# 2023 Periodic Review Report
(Reporting Period: May 15, 2022 to August 01, 2023)

Location:

Bern Metal Corporation
22 Bender Avenue, City of Buffalo, New York
NYSDEC Site No. 915135

Prepared for:

City of Buffalo
Office of Strategic Planning
Division of Environmental Affairs
65 Niagara Square Room 901
Buffalo, New York 14202

LaBella Project No. 2233132

October 2023

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# 1.0 EXECUTIVE SUMMARY

This Periodic Review Report (PRR) is a required element of the approved Operation, Maintenance and Monitoring (OM&M) Plan for 22 Bender Avenue (Former Bern Metal Corporation Site) in the City of Buffalo, Erie County, New York (hereafter referred to as the "Site"). This PRR was prepared on behalf of the City of Buffalo to summarize the post remedial status of New York State Department of Environmental Conservation (NYSDE) Site No. 915135. This PRR and associated Institutional and Engineering Controls (IC/EC) Certification Form have been completed for the post-remedial activities at the Site for the reporting period from May 15, 2022 to August 01, 2023.

## *1.1 Site Summary*

The Site encompasses approximately 3.05 acres, located at 22 & 23 Bender Street, and 1021 Clinton Street in the City of Buffalo, Erie County, New York. The Site was an abandoned scrap reprocessor. The NYSDEC conducted a Phase I investigation in 1987 that identified approximately 200 55-gallon drums on the property, along with other wastes including: metal turnings, waste chemicals, sludges, battery cases, and spilled battery acids. In 1990 the United States Environmental Protection Agency (USEPA) conducted an emergency removal at the Site. From 1994 to 1995 a Remedial Investigation and Feasibility Study (RI/FS) was completed at the Site. A Record of Decision (ROD) was signed in 1996 which required contaminated soils be consolidated and properly capped. Under a New York State consent order, the waste was consolidated and capped on the property known as Bern Metals, in 2002. An OM&M Plan was prepared by Blasland Bouck & Lee, Inc., (BBL) dated May 2003. The long-term operation, maintenance, and monitoring is in effect and is being implemented by the City of Buffalo. Additionally, an OM&M addendum was submitted outlining all the frequency period updates and changes to the previous OM&M.

## *1.2 Effectiveness of Remedial Program*

Based on a recent inspection of the Site, the Site cover system is intact and the remedial program appears to be functioning as designed on the Site.

## *1.3 Non-Compliance*

No areas of non-compliance regarding the major elements of the OM&M Plan were identified during the preparation of this PRR.

## *1.4 Recommendations*

Overall, the remedial program is viewed to be effective in achieving the remedial objectives for the Site. No changes to the OM&M Plan or the frequency of PRR submissions are recommended at this time.

## 2.0 SITE OVERVIEW

The Site encompasses approximately 3.05 acres and is located at 22 and 23 Bender Street in the City of Buffalo, Erie County, New York (see Figure 1). As shown in Figure 2, the Site is bounded by Norfolk Southern railroad tracks to the west and south, Laub International to the east, and commercial, residential and vacant properties to the north. The Site is currently a vacant grass covered landfill. Figure 2 depicts the Site boundaries overlain on a current aerial image.

### *2.1 Site Background*

The Site previously consisted of two properties known as: Bern Metals (approximately 3.05 acres) and Universal Metals (approximately 1.5 acres). The Site was an abandoned scrap reprocessor. Based on complaints from citizens, the NYSDEC conducted a Phase I Investigation in 1987. Approximately 200 55-gallon drums were found on the Bern Metals property, along with other wastes including metal turnings, waste chemicals, sludges, battery cases, and spilled battery acids. Subsequently, 25 leaking transformers containing PCBs were found on the Universal Metals property. The Site contaminants of concern included PCBs, chromium, lead, copper, and mercury prior to remediation.

In 1990 the USEPA conducted an emergency removal at the Site. Drums, gas cylinders, and transformers were removed from the Site. Under order of the USEPA in 1994, a group of potentially responsible parties (PRPs) remediated neighboring residential properties and erected a fence around the contaminated Site. The PRPs conducted a RI/FS of the Site during the period from 1994 to 1995.

The ROD was signed in 1996 which required the contaminated soils be consolidated and properly capped. Under a separate New York State consent order, the PRPs consolidated and capped the waste onto the property known as Bern Metals (approximately 3.05 acres), completing the project in 2002. An OM&M Plan was prepared in accordance with Section 5 of Final Design Report (FDR) prepared by (BBL) dated October 1998, and was required by Consent Decree No.02-CV-0277, which was entered by the United States District Court for the Western District of New York on July 19, 2002. The long-term OM&M Plan is in effect and is being implemented by the City of Buffalo. The Universal Metals property has been remediated as required by the ROD.

## 3.0 EFFECTIVENESS OF THE REMEDIAL PROGRAM

As detailed below in Section 5.1.1, the Site cover system, stormwater drainage system, and perimeter fence at the Site were inspected during the annual periodic review conducted July 28, 2023. Based on this inspection, the engineering controls are generally intact and functioning effectively; the cover system is intact and functioning effectively throughout the Site.

# 4.0 INSTITUTIONAL/ENGINEERING CONTROLS (IC/EC)

## *4.1 Institutional Control Requirements and Compliance*

In accordance with the OM&M Plan, a series of Institutional Controls (ICs) have been established for the Site in the form of Site restrictions. Adherence to these ICs is required by the OM&M Plan and include the following:

- Groundwater use restrictions;
- Implementation of the OM&M Plan

The maintenance, monitoring, inspection and reporting of all components of the remedy was performed as defined in the OM&M Plan and compliance with the above ICs was achieved.

## *4.2 Engineering Control Requirements and Compliance*

Engineering Controls (ECs) have been established for the Site including a cover system and access restrictions in the form of perimeter fencing.

### *4.2.1 Site Cover System*

Exposure to remaining contamination in soil/fill at the Site is prevented by a cover system that was previously placed over the Site. The cover system is a permanent control and quality and integrity of this system is inspected on an annual basis. The frequency of inspections will not change without the prior approval of the NYSDEC. The need for maintenance and repairs of the final cover system, sides, slopes, and stormwater drainage systems will be evaluated during the routine inspections. The purpose of these inspections is to confirm the final closure measures taken to limit stormwater infiltration and to prevent the migration of contaminant are operating as intended. The overall integrity of the final cover system on the Site will be assessed during inspections. Final cover maintenance and repair will be required if an inspection reveals any of the following conditions:

- Settlement /subsidence relative to the surrounding areas;
- Topsoil erosion;
- Cracking of the final cover system;
- Ponding of stormwater;
- Vehicle ruts;
- Exposed or damaged geosynthetic cover components;
- Animal burrows;
- Vegetative distress;
- Loss of vegetation due to traffic, drought, or excessive moisture; or
- Weed, brush or tree development.

The inspections will include observation of these condition and other conditions that could be construed to be potentially detrimental to the function of the final cover system. Repairs will be performed at all areas exhibiting deficiencies or potential problems. Remedies can include additional soil cover or repair of cover as a result of erosion, settlement, cracking, ponding, or other similarly damaging conditions. Reseeding will be performed when a loss of vegetation is notes. Bush and tress seedlings will be removed upon discovery to prevent disruption of the final cover system.

The condition of the stormwater drainage system for the final cover system is assessed as part of the inspection and maintenance activities for the final cover system. Components of the stormwater drainage system include: mid-slope drainage swales; perimeter drainage ditches; and outlet drainage ditches. The stormwater components will be inspected for worn or degraded vegetation, settlement, ponding, channel erosion or breach, and displaced rip-rap. In areas where inspections indicate a decrease in the performance of drainage system components, steps will be taken to restore components.

### *4.2.2 Site Access Controls*

Access controls at the facility include fencing around the Bern Metal property and a gate located at the end of Bender Avenue. The chain link fence as well as the gate will be inspected for structural integrity and signs of vandalism and/or tampering. Repairs, if necessary will be performed following inspections. The access gate will be checked to verify the latch assembly and lock are in place.

## 5.0 SITE MONITORING AND MAINTENANCE PROGRAM

### *5.1 Site Inspection and Certification*

This PRR provides the information necessary to document the IC/EC certification. The certification primarily consists of a Site inspection to complete the NYSDEC "Site Management Periodic Review Report Notice-Institutional and Engineering Controls Certification Form" and confirm the IC/ECs:

- Are in place, performing properly, and remain effective;
- Nothing has occurred that would impair the ability of the controls to protect the public health and environment;
- Nothing has occurred that would constitute a violation or failure to comply with any operation and maintenance plan for such controls; and
- That access is available to the Site to evaluate continued maintenance of such controls.

The Site inspection includes the inspection of the following components in accordance with the OM&M Plan.

- Final cover system;
- Stormwater drainage system;
- Site access controls; and
- Site monitoring wells

### *5.1.1 Site-Wide Inspection*

Annual Site-wide inspections of the Site are required per the OM&M Plan. The annual inspection was conducted by LaBella on July 28, 2023, which included traversing the Site on foot to observe current conditions. The Site is vacant and undeveloped, with vegetated soil cover at the ground surface. At the time of the Site inspection the vegetative cover was observed to be in good condition and cover system intact. Erosion, vehicle ruts, ponding water and protruding objects were not observed. The stormwater drainage system was observed to be in good condition and functioning as intended. Inspection of the stormwater drainage system revealed early growth of Japanese Knotweed and other brush within the perimeter drainage ditch and swales. The access gate was generally observed to be intact and functioning as intended. The perimeter fencing had minor holes. The breeches in the

fence were repaired on August 8, 2023. Additionally, the Site monitoring wells were observed to be in good condition. The completed Post-Closure Inspection Form and map is included in Appendix 1. A photographic log showing the current condition of the Site is included in Appendix 2.

### *5.1.2 IC/EC Certification*

The NYSDEC's IC/EC Certification Form was completed in its entirety as all ICs/ECs are in place for the Site per the OM&M Plan. Appendix 3 includes the NYSDEC "Site Management Periodic Review Report Notice-Institutional and Engineering Controls Certification Form."

### *5.2 Groundwater Monitoring*

The OM&M Plan specified that during the first two years of the OM&M program, groundwater sampling would be performed on a semi-annual basis and the first two groundwater sampling events would include analysis of cadmium, chromium, lead, manganese, zinc, polychlorinated biphenyls (PCBs) and benzene, toluene, ethylbenzene, and xylenes (BTEX). After a review of the first two rounds of groundwater sampling data and as approved by the NYSDEC, the analyses were reduced to lead analysis only. Following the first two years of groundwater sampling, the groundwater sampling frequency was reduced to annually. Subsequent the 2017 groundwater sampling event a recommendation was made to modify the groundwater monitoring frequency to quinquennially (every 5 years). NYSDEC approved the modification to the groundwater monitoring frequency on November 21, 2017. Groundwater sampling was performed during the previous reporting period in the Spring of 2022 at five locations (RD-1, RD-2, RD-3R, RD-4, and RD-5) for Lead. Groundwater monitoring well locations are depicted on Figure 2. The next groundwater sampling event will be performed in 2027.

## 6.0 CONCLUSIONS AND RECOMMENDATIONS

Annual inspection of the Site was performed on July 28, 2023 by LaBella Associates, DPC as prescribed in the OM&M Plan. As a result of this inspection, LaBella has determined that the Site is in compliance with the elements of the OM&M Plan.

As reflected by the signed Institutional and Engineering Controls Certification Form (Appendix 3), LaBella has concluded that:

- The required EC/ICs are in place, are performing properly, and remain effective;
- The OM&M Plan is being implemented; and
- The remedy continues to be protective of public health and the environment.

LaBella recommends the following:

- No changes to the inspection, reporting or certification frequency prescribed for the Site; and
- Vegetation from the perimeter drainage ditches should be removed.

## 7.0 LIMITATIONS

The conclusions presented in this report are based on information gathered in accordance with generally acceptable professional consulting principles and practices. All conclusions reflect observable conditions existing at the time of the Site inspection. Information provided by outside sources (individuals, agencies, laboratories, etc.) as cited herein, was used in the assessment of the Site. The accuracy of the conclusions drawn from this assessment is, therefore, dependent upon the accuracy of information provided by these sources. Furthermore, LaBella is not responsible for the impacts of any changes in environmental standards, practices, or regulations subsequent to the performance of services.

This report is based upon the application of scientific principles and professional judgment to certain facts with resultant subjective interpretations. Professional judgments expressed herein are based upon the facts currently available with the limits of the existing data, scope of services, budget and schedule. To the extent that more definitive conclusions are desired by the Client than are warranted by the current available facts, it is specifically Labella's' intent that the conclusions and recommendations stated herein will be intended as guidance and not necessarily a firm course of action expect where explicitly stated as such. LaBella makes no warranties, expressed or implied including without limitation, warranties as to merchantability or fitness of a particular purpose. Furthermore, the information provided in this report is not be construed as legal advice.

This assessment and report have been completed and prepared on behalf of and for the exclusive use of City of Buffalo. Any reliance on this report by a third party is at such party's sole risk.

## 8.0 REFERENCES

DER-10/Technical Guidance for Site Investigation and Remediation, NYSDEC, May 3, 2010

Operation Maintenance, and Monitoring Plan, Bern Metal/Universal Metal Site Buffalo, New York; Blasland, Bouck &Lee, March 2003 (revised April 2003 and May 2003)

Operation Maintenance, and Monitoring Plan Addendum, Bern Metal Corporation Site; 22 Bender Avenue, Buffalo, New York; LaBella Associates, January 24, 2022

# FIGURES

Path: I:\Buffalo, City of\2212554 - Multiple Sites Annual Monitoring\DIG\Maps\MXD\PRR\2021_08\Fig1_SiteLocation_Map.mxd

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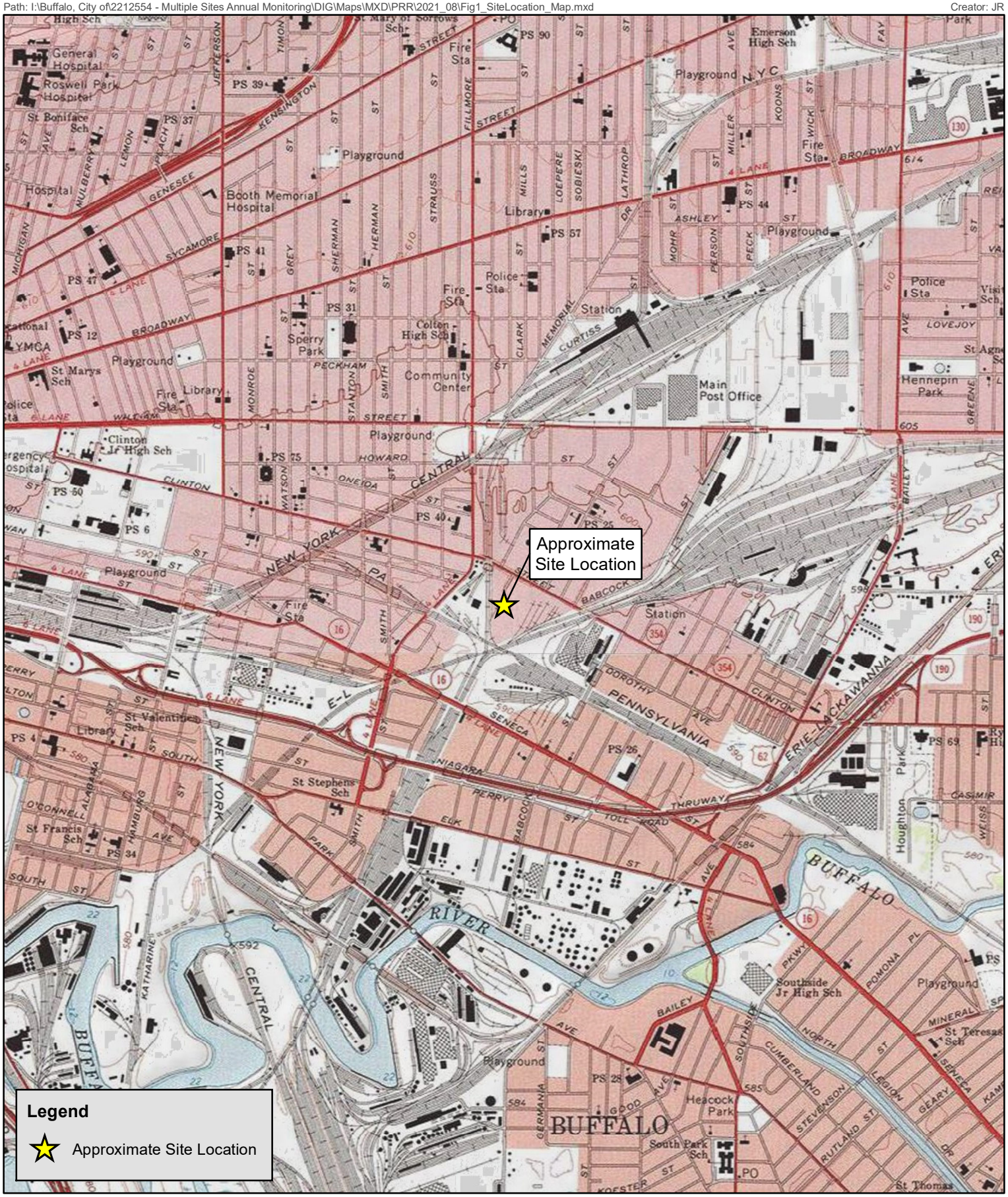


| PROJECT # / DRAWING # / DATE: | DRAWING NAME: | PROJECT: |
|---|---|---|
| 2233132<br>**Figure 1**<br>9/11/2023 | Site Location Map | 2023 Periodic Review Report<br>22 Bender Street, Buffalo, New York<br>NYSDEC Site No. C915135 |

LaBella
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Data Source: Erie County 2020; LaBella 2021; USGS, National Geographic, i-cubed 2019.

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| PROJECT # / DRAWING # / DATE: | DRAWING NAME: | PROJECT: |
|---|---|---|
| 2233132<br>**Figure 2**<br>9/11/2023 | Site Map | 2023 Periodic Review Report<br>22 Bender Street, Buffalo, New York<br>NYSDEC Site No. C915135 |

N

0 40 80 Feet

LaBella Powered by partnership.

Data Source: Bing Maps; Erie County 2020; LaBella 2022.

# APPENDIX 1

Post-Closure Inspection Form

**Post-Closure Inspection Form for Operation, Maintenance, and Monitoring**
**Bern Metal/Universal Metal Site**
**Buffalo, New York**

Date: 7/28/23
Weather: 75°F, Sunny

Inspector(s): Kelly Goliber

| Inspection Items | Acceptable Yes | Acceptable No | Comments/Conditions |
|---|---|---|---|
| **1. General Site Conditions** | | | |
| Gates Locked and Secure | X | | - Vegetative growth around wells + perimeter |
| Perimeter Fence/ Warning Signs | X | | |
| Perimeter Vegetation | X | | |
| Trash or Litter | X | | - Some holes in fence |
| Survey Control Monuments | X | | |
| **2. Maintenance Road Condition** | | | |
| Surface | X | | |
| Accessability | X | | |
| **3. Final Cover Vegetation** | | | |
| General Grass Growth | X | | |
| Stressed Vegetation | X | | |
| Animal Burrows | X | | |
| Tree or Bush Growth | X | | |
| Protruding Objects/Settlement | X | | |
| Ponding Water | X | | |
| Erosion | X | | |
| **4. Storm Water Drainage System** | | | |
| Mid-Slope Drainage Swales | X | | Excessive vegetation growth in swales |
| Perimeter Drainage Ditch | X | | |
| Outlet Drainage Ditch | X | | |
| Catch Basins | X | | |
| **5. Groundwater Monitoring Wells** | | | |
| Casings Secure and Locked | X | | |
| **6. Other Items** | | | |
| | | | |

Sketch

# APPENDIX 2

Photographs

Typical view east to west

Typical view north to south


Vegetative growth in northern swale

Vegetative growth along the western perimeter

Vegetative growth in southern swale

Vegetative growth along the eastern perimeter

Typical groundwater monitoring well

Typical groundwater monitoring well

# APPENDIX 3

Site Management Periodic Review Report Notice-Institutional and Engineering Controls Certification Form

**Enclosure 2**
**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**
**Site Management Periodic Review Report Notice**
**Institutional and Engineering Controls Certification Form**

**Site Details** **Box 1**

**Site No. 915135**

**Site Name Bern Metal Corp.**

Site Address: 22 Bender Street Zip Code: 14206
City/Town: Buffalo
County: Erie
Site Acreage: 3.05

Reporting Period: May 15, 2022 to August 01, 2023

| | YES | NO |
|---|---|---|
| 1. Is the information above correct? | X | ☐ |
| If NO, include handwritten above or on a separate sheet. | | |
| 2. Has some or all of the site property been sold, subdivided, merged, or undergone a tax map amendment during this Reporting Period? | ☐ | X |
| 3. Has there been any change of use at the site during this Reporting Period (see 6NYCRR 375-1.11(d))? | ☐ | X |
| 4. Have any federal, state, and/or local permits (e.g., building, discharge) been issued for or at the property during this Reporting Period? | ☐ | X |
| **If you answered YES to questions 2 thru 4, include documentation or evidence that documentation has been previously submitted with this certification form.** | | |
| 5. Is the site currently undergoing development? | ☐ | X |

**Box 2**

| | YES | NO |
|---|---|---|
| 6. Is the current site use consistent with the use(s) listed below? Closed Landfill | X | ☐ |
| 7. Are all ICs in place and functioning as designed? | X | ☐ |

**IF THE ANSWER TO EITHER QUESTION 6 OR 7 IS NO, sign and date below and DO NOT COMPLETE THE REST OF THIS FORM. Otherwise continue.**

**A Corrective Measures Work Plan must be submitted along with this form to address these issues.**

Signature of Owner, Remedial Party or Designated Representative Date

**SITE NO. 915135** **Box 3**

**Description of Institutional Controls**

| Parcel | Owner | Institutional Control |
|---|---|---|
| **111.84-2-15.1** | Mohammed Siddiqui | Ground Water Use Restriction<br>O&M Plan |

i) Implementation of Operation, Maintenance, and Monitoring Plan, dated May, 2003. ii) Prohibition of use of groundwater iii) Maintenance of fencing

| | | |
|---|---|---|
| **111.84-2-16** | Mohammed Siddiqui | Ground Water Use Restriction<br>O&M Plan |

i) Implementation of Operation, Maintenance, and Monitoring Plan, dated May, 2003. ii) Prohibition of use of groundwater iii) Maintenance of fencing

| | | |
|---|---|---|
| **111.84-2-31** | Damone Cannon | Ground Water Use Restriction<br>O&M Plan |

i) Implementation of Operation, Maintenance, and Monitoring Plan, dated May, 2003. ii) Prohibition of use of groundwater iii) Maintenance of fencing

**Box 4**

**Description of Engineering Controls**

| Parcel | Engineering Control |
|---|---|
| **111.84-2-15.1** | Cover System<br>Fencing/Access Control |

i) Implementation of Operation, Maintenance, and Monitoring Plan, dated May, 2003.
ii) Prohibition of use of groundwater
iii) Maintenance of fencing

| | |
|---|---|
| **111.84-2-16** | Cover System<br>Fencing/Access Control |
| **111.84-2-31** | Cover System<br>Fencing/Access Control |

**Box 5**

**Periodic Review Report (PRR) Certification Statements**

1. I certify by checking "YES" below that:

   a) the Periodic Review report and all attachments were prepared under the direction of, and reviewed by, the party making the Engineering Control certification;

   b) to the best of my knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and the information presented is accurate and compete.

| YES | NO |
|---|---|
| X | ☐ |

2. For each Engineering control listed in Box 4, I certify by checking "YES" below that all of the following statements are true:

   (a) The Engineering Control(s) employed at this site is unchanged since the date that the Control was put in-place, or was last approved by the Department;

   (b) nothing has occurred that would impair the ability of such Control, to protect public health and the environment;

   (c) access to the site will continue to be provided to the Department, to evaluate the remedy, including access to evaluate the continued maintenance of this Control;

   (d) nothing has occurred that would constitute a violation or failure to comply with the Site Management Plan for this Control; and

   (e) if a financial assurance mechanism is required by the oversight document for the site, the mechanism remains valid and sufficient for its intended purpose established in the document.

| YES | NO |
|---|---|
| X | ☐ |

**IF THE ANSWER TO QUESTION 2 IS NO, sign and date below and DO NOT COMPLETE THE REST OF THIS FORM. Otherwise continue.**

**A Corrective Measures Work Plan must be submitted along with this form to address these issues.**

_____ _____

Signature of Owner, Remedial Party or Designated Representative Date

**IC CERTIFICATIONS**
**SITE NO. 915135**

**Box 6**

**SITE OWNER OR DESIGNATED REPRESENTATIVE SIGNATURE**

I certify that all information and statements in Boxes 1,2, and 3 are true. I understand that a false statement made herein is punishable as a Class "A" misdemeanor, pursuant to Section 210.45 of the Penal Law.

I ANDREW BENKLEMAN at LABELLA ASSOCIATES 300 PEARL ST, BUFFALO, NY 14202,
print name print business address

am certifying as REMEDIAL PARTY (Owner or Remedial Party)

for the Site named in the Site Details Section of this form.

Signature of Owner, Remedial Party, or Designated Representative Rendering Certification

9/12/23
Date

## EC CERTIFICATIONS

**Box 7**

### Professional Engineer Signature

I certify that all information in Boxes 4 and 5 are true. I understand that a false statement made herein is punishable as a Class "A" misdemeanor, pursuant to Section 210.45 of the Penal Law.

I Jared Pristach (print name) at LaBella Associates, D.P.C. 300 State Street, Rochester, NY 14614 (print business address),

am certifying as a Professional Engineer for the Remedial Party (Owner or Remedial Party)

STATE OF NEW YORK
JARED ALAN PRISTACH
098932
LICENSED PROFESSIONAL ENGINEER

| Signature of Professional Engineer, for the Owner or Remedial Party, Rendering Certification | Stamp (Required for PE) | Date |
|---|---|---|
| | | 09/12/2023 |