

June 27, 2022

Ms. Megan Kuczka
New York State Department of Environmental Conservation
700 Delaware Ave.
Buffalo, New York 14209

Re: NYSDEC Revisions/Questions for PRR Reporting Period 4/21-4/22
ExxonMobil Former Buffalo Terminal – OU-2 West
Buffalo, New York
NYSDEC BCP Site #C915201C
LaBella Project No. 2200012

Dear Ms. Kuczka,

Below, please find the NYSDEC revisions/questions underlined and in italics. The response from LaBella, on behalf of Elk Street Commerce Park, is provided in normal font below each NYSDEC comment.

Per the 2019-2021 PRR Acceptance Letter, please complete the following revisions –

- *Include a cover system figure, which clearly depicts the locations of the different types of cover*
 - Figure 3 has been revised, including the paved and stone cover systems.
- *Discuss the BCA amendments in Section 1*
 - The BCA Amendment has been included in the discussion in Section 1.

The IC-EC Certification needs to be signed after the end of the Certifying Period. Please re-sign and re-submit

- This has been signed and added, post Certifying Period.

If you have any questions, please do not hesitate to contact me at (716) 345-6709.

Respectfully submitted,

LABELLA ASSOCIATES, D.P.C



Andrew Janik, PG
Project Manager



2022 Periodic Review Report

(Reporting Period: April 30, 2021 to April 30, 2022)

Location:

ExxonMobil Oil Former Buffalo Terminal OU-2 West
45 Orlando Street, Buffalo, New York
NYSDEC Site No. C915201C

Prepared for:

Elk Street Commerce Park, LLC
4 Centre Drive
Orchard Park, New York 14127

LaBella Project No. 2200012

May 2022, Revised June 2022

Table of Contents

1.0	EXECUTIVE SUMMARY	3
1.1	Site Summary	3
1.2	Effectiveness of Remedial Program.....	3
1.3	Non-Compliance	3
1.4	Recommendations	3
2.0	SITE OVERVIEW	3
2.1	Site Background	4
2.2	Remedial Program Overview	4
3.0	EFFECTIVENESS OF THE REMEDIAL PROGRAM.....	4
4.0	INSTITUTIONAL/ENGINEERING CONTROL (IC/EC) PLAN COMPLIANCE REPORT	5
4.1	IC/EC Requirements and Compliance	5
4.1.1	IC Requirements-Site Restrictions	5
4.1.2	Engineering Controls-Site Cover System	6
4.2	IC/EC Certification.....	6
5.0	MONITORING PLAN COMPLIANCE REPORT	6
5.1	Requirements	6
5.2	Comparisons with Remedial Objectives	7
5.3	Monitoring Deficiencies	7
5.4	Monitoring Conclusions and Recommendations	7
6.0	OPERATION AND MAINTENANCE PLAN.....	7
7.0	CONCLUSIONS AND RECOMMENDATIONS.....	7
8.0	LIMITATIONS.....	7
9.0	REFERENCES.....	8

Figures	Figure 1 – Site Location
	Figure 2 – Project Area
	Figure 3 – Operational Unit 2 (OU-2) West

Appendix 1	Environmental Easement
Appendix 2	Cover Inspection Form
Appendix 3	Photographs
Appendix 4	Site Management Periodic Review Report-Institutional and Engineering Controls Certification Form

1.0 EXECUTIVE SUMMARY

This Periodic Review Report (PRR) is a required element of the approved Site Management Plan (SMP) for Operable Unit No. 2 West (OU-2 West) of the ExxonMobil Oil Former Buffalo Terminal Site in Buffalo, New York (hereafter referred to as the “Site”). The Site was remediated in accordance with Brownfield Cleanup Agreement (BCA) No. C915201C-08-17, which was executed in October 2017. The BCA was amended on October 28, 2019.

1.1 Site Summary

The Site encompasses approximately 4.35 acres and is located at 45 Orlando Street in the City of Buffalo, Erie County, New York. The Site is currently occupied by one approximately 25,800 square-foot commercial building located on the south portion of the Site. The exterior portions of the Site consist of an asphalt extension of Babcock Street that extends southward across the Site from Elk Street, and stone cover on the remaining portions of the Site to the north and west of the building. Historically, the Site was formerly part of the petroleum refinery and terminal that occupied approximately 89 acres of land extending from Elk Street southward to the Buffalo River. Petroleum refinery operations commenced circa 1880 at this location and most of the facility was acquired by Standard Oil Company, ExxonMobil’s predecessor, in 1892. All refinery operations had ceased at the facility by 1981, but the facility continued to be utilized by ExxonMobil until 1995, when the property was acquired by One Babcock Terminal, LLC.

Environmental investigations conducted at the Site revealed that contamination associated with historical petroleum operations had impacted the Site, necessitating remedial activities. The remedial activities were completed pursuant to the Brownfield Cleanup Program (BCP) with oversight by the New York State Department of Environmental Conservation (NYSDEC) and Department of Health (NYSDOH). Following completion of the remedial work described in the NYSDEC-approved Remedial Action Work Plan (RAWP), some contamination was left in the subsurface of the Site, which is hereafter referred to as “remaining contamination.” The remedial efforts also included development of a SMP to manage the remaining contamination at the Site in perpetuity or until extinguishment of the Environmental Easement that was placed on the Site, in accordance with Environmental Conservation Law (ECL) Article 71, Title 36.

1.2 Effectiveness of Remedial Program

Based on a recent inspection of the Site, the Site cover system is intact and functioning as designed on the Site.

1.3 Non-Compliance

No areas of non-compliance regarding the major elements of the SMP 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 SMP, the monitoring program or the frequency of PRR submissions are recommended at this time.

2.0 SITE OVERVIEW

The Site encompasses approximately 4.35 acres and is located at 45 Orlando Street in the City of Buffalo, Erie County, New York (see Figure 1). As shown in Figure 2, the Site is bounded by Elk Street to the north, OU-3 to the South (beyond which is the Buffalo River), OU-2 East to the east, and Orlando Street to the

west. The Site is currently occupied by one approximately 25,800 square-foot commercial building located on the south portion of the Site. The exterior portions of the Site consist of an asphalt extension of Babcock Street that extends southward from Elk Street, and stone cover on the remaining portions of the Site to the north and west of the building. Figure 3 depicts the Site boundaries overlain on a current aerial image.

2.1 Site Background

The Site was formerly part of petroleum refinery and terminal that occupied approximately 89 acres of land extending from Elk Street southward to the Buffalo River. Petroleum refinery operations commenced circa 1880 at this location and most of the facility was acquired by Standard Oil Company, ExxonMobil's predecessor, in 1892. All refinery operations had ceased at the facility by 1981, but the facility continued to be utilized by ExxonMobil until 1995, when the property was acquired by One Babcock Terminal, LLC.

Historical facility plans indicate that four petroleum storage tanks and a large garage structure (current Site building) previously existed on the Site. The petroleum storage tanks were removed from the Site between the late 1980's and 2017.

In 2017, Elk Street Commerce Park, LLC (ESCP) entered into a Brownfield Cleanup Agreement (BCA) with the New York State Department of Environmental Conservation (NYSDEC), as a volunteer, to remediate the Site. ESCP subsequently acquired all portions of the Site and performed remediation in 2018-2019 in accordance with a NYSDEC-approved Remedial Action Work Plan (RAWP) dated May 2018. A Final Engineering Report (FER) summarizing and documenting the remedial program completed at the Site was filed in December 2019 and subsequently approved by the NYSDEC.

2.2 Remedial Program Overview

The remediation program was completed in conformance with the remedy selected by the NYSDEC-approved RAWP. The following remedial program elements were completed:

- Excavation and offsite disposal of Site soils exceeding Site Soil Cleanup Objectives (SCOs) for semi-volatile organic compounds (SVOCs) and metals as well as excavation and removal of soils that exhibit grossly contaminated media (GCM) characteristics to achieve Track 2 commercial use soil cleanup goals;
- Excavations were backfilled with clean imported materials;
- During the course of implementing the Track 2 remedy, the depth and extent of impacted soil was more extensive and it was determined that the Track 2 remedy could not be feasibly achieved. A Track 4 contingent remedy was subsequently implemented and involved the installation of a compliant cover over the entire Site as an Engineering Control (EC). Additionally, the SMP was revised to reflect additional site management requirements. The compliant cover consisted of a demarcation layer and a minimum of 12-inches of stone, asphalt pavement, or concrete building slabs;
- Execution and recording of an Environmental Easement to restrict land use and prevent future exposure to any contamination remaining at the Site;
- Development and implementation of a SMP for long term management of remaining contamination as required by the Environmental Easement, which includes plans for: (1) Institutional and Engineering Controls, (2) monitoring, and (3) reporting; and
- Periodic certification of the institutional and engineering controls listed above.

3.0 EFFECTIVENESS OF THE REMEDIAL PROGRAM

As detailed below in Section 4.1.2, the Site Cover System was inspected on April 7, 2022. Based on this inspection, the cover system is intact and functioning effectively throughout the Site.

4.0 INSTITUTIONAL/ENGINEERING CONTROL (IC/EC) PLAN COMPLIANCE REPORT

4.1 IC/EC Requirements and Compliance

4.1.1 IC Requirements-Site Restrictions

In accordance with the SMP, the Site has a series of Institutional Controls (ICs) in the form of Site restrictions. Adherence to these ICs is required by the Environmental Easement. The Environmental Easement is included as Appendix 1. ICs identified in the SMP include the following:

- The property may be used for commercial or industrial use;
- All ECs must be operated and maintained as specified in the SMP;
- All ECs must be inspected at a frequency and in a manner defined in the SMP;
- The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Erie County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the NYSDEC;
- Data and information pertinent to site management must be reported at the frequency and in a manner as defined in the SMP;
- All future activities that will disturb remaining contaminated material must be conducted in accordance with the SMP;
- Maintenance, inspection, and reporting of any physical component of the remedy shall be performed as defined in the SMP;
- Access to the Site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by the Environmental Easement;
- The potential for vapor intrusion must be evaluated for any future buildings to be developed in the area within the IC boundaries, and any potential impacts that are identified must be monitored or mitigated.

Additional ICs identified in the Environmental Easement for the Site include the following:

- Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;
- Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP.

ICs identified on the NYSDEC Site Management Periodic Review Report Notice IC/ECs Certification Form not identified above include the following:

- Provisions for further investigation and remediation should large scale redevelopment occur, if any of the existing structures which will remain are demolished, or if the subsurface is otherwise made accessible. The nature and extent of contamination in areas where access was previously limited or unavailable will be immediately and thoroughly investigated pursuant to a plan approved by the Department. Based on the investigation results and the Department determination of the need for a remedy, a Remedial Action Work Plan (RAWP) will be developed for the final remedy for the Site, including removal and/or treatment of any source areas to the extent feasible. Citizen Participation Plan (CPP) activities will continue through this process. Any necessary remediation will be completed prior to, or in association with, redevelopment. This includes grossly impacted soil and former refinery piping that may be located beneath the commercial building.
- Provisions for evaluation of the potential for soil vapor intrusion for any current or new buildings on the site, including provision for implementing actions recommended to address exposures related to soil vapor intrusion;

- Provisions that should an existing or future building or building foundation be demolished in the future, a cover system consistent with that described in Engineering Controls will be placed in any areas where the upper one foot of exposed surface soil exceed the applicable SCOs.

4.1.2 Engineering Controls-Site Cover System

Exposure to remaining contamination in soil/fill at the Site is prevented by a cover system placed over the Site. This cover system is comprised of a minimum of 12 inches of clean soil or crushed stone, asphalt pavement, and concrete building slabs. Soil and crushed stone cover areas also contain demarcation fabric to serve as a visual layer between clean imported cover materials and soil with remaining contamination below. The Excavation Work Plan (EWP) provided in Appendix F of the SMP outlines the procedures required to be implemented in the event the cover system is breached, penetrated or temporarily removed, and any underlying remaining contamination is disturbed. Work conducted pursuant to the EWP must also be conducted in accordance with the procedures defined in a Health and Safety Plan (HASP), which will be developed prior to work commencing, and associated Community Air Monitoring Plan (CAMP) prepared for the Site and provided in Appendix G of the SMP. The cover system is a permanent control and the quality and integrity of this system will be inspected at defined, regular intervals in perpetuity.

On April 7, 2022, Mr. Andrew Koons of LaBella conducted the annual Site inspection, which included traversing the Site on foot to observe the current conditions. The Site Inspection Form is included herein as Appendix 2. Appendix 3 includes photographs taken during the Site inspection.

The Site is currently occupied by an approximately 25,800-square foot commercial building that was vacant at the time of the Site inspection. The remaining portions of the Site generally consist of an asphalt extension of Babcock Street that extends southward across the Site from Elk Street, and stone cover on the remaining portions of the Site to the north and west of the building. All cover system types were observed to be intact at the time of the site inspection.

Additionally, monthly Site inspections were completed from April 2021 through April 2022. During the monthly inspections no concerns were identified associated with the Site. The monthly inspections are included in Appendix 2.

4.2 IC/EC Certification

The IC/EC Certification Form was completed in its entirety as all ICs/ECs are in place for the Site per the SMP. Appendix 4 includes the NYSDEC "Site Management Periodic Review Report Notice-Institutional and Engineering Controls Certification Form."

5.0 MONITORING PLAN COMPLIANCE REPORT

5.1 Requirements

The Site Wide Inspection Plan is included in Section 4.0 of the SMP and describes the measures for evaluating the integrity and effectiveness of the cover system.

The Site Wide Inspection Plan describes the methods to be used for:

- Inspecting the cover system and general Site conditions;
- Evaluation of the condition and continued effectiveness of the ECs;
- Assessing compliance with the ICs, including Site usage;
- Evaluating Site information periodically to confirm that the remedy continues to be effective in protecting public health and the environment;
- Evaluating Site compliance with requirements of the SMP; and,

- Preparing the necessary reports for the various monitoring activities.

To adequately address these issues, the Site Wide Inspection Plan provides information on:

- Annual inspection and periodic certification.

5.2 Comparisons with Remedial Objectives

Cover system monitoring was performed in accordance with the SMP, and included the annual visual inspection of the cover system components. As described in Section 4.1.2, the cover system was observed to be intact and functioning as intended, and is continuing to satisfy the remedial objectives for the Site.

5.3 Monitoring Deficiencies

No monitoring deficiencies were noted or experienced during the inspection of the cover system or completion of the PRR.

5.4 Monitoring Conclusions and Recommendations

The procedures utilized to evaluate the performance and effectiveness of the cover system were conducted in accordance with the SMP and verified that the cover system is functioning as intended. No changes to the Site Wide Inspection Plan are recommended.

6.0 OPERATION AND MAINTENANCE PLAN

The remedy for the Site does not rely on mechanical systems to protect public health and the environment. Therefore, no operation and maintenance requirements apply to the Site.

7.0 CONCLUSIONS AND RECOMMENDATIONS

The Annual Inspection of the Site was performed on April 7, 2022 by LaBella Associates, DPC as prescribed in the SMP. As a result of this inspection, LaBella has determined that the Site is in compliance with all elements of the SMP, including the Engineering & Institutional Control Plan and the Site Wide Inspection Plan. No deficiencies or failures to satisfy the requirements of the SMP were identified.

As reflected by the signed Institutional and Engineering Controls Certification Form (Appendix 4), LaBella has concluded that:

- The required EC/ICs are in place, are performing properly, and remain effective;
- The Site Monitoring Plan is being implemented; and
- The remedy continues to be protective of public health and the environment and is performing as specified in the RAWP and FER.

No changes to the inspection, reporting or certification frequency prescribed in the SMP are recommended.

8.0 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 except 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.

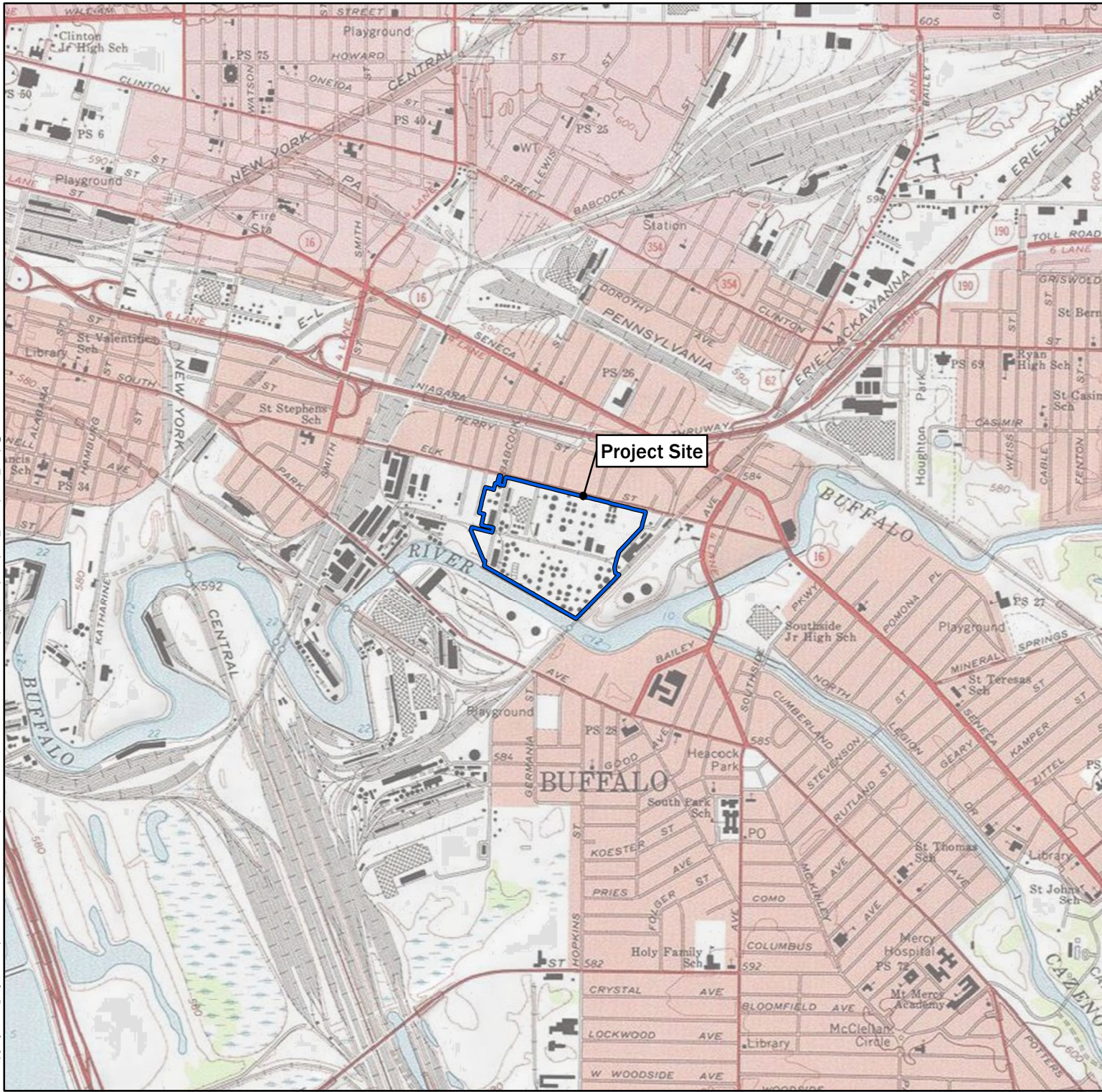
This assessment and report have been completed and prepared on behalf of and for the exclusive use of Elk Street Commerce Park, LLC. Any reliance on this report by a third party is at such party's sole risk.

9.0 REFERENCES

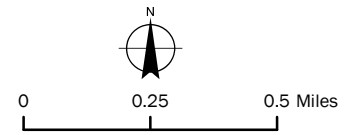
Final Engineering Report, ExxonMobil Oil Buffalo Terminal: Operable Unit 2 West, Amec E&E PC, December 2019

Site Management Plan, ExxonMobil Oil Corporation-Former Buffalo Terminal: Operable Unit 2 West, Amec E&E PC, December 2019

FIGURES



2022 Periodic Review Report
ExxonMobil Oil
Former Buffalo Terminal
OU-2 West
45 Orlando Street, Buffalo, NY
NYSDEC Site No. C915201C



Legend

 Project Site

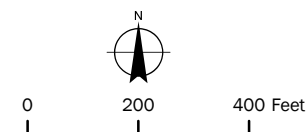
Sources: LaBella 2021; USGS 2019.

Site
Location
Figure 1

LaBella Project No: 2200012
 Date: May 2022



2022 Periodic Review Report
ExxonMobil Oil
Former Buffalo Terminal
OU-2 West
 45 Orlando Street, Buffalo, NY
 NYSDEC Site No. C915201C



Legend

- Operational Unit (OU) Boundary
- Tax Parcel Boundary

Sources: Bing 2020; Erie County 2020; LaBella 2021.

Project Area
Figure 2

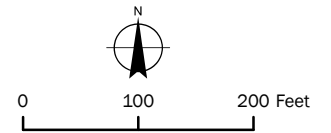
LaBella Project No: 2200012
 Date: May 2022



2021 Periodic Review Report

ExxonMobil Oil Former Buffalo Terminal OU-2 West

45 Orlando Street, Buffalo, NY
NYSDEC Site No. C915201C



Legend

- Operational Unit 2 (OU-2) West Boundary
- Tax Parcel Boundary
- Stone Cover
- Paved Area

Sources: Bing 2020; Erie County 2020; LaBella 2022.

Operational Unit 2 (OU-2) West

Figure 3

LaBella Project No: 2200012
Date: June 2022

APPENDIX 1

Environmental Easement

MICHAEL P. KEARNS, ERIE COUNTY CLERK
REF:

DATE:12/10/2019
TIME:3:00:19 PM
RECEIPT: 19208432

RUPP, BAASE, PFALZGRAF
ACCOUNT #: 1776

ITEM - 01 785
RECD: 12/10/2019 3:01:49 PM
FILE: 2019272454 BK/PG D 11353/9556
Deed Sequence: TT2019010044
ELK STREET COMMERCE PARL LLC
NEW YORK STATE DEPARTMENT OF ENVIROMENTAL CO
NSERVATION
Recording Fees 90.50
TP584 10.00
Subtotal 100.50

TOTAL DUE	\$100.50
PAID TOTAL	\$100.50
PAID CHECK	\$100.50
Check #7659:	100.50

REC BY: Loretta
COUNTY RECORDER

ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

THIS INDENTURE made this 6th day of December, 2019, between Owner, Elk Street Commerce Park, LLC, having an office at 4 Centre Drive, Orchard Park, New York 14127, County of Erie, State of New York (the "Grantor"), and The People of the State of New York (the "Grantee"), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor, is the owner of real property located at the address of 45 Orlando Street in the City of Buffalo, County of Erie and State of New York, known and designated on the tax map of the County Clerk of Erie as tax map parcel numbers: Section 122.12 Block 1 Lot 20.11, being a portion of the property conveyed to Grantor by deed dated March 25, 2019 and recorded in the Erie County Clerk's Office in Liber and Page 11344/1734.

WHEREAS, the property subject to this Environmental Easement (the "Controlled Property") comprises approximately 4.35 +/- acres, and is hereinafter more fully described in the Land Title Survey dated October 29, 2019 prepared by Michael Ennis, P.L.S. of Nussbaumer & Clarke, Inc., which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation

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established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number: C915201C-08-17, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Erie County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(7) All future activities on the property that will disturb remaining

contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation

Law.

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:

- (i) are in-place;
- (ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her 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

(7) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by

Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to:	Site Number: C915201C Office of General Counsel NYSDEC 625 Broadway Albany New York 12233-5500
With a copy to:	Site Control Section Division of Environmental Remediation NYSDEC 625 Broadway Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed

by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

11. Consistency with the SMP. To the extent there is any conflict or inconsistency between the terms of this Environmental Easement and the SMP, regarding matters specifically addressed by the SMP, the terms of the SMP will control.

Remainder of Page Intentionally Left Blank

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Elk Street Commerce Park, LLC:

By: 

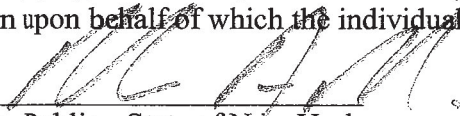
Print Name: Paul R. Neureuter

Title: Ce-Manager Date: 11/19/2019

Grantor's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF ERIE)

On the 19th day of November, in the year 20 19, before me, the undersigned, personally appeared Paul Neureuter, 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.


Notary Public - State of New York

MARC A. ROMANOWSKI
Notary Public, State of New York
Registration No. 02RO606651
Qualified in Erie County
My Commission Expires 11/19/2021

THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting by and Through the Department of Environmental Conservation as Designee of the Commissioner,

By:



Michael J. Ryan, Director
Division of Environmental Remediation

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the 6th day of December, in the year 2019, before me, the undersigned, personally appeared Michael J. Ryan, 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/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public - State of New York

KIERAN MCCARTHY
Notary Public, State of New York
Qualified in Albany County
No. 02MC6326623
Commission Expires August 7, 2023

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 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.

APPENDIX 2

Site Inspection Forms

Inactive Hazardous Waste Site Inspection Form

Site Name: ESCP OU-2 West		NYSDEC Site Number: C9152010C		NYSDEC PM: E. Melnyk	
Site Location: 45 Orlando Street		Site Classification # :		Primary Site Contact: M. Pearson	
Site Inspection Date: 4/15/2021		Purpose of Inspection: Monthly			
Name of Inspector: Brent Miller		Title: TECH.	Agency/Company: LaBella		Address:
Phone Number: 716-544-0555					

Gravel Cover System				Cover System Observations:
Cover System Onsite?	Yes	No		
Presence of Debris	Yes	No	NA	
Evidence of Ponded Water (a low area with water that remains for extended periods)	Yes	No	NA	
Evidence of Wet Areas (wet soils not located in a depression)	Yes	No	NA	
Evidence of Standing Water (water that is the result of recent precipitation events)	Yes	No	NA	
Exposed Marker Layer	Yes	No	NA	
Evidence of Erosion Settlement	Yes	No	NA	
Evidence of Erosion	Yes	No	NA	
Evidence of rutting on gravel cover	Yes	No	NA	
Evidence of unauthorized access	Yes	No	NA	
Presence of Woody Growth	Yes	No	NA	
Animal Burrows	Yes	No	NA	

Last inspection observations (document with photos and describe):

Stormwater Collection and Drainage

[illegible]

Access Road

Overall Condition	<u>Good</u>	Poor	NA	Access Rd Condition Observations:
Potholes Observed	Yes	<u>No</u>	NA	

Security features inspection

Inspection of fences, gates, etc. observations (document with photos and describe):

Interviews/Additional Contacts			
Name/Title	Phone:	Company/Entity	Contact Information
Photograph Log:			
Photograph 1			
Photograph 2			
Photograph 3			
Photograph 4			
Photograph 5			
Photograph 7			
Photograph 8			

Inactive Hazardous Waste Site Inspection Form

Site Name: ESCP OU-2 West		NYSDEC Site Number: C9152010C		NYSDEC PM: E. Melnyk	
Site Location: 45 Orlando Street		Site Classification # :		Primary Site Contact: M. Pearson	
Site Inspection Date: 5/21/2021		Purpose of Inspection: Monthly			
Name of Inspector: Brent Miller		Title: TECH.	Agency/Company: LaBella		Address:
Phone Number: 716-544-0555					

Gravel Cover System				Cover System Observations:
Cover System Onsite?	Yes	No		
Presence of Debris	Yes	No	NA	
Evidence of Ponded Water (a low area with water that remains for extended periods)	Yes	No	NA	
Evidence of Wet Areas (wet soils not located in a depression)	Yes	No	NA	
Evidence of Standing Water (water that is the result of recent precipitation events)	Yes	No	NA	
Exposed Marker Layer	Yes	No	NA	
Evidence of Erosion Settlement	Yes	No	NA	
Evidence of Erosion	Yes	No	NA	
Evidence of rutting on gravel cover	Yes	No	NA	
Evidence of unauthorized access	Yes	No	NA	
Presence of Woody Growth	Yes	No	NA	
Animal Burrows	Yes	No	NA	

Last inspection observations (document with photos and describe):

Stormwater Collection and Drainage

[illegible]

Access Road

Overall Condition	<u>Good</u>	Poor	NA	Access Rd Condition Observations:
Potholes Observed	Yes	<u>No</u>	NA	

Security features inspection

Inspection of fences, gates, etc. observations (document with photos and describe):

Interviews/Additional Contacts			
Name/Title	Phone:	Company/Entity	Contact Information
Photograph Log:			
Photograph 1			
Photograph 2			
Photograph 3			
Photograph 4			
Photograph 5			
Photograph 7			
Photograph 8			

Inactive Hazardous Waste Site Inspection Form

Site Name: ESCP OU-2 West		NYSDEC Site Number: C9152010C		NYSDEC PM: E. Melnyk	
Site Location: 45 Orlando Street		Site Classification # :		Primary Site Contact: M. Pearson	
Site Inspection Date: 6/28/2021		Purpose of Inspection: Monthly			
Name of Inspector: Brent Miller		Title: TECH.	Agency/Company: LaBella		Address:
Phone Number: 716-544-0555					

Gravel Cover System				Cover System Observations:
Cover System Onsite?	Yes	No		
Presence of Debris	Yes	No	NA	
Evidence of Ponded Water (a low area with water that remains for extended periods)	Yes	No	NA	
Evidence of Wet Areas (wet soils not located in a depression)	Yes	No	NA	
Evidence of Standing Water (water that is the result of recent precipitation events)	Yes	No	NA	
Exposed Marker Layer	Yes	No	NA	
Evidence of Erosion Settlement	Yes	No	NA	
Evidence of Erosion	Yes	No	NA	
Evidence of rutting on gravel cover	Yes	No	NA	
Evidence of unauthorized access	Yes	No	NA	
Presence of Woody Growth	Yes	No	NA	
Animal Burrows	Yes	No	NA	

Last inspection observations (document with photos and describe):

Stormwater Collection and Drainage

[illegible]

Access Road

Overall Condition	<u>Good</u>	Poor	NA	Access Rd Condition Observations:
Potholes Observed	Yes	<u>No</u>	NA	

Security features inspection

Inspection of fences, gates, etc. observations (document with photos and describe):

Interviews/Additional Contacts			
Name/Title	Phone:	Company/Entity	Contact Information
Photograph Log:			
Photograph 1			
Photograph 2			
Photograph 3			
Photograph 4			
Photograph 5			
Photograph 7			
Photograph 8			

Inactive Hazardous Waste Site Inspection Form

Site Name: ESCP OU-2 West		NYSDEC Site Number: C9152010C		NYSDEC PM: E. Melnyk	
Site Location: 45 Orlando Street		Site Classification # :		Primary Site Contact: M. Pearson	
Site Inspection Date: 7/28/2021		Purpose of Inspection: Monthly			
Name of Inspector: Brent Miller		Title: TECH.	Agency/Company: LaBella		Address:
Phone Number: 716-544-0555					

Gravel Cover System				Cover System Observations:
Cover System Onsite?	<u>Yes</u>	<i>No</i>		
Presence of Debris	<i>Yes</i>	<u><i>No</i></u>	<i>NA</i>	
Evidence of Ponded Water (a low area with water that remains for extended periods)	<i>Yes</i>	<u><i>No</i></u>	<i>NA</i>	
Evidence of Wet Areas (wet soils not located in a depression)	<i>Yes</i>	<u><i>No</i></u>	<i>NA</i>	
Evidence of Standing Water (water that is the result of recent precipitation events)	<i>Yes</i>	<u><i>No</i></u>	<i>NA</i>	
Exposed Marker Layer	<i>Yes</i>	<u><i>No</i></u>	<i>NA</i>	
Evidence of Erosion Settlement	<i>Yes</i>	<u><i>No</i></u>	<i>NA</i>	
Evidence of Erosion	<i>Yes</i>	<u><i>No</i></u>	<i>NA</i>	
Evidence of rutting on gravel cover	<i>Yes</i>	<u><i>No</i></u>	<i>NA</i>	
Evidence of unauthorized access	<i>Yes</i>	<u><i>No</i></u>	<i>NA</i>	
Presence of Woody Growth	<i>Yes</i>	<u><i>No</i></u>	<i>NA</i>	
Animal Burrows	<i>Yes</i>	<u><i>No</i></u>	<i>NA</i>	

Last inspection observations (document with photos and describe):

Stormwater Collection and Drainage

[illegible]

Access Road

Overall Condition	<u>Good</u>	Poor	NA	Access Rd Condition Observations:
Potholes Observed	Yes	<u>No</u>	NA	

Security features inspection

Inspection of fences, gates, etc. observations (document with photos and describe):

Interviews/Additional Contacts			
Name/Title	Phone:	Company/Entity	Contact Information
Photograph Log:			
Photograph 1			
Photograph 2			
Photograph 3			
Photograph 4			
Photograph 5			
Photograph 7			
Photograph 8			

Inactive Hazardous Waste Site Inspection Form

Site Name: ESCP OU-2 West		NYSDEC Site Number: C9152010C		NYSDEC PM: E. Melnyk	
Site Location: 45 Orlando Street		Site Classification # :		Primary Site Contact: M. Pearson	
Site Inspection Date: 8/3/2021		Purpose of Inspection: Monthly			
Name of Inspector: Brent Miller		Title: TECH.	Agency/Company: LaBella		Address:
Phone Number: 716-544-0555					

Gravel Cover System				Cover System Observations:
Cover System Onsite?	Yes	No		
Presence of Debris	Yes	No	NA	
Evidence of Ponded Water (a low area with water that remains for extended periods)	Yes	No	NA	
Evidence of Wet Areas (wet soils not located in a depression)	Yes	No	NA	
Evidence of Standing Water (water that is the result of recent precipitation events)	Yes	No	NA	
Exposed Marker Layer	Yes	No	NA	
Evidence of Erosion Settlement	Yes	No	NA	
Evidence of Erosion	Yes	No	NA	
Evidence of rutting on gravel cover	Yes	No	NA	
Evidence of unauthorized access	Yes	No	NA	
Presence of Woody Growth	Yes	No	NA	
Animal Burrows	Yes	No	NA	

Last inspection observations (document with photos and describe):

Stormwater Collection and Drainage

[illegible]

Access Road

Overall Condition	<u>Good</u>	Poor	NA	Access Rd Condition Observations:
Potholes Observed	Yes	<u>No</u>	NA	

Security features inspection

Inspection of fences, gates, etc. observations (document with photos and describe):

Interviews/Additional Contacts			
Name/Title	Phone:	Company/Entity	Contact Information
Photograph Log:			
Photograph 1			
Photograph 2			
Photograph 3			
Photograph 4			
Photograph 5			
Photograph 7			
Photograph 8			

Inactive Hazardous Waste Site Inspection Form

Site Name: ESCP OU-2 West		NYSDEC Site Number: C9152010C		NYSDEC PM: E. Melnyk	
Site Location: 45 Orlando Street		Site Classification # :		Primary Site Contact: M. Pearson	
Site Inspection Date: 9/9/2021		Purpose of Inspection: Monthly			
Name of Inspector: Brent Miller		Title: TECH.	Agency/Company: LaBella		Address:
Phone Number: 716-544-0555					

Gravel Cover System				Cover System Observations:
Cover System Onsite?	Yes	No		
Presence of Debris	Yes	No	NA	
Evidence of Ponded Water (a low area with water that remains for extended periods)	Yes	No	NA	
Evidence of Wet Areas (wet soils not located in a depression)	Yes	No	NA	
Evidence of Standing Water (water that is the result of recent precipitation events)	Yes	No	NA	
Exposed Marker Layer	Yes	No	NA	
Evidence of Erosion Settlement	Yes	No	NA	
Evidence of Erosion	Yes	No	NA	
Evidence of rutting on gravel cover	Yes	No	NA	
Evidence of unauthorized access	Yes	No	NA	
Presence of Woody Growth	Yes	No	NA	
Animal Burrows	Yes	No	NA	

Last inspection observations (document with photos and describe):

Stormwater Collection and Drainage

[illegible]

Access Road

Overall Condition	<u>Good</u>	Poor	NA	Access Rd Condition Observations:
Potholes Observed	Yes	<u>No</u>	NA	

Security features inspection

Inspection of fences, gates, etc. observations (document with photos and describe):

Interviews/Additional Contacts			
Name/Title	Phone:	Company/Entity	Contact Information
Photograph Log:			
Photograph 1			
Photograph 2			
Photograph 3			
Photograph 4			
Photograph 5			
Photograph 7			
Photograph 8			

Inactive Hazardous Waste Site Inspection Form

Site Name: ESCP OU-2 West		NYSDEC Site Number: C9152010C		NYSDEC PM: E. Melnyk	
Site Location: 45 Orlando Street		Site Classification # :		Primary Site Contact: M. Pearson	
Site Inspection Date: 10/26/2021		Purpose of Inspection: Monthly			
Name of Inspector: Brent Miller		Title: TECH.	Agency/Company: LaBella		Address:
Phone Number: 716-544-0555					

Gravel Cover System				Cover System Observations:
Cover System Onsite?	Yes	No		
Presence of Debris	Yes	No	NA	
Evidence of Ponded Water (a low area with water that remains for extended periods)	Yes	No	NA	
Evidence of Wet Areas (wet soils not located in a depression)	Yes	No	NA	
Evidence of Standing Water (water that is the result of recent precipitation events)	Yes	No	NA	
Exposed Marker Layer	Yes	No	NA	
Evidence of Erosion Settlement	Yes	No	NA	
Evidence of Erosion	Yes	No	NA	
Evidence of rutting on gravel cover	Yes	No	NA	
Evidence of unauthorized access	Yes	No	NA	
Presence of Woody Growth	Yes	No	NA	
Animal Burrows	Yes	No	NA	

Last inspection observations (document with photos and describe):

Stormwater Collection and Drainage

[illegible]

Access Road

Overall Condition	<u>Good</u>	Poor	NA	Access Rd Condition Observations:
Potholes Observed	Yes	<u>No</u>	NA	

Security features inspection

Inspection of fences, gates, etc. observations (document with photos and describe):

Interviews/Additional Contacts			
Name/Title	Phone:	Company/Entity	Contact Information
Photograph Log:			
Photograph 1			
Photograph 2			
Photograph 3			
Photograph 4			
Photograph 5			
Photograph 7			
Photograph 8			

Inactive Hazardous Waste Site Inspection Form

Site Name: ESCP OU-2 West		NYSDEC Site Number: C9152010C		NYSDEC PM: E. Melnyk	
Site Location: 45 Orlando Street		Site Classification # :		Primary Site Contact: M. Pearson	
Site Inspection Date: 11/29/2021		Purpose of Inspection: Monthly			
Name of Inspector: Brent Miller		Title: TECH.	Agency/Company: LaBella		Address:
Phone Number: 716-544-0555					

Gravel Cover System				Cover System Observations:
Cover System Onsite?	Yes	No		
Presence of Debris	Yes	No	NA	
Evidence of Ponded Water (a low area with water that remains for extended periods)	Yes	No	NA	
Evidence of Wet Areas (wet soils not located in a depression)	Yes	No	NA	
Evidence of Standing Water (water that is the result of recent precipitation events)	Yes	No	NA	
Exposed Marker Layer	Yes	No	NA	
Evidence of Erosion Settlement	Yes	No	NA	
Evidence of Erosion	Yes	No	NA	
Evidence of rutting on gravel cover	Yes	No	NA	
Evidence of unauthorized access	Yes	No	NA	
Presence of Woody Growth	Yes	No	NA	
Animal Burrows	Yes	No	NA	

Last inspection observations (document with photos and describe):

Stormwater Collection and Drainage

[illegible]

Access Road

Overall Condition	<u>Good</u>	Poor	NA	Access Rd Condition Observations:
Potholes Observed	Yes	<u>No</u>	NA	

Security features inspection

Inspection of fences, gates, etc. observations (document with photos and describe):

Interviews/Additional Contacts			
Name/Title	Phone:	Company/Entity	Contact Information
Photograph Log:			
Photograph 1			
Photograph 2			
Photograph 3			
Photograph 4			
Photograph 5			
Photograph 7			
Photograph 8			

**Inactive Hazardous Waste Site
Inspection Form**

Site Name: ESCP OU-2 West		NYSDEC Site Number: C9152010C	NYSDEC PM: E. Melnyk
Site Location: 45 Orlando Street		Site Classification # :	Primary Site Contact: M. Pearson
Site Inspection Date: 12/15/2021		Purpose of Inspection: Monthly	
Name of Inspector: Brent Miller	Title: TECH.	Agency/Company: LaBella	Address:
Phone Number: 716-544-0555			

Gravel Cover System				Cover System Observations:
Cover System Onsite?	<u>Yes</u>	No		
Presence of Debris	Yes	<u>No</u>	NA	
Evidence of Ponded Water (a low area with water that remains for extended periods)	Yes	<u>No</u>	NA	
Evidence of Wet Areas (wet soils not located in a depression)	Yes	<u>No</u>	NA	
Evidence of Standing Water (water that is the result of recent precipitation events)	Yes	<u>No</u>	NA	
Exposed Marker Layer	Yes	<u>No</u>	NA	
Evidence of Erosion Settlement	Yes	<u>No</u>	NA	
Evidence of Erosion	Yes	<u>No</u>	NA	
Evidence of rutting on gravel cover	Yes	<u>No</u>	NA	
Evidence of unauthorized access	Yes	<u>No</u>	NA	
Presence of Woody Growth	Yes	<u>No</u>	NA	
Animal Burrows	Yes	<u>No</u>	NA	

Last inspection observations (document with photos and describe):

Stormwater Collection and Drainage				Collection System Observations:
Drainage Structures/Pipes	<u>Good</u>	Poor	NA	

Access Road				Access Rd Condition Observations:
Overall Condition	<u>Good</u>	Poor	NA	
Potholes Observed	Yes	<u>No</u>	NA	

Security features inspection
Inspection of fences, gates, etc. observations (document with photos and describe):

Interviews/Additional Contacts			
Name/Title	Phone:	Company/Entity	Contact Information
Photograph Log:			
Photograph 1			
Photograph 2			
Photograph 3			
Photograph 4			
Photograph 5			
Photograph 7			
Photograph 8			

Inactive Hazardous Waste Site Inspection Form

Site Name: ESCP OU-2 West		NYSDEC Site Number: C9152010C		NYSDEC PM: E. Melnyk	
Site Location: 45 Orlando Street		Site Classification # :		Primary Site Contact: M. Pearson	
Site Inspection Date: 1/5/2022		Purpose of Inspection: Monthly			
Name of Inspector: Brent Miller		Title: TECH.	Agency/Company: LaBella		Address:
Phone Number: 716-544-0555					

Gravel Cover System				Cover System Observations:
Cover System Onsite?	Yes	No		
Presence of Debris	Yes	No	NA	
Evidence of Ponded Water (a low area with water that remains for extended periods)	Yes	No	NA	
Evidence of Wet Areas (wet soils not located in a depression)	Yes	No	NA	
Evidence of Standing Water (water that is the result of recent precipitation events)	Yes	No	NA	
Exposed Marker Layer	Yes	No	NA	
Evidence of Erosion Settlement	Yes	No	NA	
Evidence of Erosion	Yes	No	NA	
Evidence of rutting on gravel cover	Yes	No	NA	
Evidence of unauthorized access	Yes	No	NA	
Presence of Woody Growth	Yes	No	NA	
Animal Burrows	Yes	No	NA	

Last inspection observations (document with photos and describe):

Stormwater Collection and Drainage

[illegible]

Access Road

Overall Condition	<u>Good</u>	Poor	NA	Access Rd Condition Observations:
Potholes Observed	Yes	<u>No</u>	NA	

Security features inspection

Inspection of fences, gates, etc. observations (document with photos and describe):

Interviews/Additional Contacts			
Name/Title	Phone:	Company/Entity	Contact Information
Photograph Log:			
Photograph 1			
Photograph 2			
Photograph 3			
Photograph 4			
Photograph 5			
Photograph 7			
Photograph 8			

Inactive Hazardous Waste Site Inspection Form

Site Name: ESCP OU-2 West		NYSDEC Site Number: C9152010C		NYSDEC PM: E. Melnyk	
Site Location: 45 Orlando Street		Site Classification # :		Primary Site Contact: M. Pearson	
Site Inspection Date: 2/25/2022		Purpose of Inspection: Monthly			
Name of Inspector: Brent Miller		Title: TECH.	Agency/Company: LaBella		Address:
Phone Number: 716-544-0555					

Gravel Cover System				Cover System Observations:
Cover System Onsite?	Yes	No		
Presence of Debris	Yes	No	NA	
Evidence of Ponded Water (a low area with water that remains for extended periods)	Yes	No	NA	
Evidence of Wet Areas (wet soils not located in a depression)	Yes	No	NA	
Evidence of Standing Water (water that is the result of recent precipitation events)	Yes	No	NA	
Exposed Marker Layer	Yes	No	NA	
Evidence of Erosion Settlement	Yes	No	NA	
Evidence of Erosion	Yes	No	NA	
Evidence of rutting on gravel cover	Yes	No	NA	
Evidence of unauthorized access	Yes	No	NA	
Presence of Woody Growth	Yes	No	NA	
Animal Burrows	Yes	No	NA	

Last inspection observations (document with photos and describe):

Stormwater Collection and Drainage

[illegible]

Access Road

Overall Condition	<u>Good</u>	Poor	NA	Access Rd Condition Observations:
Potholes Observed	Yes	<u>No</u>	NA	

Security features inspection

Inspection of fences, gates, etc. observations (document with photos and describe):

Interviews/Additional Contacts			
Name/Title	Phone:	Company/Entity	Contact Information
Photograph Log:			
Photograph 1			
Photograph 2			
Photograph 3			
Photograph 4			
Photograph 5			
Photograph 7			
Photograph 8			

Inactive Hazardous Waste Site Inspection Form

Site Name: ESCP OU-2 West		NYSDEC Site Number: C9152010C		NYSDEC PM: E. Melnyk	
Site Location: 45 Orlando Street		Site Classification # :		Primary Site Contact: M. Pearson	
Site Inspection Date: 3/31/2022		Purpose of Inspection: Monthly			
Name of Inspector: Brent Miller		Title: TECH.	Agency/Company: LaBella		Address:
Phone Number: 716-544-0555					

Gravel Cover System				Cover System Observations:
Cover System Onsite?	Yes	No		
Presence of Debris	Yes	No	NA	
Evidence of Ponded Water (a low area with water that remains for extended periods)	Yes	No	NA	
Evidence of Wet Areas (wet soils not located in a depression)	Yes	No	NA	
Evidence of Standing Water (water that is the result of recent precipitation events)	Yes	No	NA	
Exposed Marker Layer	Yes	No	NA	
Evidence of Erosion Settlement	Yes	No	NA	
Evidence of Erosion	Yes	No	NA	
Evidence of rutting on gravel cover	Yes	No	NA	
Evidence of unauthorized access	Yes	No	NA	
Presence of Woody Growth	Yes	No	NA	
Animal Burrows	Yes	No	NA	

Last inspection observations (document with photos and describe):

Stormwater Collection and Drainage

[illegible]

Access Road

Overall Condition	<u>Good</u>	Poor	NA	Access Rd Condition Observations:
Potholes Observed	Yes	<u>No</u>	NA	

Security features inspection

Inspection of fences, gates, etc. observations (document with photos and describe):

Interviews/Additional Contacts			
Name/Title	Phone:	Company/Entity	Contact Information
Photograph Log:			
Photograph 1			
Photograph 2			
Photograph 3			
Photograph 4			
Photograph 5			
Photograph 7			
Photograph 8			

Inactive Hazardous Waste Site Inspection Form

Site Name: ExxonMobile/ESCP OU-2W		NYSDEC Site Number: C915201C		NYSDEC PM: E. Melnyk	
Site Location: 45 Orlando Street, Buffalo, NY		Site Classification # :		Primary Site Contact: M. Pearson	
Site Inspection Date: 4/7/2022		Purpose of Inspection: Annual PRR Inspection			
Name of Inspector: Andrew Koons		Title:	Agency/Company:	Address:	
Phone Number: 716.417.9150		Geologist	LaBella	300 Pearl St, Suite 130 Buffalo, NY	

Gravel Cover System				Cover System Observations:
Cover System Onsite?	Yes	No		
Presence of Debris	Yes	No	NA	
Evidence of Ponded Water (a low area with water that remains for extended periods)	Yes	No	NA	
Evidence of Wet Areas (wet soils not located in a depression)	Yes	No	NA	
Evidence of Standing Water (water that is the result of recent precipitation events)	Yes	No	NA	
Exposed Marker Layer	Yes	No	NA	
Evidence of Erosion Settlement	Yes	No	NA	
Evidence of Erosion	Yes	No	NA	
Evidence of rutting on gravel cover	Yes	No	NA	
Evidence of unauthorized access	Yes	No	NA	
Presence of Woody Growth	Yes	No	NA	
Animal Burrows	Yes	No	NA	

Last inspection observations (document with photos and describe):

Stormwater Collection and Drainage

[illegible]

Access Road

Overall Condition	<u>Good</u>	Poor	NA	Access Rd Condition Observations:
Potholes Observed	Yes	<u>No</u>	NA	

Security features inspection

Inspection of fences, gates, etc. observations (document with photos and describe):

Interviews/Additional Contacts			
Name/Title	Phone:	Company/Entitv	Contact Information
Photograph Log:			
Photograph 1			
Photograph 2			
Photograph 3			
Photograph 4			
Photograph 5			
Photograph 7			
Photograph 8			

APPENDIX 3

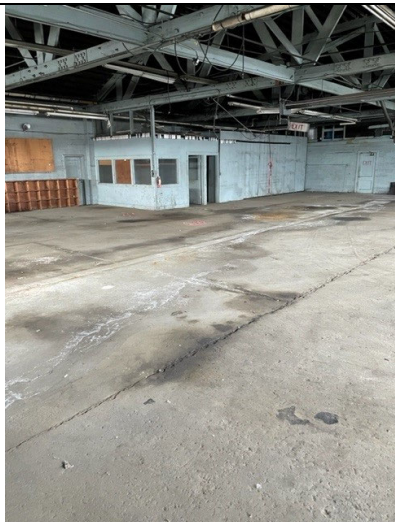
Photographs



Gravel cover on northern portion of the Site



Gravel cover on western portion of the Site behind the Site Building



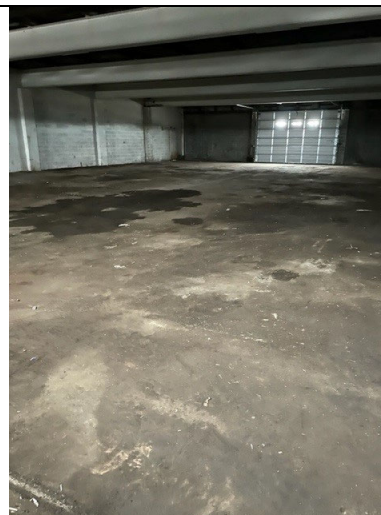
Garage Bay 1



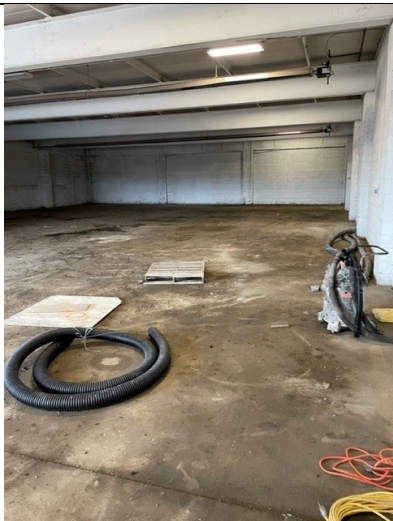
Garage Bay 2



Garage Bay 3



Garage Bay 4



Garage Bay 5

APPENDIX 4

**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 No. **C915201C**

Site Details

Box 1

Site Name **ExxonMobil Oil Former Buffalo Terminal OU-2 West**

Site Address: 45 Orlando Street Zip Code: 14210

City/Town: Buffalo

County: Erie

Site Acreage: 4.350

Reporting Period: April 30, 2021 to April 30, 2022

- | | 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 type="checkbox"/> | <input checked="" 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"/> |

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? | <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 in place and functioning as designed? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

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

Description of Institutional ControlsParcel

122.12-1-20.11

Owner

Elk Street Commerce Park, LLC

Institutional Control

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

Building Use Restriction

The remedy achieves a Track 4 commercial use cleanup at a minimum and includes the imposition of a an environmental easement and a site management plan as described below.

- **INSTITUTIONAL CONTROLS**

Imposition of an environmental easement for the controlled property that:

- o requires the remedial party or site owner to complete and submit to the Department a periodic certification of institutional and engineering controls in accordance with Part 375-1.8 (h)(3);
- o allows the use and development of the controlled property for commercial and industrial uses as defined by Part 375-1.8(g), although land use is subject to local zoning laws;
- o restricts the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by the NYSDOH or County DOH; and
- o requires compliance with the Department approved Site Management Plan.

- **SITE MANAGEMENT PLAN**

A Site Management Plan which includes the following:

- o an Institutional and Engineering Control Plan that identifies all use restrictions and engineering controls for the site and details the steps and media-specific requirements necessary to ensure the following institutional and/or engineering controls remain in place and effective:

Institutional Controls: Environmental Easement described above.

Engineering Controls: discussed in engineering control description.

This plan includes, but may not be limited to:

- an Excavation Plan which details the provisions for management of future excavations in areas of remaining contamination;
- descriptions of the provisions of the environmental easement including any land use and groundwater use restrictions;
- a provision for further investigation and remediation should large scale redevelopment occur, if any of the existing structures which will remain are demolished, or if the subsurface is otherwise made accessible. The nature and extent of contamination in areas where access was previously limited or unavailable will be immediately and thoroughly investigated pursuant to a plan approved by the Department. Based on the investigation results and the Department determination of the need for a remedy, a Remedial Action Work Plan (RAWP) will be developed for the final remedy for the site, including removal and/or treatment of any source areas to the extent feasible. Citizen Participation Plan (CPP) activities will continue through this process. Any necessary remediation will be completed prior to, or in association with, redevelopment. This includes grossly impacted soil and former refinery piping that may be located beneath or in the immediate vicinity or the two large buildings located on Buckeye Terminal property at the south east portion of the site.
- a provision for evaluation of the potential for soil vapor intrusion for any current or new buildings on the site, including provision for implementing actions recommended to address exposures related to soil vapor intrusion;
- a provision that should an existing or future building or building foundation be demolished in the future, a cover system consistent with that described in Engineering Controls will be placed in any areas where the upper one foot of exposed surface soil exceed the applicable SCOs;
- provisions for the management and inspection of the identified engineering controls:
- maintaining site access controls and Department notification; and
- the steps necessary for the periodic reviews and certification of the institutional and/or engineering controls.

Parcel

122.12-1-20.11

Engineering Control

Cover System

1. SITE COVER

A site cover was installed to allow for commercial use of the site in areas where the upper one foot of exposed surface soil will exceed the applicable soil cleanup objectives (SCOs) and over stabilized/treated soil. Where a soil cover is to be used it will be a minimum of one foot of soil placed over a demarcation layer, with the upper six inches of soil of sufficient quality to maintain a vegetative layer. Soil cover material, including any fill material brought to the site, will meet the SCOs for cover material for the use of the site as set forth in 6 NYCRR Part 375-6.7(d). Substitution of other materials and components may be allowed where such components already exist or are a component of the tangible property to be placed as part of site redevelopment. Such components may include, but are not necessarily limited to: pavement, concrete, paved surface parking areas, sidewalks, building foundations and building slabs.

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 complete.

YES NO

☒ ☐

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

☒ ☐

**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. C915201C

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.

PAUL R. NEUREUTZ at 96 THE KINGS GROUP 4 CENTRE DRIVE ORCHARD PARK, NY 14127
print name print business address

am certifying as OWNER (CO-MANAGING MEMBER) (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

5/26/2022

Date

EC CERTIFICATIONS

Box 7

Qualified Environmental Professional 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 ROBERT NAPIERALSKI at LaBella Associates
print name print business address
300 PEARL ST., SUITE 130, BUFFALO, NY

am certifying as a Qualified Environmental Professional for the REMEDIAL PARTY
(Owner or Remedial Party)


Signature of Qualified Environmental Professional, for
the Owner or Remedial Party, Rendering Certification

Stamp
(Required for PE)

6-14-22
Date