

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

Elk Street Commerce Park, LLC

Attn: Paul Neureuter

4 Centre Drive

Orchard Park, NY 14217

pneureuter@kroggrp.com

DEC 30 2019

Re: Certificate of Completion
ExxonMobil Oil Former Buffalo Terminal
OU-2 West
Site # C915201C
City of Buffalo, Erie County

Mr. Neureuter:

Congratulations on having satisfactorily completed the remedial program at the ExxonMobil Oil Former Buffalo Terminal OU-2 West Site. Enclosed please find an original, signed Certificate of Completion (COC). 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.

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:

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



Department of
Environmental
Conservation

- 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 2021.

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

Sincerely,



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

ec w/ enclosure:

Christine Vooris, Christine.Vooris@health.ny.gov
Shaun Surani, shaun.surani@health.ny.gov
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NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)
CERTIFICATE OF COMPLETION

CERTIFICATE HOLDER(S):

Name

Elk Street Commerce Park, LLC

Address

4 Centre Drive, Orchard Park, NY 14127

BROWNFIELD CLEANUP AGREEMENT:

Application Approval: 9/12/17 **Agreement Execution:** 10/2/17

Agreement Index No.: C915201C-08-17

Application Approval Amendment: 11/6/19

Agreement Execution Amendment: 11/6/19

Application Approval Amendment: 11/20/19

Agreement Execution Amendment: 11/20/19

SITE INFORMATION:

Site No.: C915201C **Site Name:** ExxonMobil Oil Former Buffalo Terminal OU-2 West

Site Owner: Elk Street Commerce Park, LLC

Street Address: 45 Orlando Street

Municipality: Buffalo **County:** Erie **DEC Region:** 9

Site Size: 4.350 Acres

Tax Map Identification Number(s): 122.12-1-20.11

Percentage of site located in an EnZone: 100 %

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 is 15%. Comprised of 10% Base, 5% EnZone.

Dependent upon the project being developed in a manner consistent with the approved Brownfield Cleanup Program application, 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 BOA from the Secretary of State (5%), or if the site is used primarily for manufacturing activities (5%) not to exceed a maximum 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 Erie County as BK/PG D 11353/9556.

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: 12/30/19

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)

ExxonMobil Oil Former Buffalo Terminal OU-2 West, Site ID No. C915201C

45 Orlando Street, Buffalo, NY, 14210

City of Buffalo, Erie County, Tax Map Identification Number 122.12-1-20.11

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 Elk Street Commerce Park, LLC for a site approximately 4.35 acres in size located at 45 Orlando 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 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.

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 Erie County as BK/PG D 11353/9556.

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 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.

**ExxonMobil Oil Former Buffalo Terminal OU-2 West, Site # C915201C
45 Orlando Street, Buffalo NY 14210**

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 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

Elk Street Commerce Park, 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:
Elk Street Commerce Park, LLC
Attn: Paul Neureuter
4 Centre Drive
Orchard Park, NY 14127

Exhibit A

Site Description

SCHEDULE "A" PROPERTY DESCRIPTION

OU2-West Description

Property Owned by Elk Street Commerce Park, LLC

THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie, and State of New York, Being part of Lots 196 and 197, Township 10, Range 8 of the Buffalo Creek Reservation, bound and described as follows:

Beginning at a point in the south line of Elk Street at its intersection with the east line of former Babcock Street;

Thence south along the east line of former Babcock Street a distance of 757.05 feet, to the north line of former Prenatt Street;

Thence west along the north line of former Prenatt Street a distance of 238.43 feet;

Thence north at right angles and along the west line of subplot 46 as shown on map recorded in the Erie County Clerk's office in Liber 428 of Deeds at page 155 and an extension north, a distance of 163.00 feet;

Thence west at right angles a distance of 80.25 feet to the east line of Orlando Street;

Thence north along the east line of Orlando Street a distance of 380.00 feet;

Thence east parallel with Elk Street and along the north line of subplot 63 a distance of 130.75 feet to the northeast corner of subplot 63;

Thence north along the west line of sublots 25, 24, and 23 a distance of 90.00 feet to the southwest corner of subplot 18;

Thence east along the south line of sublots 18 and 19 a distance of 28.00 feet;

Thence north and parallel with the west line of subplot 19 a distance of 124.00 feet to the south line of Elk Street;

Thence east along the south line of elk street a distance of 30.00 feet to a point 8 feet east of the west line of subplot 20;

Thence south and parallel with the west line of subplot 20 a distance of 124.00 feet to the south line of subplot 20;

Thence east along the south line of subplot 20, 21, and 22 a distance of 67.00 feet to the west line of former Babcock Street;

Thence north along the west line of former Babcock Street a distance of 124.00 feet to the south line of Elk Street;

Thence east along the south line of Elk Street a distance of 66.00 feet to the point of beginning, containing 4.35 acres, more or less.

Exhibit B

Site Survey



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Site Management Form
12/20/2019



SITE DESCRIPTION

SITE NO. C915201C

SITE NAME ExxonMobil Oil Former Buffalo Terminal OU-2 West

SITE ADDRESS: 45 Orlando Street ZIP CODE: 14210

CITY/TOWN: Buffalo

COUNTY: Erie

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: 04/30/2021

Description of Institutional Control

Elk Street Commerce Park, LLC

4 Centre Drive

45 Orlando Street

Environmental Easement

Block: 1

Lot: 20

Sublot: 11

Section: 122

Subsection: 12

S_B_L Image: 122.12-1-20.11

Building Use Restriction

Ground Water Use Restriction

IC/EC Plan

Landuse Restriction

Monitoring Plan

Site Management Plan

Soil Management Plan

Description of Engineering Control

Elk Street Commerce Park, LLC

4 Centre Drive

45 Orlando Street

Environmental Easement

Block: 1

Lot: 20

Sublot: 11

Section: 122

Subsection: 12

S_B_L Image: 122.12-1-20.11

Cover System