



2023 Periodic Review Report

(Reporting Period: April 30, 2022 to April 30, 2023)

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. 2231211

May 2023

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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 June 3, 2019 (change of ownership) and October 28, 2019 (change of address). There have been no further changes of use during the reporting period.

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 southeastern 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 the 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 functioning as designed on the Site. During the reporting period there were no excavations conducted to breach the cover system nor was imported material brought to 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. The emergence of woody growth on the fringes of the cover system were documented and will be addressed with a regular mowing and removal program.

1.4 Recommendations

Overall, the remedial program is viewed to be effective in achieving the remedial objectives for the Site. Minor updates to the SMP should be made. The monitoring program is sufficient for current Site conditions. Consideration should be given to change the frequency of the PRR reporting to biennial.

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 southeastern 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 a 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 was 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 exhibited 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 20, 2023. Based on this inspection, the cover system is 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 and amendments are 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 stone, asphalt pavement, and concrete building slabs. 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 20, 2023, Mr. Chris Finn 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 May 2022 through April 2023. During the monthly inspections no concerns were identified associated with the Site cover system aside from the emerging woody growth. 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 completed 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 functioning as intended and is continuing to satisfy the remedial objectives for the Site.

5.3 Monitoring Deficiencies

Aside from the emergence of woody growth, 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 20, 2023, 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 of the elements of the SMP. Aside from the emergence of woody growth on the northern fringes of the parcel, no other deficiencies or failures of 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 frequency prescribed in the SMP are recommended. However, given the nature of the site and de minimis monitoring activity, it would be recommended to amend the reporting and certification frequency to a biennial schedule.

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 expect 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 to be construed as legal advice.

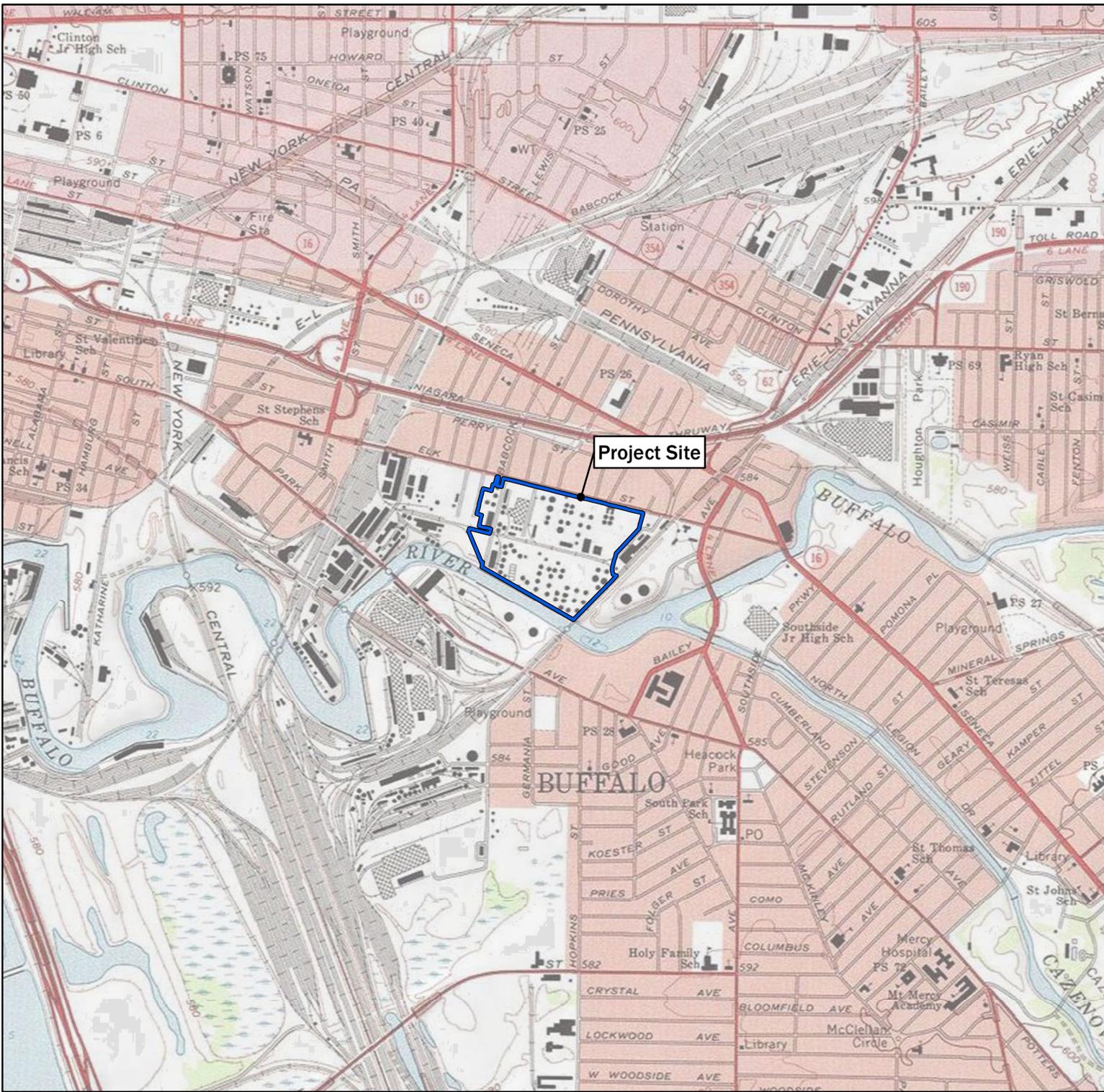
This assessment and report have been completed and prepared on behalf of and for the exclusive use of Elk Street Commerce Park, LLC. Any reliance on this report by a third party is at such party's sole risk.

9.0 REFERENCES

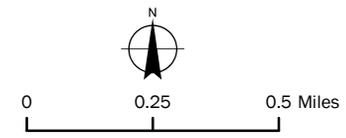
Final Engineering Report, ExxonMobil Oil Buffalo Terminal: Operable Unit 2 West, Amec E&E PC, December 2019

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

Figures



2023 Periodic Review Report
ExxonMobil Oil
Former Buffalo Terminal
OU-2 West
 45 Orlando Street, Buffalo, NY
 NYSDEC Site No. C915201C



Legend
 Project Site

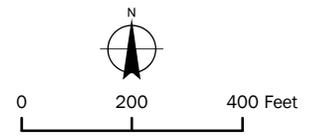
Sources: LaBella 2023; USGS 2019.

Site
Location
Figure 1

LaBella Project No: 2231211
 Date: May 2023



2023 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 Maps; Erie County 2020; LaBella 2023.

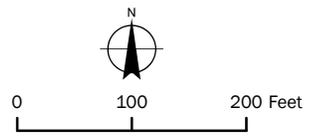
Project Area
Figure 2

LaBella Project No: 2231211
 Date: May 2023





2023 Periodic Review Report
ExxonMobil Oil
Former Buffalo Terminal
OU-2 West
 45 Orlando Street, Buffalo, NY
 NYSDEC Site No. C915201C



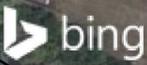
- Legend**
- Operational Unit 2 (OU-2) West Boundary
 - Tax Parcel Boundary
 - Stone Cover
 - Paved Area

Sources: Bing Maps; Erie County 2020; LaBella 2023.

Operational Unit 2
(OU-2) West

Figure 3

LaBella Project No: 2231211
 Date: May 2023



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/PD 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

FILED

DEC 10 2019

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.

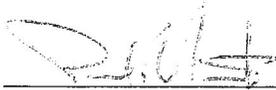
10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

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: 

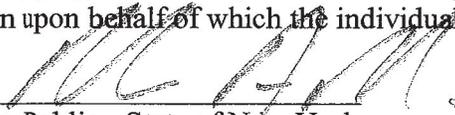
Print Name: Paul R. Neureuter

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 2019, 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

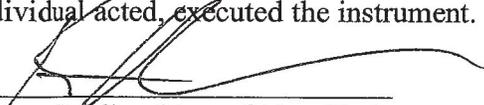
THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting by and Through the Department of Environmental Conservation as Designee of the Commissioner,

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;

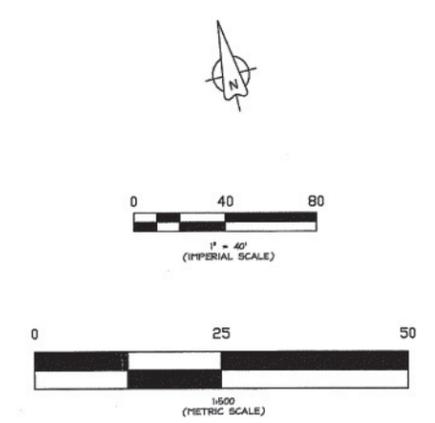
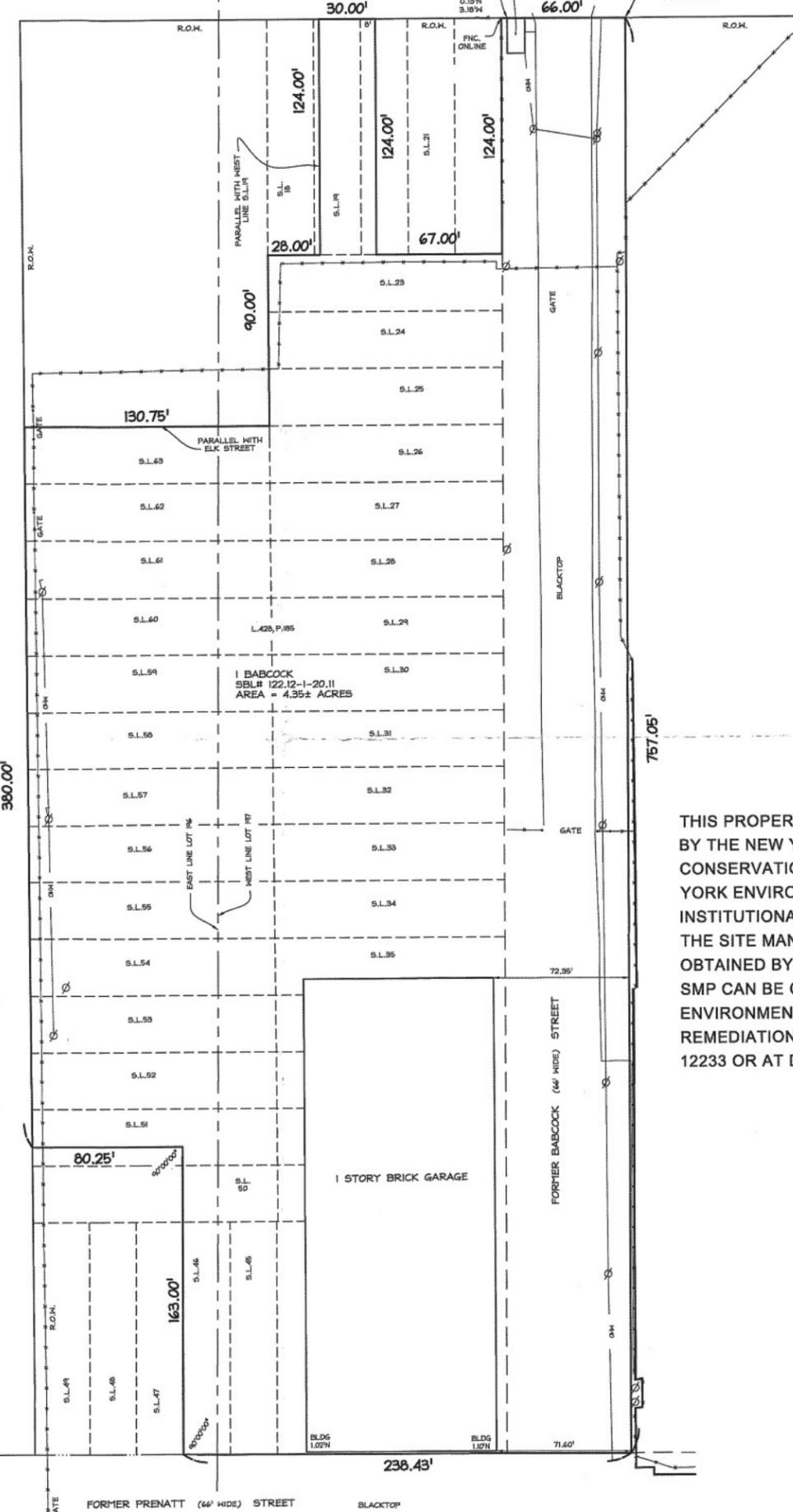
Thence east along the south line of subplot 20, 21, and 22 a distance of 67.00 feet to the west line of former Babcock Street;

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.

ORLANDO STREET (50' WIDE)

ELK STREET (66' WIDE)



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 NEW YORK ENVIRONMENTAL CONSERVATION LAW. THE ENGINEERING AND INSTITUTIONAL CONTROLS FOR THIS EASEMENT ARE SET FORTH IN THE SITE MANAGEMENT PLAN (SMP). A COPY OF THE SMP MUST BE OBTAINED BY ANY PARTY WITH AN INTEREST IN THE PROPERTY. THE SMP CAN BE OBTAINED FROM THE NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DIVISION OF ENVIRONMENTAL REMEDIATION, SITE CONTROL SECTION, 625 BROADWAY, ALBANY, NY 12233 OR AT DERWEB@DEC.NY.GOV

ENVIRONMENTAL EASEMENT LEGAL DESCRIPTION
 Operating Unit 2 West (OU2 W)

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 SUBLOT 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 SUBLOT 63 A DISTANCE OF 130.75 FEET TO THE NORTHEAST CORNER OF SUBLOT 63;

THENCE NORTH ALONG THE WEST LINE OF SUBLOTS 25, 24, AND 23 A DISTANCE OF 90.00 FEET TO THE SOUTHWEST CORNER OF SUBLOT 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 SUBLOT 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 SUBLOT 20;

THENCE SOUTH AND PARALLEL WITH THE WEST LINE OF SUBLOT 20 A DISTANCE OF 124.00 FEET TO THE SOUTH LINE OF SUBLOT 20;

THENCE EAST ALONG THE SOUTH LINE OF SUBLOT 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.

LEGEND
 -OH- OVERHEAD WIRES
 ⊕ LIGHT POLE
 ⊕ UTILITY POLE



3556 Lake Shore Road, Suite 500, Buffalo, NY 14219
 p (716) 827-8000 f (716) 270-6091 www.nussclarke.com

ENVIRONMENTAL EASEMENT SURVEY
 Operating Unit 2 West
 1 Babcock Street
 Part of Lot 196 & 197, Township 10, Range 8
 Buffalo Creek Reservation, City of Buffalo
 County of Erie, State of New York
 Date of Survey: 04/04/18 Lic. No. 50415 Scale: 1" = 40'

NUSSEBAUMER & CLARKE, INC.
 ENGINEERS AND SURVEYORS
 EST. 1933

NO IRONS SET OR FOUND AT PROPERTY CORNERS UNLESS NOTED HEREOF
 This survey was prepared without the benefit of an Unrestricted Professional Engineer, drawing, abstract of title and is subject to any state of facts, design, record or other information on record that may be revealed by an examination of such.

Project No. 1802-03818C6b

Elk Street Commerce Park LLC

June 3, 2019

New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, New York 12233-7020

Attn: **Chief, Site Control Section**

Re: **ExxonMobil Oil Former Buffalo Terminal OU2-West
Site #C915201C**

Subj: **Brownfield Cleanup Agreement - Change of Use**

Ladies and Gentlemen:

Enclosed please find the following a Brownfield Cleanup Program (BCP) Application to Amend Brownfield Cleanup Agreement and a Change of Use notification pertaining to the referenced site.

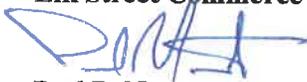
The purpose of this submission is to address change of property ownership for the entirety of the property included in the BCA boundary for Operable Unit 2-West. Note that the BCA Boundary has not changed. The property was acquired by Elk Street Commerce Park, LLC from One Babcock Terminals, Inc. on May 9, 2019.

We trust that the attached submission meets your approval and that the necessary data is updated in advance of issuing the Certificate of Completion. Please note that the COC is expected to be issued on or before December 31, 2019.

Should you have any questions, please contact the undersigned.

Thank you for your cooperation in this matter.

Very truly yours,
Elk Street Commerce Park, LLC



Paul R. Neureuter
Co-manager

cc w/ encl.

Marc Romanowski, Esq.
Jennifer Dougherty, Esq.
Eugene Melnyk, P.E.
Arnie Cubins



Department of
Environmental
Conservation

BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

Check the appropriate box below based on the nature of the amendment modification requested:

Amendment to [check one or more boxes below]

- Add
- Substitute
- Remove
- Change in Name

applicant(s) to the existing Brownfield Cleanup Agreement [*Complete Section I-IV below and Part II*]

Does this proposed amendment involve a transfer of title to all or part of the brownfield site? Yes No

If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See <http://www.dec.ny.gov/chemical/76250.html>

Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]

Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]

Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY: Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment:

This amendment is submitted to reflect a change of ownership of the property. Elk Street Commerce Park, LLC acquired the property from One Babcock Terminals, Inc. on May 9, 2019.

Please refer to the attached instructions for guidance on filling out this application

Section I. Existing Agreement InformationBCP SITE NAME: ExxonMobil Oil Former Buffalo Terminal BCP SITE NUMBER: C915201C

NAME OF CURRENT APPLICANT(S): Elk Street Commerce Park, LLC

INDEX NUMBER OF EXISTING AGREEMENT: C95201C-08 DATE OF EXISTING AGREEMENT: 10/02/17 **Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)**

NAME

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Is the requestor authorized to conduct business in New York State (NYS)?

Yes

No

- If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation & Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

NAME OF NEW REQUESTOR'S REPRESENTATIVE

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S CONSULTANT (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S ATTORNEY (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? Yes No

Describe Requestor's Relationship to Existing Applicant:

Section III. Current Property Owner/Operator Information (only include if new owner/operator or new existing owner/operator information is provided, and highlight new information)

OWNER'S NAME (if different from requestor)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

OPERATOR'S NAME (if different from requestor or owner)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Section IV. Eligibility Information for New Requestor (Please refer to ECL § 27-1407 for more detail)

If answering "yes" to any of the following questions, please provide an explanation as an attachment.

1. Are any enforcement actions pending against the requestor regarding this site? Yes No
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site? Yes No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? Yes No
Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the subject law; ii) any order or determination; iii) any regulation implementing ECL Article 27 Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment. Yes No
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, Department assigned site number, the reason for denial, and other relevant information. Yes No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants? Yes No
7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state? Yes No
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department? Yes No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application? Yes No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order? Yes No
11. Are there any unregistered bulk storage tanks on-site which require registration? Yes No

THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL §27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.

VOLUNTEER

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.

Requestor's Relationship to Property (check one):

Prior Owner Current Owner Potential /Future Purchaser Other _____

If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted.** Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site Is this proof attached? Yes No

Note: a purchase contract does not suffice as proof of access.

Section V. Property description and description of changes/additions/reductions (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

TAX BLOCK AND LOT (TBL) (in existing agreement)

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

Check appropriate boxes below:

- Changes to metes and bounds description or TBL correction
- Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

Approximate acreage added: _____

ADDITIONAL PARCELS:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

- Reduction of property

Approximate acreage removed: _____

PARCELS REMOVED:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, or acceptable site map to this application.

Supplement to the Application To Amend Brownfield Cleanup Agreement And Amendment - Questions for Sites Seeking Tangible Property Credits in New York City ONLY.

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please answer questions below and provide documentation necessary to support answers.	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see DEC's website for more information.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
From ECL 27-1405(31):	
"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.	
3. Is the project an affordable housing project as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
From 6 NYCRR 375- 3.2(a) as of August 12, 2016:	
(a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.	
(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' households annual gross income.	
(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which sets affordable units aside for home owners at a defined maximum percentage of the area median income.	
(3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.	

PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information
BCP SITE NAME: ExxonMobil Oil Former Buffalo Terminal OU-2 BCP SITE NUMBER: C915201C
NAME OF CURRENT APPLICANT(S): Elk Street Commerce Park, LLC
INDEX NUMBER OF EXISTING AGREEMENT: C915201C-08-17
EFFECTIVE DATE OF EXISTING AGREEMENT: 10/2/2017

Declaration of Amendment:

By the Requestor(s) and/or Applicant(s) signatures below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from any obligations held under the Agreement or those same laws.

Statement of Certification and Signatures: New Requestor(s) (if applicable)

(Individual)

I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am (title _____) of (entity _____); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

_____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: _____ Signature: _____

Print Name: _____

Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)

(Individual)

I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am Co-Manager (title) of Elk Street Commerce Park, LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. _____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: _____ Signature: _____

Print Name: Paul R. Neureuter

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Status of Agreement:

<input type="checkbox"/> PARTICIPANT A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input type="checkbox"/> VOLUNTEER A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
---	---

Effective Date of the Original Agreement:

Signature by the Department:

DATED:

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:

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

SUBMITTAL INFORMATION:

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) must be sent to:

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

FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE: _____ **LEAD OFFICE:** _____

PROJECT MANAGER: _____

**BROWNFIELD CLEANUP PROGRAM (BCP)
INSTRUCTIONS FOR COMPLETING A BCP AMENDMENT APPLICATION**

This form must be used to add a party, modify a property description, or reduce/expand property boundaries for an existing BCP Agreement and/or Application. **NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.**

SECTION II NEW REQUESTOR INFORMATION

Requestor Name

Provide the name of the person(s)/entity requesting participation in the BCP. (If more than one, attach additional sheets with requested information. If an LLC, the members/owners names need to be provided on a separate attachment). The requestor is the person or entity seeking DEC review and approval of the remedial program.

If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the [NYS Department of State's Corporation & Business Entity Database](#). A print-out of entity information from the database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

Requestor Address, etc.

Provide the requestor's mailing address, telephone number; fax number and e-mail address.

Representative Name, Address, etc.

Provide information for the requestor's authorized representative. This is the person to whom all correspondence, notices, etc will be sent, and who will be listed as the contact person in the BCA. Invoices will be sent to the representative unless another contact name and address is provided with the application.

Consultant Name, Address, etc.

Provide information for the requestor's consultant.

Attorney Name, Address, etc.

Provide information for the requestor's attorney.

SECTION III CURRENT PROPERTY OWNER/OPERATOR INFORMATION - only include if new owner/operator or new existing owner/operator information is provided, and highlight new information in form.

Owner Name, Address, etc.

Provide information for the new owner of the property. List all new parties holding an interest in the property.

Operator Name, Address, etc.

Provide information for the new operator (if different from the new requestor or owner).

SECTION IV**NEW REQUESTOR ELIGIBILITY INFORMATION**

As a separate attachment, provide complete and detailed information in response to any eligibility questions answered in the affirmative. It is permissible to reference specific sections of existing property reports; however, it is requested that such information be summarized. For properties with multiple addresses or tax parcels, please include this information for each address or tax parcel.

SECTION V PROPERTY DESCRIPTION AND DESCRIPTION OF CHANGES / ADDITIONS / REDUCTIONS (IF APPLICABLE)

NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.

Property Address

Provide a street address, city/town, and zip code. For properties with multiple addresses, provide information for all.

Tax Parcel Information

Provide the tax parcel/section/block/lot information. If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, and/or acceptable site map to this application. Tax map information may be obtained from the tax assessor's office for all tax parcels that are included in the property boundaries. Attach a county tax map with identifier numbers, along with any figures needed to show the location and boundaries of the property. Include a USGS 7.5 minute quad map on which the property appears.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION



**60-Day Advance Notification of Site Change of Use, Transfer of
Certificate of Completion, and/or Ownership**
Required by 6NYCRR Part 375-1.11(d) and 375-1.9(f)

To be submitted at least 60 days prior to change of use to:

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

I. Site Name: ExxonMobil Oil Former Buffalo Terminal OU2-We **DEC Site ID No.** C915201C

II. Contact Information of Person Submitting Notification:

Name: Paul R. Neureuter
Address1: 4 Centre Drive
Address2: Orchard Park, New York 14127
Phone: 716-667-1234 E-mail: pneureuter@kroggrp.com

III. Type of Change and Date: Indicate the Type of Change(s) (check all that apply):

- Change in Ownership or Change in Remedial Party(ies)
 Transfer of Certificate of Completion (CoC)
 Other (e.g., any physical alteration or other change of use)

Proposed Date of Change (mm/dd/yyyy):

IV. Description: Describe proposed change(s) indicated above and attach maps, drawings, and/or parcel information.

This amendment is submitted to reflect a change of ownership of the property. Elk Street Commerce Park, LLC acquired the property from One Babcock Terminals, Inc. on May 9, 2019.

If "Other," the description must explain and advise the Department how such change may or may not affect the site's proposed, ongoing, or completed remedial program (attach additional sheets if needed).

V. **Certification Statement:** Where the change of use results in a change in ownership or in responsibility for the proposed, ongoing, or completed remedial program for the site, the following certification must be completed (by owner or designated representative; see §375-1.11(d)(3)(i)):

I hereby certify that the prospective purchaser and/or remedial party has been provided a copy of any order, agreement, Site Management Plan, or State Assistance Contract regarding the Site's remedial program as well as a copy of all approved remedial work plans and reports.

Name: _____ 6/3/2019
(Signature) (Date)

Paul R. Neureuter

(Print Name)

Address1: 4 Centre Drive
Address2: Orchard Park, New York 14127
Phone: 716-667-1234 E-mail: pneureuter@kroggrp.com

VI. **Contact Information for New Owner, Remedial Party, or CoC Holder:** If the site will be sold or there will be a new remedial party, identify the prospective owner(s) or party(ies) along with contact information. If the site is subject to an Environmental Easement, Deed Restriction, or Site Management Plan requiring periodic certification of institutional controls/engineering controls (IC/ECs), indicate who will be the certifying party (attach additional sheets if needed).

Prospective Owner Prospective Remedial Party Prospective Owner Representative

Name: Elk Street Commerce Park, LLC
Address1: 4 Centre Drive
Address2: Orchard Park, New York 14127
Phone: 716-667-1234 E-mail: pneureuter@kroggrp.com

Certifying Party Name: Paul R. Neureuter
Address1: 4 Centre Drive
Address2: Orchard Park, New York 14127
Phone: 716-667-12345 E-mail: pneureuter@kroggrp.com

VII. Agreement to Notify DEC after Transfer: If Section VI applies, and all or part of the site will be sold, a letter to notify the DEC of the completion of the transfer must be provided. If the current owner is also the holder of the CoC for the site, the CoC should be transferred to the new owner using DEC's form found at <http://www.dec.ny.gov/chemical/54736.html>. This form has its own filing requirements (see 6NYCRR Part 375-1.9(f)).

Signing below indicates that these notices will be provided to the DEC within the specified time frames. If the sale of the site also includes the transfer of a CoC, the DEC agrees to accept the notice given in VII.3 below in satisfaction of the notice required by VII.1 below (which normally must be submitted within 15 days of the sale of the site).

Within 30 days of the sale of the site, I agree to submit to the DEC:

1. the name and contact information for the new owner(s) (see §375-1.11(d)(3)(ii));
2. the name and contact information for any owner representative; and
3. a notice of transfer using the DEC's form found at <http://www.dec.ny.gov/chemical/54736.html> (see §375-1.9(f)).

Name:

(Signature)

6/3/2019

(Date)

Paul R. Neureuter

(Print Name)

Address1: 4 Centre Drive

Address2: Orchard Park, New York 14127

Phone: 716-667-1234

E-mail: pneureuter@kroggrp.com

Continuation Sheet

Prospective Owner/Holder Prospective Remedial Party Prospective Owner Representative
Name: _____

Address1: _____

Address2: _____

Phone: _____ E-mail: _____

Prospective Owner/Holder Prospective Remedial Party Prospective Owner Representative
Name: _____

Address1: _____

Address2: _____

Phone: _____ E-mail: _____

Prospective Owner/Holder Prospective Remedial Party Prospective Owner Representative
Name: _____

Address1: _____

Address2: _____

Phone: _____ E-mail: _____

Prospective Owner/Holder Prospective Remedial Party Prospective Owner Representative
Name: _____

Address1: _____

Address2: _____

Phone: _____ E-mail: _____

Prospective Owner/Holder Prospective Remedial Party Prospective Owner Representative
Name: _____

Address1: _____

Address2: _____

Phone: _____ E-mail: _____

Prospective Owner/Holder Prospective Remedial Party Prospective Owner Representative
Name: _____

Address1: _____

Address2: _____

Phone: _____ E-mail: _____



Instructions for Completing the 60-Day Advance Notification of Site Change of Use, Transfer of Certificate of Completion (CoC), and/or Ownership Form

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

Section I

Description

Site Name

Official DEC site name.
(see <http://www.dec.ny.gov/cfm/external/derexternal/index.cfm?pageid=3>)

DEC Site ID No.

DEC site identification number.

Section II

Contact Information of Person Submitting Notification

Name

Name of person submitting notification of site change of use, transfer of certificate of completion and/or ownership form.

Address1

Street address or P.O. box number of the person submitting notification.

Address2

City, state and zip code of the person submitting notification.

Phone

Phone number of the person submitting notification.

E-mail

E-mail address of the person submitting notification.

Section III

Type of Change and Date

Check Boxes

Check the appropriate box(s) for the type(s) of change about which you are notifying the Department. Check all that apply.

Proposed Date of Change

Date on which the change in ownership or remedial party, transfer of CoC, or other change is expected to occur.

Section IV

Description

Description

For each change checked in Section III, describe the proposed change. Provide all applicable maps, drawings, and/or parcel information. If "Other" is checked in Section III, explain how the change may affect the site's proposed, ongoing, or completed remedial program at the site. Please attach additional sheets, if needed.

Section V Certification Statement

This section must be filled out if the change of use results in a change of ownership or responsibility for the proposed, ongoing, or completed remedial program for the site. When completed, it provides DEC with a certification that the prospective purchaser has been provided a copy of any order, agreement, or State assistance contract as well as a copy of all approved remedial work plans and reports.

Name The owner of the site property or their designated representative must sign and date the certification statement. Print owner or designated representative's name on the line provided below the signature.

Address1 Owner or designated representative's street address or P.O. Box number.

Address2 Owner or designated representative's city, state and zip code.

Phone Owner or designated representative's phone number.

E-Mail Owner or designated representative's E-mail.

Section VI Contact Information for New Owner, Remedial Party, and CoC Holder (if a CoC was issued)

Fill out this section only if the site is to be sold or there will be a new remedial party. Check the appropriate box to indicate whether the information being provided is for a Prospective Owner, CoC Holder (if site was ever issued a COC), Prospective Remedial Party, or Prospective Owner Representative. Identify the prospective owner or party and include contact information. A Continuation Sheet is provided at the end of this form for additional owner/party information.

Name Name of Prospective Owner, Prospective Remedial Party or Prospective Owner Representative.

Address1 Street address or P.O. Box number for the Prospective Owner, Prospective Remedial Party, or Prospective Owner Representative.

Address2 City, state and zip code for the Prospective Owner, Prospective Remedial Party, or Prospective Owner Representative.

Phone Phone number for the Prospective Owner, Prospective Remedial Party or Prospective Owner Representative.

E-Mail E-mail address of the Prospective Owner, Prospective Remedial Party or Prospective Owner Representative.

If the site is subject to an Environmental Easement, Deed Restriction, or Site Management Plan requiring periodic certification of institutional controls/engineering controls (IC/EC), indicate who will be the certifying party(ies). Attach additional sheets, if needed.

Certifying Party Name	Name of Certifying Party.
Address1	Certifying Party's street address or P.O. Box number.
Address2	Certifying Party's city, state and zip code.
Phone	Certifying Party's Phone number.
E-Mail	Certifying Party's E-mail address.

Section VII Agreement to Notify DEC After Property Transfer/Sale

This section must be filled out for all property transfers of all or part of the site. If the site also has a CoC, then the CoC shall be transferred using DEC's form found at <http://www.dec.ny.gov/chemical/54736.html>

Filling out and signing this section of the form indicates you will comply with the post transfer notifications within the required timeframes specified on the form. If a CoC has been issued for the site, the DEC will allow 30 days for the post transfer notification so that the "Notice of CoC Transfer Form" and proof of it's filing can be included. Normally the required post transfer notification must be submitted within 15 day (per 375-1.11(d)(3)(ii)) when no CoC is involved.

Name	Current property owner must sign and date the form on the designated lines. Print owner's name on the line provided.
Address1	Current owner's street address.
Address2	Current owner's city, state and zip code.

Elk Street Commerce Park, LLC

October 28, 2019

New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, New York 12233-7020

Attn: **Chief, Site Control Section**

Re: **ExxonMobil Oil Former Buffalo Terminal OU2-West
Site #915201C**

Subj: **Brownfield Cleanup Agreement – Change of Use and Application to Amend BCA**

Ladies and Gentlemen:

On June 3, 2019 Elk Street Commerce Park, LLC (ESCP) submitted a Brownfield Cleanup Program (BCP) Application to Amend Brownfield Cleanup Agreement and Change of Use notification pertaining to the referenced site. The purpose of this submission was to reflect an ownership change resulting from ESCP's acquiring the property from One Babcock Terminals, Inc. effective May 9, 2019.

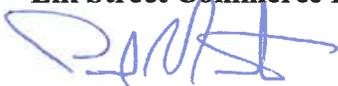
Since that time, the City of Buffalo has assigned a new street address and tax parcel identification number (SBL number) for the property. As such, ESCP is submitting herewith a revised Application to Amend and Change of Use.

We trust that the attached submission meets your approval and that the necessary data will be updated by the NYSDEC in advance of issuing the Certificate of Completion, which is anticipated on or before December 31, 2019.

Should you have any questions, please contact the undersigned.

Thank you for your cooperation in this matter.

Very truly yours,
Elk Street Commerce Park, LLC



Paul R. Neureuter
Co-manager

cc w/ encl

Marc Romanowski, Esq.
Jennifer Dougherty, Esq.
Eugene Melnyk, P.E.
Arnie Cubins



60-Day Advance Notification of Site Change of Use, Transfer of Certificate of Completion, and/or Ownership
Required by 6NYCRR Part 375-1.11(d) and 375-1.9(f)

To be submitted at least 60 days prior to change of use to:

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

I. Site Name: ExxonMobil Oil Former Bu **DEC Site ID No.** C91501C

II. Contact Information of Person Submitting Notification:

Name: Paul R. Neureuter
Address1: 4 Centre Drive
Address2: Orchard Park, New York 14127
Phone: 716-667-1234 E-mail: pneureuter@kroggrp.com

III. Type of Change and Date: Indicate the Type of Change(s) (check all that apply):

- Change in Ownership or Change in Remedial Party(ies)
- Transfer of Certificate of Completion (CoC)
- Other (e.g., any physical alteration or other change of use)

Proposed Date of Change (mm/dd/yyyy): May 9, 2019

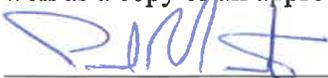
IV. Description: Describe proposed change(s) indicated above and attach maps, drawings, and/or parcel information.

The Change of Use is submitted to reflect a change of ownership of the property. Elk Street Commerce Park, LLC acquired the property from One Babcock Terminals, LLC on May 9, 2019. In conjunction with this property transfer the City of Buffalo assigned a new street address and tax parcel identification number (SBL). The new address is 45 Orlando Street and the new SBL # is 122.12-1-20.11.

If "Other," the description must explain and advise the Department how such change may or may not affect the site's proposed, ongoing, or completed remedial program (attach additional sheets if needed).

V. Certification Statement: Where the change of use results in a change in ownership or in responsibility for the proposed, ongoing, or completed remedial program for the site, the following certification must be completed (by owner or designated representative; see §375-1.11(d)(3)(i)):

I hereby certify that the prospective purchaser and/or remedial party has been provided a copy of any order, agreement, Site Management Plan, or State Assistance Contract regarding the Site's remedial program as well as a copy of all approved remedial work plans and reports.

Name:  Oct 28, 2019
(Signature) (Date)

Paul R. Neureuter
(Print Name)

Address1: 4 Centre Drive
Address2: Orchard Park, New York 14127
Phone: 716-667-1234 E-mail: pneureuter@kroggrp.com

VI. Contact Information for New Owner, Remedial Party, or CoC Holder: If the site will be sold or there will be a new remedial party, identify the prospective owner(s) or party(ies) along with contact information. If the site is subject to an Environmental Easement, Deed Restriction, or Site Management Plan requiring periodic certification of institutional controls/engineering controls (IC/ECs), indicate who will be the certifying party (attach additional sheets if needed).

Prospective Owner Prospective Remedial Party Prospective Owner Representative

Name: Elk Street Commerce Park, LLC
Address1: 4 Centre Drive
Address2: Orchard Park, New York 14127
Phone: 716-667-1234 E-mail: pneureuter@kroggrp.com

Certifying Party Name: Paul R. Neureuter
Address1: 4 Centre Drive
Address2: Orchard Park, New York 14127
Phone: 716-667-1234 E-mail: pneureuter@kroggrp.com

VII. Agreement to Notify DEC after Transfer: If Section VI applies, and all or part of the site will be sold, a letter to notify the DEC of the completion of the transfer must be provided. If the current owner is also the holder of the CoC for the site, the CoC should be transferred to the new owner using DEC's form found at <http://www.dec.ny.gov/chemical/54736.html>. This form has its own filing requirements (see 6NYCRR Part 375-1.9(f)).

Signing below indicates that these notices will be provided to the DEC within the specified time frames. If the sale of the site also includes the transfer of a CoC, the DEC agrees to accept the notice given in VII.3 below in satisfaction of the notice required by VII.1 below (which normally must be submitted within 15 days of the sale of the site).

Within 30 days of the sale of the site, I agree to submit to the DEC:

1. the name and contact information for the new owner(s) (see §375-1.11(d)(3)(ii));
2. the name and contact information for any owner representative; and
3. a notice of transfer using the DEC's form found at <http://www.dec.ny.gov/chemical/54736.html> (see §375-1.9(f)).

Name:



(Signature)

Oct 28, 2019

(Date)

Paul R. Neureuter

(Print Name)

Address1: 4 Centre Drive

Address2: Orchard Park, New York 14127

Phone: 716-667-1234

E-mail: pneureuter@kroggrp.com



BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

Check the appropriate box below based on the nature of the amendment modification requested:

Amendment to [check one or more boxes below]

- Add
- Substitute
- Remove
- Change in Name

applicant(s) to the existing Brownfield Cleanup Agreement [*Complete Section I-IV below and Part II*]

Does this proposed amendment involve a transfer of title to all or part of the brownfield site? Yes No

If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See <http://www.dec.ny.gov/chemical/76250.html>

Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]

Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]

Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY: Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment:

This amendment is submitted to reflect a change of ownership of the property. Elk Street Commerce Park, LLC acquired the property from One Babcock Terminals, Inc. on May 9, 2019.

In conjunction with this property transfer, the City of Buffalo has assigned a new street address and tax parcel identification number (SBL). The new address is 45 Orlando Street and the SBL # is 122.12-1-20.11

Please refer to the attached instructions for guidance on filling out this application

Section I. Existing Agreement InformationBCP SITE NAME: ExxonMobil Oil Former Buffalo Terminal BCP SITE NUMBER: C915201C

NAME OF CURRENT APPLICANT(S): Elk Street Commerce Park, LLC

INDEX NUMBER OF EXISTING AGREEMENT: C95201C-08 DATE OF EXISTING AGREEMENT: 10/02/17 **Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)**

NAME

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Is the requestor authorized to conduct business in New York State (NYS)? Yes No

- If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation & Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

NAME OF NEW REQUESTOR'S REPRESENTATIVE

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S CONSULTANT (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S ATTORNEY (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? Yes No

Describe Requestor's Relationship to Existing Applicant:

Section III. Current Property Owner/Operator Information (only include if new owner/operator or new existing owner/operator information is provided, and highlight new information)

OWNER'S NAME (if different from requestor)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

OPERATOR'S NAME (if different from requestor or owner)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Section IV. Eligibility Information for New Requestor (Please refer to ECL § 27-1407 for more detail)

If answering "yes" to any of the following questions, please provide an explanation as an attachment.

1. Are any enforcement actions pending against the requestor regarding this site? Yes No
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site? Yes No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? Yes No
Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the subject law; ii) any order or determination; iii) any regulation implementing ECL Article 27 Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment. Yes No
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, Department assigned site number, the reason for denial, and other relevant information. Yes No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants? Yes No
7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state? Yes No
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department? Yes No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application? Yes No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order? Yes No
11. Are there any unregistered bulk storage tanks on-site which require registration? Yes No

THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL §27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.

VOLUNTEER

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.

Requestor's Relationship to Property (check one):

Prior Owner Current Owner Potential /Future Purchaser Other _____

If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted.** Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site Is this proof attached? Yes No

Note: a purchase contract does not suffice as proof of access.

Section V. Property description and description of changes/additions/reductions (if applicable)

ADDRESS 45 Orlando Street

CITY/TOWN Buffalo, New York

ZIP CODE 14210

TAX BLOCK AND LOT (TBL) (in existing agreement)

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
1 Babcock Street		122.12	1	20.1	

Check appropriate boxes below:

- Changes to metes and bounds description or TBL correction
- Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

Approximate acreage added: _____

ADDITIONAL PARCELS:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
45 Orlando Street		123.13	1	21	

- Reduction of property
- Approximate acreage removed: _____

PARCELS REMOVED:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, or acceptable site map to this application.

Supplement to the Application To Amend Brownfield Cleanup Agreement And Amendment - Questions for Sites Seeking Tangible Property Credits in New York City ONLY.

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please answer questions below and provide documentation necessary to support answers.	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see DEC's website for more information.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>From ECL 27-1405(31):</p> <p>"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p>	
3. Is the project an affordable housing project as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>From 6 NYCRR 375- 3.2(a) as of August 12, 2016:</p> <p>(a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.</p> <p>(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' households annual gross income.</p> <p>(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which sets affordable units aside for home owners at a defined maximum percentage of the area median income.</p> <p>(3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.</p>	

PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information

BCP SITE NAME: ExxonMobil Oil Former Buffalo Terminal OU-2₊ BCP SITE NUMBER: C915201C

NAME OF CURRENT APPLICANT(S): Elk Street Commerce Park, LLC

INDEX NUMBER OF EXISTING AGREEMENT: C915201C-08-17

EFFECTIVE DATE OF EXISTING AGREEMENT: 10/2/2017

Declaration of Amendment:

By the Requestor(s) and/or Applicant(s) signatures below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from any obligations held under the Agreement or those same laws.

Statement of Certification and Signatures: New Requestor(s) (if applicable)

(Individual)

I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am (title _____) of (entity _____); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

_____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: _____ Signature: _____

Print Name: _____

Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)

(Individual)

I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am Co-Manager (title) of Elk Street Commerce Park, LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. Paul R. Neureuter's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 10/28/2019 Signature: 

Print Name: Paul R. Neureuter

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Status of Agreement:

PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.

VOLUNTEER

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.

Effective Date of the Original Agreement:

Signature by the Department:

DATED:

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By:

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

SUBMITTAL INFORMATION:

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) must be sent to:

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

FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE: _____ **LEAD OFFICE:** _____

PROJECT MANAGER: _____

Appendix 2

Cover 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: 5/20/2022		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?	<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):
Starting to see green vegetation growing in the stoned areas. The vegetation is about 3" to 6" tall. Does not look to be of a woody growth type. Will inform the property owner of this finding.

Stormwater Collection and Drainage

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

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: 6/17/2022		Purpose of Inspection: Monthly	
Name of Inspector: Andy Janik	Title: PM	Agency/Company: LaBella	Address:
Phone Number: 716-345-6709			

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):
 Starting to see green vegetation growing in the stoned areas. The vegetation is about 12" tall. Does not look to be of a woody growth type. Will inform the property owner of this finding.

Stormwater Collection and Drainage

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

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: 7/15/2022		Purpose of Inspection: Monthly	
Name of Inspector: Andy Janik	Title: PM	Agency/Company: LaBella	Address:
Phone Number: 716-345-6709			

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):
Starting to see green vegetation growing in the stoned areas. The vegetation is about 12" tall. Does not look to be of a woody growth type.

Stormwater Collection and Drainage

Drainage Structures/Pipes	Good	Poor	NA	Collection System Observations:

Access Road

Overall Condition	Good	Poor	NA	Access Rd Condition Observations:
Potholes Observed	Yes	No	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: 8/16/2022		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?	<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):
 Starting to see green vegetation growing in the stoned areas. The vegetation is about 12" tall. Starting to find some woody growth mixed in with the vegetation. See Attached Photos. Client notified.

Stormwater Collection and Drainage

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

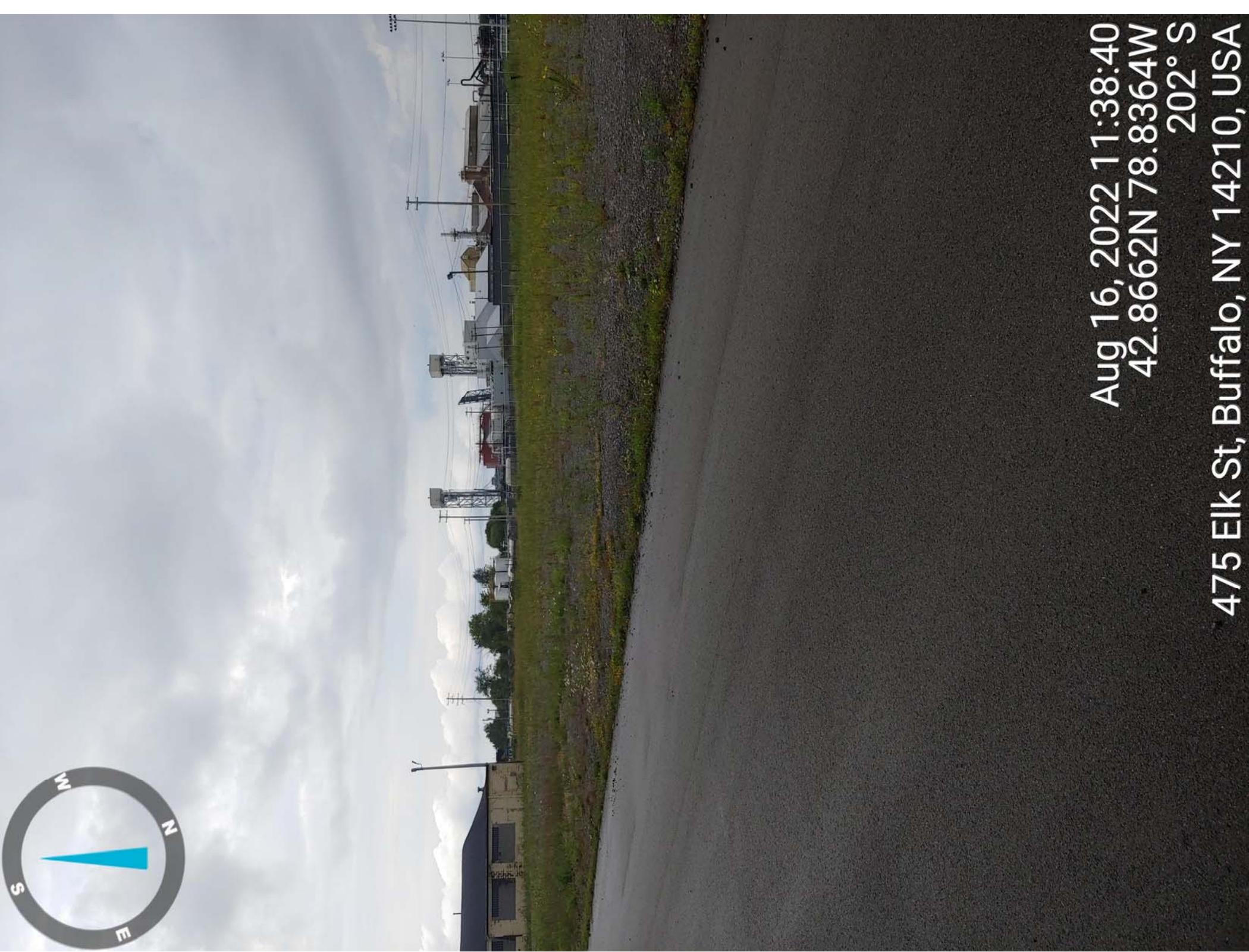
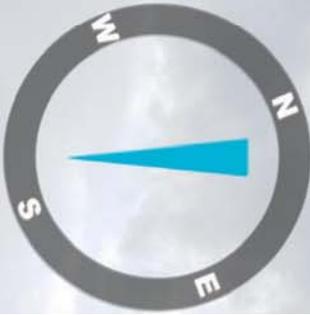
Access Road

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

Security features inspection

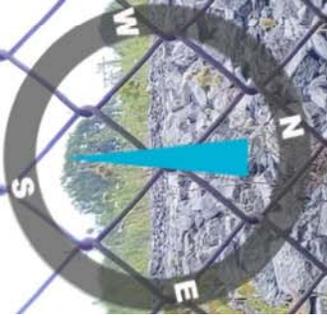
Inspection of fences, gates, etc. observations (document with photos and describe):

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			



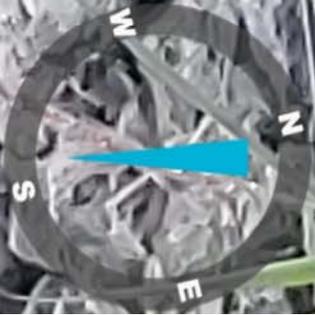
Aug 16, 2022 11:38:40
42.8662N 78.8364W
202° S

475 Elk St, Buffalo, NY 14210, USA



Aug 16, 2022 11:38:19
42.8662N 78.8364W
193° S

475 Elk St, Buffalo, NY 14210, USA



Aug 16, 2022 11:38:28
42.8662N 78.8363W

194° S
475 Elk St, Buffalo, NY 14210, USA

**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: 9/22/2022		Purpose of Inspection: Monthly	
Name of Inspector: Andy Janik		Title: PM	Agency/Company: LaBella
Phone Number: 716-345-6709		Address:	

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):
 Green vegetation growing in the stoned areas. The vegetation is about 12" tall. Starting to find some woody growth mixed in with the vegetation.

Stormwater Collection and Drainage

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

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: 10/25/2022		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?	<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):
 Green vegetation growing in the stoned areas. The vegetation is about 12" tall. Starting to find some woody growth mixed in with the vegetation.

Stormwater Collection and Drainage

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

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: 11/28/2022		Purpose of Inspection: Monthly	
Name of Inspector: Brent Miller		Title: Tech.	Agency/Company: LaBella
Phone Number: 716-544-0555		Address:	

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

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

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: 12/19/2022		Purpose of Inspection: Monthly	
Name of Inspector: Brent Miller		Title: Tech.	Agency/Company: LaBella
Phone Number: 716-544-0555		Address:	

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

Drainage Structures/Pipes	Good	Poor	NA	Collection System Observations:	

Access Road

Overall Condition	Good	Poor	NA	Access Rd Condition Observations:
Potholes Observed	Yes	No	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: 01-13-2023		Purpose of Inspection: Monthly	
Name of Inspector: Christopher Finn	Title: Tech.	Agency/Company: LaBella	Address:
Phone Number: 716-907-0596			

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

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

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: 3-1-2023 (for February)		Purpose of Inspection: Monthly	
Name of Inspector: Christopher Finn		Title: Tech.	Agency/Company: LaBella
Phone Number: 716-907-0596		Address:	

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

Drainage Structures/Pipes	Good	Poor	NA	Collection System Observations:	

Access Road

Overall Condition	Good	Poor	NA	Access Rd Condition Observations:
Potholes Observed	Yes	No	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: 3-31-2023		Purpose of Inspection: Monthly	
Name of Inspector: Christopher Finn		Title: Tech.	Agency/Company: LaBella
Phone Number: 716-907-0596		Address:	

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

Drainage Structures/Pipes	Good	Poor	NA	Collection System Observations:	

Access Road

Overall Condition	Good	Poor	NA	Access Rd Condition Observations:
Potholes Observed	Yes	No	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: 4-20-2023		Purpose of Inspection: Monthly	
Name of Inspector: Christopher Finn	Title: Tech.	Agency/Company: LaBella	Address:
Phone Number: 716-907-0596			

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

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

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			

Appendix 3

Site Photographs



Facing southwest, garage off Babcock St.



Facing northwest, northwestern area of property



Facing north, western side of garage



Facing southwest, northwestern area of property

Appendix 4

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 Details

Site No. **C915201C**

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, 2022 to April 30, 2023

- | | 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 Controls

<u>Parcel</u>	<u>Owner</u>	<u>Institutional Control</u>
122.12-1-20.11	Elk Street Commerce Park, LLC	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 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 to the onsite garage.
- 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.

Description of 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

X □

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

X □

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

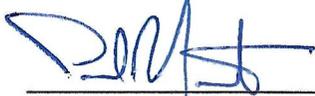
SITE OWNER OR DESIGNATED REPRESENTATIVE SIGNATURE

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.

I Paul R. Neureuter at c/o The Krog Group, 4 Centre Drive, Orchard Park
New York 14127,
print name print business address

am certifying as Owner (Owner or Remedial Party)

for the Site named in the Site Details Section of this form.



(Co-manager)

May 9, 2023

Signature of Owner, Remedial Party, or Designated Representative
Rendering Certification

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 Andrew Janik at LaBella Associates
300 Pearl St., Ste. #130, Buffalo, NY
print name print business address

am certifying as a Qualified Environmental Professional for the Elk Street Commerce Park, LLC
(Owner or Remedial Party)

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

Stamp
(Required for PE)

5/8/33
Date