

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation

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[www.dec.ny.gov](http://www.dec.ny.gov)

7/17/2020

Jason Paananen  
Director Of Environmental Affairs  
City of Buffalo  
65 Niagara Square  
901 City Hall  
Buffalo, NY 14202

## Re: Reminder Notice: Site Management Periodic Review Report and IC/EC Certification Submittal

**Site Name:** Fourth Street MGP Site

**Site No.:** 915167

**Site Address:** 43 Carolina Street  
Buffalo, NY 14202

Dear Jason Paananen:

This letter serves as a reminder that sites in active Site Management (SM) require the submittal of a periodic progress report. This report, referred to as the Periodic Review Report (PRR), must document the implementation of, and compliance with, site-specific SM requirements. Section 6.3(b) of DER-10 *Technical Guidance for Site Investigation and Remediation* (available online at <http://www.dec.ny.gov/regulations/67386.html>) provides guidance regarding the information that must be included in the PRR. Further, if the site is comprised of multiple parcels, then you as the Certifying Party must arrange to submit one PRR for all parcels that comprise the site. The PRR must be received by the Department no later than **September 26, 2020**. Guidance on the content of a PRR is enclosed.

Site Management is defined in regulation (6 NYCRR 375-1.2(at)) and in Chapter 6 of DER-10. Depending on when the remedial program for your site was completed, SM may be governed by multiple documents (e.g., Operation, Maintenance, and Monitoring Plan; Soil Management Plan) or one comprehensive Site Management Plan.

A Site Management Plan (SMP) may contain one or all of the following elements, as applicable to the site: a plan to maintain institutional controls and/or engineering controls (“IC/EC Plan”); a plan for monitoring the performance and effectiveness of the selected remedy (“Monitoring Plan”); and/or a plan for the operation and maintenance of the selected remedy (“O&M Plan”). Additionally, the technical requirements for SM are stated in the decision document (e.g., Record of Decision) and, in some cases, the legal agreement directing the remediation of the site (e.g., order on consent, voluntary agreement, etc.).

When you submit the PRR (by the due date above), include the enclosed forms documenting that all SM requirements are being met. The Institutional Controls (ICs) portion of the form (Box 6) must be signed by you or your designated representative. If you cannot certify that all SM requirements are being met, you must submit a Corrective Measures Work Plan that identifies the actions to be taken to restore compliance. The work plan must include a schedule to be approved by the Department. The Periodic Review process will not be considered complete until all necessary corrective measures are completed and all required controls are certified. Instructions for completing the certifications are enclosed.

All site-related documents and data, including the PRR, must be submitted in electronic format to the Department of Environmental Conservation. The required format for documents is an Adobe PDF file with optical character recognition and no password protection. Data must be submitted as an electronic data deliverable (EDD) according to the instructions on the following webpage:

<https://www.dec.ny.gov/chemical/62440.html>

Documents may be submitted to the project manager either through electronic mail or by using the Department's file transfer service at the following webpage:

<https://fts.dec.state.ny.us/fts/>

The Department will not approve the PRR unless all documents and data generated in support of the PRR have been submitted using the required formats and protocols.

You may contact Megan Kuczka, the Project Manager, at 716-842-2175 or [megan.kuczka@dec.ny.gov](mailto:megan.kuczka@dec.ny.gov) with any questions or concerns about the site. Please notify the project manager before conducting inspections or field work. You may also write to the project manager at the following address:

New York State Department of Environmental Conservation  
270 Michigan Ave  
Buffalo, NY 14203-2915

#### Enclosures

PRR General Guidance  
Certification Form Instructions  
Certification Forms

cc: w/ enclosures

Buffalo Urban Renewal Agency

ec: w/ enclosures

Megan Kuczka, Project Manager

Andrea Caprio, Regional Hazardous Waste Remediation Supervisor, Region 9

## Enclosure 1

### Certification Instructions

#### I. Verification of Site Details (Box 1 and Box 2):

Answer the three questions in the Verification of Site Details Section. The Owner and/or Qualified Environmental Professional (QEP) may include handwritten changes and/or other supporting documentation, as necessary.

#### II. Certification of Institutional Controls/ Engineering Controls (IC/ECs)(Boxes 3, 4, and 5)

1.1.1. Review the listed IC/ECs, confirming that all existing controls are listed, and that all existing controls are still applicable. If there is a control that is no longer applicable the Owner / Remedial Party should petition the Department separately to request approval to remove the control.

2. In Box 5, complete certifications for all Plan components, as applicable, by checking the corresponding checkbox.

3. If you cannot certify "YES" for each Control listed in Box 3 & Box 4, sign and date the form in Box 5. Attach supporting documentation that explains why the **Certification** cannot be rendered, as well as a plan of proposed corrective measures, and an associated schedule for completing the corrective measures. Note that this **Certification** form must be submitted even if an IC or EC cannot be certified; however, the certification process will not be considered complete until corrective action is completed.

If the Department concurs with the explanation, the proposed corrective measures, and the proposed schedule, a letter authorizing the implementation of those corrective measures will be issued by the Department's Project Manager. Once the corrective measures are complete, a new Periodic Review Report (with IC/EC Certification) must be submitted within 45 days to the Department. If the Department has any questions or concerns regarding the PRR and/or completion of the IC/EC Certification, the Project Manager will contact you.

#### III. IC/EC Certification by Signature (Box 6 and Box 7):

If you certified "YES" for each Control, please complete and sign the IC/EC Certifications page as follows:

- For the Institutional Controls on the use of the property, the certification statement in Box 6 shall be completed and may be made by the property owner or designated representative.
- For the Engineering Controls, the certification statement in Box 7 must be completed by a Professional Engineer or Qualified Environmental Professional, as noted on the 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	
<b>Site No.</b>	<b>915167</b>		
<b>Site Name Fourth Street MGP Site</b>			
Site Address: 43 Carolina Street    Zip Code: 14202			
City/Town: Buffalo			
County: Erie			
Site Acreage: 5.000			
Reporting Period: August 27, 2017 to August 27, 2020			
		YES	NO
1.	Is the information above correct?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	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?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3.	Has there been any change of use at the site during this Reporting Period (see 6NYCRR 375-1.11(d))?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4.	Have any federal, state, and/or local permits (e.g., building, discharge) been issued for or at the property during this Reporting Period?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	<b>If you answered YES to questions 2 thru 4, include documentation or evidence that documentation has been previously submitted with this certification form.</b>		
5.	Is the site currently undergoing development?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

		Box 2	
		YES	NO
6.	Is the current site use consistent with the use(s) listed below? Commercial and Industrial	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7.	Are all ICs/ECs in place and functioning as designed?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>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.</b>			
<b>A Corrective Measures Work Plan must be submitted along with this form to address these issues.</b>			
_____ Signature of Owner, Remedial Party or Designated Representative		_____ Date	

**Description of Institutional Controls**

Parcel

Owner

Institutional Control

110.12-1-20.1

Buffalo Urban Renewal Agency

Landuse Restriction  
Ground Water Use Restriction  
Site Management Plan  
IC/EC Plan  
Soil Management Plan

1. Property to be used for commercial or industrial purposes only.
2. Prohibition of groundwater use.

110.12-1-23

City of Buffalo

Soil Management Plan  
Site Management Plan  
IC/EC Plan  
Ground Water Use Restriction  
Landuse Restriction

1. Property to be used for commercial or industrial purposes only.
2. Prohibition of groundwater use.

**Description of Engineering Controls**

None Required

Not Applicable/No EC's

### 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 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 complete.

YES NO

2. If this site has an IC/EC Plan (or equivalent as required in the Decision Document), for each Institutional or Engineering control listed in Boxes 3 and/or 4, I certify by checking "YES" below that all of the following statements are true:

(a) the Institutional Control and/or 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

**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. 915167**

**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.

901 City Hall, 65 Niagara Sq.

I Jason Paananen at Buffalo, NY 14202,  
print name print business address

am certifying as Owner (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

11/19/2020

Date

**Enclosure 3**  
**Periodic Review Report (PRR) General Guidance**

- I. Executive Summary: (1/2-page or less)
  - A. Provide a brief summary of site, nature and extent of contamination, and remedial history.
  - B. Effectiveness of the Remedial Program - Provide overall conclusions regarding:
    1. progress made during the reporting period toward meeting the remedial objectives for the site
    2. the ultimate ability of the remedial program to achieve the remedial objectives for the site.
  - C. Compliance
    1. Identify any areas of non-compliance regarding the major elements of the Site Management Plan (SMP, i.e., the Institutional/Engineering Control (IC/EC) Plan, the Monitoring Plan, and the Operation & Maintenance (O&M) Plan).
    2. Propose steps to be taken and a schedule to correct any areas of non-compliance.
  - D. Recommendations
    1. recommend whether any changes to the SMP are needed
    2. recommend any changes to the frequency for submittal of PRRs (increase, decrease)
    3. recommend whether the requirements for discontinuing site management have been met.
  
- II. Site Overview (one page or less)
  - A. Describe the site location, boundaries (figure), significant features, surrounding area, and the nature and extent of contamination prior to site remediation.
  - B. Describe the chronology of the main features of the remedial program for the site, the components of the selected remedy, cleanup goals, site closure criteria, and any significant changes to the selected remedy that have been made since remedy selection.
  
- III. Evaluate Remedy Performance, Effectiveness, and Protectiveness  
Using tables, graphs, charts and bulleted text to the extent practicable, describe the effectiveness of the remedy in achieving the remedial goals for the site. Base findings, recommendations, and conclusions on objective data. Evaluations and should be presented simply and concisely.
  
- IV. IC/EC Plan Compliance Report (if applicable)
  - A. IC/EC Requirements and Compliance
    1. Describe each control, its objective, and how performance of the control is evaluated.
    2. Summarize the status of each goal (whether it is fully in place and its effectiveness).
    3. Corrective Measures: describe steps proposed to address any deficiencies in ICECs.
    4. Conclusions and recommendations for changes.
  - B. IC/EC Certification
    1. The certification must be complete (even if there are IC/EC deficiencies), and certified by the appropriate party as set forth in a Department-approved certification form(s).
  
- V. Monitoring Plan Compliance Report (if applicable)
  - A. Components of the Monitoring Plan (tabular presentations preferred) - Describe the requirements of the monitoring plan by media (i.e., soil, groundwater, sediment, etc.) and by any remedial technologies being used at the site.
  - B. Summary of Monitoring Completed During Reporting Period - Describe the monitoring tasks actually completed during this PRR reporting period. Tables and/or figures should be used to show all data.
  - C. Comparisons with Remedial Objectives - Compare the results of all monitoring with the remedial objectives for the site. Include trend analyses where possible.
  - D. Monitoring Deficiencies - Describe any ways in which monitoring did not fully comply with the monitoring plan.
  - E. Conclusions and Recommendations for Changes - Provide overall conclusions regarding the monitoring completed and the resulting evaluations regarding remedial effectiveness.
  
- VI. Operation & Maintenance (O&M) Plan Compliance Report (if applicable)
  - A. Components of O&M Plan - Describe the requirements of the O&M plan including required activities, frequencies, recordkeeping, etc.
  - B. Summary of O&M Completed During Reporting Period - Describe the O&M tasks actually completed during this PRR reporting period.
  - C. Evaluation of Remedial Systems - Based upon the results of the O&M activities completed, evaluated



the ability of each component of the remedy subject to O&M requirements to perform as designed/expected.

- D. O&M Deficiencies - Identify any deficiencies in complying with the O&M plan during this PRR reporting period.
- E. Conclusions and Recommendations for Improvements - Provide an overall conclusion regarding O&M for the site and identify any suggested improvements requiring changes in the O&M Plan.

#### VII. Overall PRR Conclusions and Recommendations

- A. Compliance with SMP - For each component of the SMP (i.e., IC/EC, monitoring, O&M), summarize;
  - 1. whether all requirements of each plan were met during the reporting period
  - 2. any requirements not met
  - 3. proposed plans and a schedule for coming into full compliance.
- B. Performance and Effectiveness of the Remedy - Based upon your evaluation of the components of the SMP, form conclusions about the performance of each component and the ability of the remedy to achieve the remedial objectives for the site.
- C. Future PRR Submittals
  - 1. Recommend, with supporting justification, whether the frequency of the submittal of PRRs should be changed (either increased or decreased).
  - 2. If the requirements for site closure have been achieved, contact the Departments Project Manager for the site to determine what, if any, additional documentation is needed to support a decision to discontinue site management.

#### VIII. Additional Guidance

Additional guidance regarding the preparation and submittal of an acceptable PRR can be obtained from the Departments Project Manager for the site.