such alternate levels shall be submitted to the Section for evaluation after Facility characterization is complete.

M. Remediation Program

1. An interim remediation program is currently being implemented at the Facility and is described in the *Semi-Annual Water Quality Monitoring Report* (dated August 24, 2020). The former SVE system that transects residual contaminant impacts associated with the DGN area was returned to full-time operation on February 2, 2017, and is still currently in operation. Additionally, Black & Decker injected permanganate into the subsurface in July and November 2018. Permanganate injections were focused on the southwest area of concern in the vicinity of MW-23 and the DGN area.
2. Black & Decker shall submit a proposed final remediation program based upon the SCM. The final remediation program shall include a summary of remedial options considered, an implementation schedule, a method of evaluating the effectiveness of the remediation program, a method of determining when remediation is complete, and an estimate of the required duration of the remediation program to meet the remedial goals.

3. Thirty (30) calendar days after the Section's determination that the Facility characterization described in Paragraphs V.F through V.I is complete, Black & Decker shall submit to the Section a description of the remediation program designed to achieve the remedial goals. The description of the remediation program shall be based upon the information developed in the remedial strategy. The remediation program shall at all times be technically consistent with appropriate and applicable EPA and Division guidance on the development and use of remediation technologies.
4. Within thirty (30) calendar days of receiving the Section's concurrence on the proposed final remediation program, Black & Decker shall provide the Section with all information necessary for the Section to commence the public participation process as specified in Paragraphs XI.A-XI.B. Upon completion of the public participation process, the Section shall approve, approve with modification, or disapprove the remediation program.
5. Within sixty (60) calendar days after approval of the final remediation program, Black & Decker shall submit to the Section the specifications for the remediation program and shall begin implementation of the remediation program. The remediation shall not be deemed complete pursuant to Paragraphs XIV.A. through XIV.C. of this Order until the remedial goals have been met.
6. If the approved final remedy for the Facility includes institutional controls or other land use restrictions, the Property Owners agree and hereby bind all persons who, subsequent to the effective date of this Order, obtain any interest in the property to record such land use restrictions as shall be required by the Section. Any person who obtains an interest in any portion of the real property subject to this Order shall be given notice of this agreement, and the information contained in this Paragraph shall be included in the deed or other instrument creating rights in the real property, which document shall be promptly recorded in the Randolph County Register of Deeds Office.

**VI. Data Quality Assurance and Quality Control**

- A. Workplans shall contain quality assurance/quality control (QA/QC) and chain of custody procedures for all sampling, monitoring, and analytical activities. Black & Decker shall document in the applicable report any deviations from the QA/QC and chain of custody procedures in approved workplans, including reasons for the deviations.
  
- B. To ensure that data of known and appropriate quality are obtained and are sufficient to support their intended use(s), Black & Decker shall submit workplans and reports to the Section that include data quality objectives for each collection activity.

**VII. Property Access and Sampling Access**

- A. Black & Decker shall assure that the Section and its representatives, including contractors, can enter the premises at reasonable times to ensure performance of the activities required by this Order.
- B. To assure access to property beyond the Facility boundary, Black & Decker shall use their best efforts to obtain access agreements and easements from current owners of property impacted by contamination from the Facility as required by the Act and the State Hazardous Waste Rules, which agreements shall be legally sufficient to run with the land if the property is sold; shall be recorded with the Randolph County Register of Deeds office; and shall be indexed with the State of North Carolina as the Grantee.
- C. In the event that the access agreements and easements required by Paragraph VII.B cannot be obtained by Black & Decker’s best efforts, Black & Decker shall notify the Section and provide documentation regarding its efforts to obtain such agreements. If necessary, the Section may exercise its legal authority to assist Black & Decker in obtaining access to properties beyond the Facility boundary.
- D. The Section or its representatives may take split or duplicate samples of any samples collected by Black & Decker, or any authorized representative of Black & Decker, pursuant to this Order. Black & Decker or its authorized representatives shall notify the Section no less than ten (10) working days in advance of any field activities. Black & Decker may give verbal notification to the Section in this instance.
- E. Black & Decker shall allow the Section or its representatives to enter the Facility at reasonable times, upon notice to Black & Decker, to review the progress of activities required by this Order, to conduct such tests as the Section deems necessary in connection with this Order, and to otherwise assess Black & Decker’s compliance with this Order.
- F. All persons with access to the Facility pursuant to this Order shall comply with Facility-specific health and safety plans and any applicable Facility security procedures.
- G. Nothing in this Order shall limit any access rights the Section may have pursuant to law.

**VIII. Data Collection/Document Availability/Reporting Requirements**

- A. Black & Decker shall, upon request, furnish the Section with copies of records required by this Order, including copies of daily reports, inspection reports, and laboratory/monitoring data. Black & Decker is also required to provide electronic data deliverables (EDDs) of all sampling data.
- B. All data, factual information, and documents submitted by Black & Decker pursuant to this Order shall be subject to public inspection. Black & Decker shall not assert any confidentiality or privilege claim concerning any data gathered during any investigations or other actions required by this Order, including any hydrogeological or chemical data, any data submitted in support of a remedial proposal, or any other scientific or engineering data especially as regards an interim or final remedy. Except as specifically prohibited by this paragraph, Black & Decker may assert a claim of confidentiality as to any process, method, technique, or any description thereof that Black & Decker claim constitutes proprietary or trade secret information developed by Black & Decker or developed by their contractor(s). Except as specifically prohibited by this paragraph, Black & Decker may assert business confidentiality claims, if applicable, at the time information is submitted for information provided in connection with this Order in accordance with 40 CFR 2.203(b), adopted by reference in 15A NCAC 13A .0104(c), Chapter 132 of the North Carolina General Statutes, N.C.G.S. § 130A-304, or any other applicable State law. Any claim for confidentiality submitted pursuant to this paragraph shall be subject to North Carolina's confidentiality determination procedures and, if determined to be confidential, afforded protection by the Section as provided by North Carolina law.
- C. Documents that are asserted to be attorney work product or subject to privilege under law shall not be subject to inspection or copying under this Order. Black & Decker shall provide the Section with (1) an identification of the date, title, and subject matter of each document for which a privilege is asserted; and (2) an explanation as to why the privilege is applicable to the document or portions thereof. Notwithstanding the foregoing provision, the Section may seek disclosure of such documents through a court of competent jurisdiction.
- D. Black & Decker shall notify the Section in writing as soon as possible, and no later than fifteen (15) working days after Black & Decker obtains knowledge, of any planned physical alterations or additions which may impact the HWMU, SWMUs, AOCs, or areas contaminated by releases from these units.
- E. Black & Decker shall report to the Section any situations that may endanger human health or the environment. These reports shall be communicated orally within 24 hours and submitted in writing within five (5) working days of when Black & Decker becomes aware that the situation exists. Depending upon the circumstances, the Section may waive the five-day requirement and allow Black & Decker to submit the written report within fifteen (15) working days.
- F. Black & Decker shall submit a biennial report to the Section by March 1 of each even numbered year as required by 40 CFR 264.75, incorporated by reference in 15A NCAC 13A .0109(f). The biennial report shall be submitted electronically via RCRA Info (<https://rcrainfo.epa.gov/rcrainfoprod/action/secured/login>). The report shall cover activities required by this Order during the previous calendar year. The certification submitted with the biennial report shall be signed by an authorized corporate officer of Black & Decker .

- G. Black & Decker shall preserve, for at least three (3) years after the termination of this Order, all records and documents in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys that relate in any way to this Order. For any hazardous waste generated, Black & Decker shall retain a copy of all notices, certifications, demonstrations, waste analysis data, and other documentation for at least five (5) years from the date the last waste was treated, stored, or disposed (either at the Facility or beyond the Facility) or until the Section determines corrective action is completed, whichever date is later.
  
- H. Notification and data collection/assessment requirements for newly identified SWMUs and AOCs.
  - 1. Black & Decker shall notify the Section in writing, within fifteen (15) calendar days of discovery, of any newly identified SWMU or AOC. The notification shall include, at a minimum, the location of the SWMU or AOC and all available information pertaining to the nature of the release (e.g., media affected, hazardous constituents released, magnitude of release).
  
  - 2. Black & Decker shall prepare and submit to the Section, within ninety (90) calendar days of notification, a SWMU Assessment Report (SAR) for each newly identified SWMU or AOC. At a minimum, the SAR shall provide the following information:
    - a. Location of unit on a topographic map of appropriate scale such as required under 40 CFR 270.14(b)(19), incorporated by reference in 15A NCAC 13A .0113(b).
    - b. Designation of type and function of unit.
    - c. General dimensions, capacities and structural description of unit (including any available plans/drawings).
    - d. Dates that the unit operated.
    - e. Specification of all wastes that have been managed at/in the unit to the extent available, including any available data on hazardous constituents in the waste.
    - f. All available information pertaining to any release of hazardous waste or hazardous constituents from such unit (to include ground water data, soil analyses, air, and/or surface water data).
  
  - 3. Based on the data in the SAR, the Section shall determine the need for further investigations at the newly identified SWMU or AOC. If the Section determines that further investigations are needed, the Section shall require Black & Decker to develop a plan for such investigations and to obtain Section approval before implementing the plan.
  
- I. Notification requirements and data collection/assessment for newly discovered releases at previously identified SWMUs and AOCs.
  - 1. Black & Decker shall notify the Section in writing of any newly discovered release(s) of hazardous waste or hazardous constituents identified during the course of ground water monitoring, field investigations, environmental audits of previously known SWMUs or AOCs, or by other means, within fifteen (15) calendar days of discovery. This requirement also applies to newly discovered releases at known SWMUs and AOCs for which additional investigation was not previously required.

2. If the Section determines that further investigation of the SWMUs or AOCs is needed, the Section shall require Black & Decker to develop a plan for such investigation and to obtain Section approval before implementing the plan.
  
- J. Black & Decker shall furnish the Section with any relevant information that may be used to determine whether cause exists to terminate or revise this Order.

**IX. Inspection and Training Requirements**

- A. Within sixty (60) calendar days of the effective date of this Order, Black & Decker shall submit for Section approval a general inspection and maintenance schedule for the environmental monitoring and remedial action systems currently in use at the Facility. This plan shall be consistent with 40 CFR 264.15, incorporated by reference in 15A NCAC 13A .0109(c), and shall be updated as necessary to include additional or modified monitoring and remedial action systems required by this Order.
  
- B. Within sixty (60) calendar days following a request from the Section, Black & Decker shall submit for Section approval a personnel training plan for employees and contractors involved with environmental monitoring and the remedial action system. The plan shall be consistent with 40 CFR 264.16, incorporated by reference in 15A NCAC 13A .0109(c). Training shall include instruction for emergency response, sampling, and operation and maintenance procedures. The personnel training plan shall be updated as necessary to incorporate additional or modified monitoring and remedial action systems required by this Order. Black & Decker shall maintain copies of training documents and records according to the requirements of Paragraph VIII.G. of this Order.

**X. Cost Estimate, Financial Assurance, and Adjustments**

- A. In accordance with 40 CFR 265.121, incorporated by reference in 15A NCAC 13A .0110(g), Black & Decker shall comply with the requirements listed in 40 CFR 264.100 and 264.101, incorporated by reference in 15A NCAC 13A .0109(g), for Facility corrective action as defined in Paragraph IV.A.8.
- B. Within one hundred eighty (180) calendar days of issuance of this Order, Black & Decker shall submit for Section review and approval a written cost estimate as described in 40 CFR 264.144 and 40 CFR 264.101, incorporated by reference in 15A NCAC 13A .0109(i), for the actions required by this Order. This cost estimate shall be based on the Remedial Strategy described in Section V.L. and the Remediation Program described in Section V.M.
- C. Subsequent cost estimates shall be prepared as described in 40 CFR 264.144(a) and 264.101, incorporated by reference in 15A NCAC 13A .0109(i), and shall be based on the most recently approved Remedial Strategy or Remediation Program. Additionally, the following requirements shall apply to the cost estimate.
1. Black & Decker shall, as described in 40 CFR 264.144(c), incorporated by reference in 15A NCAC 13A .0109(i), submit cost adjustments for modifications to the Remedial Strategy described in Section V.L. or to the Remediation Program described in Section V.M. within thirty (30) calendar days after receiving approval of the modification if the change increases the cost of corrective action.
  2. At each five-year interval after this Order is issued, Black & Decker shall submit an updated cost estimate for completion of corrective action. The updated cost estimate shall be submitted sixty (60) days prior to the anniversary date of the establishment of the financial assurance instrument unless using a financial test or corporate guarantee, in which case the estimate shall be updated thirty (30) days after the close of the firm's fiscal year.
- D. Black & Decker shall maintain at the Facility a copy of the latest cost estimate as described in 40 CFR 264.144(d), incorporated by reference in 15A NCAC 13A .0109(h).
- E. Within sixty (60) days of the approval of the cost estimate provided in Paragraph X.B or Paragraph X.C, Black & Decker shall establish financial assurance in the amount at least equal to the cost estimate as provided in Paragraph X.B or Paragraph X.C. Financial instruments described in 15A NCAC 13A .0109 and 40 CFR 264.145 as adopted in 15A NCAC 13A .0109 shall be used to establish financial assurance for post-closure care and corrective action. The amount of financial assurance to be established shall at least be equal to the amount of the written cost estimate as provided in Paragraphs X.B and X.C. of this Order or for an amount agreed upon by the Department. Financial assurance established pursuant to this paragraph can be used solely for the purpose of conducting the activities required by this Order.
- F. The wording of the instrument described in 40 CFR 264.151 as adopted in 15A NCAC 13A .0109 used to demonstrate financial assurance for post-closure care may be modified in order to provide financial assurance for both post-closure care and corrective action. Modifications to the wording of an instrument shall be subject to approval of the Department.

- G. Instrument(s) used to demonstrate financial assurance for post-closure care and corrective action shall be subject to approval by the Department prior to implementation to assure that such instrument(s) are consistent with the requirements of this Order and with applicable regulations and guidance.
- H. Black & Decker's failure to demonstrate its financial ability to complete the Facility characterization and remediation shall not excuse the company's independent obligation to perform the activities required by this Order.
- I. This permit shall be reviewed by the Secretary of the Department of Environmental Quality or his designee (hereafter referred to as Department) five (5) years after the date of issuance and modified as necessary.

**XI. Public Participation**

- A. The Section shall publish public notices and hold public hearings at the following times in accordance with 40 CFR 265.121, incorporated by reference in 15A NCAC 13A .0110(g):
  - 1. Prior to the issuance of this Order;
  - 2. Upon development of the proposed remediation program, regarding the proposed preferred remedy and the assumptions upon which the remedy is based, in particular those related to land use and site characterization; and
  - 3. Upon completion of corrective action at the Facility or a portion of the Facility, but prior to the Section issuing a No Further Action determination for a portion of the Facility or an Acknowledgement of Termination pursuant to Paragraph XIV.C. of this Order.
  - 4. When deemed necessary by the Section, additional public meetings will be held to address the public's concerns.
  
- B. Consistent with the intent of N.C.G.S. Chapter 150B, at any hearing required by Paragraph XI.A. of this Order, the Section shall receive oral and written comments from the public and shall also receive written comments submitted by Black & Decker in response to the public comments. The Section shall consider all these comments in making its decisions regarding continuing characterization of the Facility, remedy selection, and completion of corrective action for the Facility or a portion of the Facility.

**XII. Delay in Performance**

As soon as Black & Decker is aware of the potential for delay in achieving the requirements of this Order, the company shall submit to the Section written documentation stating the reasons for the delay and the efforts made by Black & Decker to avoid the delay, as well as a time by which such work can be completed. The Section shall review the documentation and shall approve the new schedule if Black & Decker shows good cause for the potential delay. Good cause shall include, but is not limited to, extraordinary weather, natural disasters, pandemics, and national emergencies. The burden of demonstrating that there is good cause for the proposed delay rests solely with Black & Decker.

**XIII. Dispute Resolution**

If Black & Decker disputes any decision of the Section made pursuant to this Order, and the matter cannot be resolved through less formal negotiations, Black & Decker shall submit to the Section a written statement of the grounds for dispute within fourteen (14) days of being notified of such decision. Within a reasonable period following receipt of Black & Decker’s statement of dispute, the Section shall issue a written decision on the disputed matter.

Within fourteen (14) days of receiving the Section’s written decision on the dispute, Black & Decker shall provide a written statement as to whether it shall abide by the decision. If the Section does not receive from Black & Decker a statement to abide by the Section’s decision, or the statement is to the effect that Black & Decker shall not abide by the Section’s decision on the disputed matter, the Section shall have the right to deem the Order dissolved.

In the event that the Order is dissolved pursuant to the Dispute Resolution provision, the Section shall retain all its applicable enforcement rights against Black & Decker, including calling for submittal of a RCRA application and financial assurance for a Post-Closure Permit and corrective action for the Facility. Black & Decker shall retain any applicable defenses.

Black & Decker’s invocation of the Dispute Resolution provision shall not alone excuse noncompliance with this Order or any requirement established pursuant thereto.

**XIV. Satisfaction of Order**

- A. When Black & Decker determines all requirements of this Order have been completed, it shall (1) give written notice to the Section indicating the Work required by the Order has been completed; and (2) file a petition to terminate the Order. Black & Decker may also petition the Section to issue a No Further Action determination for a portion of the Facility. After completion of the Public Participation process required by Paragraphs XI.A.-XI.B. of this Order, the Section shall either agree or disagree with Black & Decker's Termination Petition or No Further Action Petition for a portion of the Facility.
  
- B. If the Section determines that the Work required by this Order has not been completed, the Section shall notify Black & Decker in writing of activities that must be undertaken to complete the Work, including a schedule for the performance of such activities. Once these additional activities are completed, Black & Decker may file another petition pursuant to Paragraph XIV.A.
  
- C. If, after completion of the Public Participation process required by Paragraphs XI.A.-XI.B., the Section concludes that the Work required by this Order has been satisfactorily performed, the Section shall memorialize its decision in a No Further Action Determination for a portion of the Facility or an Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights. Except as specified below, all of Black & Decker's obligations under this Order shall be deemed to be satisfied and terminated upon Black & Decker's execution of the Acknowledgement issued by the Section. This notice shall not terminate Black & Decker's obligation to comply with any continuing requirements hereunder, including but not limited to record preservation, reservation of rights, other claims, and indemnification of the State. Black & Decker's execution of the Acknowledgement will affirm their continuing obligation, including the maintenance of institutional controls or other long-term measures that are an integral part of the final remedy.

**XV. Change of Ownership or Operational Control**

- A. Black & Decker shall notify the Section in writing within a reasonable time after Black & Decker learns of any change in ownership or operational control of the property on which the Facility is located or any proposed change of ownership or operational control of the monitoring and remediation system.
  
- B. This Order cannot be transferred to a new owner or operator. Black & Decker shall notify the proposed new owner or operator about this Order, the termination of the Order upon ownership change, and the new owner or operator’s responsibility to file a RCRA Part A permit application. Black & Decker shall provide evidence to the Section of the notification to the proposed new owner or operator pursuant to this Paragraph. This evidence shall describe how Black & Decker has assured that, despite the transfer in ownership or operation, all institutional controls required for the Facility, now or in the future, will be implemented and maintained. Additionally, Black & Decker shall (1) assure the instrument effecting the conveyance or transfer of real or personal property interest contains a copy of this Order; and (2) use its best efforts to obtain access agreements to meet the requirements of Paragraph VII.A. from the party obtaining control of the real or personal property.
  
- C. In the event of change in ownership of the Facility, whether or not pursuant to a Brownfields Agreement, the Section shall retain all its applicable enforcement rights against Black & Decker, including calling for submission of a RCRA permit application and financial assurance for a post-closure permit and corrective action.
  
- D. No change in corporate ownership or corporate status will alter Black & Decker’s obligations under this Order or excuse Black & Decker’s noncompliance with this Order or any requirement established pursuant thereto.
  
- E. No conveyance of title, easement, or other interest in the Facility, or a portion of the Facility, or the monitoring or remediation system will affect Black & Decker’s obligations under this Order. This Paragraph will not apply if the Parties agree pursuant to Paragraph XIV.C. that this Order has terminated as to the Facility. This Paragraph will not apply to any portion of the Facility for which the Section has issued a no further action determination (e.g., clean-closed areas).

**XVI. Decisions/Notification**

- A. All approvals by and decisions of the Section shall be communicated in writing to Black & Decker by the Chief of the Hazardous Waste Section or her designee. No informal advice, guidance, suggestions, or comments by the Section regarding reports, plans, specifications, schedules or any other matter will relieve Black & Decker of its obligation to obtain formal approvals as required by this Order.
  
- B. All documents and notices required to be submitted by Black & Decker to the Section pursuant to this Order shall be sent to:

Adam Ulishney, Chief  
Hazardous Waste Section  
Division of Waste Management  
N. C. Dept. of Environmental Quality  
1646 Mail Service Center  
Raleigh, NC 27699-1646

- C. Unless otherwise agreed to by Black & Decker, the Section shall direct all correspondence related to this Order to:

Amanda Gonzalez  
Remediation Project Manager  
Stanley Black & Decker  
1000 Stanley Drive  
New Britain, CT 06053

**XVII. Notice of Non-Liability of the State**

- A. The State, its agencies, employees and other representatives shall not be deemed a party to any contract involving Black & Decker and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act or omission of Black & Decker, their officers, employees, contractors, receivers, trustees, agents, assigns, or other representatives in carrying out the activities required by this Order.
  
- B. The State, its agencies, employees and other representatives shall not be liable for any injuries or damages to persons or property resulting from the acts or omissions of Black & Decker, their officers, employees, contractors, receivers, trustees, agents, assigns, or other representatives caused by implementation of this Order or otherwise.

**XVIII. Reservation of Rights**

- A. The Section hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including any which may pertain to Black & Decker's failure to comply with any of the requirements of this Order. This Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which the Section has under RCRA or any other statutory, regulatory, or common law authority.
- B. Black & Decker's compliance with the terms of this Order shall not relieve Black & Decker of any obligation to comply with any other applicable local, State, or federal laws and regulations. Similarly, this Order does not relieve Black & Decker of any obligation to obtain and comply with any applicable local, State, or federal permit or approval.
- C. The issuance of this Order and Black & Decker's stipulation to comply shall not limit or otherwise preclude the Section from taking additional enforcement action pursuant to RCRA, the North Carolina General Statutes, or any other authority should the Section determine that such action is warranted.
- D. The Section expressly reserves all rights and defenses that it may have, including the right to disapprove of work performed by Black & Decker pursuant to this Order, to require that Black & Decker correct any work performed despite disapproval by the Section, and to require that Black & Decker perform tasks in addition to those specifically stated in this Order.
- E. Notwithstanding compliance with the terms of this Order, Black & Decker is not released from liability, if any, for the reasonable costs of any response actions taken by the Section. The Section reserves the right to seek reimbursement from Black & Decker for costs incurred by the Section in connection with any response action the Section undertakes or any costs incurred by the Section in overseeing implementation of this Order, including enforcement costs.
- F. Black & Decker stipulates that pursuant to N.C.G.S. § 130A-18, and irrespective of all other remedies at law, the Section may file an action for injunctive relief in the Superior Court of Randolph County to enjoin any threatened or continuing violation of the requirements of this Order or the statutes or rules cited therein, including but not limited to the requirements for corrective action, or to impose any emergency response measures deemed necessary to protect human health and the environment.
- G. The Section may impose an administrative penalty on Black & Decker for violating the requirements of this Order or the statutes or rules cited therein. The assessment of an administrative penalty pursuant to N.C.G.S. § 130A-22 will confer on Black & Decker all rights under Chapter 150B of the North Carolina General Statutes to contest the Section's decision to impose an administrative penalty, but not to contest the validity or enforceability of this Order, in so far as Black & Decker has stipulated to the Section's jurisdiction and has waived its rights to contest the Section's enforcement of the Order pursuant to Paragraph II.B.
- H. The Chief of the Hazardous Waste Section may determine that acts or circumstances, whether or not directly related to this Order, may endanger human health, welfare, or the environment and may order Black & Decker to stop further implementation of this Order, either temporarily or permanently, until the

endangerment is abated. The State may also, for any other reason permitted by law, order Black & Decker to cease activities at the Facility.

- I. Nothing in this Order shall be construed as limiting the Section in performing its duty to protect the public health and the environment of the State as required by law. The State may order or independently initiate any response action it deems necessary to protect public health, welfare, or the environment.

**XIX. Other Claims**

- A. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, corporation, or other entity for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous wastes or hazardous constituents found at, taken to, or taken from the Facility.
  
- B. Nothing herein shall constitute a satisfaction of, or release from, liability for any claim arising as a result of operation, ownership or use of the Facility by Black & Decker, their agent(s), contractors, lessees, successors, or assigns.

**XX. Indemnification of the State of North Carolina**

Black & Decker stipulates that it will indemnify, save and hold harmless the State, its agencies, departments, agents, and employees, from all claims or causes of action arising from or on account of acts or omissions of Black & Decker or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Order. This indemnification will not affect or limit the rights or obligations of Black & Decker or the State under their various contracts. This indemnification will not create any obligation on the part of Black & Decker to indemnify the State from claims arising from the acts or omissions of the State.

**XXI. Additional Provisions**

- A. This Order may only be modified in writing. The existing Order shall remain in effect as written until such time as the Parties have executed a written amendment to the Order or until such time as the Section deems the Order satisfied pursuant to the provisions of Paragraph XIV.C.
- B. The signatory for each Party certifies that he or she is fully authorized to execute, and legally bind such Party to, this document.
- C. The annual activity fee specified in N.C.G.S. § 130A-294.1 shall be paid to the Division by Black & Decker.
- D. If any judicial authority holds any provision of this Order to be invalid, the remaining provisions shall remain in force and shall not be affected.
- E. Except as otherwise provided in this Order, the Parties shall bear their own costs and attorney's fees.
- F. A table summarizing the Work required by this Order can be found in Attachment 5.
- G. This Order is effective on the date that the Section signs the Order.

FOR THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY

\_\_\_\_\_  
Adam Ulishney, Chief  
Hazardous Waste Section  
Division of Waste Management

\_\_\_\_\_  
Date Signed

FOR Black & Decker

\_\_\_\_\_  
Kathryn E. Hinckley, DHS Director  
Environmental Affairs  
Stanley Black & Decker

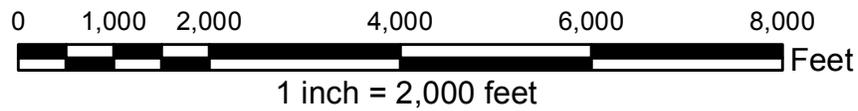
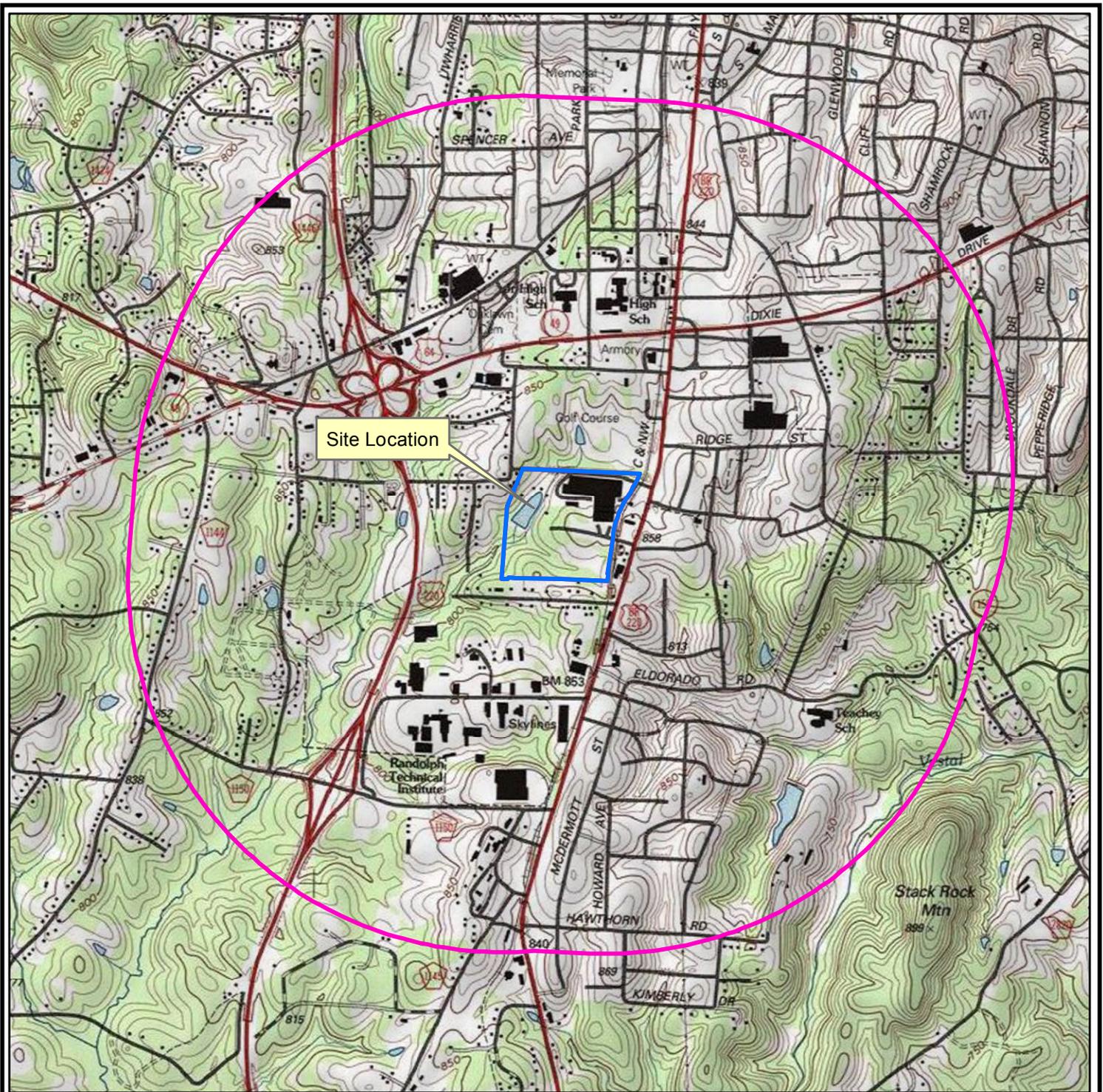
\_\_\_\_\_  
Date Signed

**Schedule of Compliance**

<b>Schedule of Compliance</b>	<b>Due Date</b>
Submit an updated SCM Paragraph V.F.2	Within ninety (90) days of a written request from the Section.
Submit a Characterization Work Plan Paragraph V.H.1	Within sixty (60) days following a request from the Section.
Submit an Amended Monitoring Program Paragraph V.J.2	Within thirty (30) days of written notification from the Section.
Submit Interim Measures Work Plan Paragraph V.K.1	As authorized and directed by the Section.
Submit final Interim Measures Report Paragraph V.K.6	Within ninety (90) days of completion of any interim measure.
Submit Remedial Strategy Paragraph V.L.1	Within sixty (60) days following issuance of this Order.
Submit Description of Remediation Program Paragraph V.M.3	Within thirty (30) days following Section completeness determination.
Provide information necessary to commence public participation process Paragraph V.M.4	Within thirty (30) days following Section completeness determination.
Implement Remediation Program Paragraph V.M.5	Within sixty (60) days following Section approval.
Provide notification of field activity scheduling Paragraph VII.D	Within ten (10) days in advance of field activities.
Provide notification of any planned physical alterations or additions which may impact SWMUs or AOCs Paragraph VIII.D	No later than fifteen (15) days after obtain information of planned physical alterations or additions.
Provide notification of any situations that may endanger human health or the environment Paragraph VIII.E	Oral notification within 24 hours; written notification within five (5) working days.
Submit biennial report Paragraph VIII.F	By March 1 of each even numbered year.
Provide notification of newly-identified SWMUs or AOCs Paragraph VIII.H.1	Within fifteen (15) days of discovery.

<b>Schedule of Compliance</b>	<b>Due Date</b>
Submit SWMU Assessment Report Paragraph VIII.H.2	Within ninety (90) days following notification.
Provide notification of any newly discovered releases of hazardous waste or hazardous constituents Paragraph VIII.I.1	Within fifteen (15) days of discovery.
Submit general inspection and maintenance schedule Paragraph IX.A	Within sixty (60) days following issuance of this Order.
Submit personnel training plan for employees and contractors Paragraph IX.B	Within sixty (60) days following a request from the Section.
Submit written cost estimate Paragraph X.B	Within one hundred eighty (180) days following issuance of this Order.
Submit cost estimate for modification to the Remedial Strategy Paragraph X.C.1	Within thirty (30) days after receiving approval of the modification.
Submit updated cost estimate for completion of corrective action Paragraph X.C.2	At each five-year interval following issuance of this Order.
Establish financial assurance for corrective action Paragraph X.E	Within sixty (60) days following approval of the cost estimate.
Provide written notification of change in ownership or operational control in writing Paragraph XV.A	Within ninety (90) days prior to the date of the change.

FIGURES

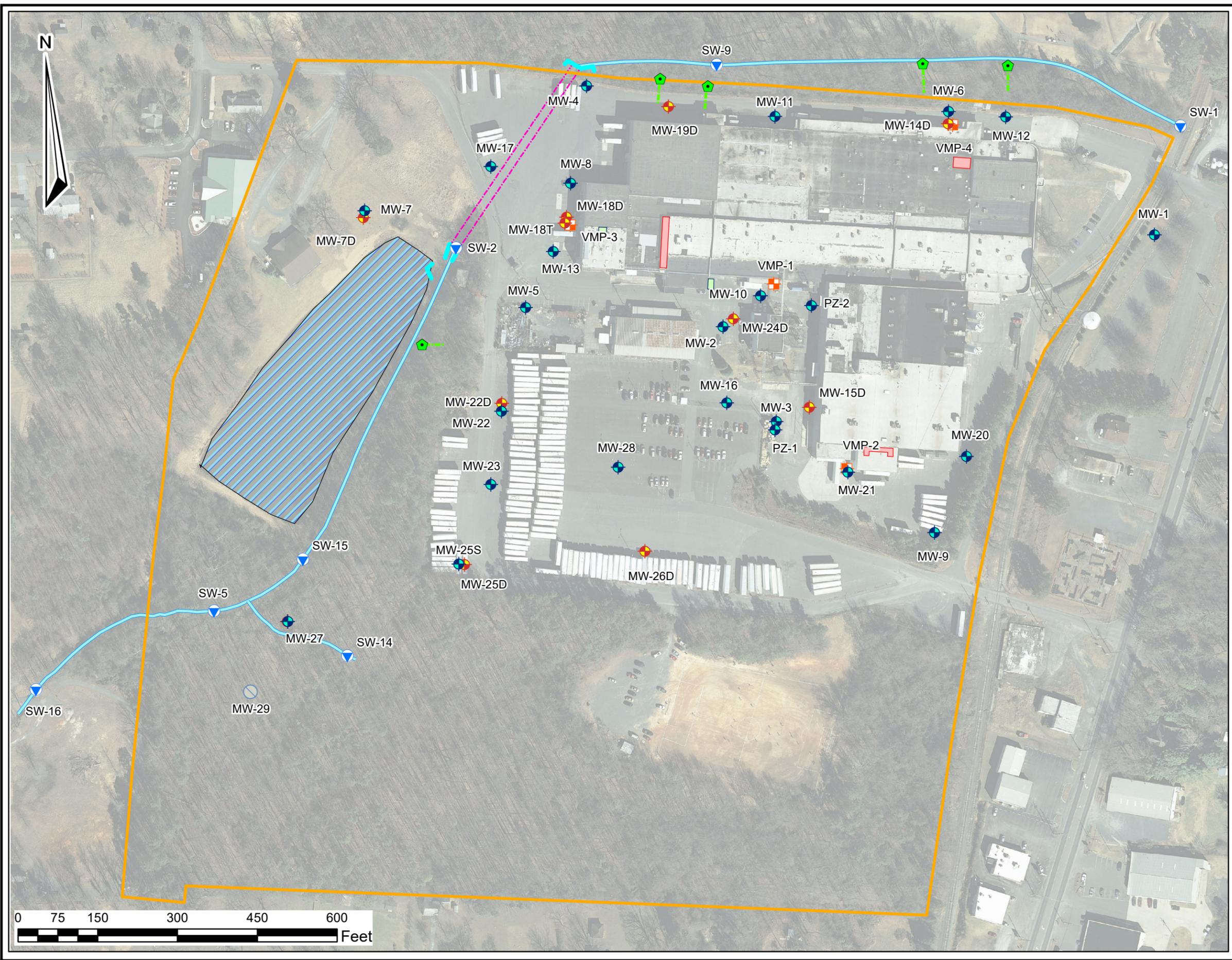


**Legend**

- Subject Parcel
- 1 mile Radius

**Figure 1**  
**Site Location**  
**1758 South Fayetteville Street**  
**Asheboro, North Carolina**  
**HRP # BLA1026.RA**  
**Scale 1" = 2,000'**

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### Legend

- Shallow Monitoring Well
- Deep Monitoring Well
- Vapor Monitoring Point
- Destroyed Monitoring Well
- Storm Water Outfall
- Surface Water sample
- Property Boundary
- Concrete Headwall
- Culvert
- Stormwater Outfall Pipe
- Creek
- Potential Source Area
- Degreaser Area
- Pond

**Figure 1**  
**Site Map**  
**April 2021**  
**Former Black & Decker Plant**  
**Asheboro, North Carolina**  
**HRP # SBD0023.GW**



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