

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Office of the Director
625 Broadway, 12th Floor, Albany, New York 12233-7011
P: (518) 402-9706 | F: (518) 402-9020
www.dec.ny.gov

780 Ellicott Street, LLC
Attn: Mr. Jon Williams
333 Ganson Street
Buffalo, NY 14203

SEP 3 2019

Re: Certificate of Completion
Osmose Wood Preserving Site
a/k/a 980 Ellicott Street Site
Site No.: 915143
Buffalo, Erie County, NY

Dear Mr. Williams:

Congratulations on having satisfactorily completed the remedial program at the Osmose Wood Preserving Site a/k/a 980 Ellicott Street Site. Enclosed please find an original, signed Certificate of Completion. The New York State Department of Environmental Conservation (Department) is pleased to inform you that the Final Engineering Report is hereby approved, allowing the Certificate of Completion (COC) to be issued for the above-referenced site.

Please note that you are required to perform the following tasks:

- If you are the site owner, you must record a notice of the COC in the recording office for the County (or Counties) where any portion of the site is located within 30 days of issuance of the COC; or if you are a prospective purchaser of the site, you must record a notice of the COC within 30 days of the date that you acquire the site. If you are a non-owner, you must work with the owner to assure the notice of COC is recorded within the time frame specified. In all cases, proof of filing must be provided to the Department within 30 days of receipt. A standard notice form is attached to this letter.
- Place the notice of the COC in the document repository for the site within 10 days of issuance of the COC; and
- Implement the Department-approved Site Management Plan (SMP) which details the activities necessary to assure the performance, effectiveness, and protectiveness of the remedial program. You must report the results of these activities to the Department in a Periodic Review Report (PRR) which also includes any required IC/EC certifications. The site IC/ECs are identified on the attached Site Management Form. The next PRR including the certification of the




Department of
Environmental
Conservation

IC/ECs is due to the Department in March of 2020.

The Department will prepare and distribute to the Site Contact List a fact sheet describing the institutional and engineering controls that are required at the site.

If you have any questions regarding any of these items, please contact Jaspal S. Walia at (716) 851-7220.

Sincerely,



Michael J. Ryan, P.E.

Director

Division of Environmental Remediation

Enclosure

ec w/ enclosure:

Ms. Christine Vooris, NYSDOH
Mr. Eamonn O'Neil, NYSDOH
Mr. David Flynn, Phillips Lytle, LLP, (dflynn@phillipslytle.com)
Mr. Jon Williams, 780 Ellicott Street, LLC, (jmwilliams@oscinc.com)
Mr. John Black, Inventum Engineering, PC, john.black@inventumeng.com

ec w/o enc.:

Mr. Michael Cruden, NYSDEC
Mr. Jaspal S. Walia, NYSDEC
Mr. Stanley Radon, NYSDEC
Ms. Jennifer Dougherty, Esq., NYSDEC
Ms. Kelly Lewandowski, NYSDEC
Ms. Dolores Tuohy, NYSDEC

NYSDEC STATE SUPERFUND PROGRAM (SSF)
CERTIFICATE OF COMPLETION

Name

780 Ellicott Street, LLC

Address

333 Ganson Street, Buffalo, NY 14203

SITE INFORMATION

Site No.: 915143 **Site Name:** Osmose Wood Preserving

Order on Consent: Index No. B9-0314-90-01 and R9-20170520-83 **Order Execution Date:** 08-23-2017

Site Owner: 780 Ellicott Street, LLC

Street Address: 980 Ellicott Street

Municipality: Buffalo **County:** Erie

DEC Region: 9

Site Size: 0.533 Acres

Tax Map Identification Number(s): 100.63-3-37 (portion of)

A description of the property subject to this Certificate is attached as Exhibit A and a site survey is attached as Exhibit B.

CERTIFICATE ISSUANCE

This Certificate of Completion, hereinafter referred to as the "Certificate," is issued pursuant to 6 NYCRR §375-1.9.

This Certificate has been issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and data submitted pursuant to the Order on Consent as well as any other relevant information regarding the Site, that the applicable remediation requirements set forth in the Environmental Conservation Law (ECL) and 6NYCRR Part 375 have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

The remedial program for the Site has achieved a cleanup level that would be consistent with the following categories of uses:

Allowable Uses under the SSF: Commercial and Industrial

The Remedial Program includes use restrictions or reliance on the long term employment of institutional or engineering controls which are contained in the approved Site Management Plan and an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Erie County with recording identifier BK 11347, PG 5266.

LIABILITY LIMITATION

Upon issuance of this Certificate of Completion, and subject to the terms and conditions set forth herein, the Certificate holder(s) shall be entitled to the liability limitation provided in 6NYCRR §375-2.9. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in 6NYCRR §375-2.9(d). The liability limitation shall be subject to all rights reserved to the State by ECL §27-1321 and any other applicable provision of law.

CERTIFICATE TRANSFERABILITY

This Certificate may be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by 6NYCRR §375-1.9(f)-(g).


CERTIFICATE MODIFICATION/REVOCATION

This Certificate of Completion may be modified or revoked by the Commissioner following notice and an opportunity for a hearing in accordance with 6NYCRR §375-1.9(e)(2) upon a finding that:

- (1) the remedial party has failed to manage the controls or monitoring in full compliance with the terms of the approved remedial program;
- (2) there has been a failure to comply with the terms and conditions of the order;
- (3) there was a misrepresentation of a material fact tending to demonstrate that the cleanup levels were reached;
- (4) the terms and conditions of any environmental easement have been intentionally violated or found to be not protective or enforceable;
- (5) for good cause;
- (6) environmental contamination at, on, under, or emanating from the site if, in light of such conditions, the site is no longer protective of public health or the environment, and the remedial party is not in good faith negotiating, and/or following its approval by the Department, implementing a work plan to achieve conditions at the site which are protective of public health and the environment;
- (7) non-compliance with the terms of the order, the remedial work plan, site management plan, or the certificate of completion after notice of the failure and reasonable opportunity to cure has been afforded to the remedial party by the Department as provided for at paragraph 375-1.9(e)(2);
- (8) fraud related to the remedial program for the site committed by the certificate holder;
- (9) a finding by the Department that a change in an environmental standard, factor, or criterion upon which the remedial work plan was based renders the remedial program implemented at the site no longer protective of public health or the environment, and the remedial party is not in good faith negotiating, and/or following its approval by the Department, implementing a work plan to achieve conditions at the site which are protective of public health and the environment; or
- (10) a change in the site's use subsequent to the Department's issuance of the certificate of completion, unless additional remediation is undertaken which shall meet the standard for protection of the public health and environment that applies to this site.

The Certificate holder(s) (including its successors or assigns) shall have thirty (30) days within which to cure any deficiency or to seek a hearing. If the deficiency is not cured or a request for a hearing received within such 30-day period, the Certificate shall be deemed modified or vacated on the 31st day after the Department's notice.

Basil Seggos
Commissioner
New York State Department of Environmental Conservation

By: 
Michael J. Ryan, P.E., Director
Division of Environmental Remediation

Date: 9/3/13

NOTICE OF CERTIFICATE OF COMPLETION
Inactive Hazardous Waste Disposal Site Program
Pursuant to 6 NYCRR Part 375-1.9(d)

Osmose Wood Preserving Site a/k/a 980 Ellicott Street, Site ID No.915143

980 Ellicott Street, Buffalo, Erie County, NY 14209

Tax Map Identification Number(s): A portion of SBL No.: 100.63-3-37

PLEASE TAKE NOTICE, the New York State Department of Environmental Conservation (Department) has issued a Certificate of Completion (Certificate) pursuant to 6 NYCRR Part 375 to 780 Ellicott Street, LLC for a parcel approximately 0.533 acres located at the 980 Ellicott Street in the City of Buffalo, Erie County.

PLEASE TAKE NOTICE, the Certificate was issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and data submitted pursuant to the Order on Consent, as well as any other relevant information regarding the Site, that the remediation requirements set forth in ECL Article 27, Title 13 have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

PLEASE TAKE NOTICE, the remedial program for the Site has achieved a cleanup level that would be consistent with the following categories of uses (actual site use is subject to local zoning requirements):

- ☐ Unrestricted Use, as set forth in 6 NYCRR 375-1.8(g)(1)i
- ☐ Residential Use, as set forth in 6 NYCRR 375-1.8(g)(2)i.
- ☐ Restricted Residential Use, as set forth in 6 NYCRR 375-1.8(g)(2)ii.
- ☒ Commercial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iii.
- ☒ Industrial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iv.

Further, the use of groundwater is restricted and may not be used, unless treated in accordance with the requirements provided by the New York State Department of Health, or a local County Health Department with jurisdiction in such matters and such is approved by the Department as not inconsistent with the remedy.

PLEASE TAKE NOTICE, since the remedial program relies upon use restrictions or the long term employment of institutional or engineering controls; such institutional or engineering controls are contained in Declaration of Covenants and Restrictions granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Erie County as BK 11347; PG 5266.

PLEASE TAKE NOTICE, the Environmental Easement requires that the approved site management plan (SMP) for this property be adhered to. The SMP, which may be amended from time to time, may include sampling, monitoring, and/or operating a treatment system on the property, providing certified reports to the NYSDEC, and generally provides for the management of any and all plans and limitations on the property. A copy of the SMP is available upon request by writing to the Department's Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, New York 12233.

PLEASE TAKE NOTICE, provided that the Environmental Easement, SMP and Certificate are complied with, the Certificate holder(s) shall be entitled to the liability limitation provided in 6 NYCRR Part 375-2.9. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in 6 NYCRR Part 375-2.9. The liability limitation shall be subject to all rights reserved to the State by 6 NYCRR Part 375-2.9 and any other applicable provision of

Osmose Wood Preserving Site a/k/a 980 Ellicott Street, Site ID No.915143
980 Ellicott Street, Buffalo, Erie County, NY 14209

law.

PLEASE TAKE NOTICE, any change of use of the site, as defined in 6 NYCRR 375, must be preceded by notice to the Department in accordance with 6 NYCRR 375-1.11(d). A transfer of any or all of the property constitutes a change of use.

PLEASE TAKE NOTICE, the Certificate may be revoked if the Environmental Easement as implemented, if applicable, is not protective or enforceable.

PLEASE TAKE NOTICE, the Certificate may be only be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by 6 NYCRR Part 375-1.9. Failure to comply with the regulatory requirements for transfer **WILL** bar the successors and assigns from the benefits of the Certificate.

PLEASE TAKE NOTICE, the Certificate may be modified or revoked by the Commissioner as set forth in the applicable regulations.

PLEASE TAKE NOTICE, a copy of the Certificate can be reviewed at the NYSDEC's Region 9 located at 270 Michigan Avenue, Buffalo, NY 14203, by contacting the Regional Environmental Remediation Engineer.

WHEREFORE, the undersigned has signed this Notice of Certificate

780 Ellicott Street, LLC.

By: _____

Title: _____

Date: _____

STATE OF NEW YORK) SS:
COUNTY OF)

On the _____ day of _____, in the year 20__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of individual
taking acknowledgment

Please record and return to:
780 Ellicott Street, LLC.
c/o Jon Williams
333 Ganson Street
Buffalo, NY 14203

Exhibit A
Site Description

SCHEDULE "A" PROPERTY DESCRIPTION

ENVIRONMENTAL EASEMENT DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie, State of New York, being part of Lot No. 31, Township 11, Range 8 of the Holland Land Company's Survey, and more particularly bounded and described as follows:

BEGINNING at a point in the westerly line of Ellicott Street, distant 148.05 feet northerly from the point of intersection of the westerly line of Ellicott Street with the northerly line of Best Street;

Thence N 89°03'07" W a distance of 200.59 feet to a point;

Thence N 13°40'13" ' E a distance of 50.00 feet to a point;

Thence N 89°03'07" ' W a distance of 30.00 feet to a point;

Thence N 13°40'13" ' E a distance of 49.99 feet to a point;

Thence S 89°03'07" E a distance of 49.00 feet to a point;

Thence N 13°40'13" ' E a distance of 7.00 feet to a point;

Thence S 76°19'47" E a distance of 9.00 feet to a point;

Thence N 11°51'01" ' E a distance of 47.88 feet to a point;

Thence S 78°00'20" E a distance of 39.32 feet to a point;

Thence S 39°59'19" W a distance of 8.65 feet to a point;

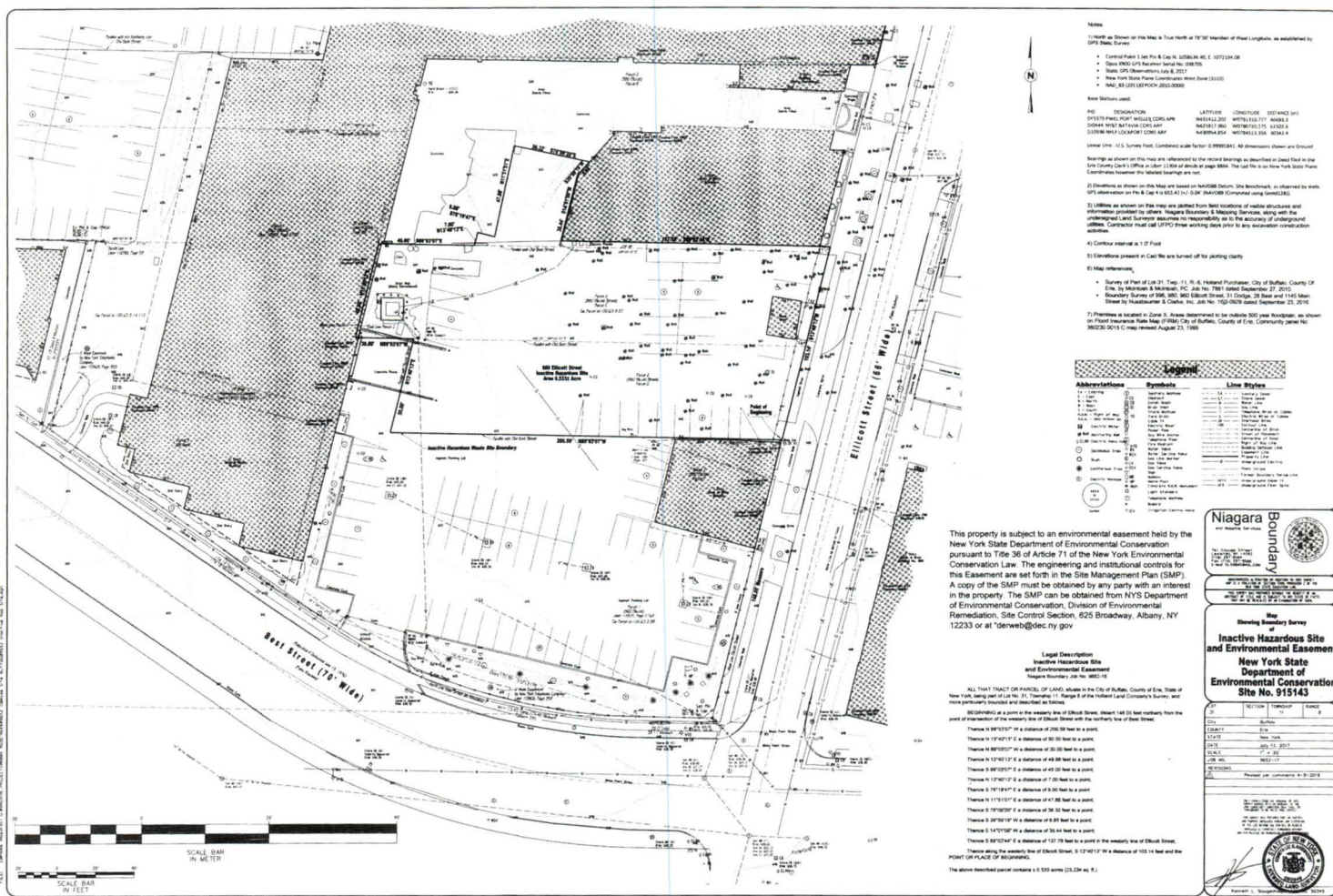
Thence S 14°01'09" W a distance of 35.44 feet to a point;

Thence S 89°02'44" E a distance of 137.78 feet to a point in the westerly line of Ellicott Street;

Thence along the westerly line of Ellicott Street, S 13°40'13" W a distance of 103.14 feet and the POINT OR PLACE OF BEGINNING.

The above described parcel contains \pm 0.533 acres (23,234 sq. ft.)

Exhibit B
Site Survey





NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Site Management Form

8/7/2019



SITE DESCRIPTION

SITE NO. 915143

SITE NAME Osmose Wood Preserving

SITE ADDRESS: 980 Ellicott Street ZIP CODE: 14209

CITY/TOWN: Buffalo

COUNTY: Erie

ALLOWABLE USE: Commercial and Industrial

SITE MANAGEMENT DESCRIPTION

SITE MANAGEMENT PLAN INCLUDES:

IC/EC Certification Plan YES

Monitoring Plan YES

Operation and Maintenance (O&M) Plan NO

Periodic Review Frequency: 1 year

Periodic Review Report Submittal Date: 02/17/2020

Description of Institutional Control

780 Ellicott Street, LLC

Environmental Easement

Block: 3

Lot: 37

Sublot:

Section: 100

Subsection: 63

S_B_L Image: 100.63-3-37

Ground Water Use Restriction

IC/EC Plan

Landuse Restriction

Monitoring Plan
Site Management Plan

Description of Engineering Control

Not Applicable/No EC's