

# 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

DEC 28 2018

Mr. Don Benson  
Benson Construction and Development, LLC  
221 Homer Street  
Olean, New York 14760

Mr. Don Benson  
Homer Street Properties, LLC  
423 West Riverside  
Olean, New York 14760

Re: Certificate of Completion  
229 Homer Street  
Site No. C905044  
Olean, Cattaraugus County

Dear Mr. Benson:

Congratulations on having satisfactorily completed the remedial program at the 229 Homer Street site. The New York State Department of Environmental Conservation (Department) is pleased to inform you that the Final Engineering Report is hereby approved, allowing the COC to be issued for the above-referenced site. Enclosed please find an original, signed Certificate of Completion (COC).

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. A copy of the recorded notice should be provided to the Department's project manager. 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. A standard notice form is attached to this letter. Please return the proof of recording to:



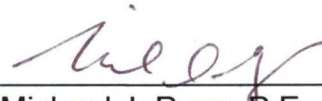
Department of  
Environmental  
Conservation

Chief, Site Control Section  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, NY 12233-7020

- Provide the notice of the COC to the Document Repositories within 10 days of issuance of the COC. The Department will develop a fact sheet announcing the issuance of the COC and describing the institutional and engineering controls (IC/ECs), if any, that are required at the site and distribute it to the County Listserv within 10 days;
- Implement the Department-approved Site Management Plan (SMP) which details the activities necessary to assure the performance, effectiveness, and protectiveness of the remedial program; and 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 first PRR including the certification of the IC/ECs is due to the Department in April 2020.

If you have any questions regarding any of these items, please contact Anthony Lopes at 716-851-7220.

Sincerely,



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Michael J. Ryan, P.E.

Director

Division of Environmental Remediation

cc w/ enclosure:

C. Vooris – NYSDOH

C. Bethoney - NYSDOH

R. Ockerby – NYSDOH

D. Benson, [dbenson@benson-construction.com](mailto:dbenson@benson-construction.com)

Matt Gokey, [matthew.gokey@tax.ny.gov](mailto:matthew.gokey@tax.ny.gov)

Matt Culotti, [matthew.culotti@tax.ny.gov](mailto:matthew.culotti@tax.ny.gov)

M. Lesakowski, [mlesakowski@turnkeyllc.com](mailto:mlesakowski@turnkeyllc.com)

C. Slater - [cslater@cslaterlaw.com](mailto:cslater@cslaterlaw.com)

ec w/o enc.:

A. Lopes

G. Heitzman

C. Staniszewski

M Cruden

J. Dougherty

K. Lewandowski

D. Tuohy



NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)  
*CERTIFICATE OF COMPLETION*

**CERTIFICATE HOLDER(S):**

**Name**

Benson Construction and Development, LLC  
Homer Street Properties, LLC

**Address**

221 Homer Street, Olean, NY 14760  
423 West Riverside, Olean, NY 14760

**BROWNFIELD CLEANUP AGREEMENT:**

**Application Approval:** 9/30/15    **Agreement Execution:** 10/13/15    **Agreement Index No.:** C905044-09-15

**Application Approval Amendment:** 10/5/17

**Agreement Execution Amendment:** 10/5/17

**Application Approval Amendment:** 12/28/18

**Agreement Execution Amendment:** 12/28/18

**SITE INFORMATION:**

**Site No.:** C905044 **Site Name:** 229 Homer Street

**Site Owner:** Homer Street Properties, LLC

**Street Address:** 229 Homer Street

**Municipality:** Olean    **County:** Cattaraugus    **DEC Region:** 9

**Site Size:** 3.340 Acres

**Tax Map Identification Number(s):** 94.032-1-2.5

**Percentage of site located in an EnZone:** 0 - 49 %

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 Article 27, Title 14 of the New York State Environmental Conservation Law ("ECL").

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 Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the Site, that the applicable remediation requirements set forth in the ECL 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 (actual site use is subject to local zoning requirements):

**Allowable Uses under the BCP:** Commercial and Industrial

**Cleanup Track:** Track 4: Restricted use with site-specific soil cleanup objectives

**Tax Credit Provisions:**

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 25 %.

Tangible Property Credit Component Rate is 10%. Comprised of 10% Base.

Dependent upon the project being developed in a manner consistent with the requirements of Section 21(a)(5)(B) of the New York State Tax Law, additional rate increases may be available if the site is developed as affordable housing (5%), if the Certificate Holder receives a separate Determination of Conformance with the Brownfield Opportunity Area (BOA) from the Secretary of State (5%), or if the site is used primarily for manufacturing activities (5%), not to exceed a maximum total Tangible Property Credit Rate of 24 %.



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 Cattaraugus County as 285028-001.

#### **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 ECL Section 27-1421. 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 ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 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 ECL Section 27-1419.5 and 6NYCRR Part 375-1.9.

#### **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 ECL Section 27-1419 and 6NYCRR Part 375-1.9(e) upon a finding that:

- (1) either the Applicant or the Applicant's successors or assigns have failed to comply with the terms and conditions of the Brownfield Site Cleanup Agreement;
- (2) the Applicant made a misrepresentation of a material fact tending to demonstrate that it was qualified as a Volunteer;
- (3) either the Applicant or the Applicant's successors or assigns made a misrepresentation of a material fact tending to demonstrate that the cleanup levels identified in the Brownfield Site Cleanup Agreement were reached;
- (4) there is good cause for such modification or revocation;
- (5) either the Applicant or the Applicant's successors or assigns failed to manage the controls or monitoring in full compliance with the terms of the remedial program;
- (6) the terms and conditions of the environmental easement have been intentionally violated or found to be not protective or enforceable.

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 is not 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:  Date: 12/28/13  
Michael J. Ryan, P.E., Director  
Division of Environmental Remediation



**NOTICE OF CERTIFICATE OF COMPLETION**  
**Brownfield Cleanup Program**  
**6 NYCRR Part 375-1.9(d)**

**229 Homer Street, Site ID No. C905044**  
**229 Homer Street: 229 Homer Street, Olean, NY, 14760**  
**Olean, Cattaraugus, 94.032-1-2.5**

**PLEASE TAKE NOTICE**, the New York State Department of Environmental Conservation (Department) has issued a Certificate of Completion (Certificate) pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law (ECL) to Benson Construction and Development, LLC and Homer Street Properties, LLC for a parcel approximately 3.340 acres located at 229 Homer Street in the City of Olean, Cattaraugus 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 Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the Site, that the remediation requirements set forth in ECL Article 27, Title 14 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.

**PLEASE TAKE NOTICE**, provided that the Certificate is complied with, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. 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 ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

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 an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Cattaraugus County as 285028-001.

**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

***229 Homer Street Site, C905044, 229 Homer Street***

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 ECL Section 27-1421. 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 ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of 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 entitle the Certificate holder(s) to tax credits in accordance with Tax Law Sections 21, 22 and 23.

**PLEASE TAKE NOTICE**, the Certificate may only be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by ECL Section 27-1419.5 and 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

Homer Street Properties, 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:**  
Benson Construction and Development, LLC  
221 Homer Street  
Olean, NY 14760



# **Exhibit A**

**Exhibit A**  
**Environmental Easement Description**  
**For 229 Homer Street Site**  
**BCP Site No. C905044**

**ALL THAT TRACT OR PARCEL OF LAND** situate in the City of Olean, Cattaraugus County, State of New York, being a part of Lot 8, Section 5, Township 2, Range 4 of the Holland Land Company's Survey, bounded and described as follows:

**BEGINNING** at an iron pin on the west bounds of the Southern Tier Rail Auth., a distance of 925' from the centerline intersection of Oregon Road; Thence S 28-51-52 W, along the west bounds of the Southern Tier Rail Auth., a distance of 335.00' to an iron pin; thence N 61-08-08 W, along the northerly bounds of lands of Homer Street Properties, LLC., a distance of 455.0 l' to an iron pin on the easterly street bounds of Homer Street Extension; thence N 35-55-16 E along the easterly street bounds of Homer Street Extension, a distance of 33 7 .56' to an iron pin; thence S 61-08-08 E along the southerly bounds of Casella Waste Mgt. of NY, Inc., a distance of 413.54' to the point of beginning, containing 3.34 acres, more or less.

# **Exhibit B**



NUMBER 1007 PAGE 1084



NOV 16 11 46 AM '01  
CATTARAUGUS COUNTY  
CLERK

Eric Biscaro

OCT. 17, 1988  
REVISE NOV 15, 2000

BY D. MICHAEL CANADA  
N.Y.S.L.S.# 49215  
PORTVILLE, N.Y. 14770

ALTERATION OF THIS DOCUMENT IS  
ILLEGAL EXCEPT BY A LICENSED  
SURVEYOR UNDER SECTION 7209 OF  
THE N.Y.S. EDUCATION LAW

THIS PARCEL IS SUBJECT TO ANY FACTS THAT AN  
UP TO DATE ABSTRACT OF TITLE WOULD SHOW.

D Michel Comolli

UOB = 475 - 4



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
Site Management Form  
12/20/2018



**SITE DESCRIPTION**

**SITE NO.** C905044

**SITE NAME** 229 Homer Street

**SITE ADDRESS:** 229 Homer Street **ZIP CODE:** 14760

**CITY/TOWN:** Olean

**COUNTY:** Cattaraugus

**ALLOWABLE USE:** Commercial and Industrial

**SITE MANAGEMENT DESCRIPTION**

**SITE MANAGEMENT PLAN INCLUDES:** YES NO

IC/EC Certification Plan ☒ ☐

Monitoring Plan ☒ ☐

Operation and Maintenance (O&M) Plan ☒ ☐

Periodic Review Frequency: once a year

Periodic Review Report Submitted Date: 04/30/2020

**Description of Institutional Control**

**Benson Construction and Development, LLC**

221 Homer Street

**229 Homer Street**

Environmental Easement

Block: 1

Lot: 2

Sublot: 5

Section: 94

Subsection: 032

S\_B\_L Image: 94.032-1-2.5

Ground Water Use Restriction

IC/EC Plan

Landuse Restriction

Monitoring Plan

O&M Plan

Site Management Plan

## Soil Management Plan

### Description of Engineering Control

#### **Benson Construction and Development, LLC**

221 Homer Street

#### **229 Homer Street**

Environmental Easement

Block: 1

Lot: 2

Sublot: 5

Section: 94

Subsection: 032

S\_B\_L Image: 94.032-1-2.5

Air Sparging/Soil Vapor Extraction

Cover System