
PERIODIC REVIEW REPORT
for the

NOCO #S41 SITE
(SITE No. C915211)

BUFFALO, NEW YORK

March 2012

0275-013-001

Prepared for:

Inland Diversified Buffalo Genesee, LLC

Prepared By:



TurnKey Environmental Restoration, LLC
2558 Hamburg Turnpike, Suite 300
Buffalo, NY 14218
(716) 856-0635

PERIODIC REVIEW REPORT

NOCO #S41 Site

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1.0 INTRODUCTION

TurnKey Environmental Restoration, LLC (TurnKey), has prepared this Periodic Review Report (PRR), on behalf of Inland Diversified Buffalo Genesee, LLC (Inland Diversified), to summarize the post-remedial status of the New York State Department of Environmental Conservation (NYSDEC) Brownfield Cleanup Program (BCP) NOCO #S41 Site (Site) C915211. This PRR has been prepared in accordance with the NYSDEC DER-10 *Technical Guidance for Site Investigation and Remediation* (May 2010) and the NYSDEC's Institutional and Engineering Controls (IC/EC) Certification Form has been completed for the Site (see Appendix A).

Though the reporting period for this PRR is December 13, 2011 to December 13, 2012, it should be noted that Inland Diversified acquired the property in April 2012.

1.1 Site Information

The Site is located in the City of Buffalo, County of Erie, New York and is addressed at 1055 Genesee Street (SBL# 100.76-5-1) on the Erie County Tax Map. The BCP Site is an approximate 0.7-acre parcel located at the corner of Genesee Street and Fillmore Avenue (see Figure 1). The current Site and the adjoining 1067 Genesee Street parcel were redeveloped as a single commercial-retail project in 2011. This PRR and the associated certification are prepared specific to the 1055 Genesee Street parcel only.

1.2 Remedial History

Environmental remediation of the Site was undertaken by a former owner, which executed a Brownfield Cleanup Agreement (BCA) with the NYSDEC in July 2007. A Remedial Investigation/Alternatives Analysis Report/Interim Remedial Measures (RI/AAR/IRM) Work Plan was approved by the Department in November 2007, and the RI/IRM activities were completed at the Site in June 2009. Based on the Alternatives Analysis (AA) evaluation, it was concluded that the IRMs, together with implementation of a Site Management Plan (SMP) satisfied the remedial action objectives and is protective of human health and the environment, and was selected as the final remedial approach for the NOCO #S41 Site. The Final Engineering Report (FER) and SMP for the Site were approved by the NYSDEC in December 2009. The Certificate of Completion (COC) was issued for the Site on December 24, 2009.

1.3 Compliance

At the time of the Site inspection, the Site was fully compliant with the Institutional Controls as stated in the SMP.

1.4 Recommendations

Based on the results of the annual inspection and certification, TurnKey makes the following recommendations for the Site.

- Update Box 3 of the Certification Form to identify the Site Owner as Inland Diversified Buffalo Genesee, LLC.
- Update the SMP by including the post-redevelopment as-built survey and modifying the groundwater monitoring plan in accordance with the Department's approval for cessation of groundwater monitoring correspondence dated February 23, 2012.
- Based on the high probability for snow cover in December, it is recommended that the PRR reporting period end date be changed from December to May. This later date would assure no hindrance at the site inspection due to snow or ice cover.

Beyond those changes described above, no modifications to the current SMP are recommended at this time.

2.0 SITE OVERVIEW

Currently, the Site is occupied by an approximate 10,000 sq-ft commercial-retail store and associated parking area. Historically, the site was used as a gasoline service station from approximately 1950 until 2007. As described above, the remedial activities completed under the BCP were completed from 2007 through 2009, including:

- Removal of three underground storage tanks (USTs), including associated dispensing units and underground product piping. Extraction and off-site disposal of residual product/water mixture from the USTs and associated piping.
- Excavation of petroleum-impacted soil/fill followed by off-site transportation and disposal at a commercial landfill.
- Extraction and treatment of groundwater from the excavation during remediation activities.
- Placement and compaction of backfill.

Redevelopment activities, undertaken by the previous owner, 1055 Genesee Street, LLC, including demolition of the former convenience store building, excavation for new building footers, utility corridors, and parking lot catch basins, and construction of the new building and parking lot were completed between April and September 2011.

2.1 Property Transfer Activities

Prior to property transfer, a 60-Day Notice of Intent to Transfer was forwarded to the NYSDEC, dated February 22, 2012; and a Notice of Transfer of Certificate of Completion (COC), documenting that 1055 Genesee Street, LLC provided the required documents to Inland Diversified Buffalo Genesee, LLC was completed on April 7, 2012. Copies of the notification and transfer documents are included electronically in Appendix B.

3.0 REMEDY PERFORMANCE

Annual inspections have been completed at the Site in accordance with the SMP since 2011. The Site inspection including a walk-over of the entire BCP Site to visually observe and document the use of the Site for Commercial Use, restriction of groundwater use, and conformance with the Site Management Plan (SMP). The March 2013 site inspection indicates that the controls are in-place and functioning as intended in accordance with the SMP. The completed IC/EC Certification form and site photographs are included in Appendix A and Appendix C, respectively.

4.0 SITE MANAGEMENT PLAN

The NOCO #S41 Site's post-remedial SMP was approved by the NYSDEC in December 2009. The SMP provides a detailed description of all procedures required to manage remaining contamination at the Site after completion of the Remedial Action, including: (1) implementation and management of all Institutional Controls; and, (2) performance of periodic inspections, certification of results, and submittal of Periodic Review Reports. A brief description of these SMP components is presented below.

4.1 Institutional Control Plan

As a requirement of the SMP a series of Institutional Controls are required to (1) prevent future exposure to remaining contamination by controlling disturbances of the subsurface contamination; and, (2) limit the use and development of the Site to commercial use or less restricted uses (i.e., industrial).

4.1.1 Excavation Work Plan

The Excavation Work Plan, which is included within the approved-SMP for the Site, provides guidelines for the management of soil and fill material during any future intrusive activities.

No intrusive activities were completed during this reporting period.

4.1.2 Site Land Use

The Site is currently utilized as a commercial retail operation, and is in compliance with the Site's land use criteria (commercial use).

4.2 Long-Term Groundwater Monitoring (LTGWM) Plan

Prior to Inland Diversity's acquisition of the Site, a request to discontinue LTGWM was forwarded to the Department. In accordance with the NYSDEC correspondence, dated February 23, 2012, cessation of the LTGWM was approved for the Site in this reporting period.

4.3 Annual Inspection and Certification Program

The Annual Inspection and Certification Program outlines the requirements for the Site, to certify and attest that the institutional controls and/or engineering controls employed at the Site are unchanged from the previous certification. The Annual Certification will primarily consist of an annual Site Inspection to complete the auto-generated NYSDEC Institutional and Engineering Controls (IC/EC) Certification Form. The site inspection will verify that the IC/ECs:

- Are in place and effective.
- Are performing as designed.
- That nothing has occurred that would impair the ability of the controls to protect the public health and environment.
- That nothing has occurred that would constitute a violation or failure to comply with any operation and maintenance plan for such controls.
- Access is available to the Site to evaluate continued maintenance of such controls.

A Site Inspection of the property was conducted by a TurnKey Qualified Environmental Professional (QEP) on March 18, 2013. At the time of the inspection, the property was operating as a commercial retail operation (Dollar General), with surface parking, paved walkways and landscaped areas. The Site is on municipal water supply, and no observable use of groundwater was noted during the site inspection.

The completed Site Management Periodic Review Report Notice – Institutional and Engineering Controls Certification Form is included in Appendix A. A photolog of the site inspection is included in Appendix B.

4.4 Engineering and Institutional Control Requirements and Compliance

As detailed in the Environmental Easements, several Institutional Controls (ICs) need to be maintained as a requirement of the BCA for the Site.

4.4.1 Engineering Controls

No engineering controls are required for the Site.

4.4.2 Institutional Controls

- Groundwater-Use Restriction – the use of groundwater for potable and non-potable purposes is prohibited; and
- Land-Use Restriction: The controlled property may be used for commercial use; and,
- Implementation of the SMP.

5.0 CONCLUSIONS AND RECOMMENDATIONS

Conclusions and recommendations are as follows:

- At the time of the site inspection, the Site was in compliance with the Site Management Plan.

The following modifications are recommended for the Site.

- Update Box 3 of the Certification Form to identify the Site Owner as Inland Diversified Buffalo Genesee, LLC.
- Update the SMP by including the post-redevelopment as-built survey and modifying the groundwater monitoring plan in accordance with the Department's approval for cessation of groundwater monitoring correspondence dated February 23, 2012.
- Based on the high probability for snow cover in December, it is recommended that the PRR reporting period end date be changed from December to May. This later date would assure no hindrance at the site inspection due to snow or ice cover.

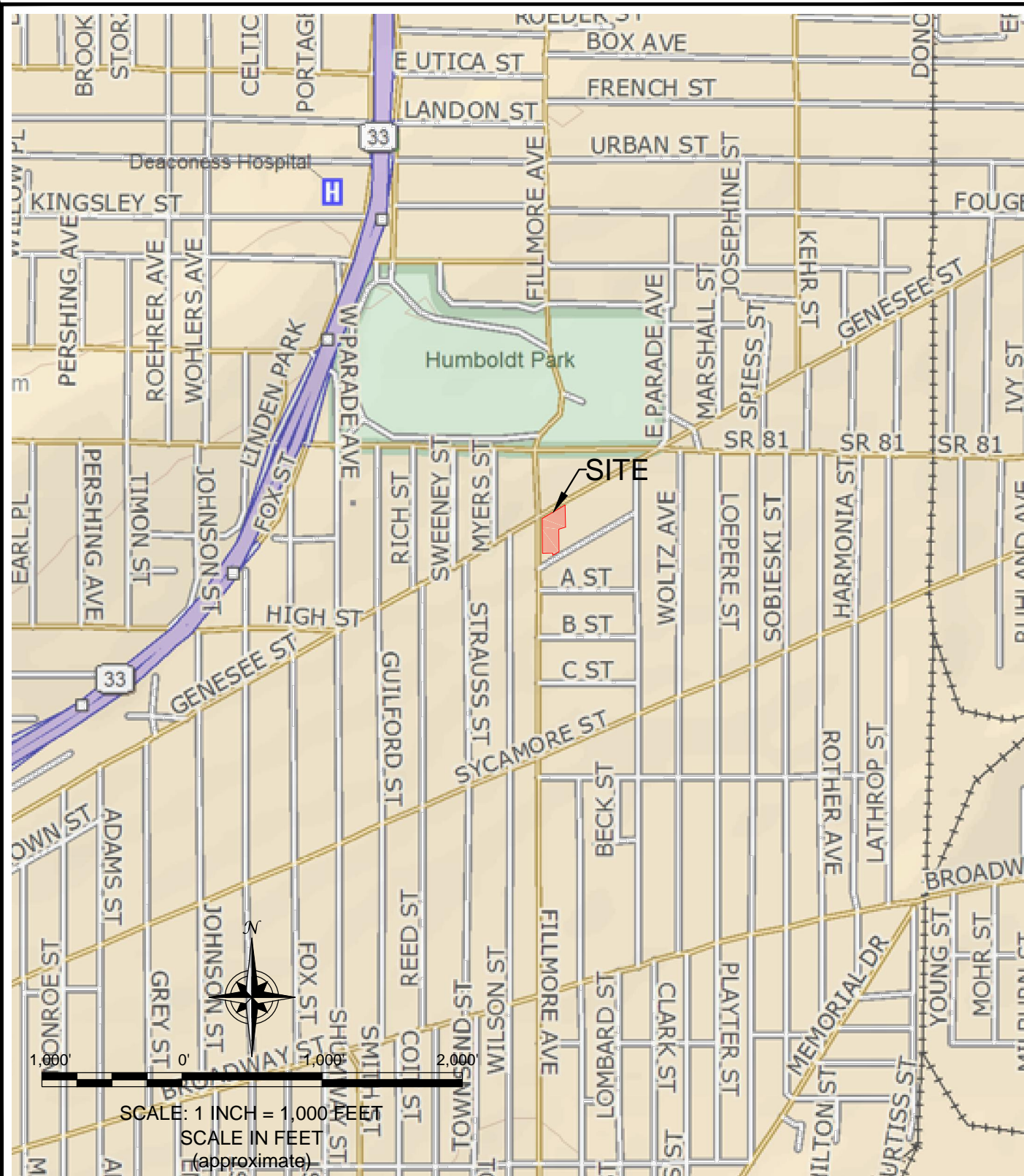
6.0 DECLARATION/LIMITATION

TurnKey Environmental Restoration, LLC personnel conducted the annual site inspections for Brownfield Cleanup Program Site No. C915211, located in Buffalo, New York, according to generally accepted practices. This report complied with the scope of work provided to Inland Diversified Buffalo Genesee, LLC by TurnKey Environmental Restoration, LLC.

This report has been prepared for the exclusive use of Inland Diversified Buffalo Genesee, LLC. The contents of this report are limited to information available at the time of the site inspection. The findings herein may be relied upon only at the discretion of Inland Diversified Buffalo Genesee, LLC. Use of or reliance upon this report or its findings by any other person or entity is prohibited without written permission of TurnKey Environmental Restoration, LLC.

FIGURES

FIGURE 1



2558 HAMBURG TURNPIKE
SUITE 300
BUFFALO, NY 14218
(716) 856-0635

SITE LOCATION AND VICINITY MAP BCP SITE No. C915211

PERIODIC REVIEW REPORT

NOCO #S41 SITE

BUFFALO, NEW YORK

PREPARED FOR

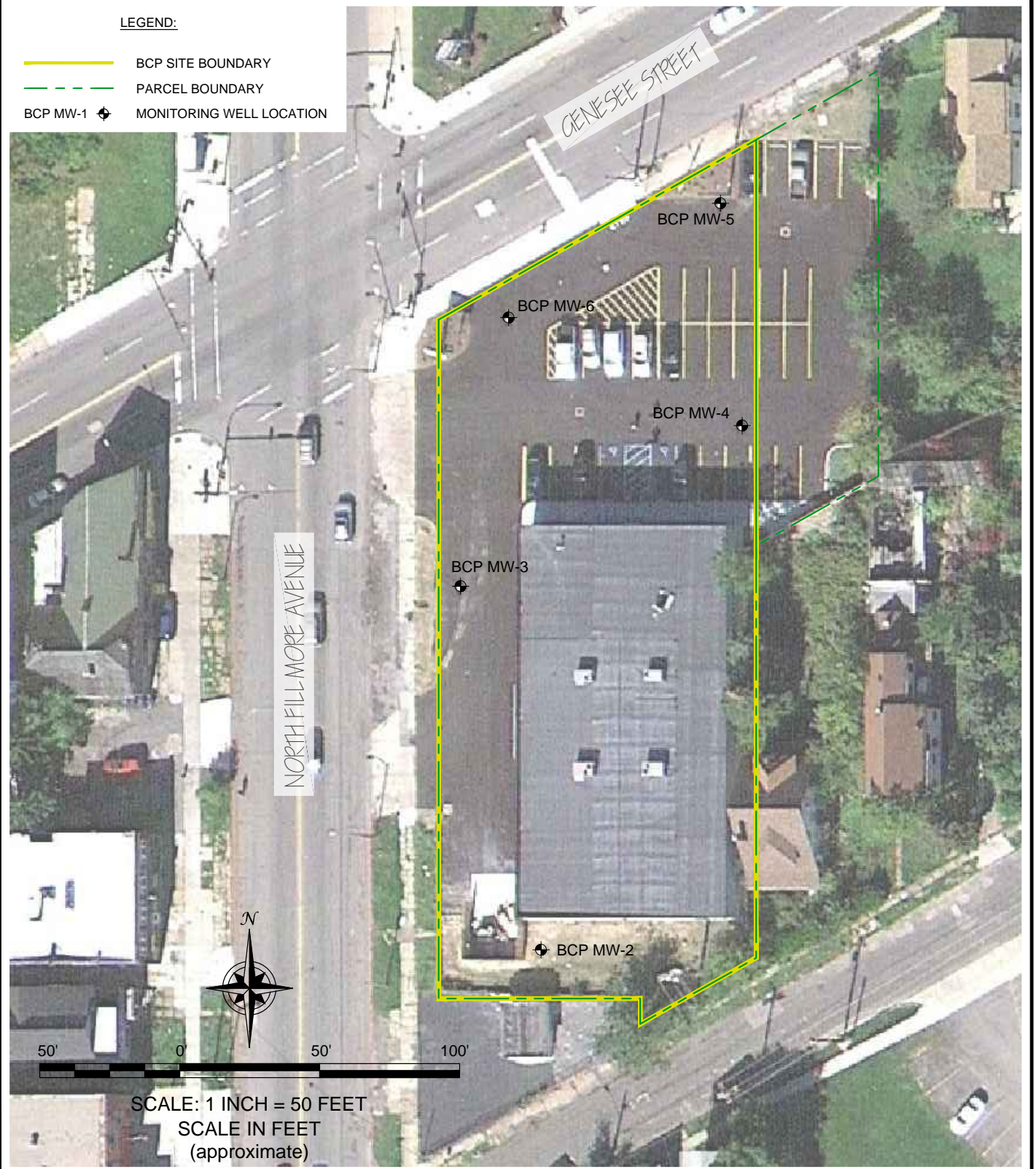
INLAND DIVERSIFIED BUFFALO GENESEE, LLC

PROJECT NO.: 0275-013-001

DATE: MARCH 2013

DRAFTED BY: JGT

FIGURE 2



2558 HAMBURG TURNPIKE
SUITE 300
BUFFALO, NY 14218
(716) 856-0635

PROJECT NO.: 0275-013-001

DATE: MARCH 2013

DRAFTED BY: JGT

SITE PLAN
BCP SITE No. C915211
PERIODIC REVIEW REPORT

NOCO #S41 SITE

BUFFALO, NEW YORK

PREPARED FOR

INLAND DIVERSIFIED BUFFALO GENESEE, LLC

APPENDIX A

INSTITUTIONAL 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		Box 1	
Site No.	C915211		
Site Name NOCO #S41			
Site Address: 1055 Genesee Street		Zip Code: 14212	
City/Town: Buffalo			
County: Erie			
Site Acreage: 0.7			
Reporting Period: December 13, 2011 to December 13, 2012			
		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 checked="" type="checkbox"/>	<input 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/ECs 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

		Box 2A
	8. Has any new information revealed that assumptions made in the Qualitative Exposure Assessment regarding offsite contamination are no longer valid?	YES NO <input type="checkbox"/> <input checked="" type="checkbox"/>
If you answered YES to question 8, include documentation or evidence that documentation has been previously submitted with this certification form.		
	9. Are the assumptions in the Qualitative Exposure Assessment still valid? (The Qualitative Exposure Assessment must be certified every five years)	<input checked="" type="checkbox"/> <input type="checkbox"/>
If you answered NO to question 9, the Periodic Review Report must include an updated Qualitative Exposure Assessment based on the new assumptions.		

SITE NO. C915211		Box 3
Description of Institutional Controls		
<u>Parcel</u> 100.76-5-1	<u>Owner</u> 1055 Genesee Street, LLC	<u>Institutional Control</u> Ground Water Use Restriction IC/EC Plan Landuse Restriction Monitoring Plan Site Management Plan Soil Management Plan

Box 4
<p>Description of Engineering Controls</p> <p>None Required</p> <p>Not Applicable/No EC's</p> <p>Engineering Control Details for Site No. C915211</p> <p>Parcel: 100.76-5-1</p> <p>No engineering controls. IC includes Environmental Easement, Site Management Plan, ground water monitoring, and periodic certification.</p>

Periodic Review Report (PRR) Certification Statements

1. I certify by checking "YES" below that:

a) the Periodic Review report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

b) to the best of my knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and the information presented is accurate and complete.

YES NO

☒ ☐

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

(a) the Institutional Control and/or Engineering Control(s) employed at this site is unchanged since the date that the Control was put in-place, or was last approved by the Department;

(b) nothing has occurred that would impair the ability of such Control, to protect public health and the environment;

(c) access to the site will continue to be provided to the Department, to evaluate the remedy, including access to evaluate the continued maintenance of this Control;

(d) nothing has occurred that would constitute a violation or failure to comply with the Site Management Plan for this Control; and

(e) if a financial assurance mechanism is required by the oversight document for the site, the mechanism remains valid and sufficient for its intended purpose established in the document.

YES NO

☒ ☐

**IF THE ANSWER TO QUESTION 2 IS NO, sign and date below and
DO NOT COMPLETE THE REST OF THIS FORM. Otherwise continue.**

A Corrective Measures Work Plan must be submitted along with this form to address these issues.

Signature of Owner, Remedial Party or Designated Representative

Date

IC CERTIFICATIONS
SITE NO. C915211

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 LARRY SAIDAK at 2901 BUTTERFIELD ROAD, OAK BROOK, IL.
print name print business address 60523
am certifying as OWNER (Owner or Remedial Party)

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

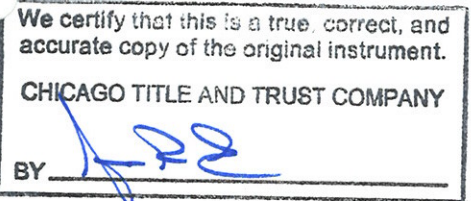
[Signature] as owner
Signature of Owner, Remedial Party, or Designated Representative
Rendering Certification

4/3/17
Date

APPENDIX B

BCP TRANSFER DOCUMENTS

Record and Return to:
Craig A. Slater, Esq.
Harter Secrest & Emery LLP
12 Fountain Plaza, Suite 400
Buffalo, NY 14202



WARRANTY DEED

THIS INDENTURE is made this 8th day of March, 2012 between **1055 Genesee Street, LLC**, a New York limited liability company having an office and place of business at 700 Parkside Avenue, Suite 100, Buffalo, New York, (*Grantor*), and

Inland Diversified Buffalo Genesee, L.L.C., a Delaware limited liability company having an office and place of business at 2901 Butterfield Road, Oak Brook, Illinois 60523 (*Grantee*).

WITNESSETH, that the Grantor, in consideration of One and No/100 Dollar (\$1.00) and other valuable consideration paid by the Grantee, does hereby grant and release unto the Grantee, the distributees, heirs or successors and assigns of the Grantee forever, **ALL THAT TRACT OR PARCEL OF LAND**, with the buildings and improvements thereon, situate in the City of Buffalo, County of Erie and State of New York, as more particularly described on Schedule A attached hereto.

TOGETHER with all right, title and interest, if any, of the Grantor in and to any streets and roads abutting the above described premises to the centerlines thereof.

THIS CONVEYANCE is made and accepted subject to those covenants, restrictions, conditions and easements of record, if any, affecting the above-described premises set forth on Schedule B.

TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the Grantee, the heirs or successors and assigns of the Grantee, forever.

AND, the Grantor covenants as follows:

1. That the Grantee shall quietly enjoy the said premises; and
2. That the Grantor will forever warrant the title to the said premises.

AND, the Grantor, in compliance with section 13 of the Lien Law, covenants that the Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The words "Grantor" and "Grantee" shall be construed to read in the plural whenever the sense of this deed so requires.

IN WITNESS WHEREOF, the Grantor has duly executed this Deed the day and year first above written.

1055 Genesee Street, LLC

By: 
Name: David E. Pawlik
Its: Managing Member

STATE OF NEW YORK)
COUNTY OF Erie)ss.:

On the 8th day of March in the year 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared David E. Pawlik, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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.

Staci L. Holquist
Notary Public

STACI L. HOLQUIST
Notary Public, State of New York
Qualified in Erie County
Commission Expires June 30, 2012

SCHEDULE A

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Lot No. 5, Township 11, Range 8 of the Holland Land Company's Survey, described as follows:

BEGINNING at a point in the easterly line of Fillmore Avenue as a one hundred foot (100) wide right of way, distant fifty (50) feet northerly from its intersection with the northerly line of Peterson Street, as a forty-nine and one half feet (49.5) wide right of way (which point of beginning is also the northwest corner of land conveyed to Central Oil Company Inc. by deed recorded in Erie County Clerk's Office in liber 1355 of Deeds page 405) running thence northerly along the easterly line of Fillmore Avenue two hundred forty-seven and fifty-two hundredths (247.52) feet to its intersection with the southerly line of Genesee Street; running thence easterly along the southerly line of Genesee Street one hundred thirty and forty-seven hundredths (130.47) feet to the northeast corner of the lands secondly described in a certain deed from John G. Bilz as executor of the last will and testament of Anna Maria Baetzhold, deceased, to August Aichinger and Mary his wife dated December 10, 1910 and recorded in said Clerk's office in liber 1170 of Deeds page 102; running thence southerly along the easterly line of said land so described in said deed to August Aichinger and Mary his wife, as aforesaid, one hundred fifty (150) feet to the northerly line of lands conveyed by August Aichinger and Mary his wife to Joseph J. Stoll by deed dated June 1, 1911 and recorded in said Clerk's Office in liber 1204 of Deeds page 66; running thence westerly along the northerly line of said lands so conveyed to Joseph J. Stoll, as aforesaid, seventeen hundredths (.17) of a foot more or less to the westerly line of the lands so conveyed to Joseph J. Stoll, as aforesaid; running thence southerly along the said westerly line of said lands so conveyed to Joseph Stoll, as aforesaid one hundred forty-seven and twenty-one hundredths (147.21) feet to the northerly line of Peterson Street; thence southwesterly along the northerly line of Peterson Street forty-seven and sixty-three hundredths (47.63) feet to the easterly line of lands so conveyed to the Central Oil Company, Inc.; thence northerly along the easterly line of lands so conveyed to the Central Oil Company Inc. nine and seven hundredths (9.07) feet to the northeast corner of lands so conveyed to the Central Oil Company Inc.; thence westerly along the northerly line of lands so conveyed to the Central Oil Company Inc., seventy-two (72) feet to the easterly line of Fillmore Avenue at the point or place of beginning.

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.

PERMITTED EXCEPTIONS

1. Rights and claims of tenants as tenants only: Dollar General.
2. Future Installments of special assessments for Improvements payable with County taxes.
3. New York Real Property Tax Law Section 302 and 520 may affect the real estate tax liability if the premises described in Schedule "A" have a tax exemption. Pursuant to the Real Property Tax Law, the exemption of the premises from taxation terminates immediately upon the acquisition of title by a non-exempt entity. The premises shall be taxed pro rata for the unexpired term of that taxable year and subsequent thereto at the full valuation without benefit of such tax exemption.
4. Environmental Easement between NOCO Express Properties, LLC and The People of the State of New York acting through their Commissioner of the Department of Environmental Conservation dated December 4, 2009 and recorded December 18, 2009 In L1ber 11175 of Deeds at page 2301.
5. The Easement granted to Niagara Mohawk Power Corporation and Verizon New York, inc. dated May 4, 2011 and recorded In L1ber 11204 of Deeds at page 5588 on June 15, 2011.
6. Exceptions as disclosed by Survey #100.76-5-1 & 2 made by Millard, MacKay & Delles and dated February 6, 2012, as follows:
 - a. Aerial wires and utility pole at northeast and south portions of premises.
 - b. Various monitoring wells and storm drains on premises.
 - c. Frame building on premises next south encroaches up to 0.15' on Insured premises.
 - d. Sign post at northwest corner of premises.
 - e. Variations between the lines of fences and the east line of record title.



Harter Secrest & Emery LLP

ATTORNEYS AND COUNSELORS

WWW.HSELAW.COM

February 22, 2012

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Chief, Site Control
NYS Department of Environmental Conservation
Department of Environmental Enforcement
625 Broadway
Albany, New York 12233-5500

Re: BCP Site No. C915211
1055 Genesee Street, Buffalo, N.Y. (Erie County)
1055 Genesee Street, LLC to Inland Diversified Buffalo Genesee, LLC
Notice of Transfer of Title (Change of Use)

Dear Sirs:

Please be advised that a Purchase and Sale Agreement has been executed between 1055 Genesee Street, LLC, ("1055"), the seller and our client, and Inland Diversified Buffalo Genesee, LLC ("Inland"), the purchaser, for the sale of the property located at 1055 Genesee Street, Buffalo, New York (the "site"). The site (reference site number C915211) was remediated by NOCO Express Properties, LLC under the Brownfield Cleanup Program. Upon completion of the remediation, a Certificate of Completion ("COC") was issued by the Department to NOCO on December 20, 2009 which was thereafter filed with the Erie County Clerk's Office. A copy of the COC is enclosed for ease of reference. This property was the subject of a prior transfer, dated April 8, 2011 to 1055.

Please accept this letter as our 60-Day Notice of Intent to Transfer (a change of use) under the provisions of ECL §27-1425(2) and 6 NYCRR §375-1.11(d). We have enclosed an executed copy of the DEC 60-Day Notification of Transfer of Certificate of Completion. For these purposes, we provide the following information:

1. Contemplated Change: Change of ownership/title.
2. Affect of Change of Use on Remediation: The remediation is complete and will not be affected by the change of ownership. If any construction activities occur in the future, as discussed below, the Soil Management Plan will be complied with. Future use will be limited to commercial use only.
3. Certification by Parties: 1055 certifies that it has provided to Inland the Brownfield Cleanup Agreement, all relevant remedial work plans, the final engineering report, the Soil Management Plan, the Environmental Easement, and all documents and information relevant to the site and the site remediation.
4. Assumption of Responsibility: The buyer, Inland, will, at the time of closing, assume all operation and maintenance for any and all of the engineering controls in accordance with

Chief, Site Control
February 22, 2012
Page 2

the approved Soil Management Plan and the filed Environmental Easement and duties and obligations associated with any institutional controls.

5. Final Notice of COC Transfer: When and if the closing between 1055 and Inland occurs and the change of use by transfer of title to the site occurs, 1055 will file with the Erie County Clerk's Office, in accordance with the provisions of ECL §27-1419(5) and 6 NYCRR §375-1.9(f), the executed Department Form for transfer of the COC. In that event, Inland will thereafter forward to the Department the proof of filing of the Notice of COC Transfer and request the issuance of a new COC in the name of Inland.
6. Buyer Contact Information: The contact information for the buyer, Inland Diversified Buffalo Genesee, LLC, is as follows:

Inland Diversified Buffalo Genesee, LLC
2901 Butterfield Road
Oak Brook, IL 60523
Contact: Gary Pechter, Esq., Senior V.P. and General Counsel

Please contact us with any questions or if you required anything further.

Very truly yours,

Harter Secrest & Emery LLP



Craig A. Slater
Partner

DIRECT DIAL: (716) 844-3723
E-MAIL: CSLATER@HSELAW.COM

CAS:lks
Enclosure

cc: D. Pawlik (1055)
G. Pechter, Esq. (Inland)

copy



ERIE COUNTY CLERKS OFFICE

County Clerk's Recording Page

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Trans Num: 832390

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MTG SEQ:

UCC:

SCAR:

INDEX:

Party 1:

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL&SEE

Party 2:

NOCO ENERGY CORP

Recording Fees:

RECORDING	\$35.00
COE CO \$1 RET	1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75

Consideration Amount: \$0.00

BASIC	\$0.00
SONYMA	\$0.00
ADDL	\$0.00
NFTA MT	\$0.00
TRANSFER	\$0.00
NFTA TT	\$0.00

Total: \$55.00

STATE OF NEW YORK
ERIE COUNTY CLERK'S OFFICE

WARNING - THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT,
REQUIRED BY SECTIONS 319&316-a (5) OF THE REAL PROPERTY LAW
OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

Kathleen C. Hochul
County Clerk

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

**NOCO #S41, Site# C915211
1055 Genesee Street, Buffalo, NY 14212**

PLEASE TAKE NOTICE, the New York State Department of Environmental Conservation (Department) has issued a Certificate of Completion (Certificate) pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law (ECL) to NOCO Energy Corp. for a parcel approximately 0.75 acres located at the 1055 Genesee Street in the City of Buffalo, Erie County.

PLEASE TAKE NOTICE, the Certificate was issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and data submitted pursuant to the Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the Site, that the remediation requirements set forth in ECL Article 27, Title 14 have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

PLEASE TAKE NOTICE, the remedial program for the Site has achieved a cleanup level that would be consistent with the following categories of uses (actual site use is subject to local zoning requirements):

- ☐ Residential Use, as set forth in 6 NYCRR 375-1.8(g)(2)i.
- ☐ Restricted Residential Use, as set forth in 6 NYCRR 375-1.8(g)(2)ii.
- ☒ Commercial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iii.
- ☐ Industrial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iv.

Further, the use of groundwater is restricted and may not be used, unless treated in accordance with the requirements provided by the New York State Department of Health, or a local County Health Department with jurisdiction in such matters and such is approved by the Department as not inconsistent with the remedy.

PLEASE TAKE NOTICE, since the remedial program relies upon use restrictions or the long term employment of institutional or engineering controls; such institutional or engineering controls are contained in an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Erie County as CTRL#:2009254868, BK/PG:D11175/2301.

PLEASE TAKE NOTICE, the Environmental Easement requires that the approved site management plan (SMP) for this property be adhered to. The SMP, which may be amended from time to time, may include sampling, monitoring, and/or operating a treatment system on the property, providing certified reports to the NYSDEC, and generally provides for the management of any and all plans and limitations on the property. A copy of the SMP is available upon request by writing to the Department's Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, New York 12233.

PLEASE TAKE NOTICE, provided that the Environmental Easement, SMP and Certificate are complied with, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

PLEASE TAKE NOTICE, the Certificate may entitle the Certificate holder(s) to tax credits in

830 3/10 5305
JSC
7014-2

NOCO #S41, C915211, 1055 Genesee Street, Buffalo, NY 14212

accordance with Tax Law Sections 21, 22 and 23.

PLEASE TAKE NOTICE, any change of use of the site, as defined in 6 NYCRR 375, must be preceded by notice to the Department in accordance with 6 NYCRR 375-1.11(d). A transfer of any or all of the property constitutes a change of use.

PLEASE TAKE NOTICE, the Certificate may be only be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by ECL Section 27-1419.5 and 6 NYCRR Part 375-1.9. Failure to comply with the regulatory requirements for transfer WILL bar the successors and assigns from the benefits of the Certificate.

PLEASE TAKE NOTICE, the Certificate may be modified or revoked by the Commissioner as set forth in the applicable regulations.

PLEASE TAKE NOTICE, the Certificate may be revoked if the Environmental Easement as implemented, if applicable, is not protective or enforceable.

PLEASE TAKE NOTICE, a copy of the Certificate can be reviewed at the NYSDEC's Region 9 located at 270 Michigan Avenue, Buffalo, NY 14203-2999, by contacting the Regional Environmental Remediation Engineer.

WHEREFORE, the undersigned has signed this Notice of Certificate

NOCO Energy Corp.

By: [Signature]

Title: Director of Risk Management

Date: 1/6/10

STATE OF NEW YORK) SS:
COUNTY OF ERIE)

On the 6th day of January, in the year 2010, before me, the undersigned, personally appeared Michael Yount, 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.

Angela M. Demerle
Signature and Office of individual
taking acknowledgment

Please record and return to:
NOCO Energy Corp.
2440 Sheridan Drive
Tonawanda, NY 14150

12/03/09

ANGELA M. DEMERLE
NOTARY PUBLIC, State of New York
Erie County
Commission Expires 4/21/2010

NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)
CERTIFICATE OF COMPLETION

CERTIFICATE HOLDER(S):

Name

NOCO ENERGY CORP.

Address

2440 Sheridan Drive, Tonawanda, NY 14150

BROWNFIELD CLEANUP AGREEMENT:

Application Approval: 6/13/07

Agreement Execution: 7/9/07

Agreement Index No.: B9-0741-07-04

SITE INFORMATION

Site No.: C915211 **Site Name:** NOCO #S41

Site Owner: NOCO Express Properties, LLC

Street Address: 1055 Genesee Street

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

Site Size: 0.73 Acres

Tax Map Identification Number(s): 100.76-5-1

Percentage of site located in an EnZone: 100 %

A description of the property subject to this Certificate is attached as Exhibit A and a site survey is attached as Exhibit B.

CERTIFICATE ISSUANCE

This Certificate of Completion, hereinafter referred to as the "Certificate," is issued pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law ("ECL").

This Certificate has been issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and data submitted pursuant to the Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the Site, that the applicable remediation requirements set forth in the ECL have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

The remedial program for the Site has achieved a cleanup level that would be consistent with the following categories of uses (actual site use is subject to local zoning requirements):

Allowable Uses under the BCP: Commercial and Industrial

Cleanup Track: Track 2: Restricted use with generic soil cleanup objectives

Tax Credit Provisions for Entities Taxable Under Article 9, 9-A, 32, and 33:

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 20 %.

Tangible Property Credit Component Rate is 20 %.

Tax Credit Provisions for Entities Taxable Under Article 22 & S Corporations:

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 18 %.

Tangible Property Credit Component Rate is 18 %.

The Remedial Program includes use restrictions or reliance on the long term employment of institutional or engineering controls; such institutional or engineering controls are contained in an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Erie County as 2009254868.

LIABILITY LIMITATION

Upon issuance of this Certificate of Completion, and subject to the terms and conditions set forth herein, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

CERTIFICATE TRANSFERABILITY

This Certificate may be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by ECL Section 27-1419.5 and 6NYCRR Part 375-1.9.

CERTIFICATE MODIFICATION/REVOCATION

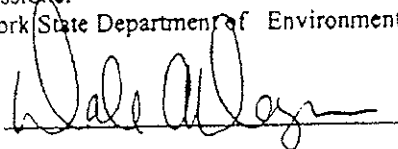
This Certificate of Completion may be modified or revoked by the Commissioner following notice and an opportunity for a hearing in accordance with ECL Section 27-1419 and 6NYCRR Part 375-1.9(e) upon a finding that:

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

The Certificate holder(s) (including its successors or assigns) shall have thirty (30) days within which to cure any deficiency or to seek a hearing. If the deficiency is not cured or a request for a hearing received within such 30-day period, the Certificate shall be deemed modified or vacated on the 31st day after the Department's notice.

Alexander B. Grannis
Commissioner
New York State Department of Environmental Conservation

By:



Date:

12/30/09

SCHEDULE A PROPERTY DESCRIPTION

Address: 1055 Genesee Street, Buffalo, NY
 Erie County
 Tax Map: 100.76-5-1

Attachment A

LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Lot No. 5, Township 11, Range 8 of the Holland Land Company's Survey, described as follows:

Beginning at a point in the easterly line of Fillmore Avenue as a 100 foot wide right of way, distant 50 feet northerly from its intersection with the northerly line of Peterson Street as a 49.5 foot wide right of way, (which point of beginning is also the northwest corner of lands conveyed to Central Oil Company Inc. by deed recorded in Erie County Clerk's Office in Liber 1355 of Deeds page 405); running thence northerly along the easterly line of Fillmore Avenue 247.52 feet to its intersection with the southerly line of Genesee Street; running thence easterly along the southerly line of Genesee Street 130.47 feet to the northeast corner of the lands secondly described in a certain deed from John G. Bilz as executor of the last will and testament of Anna Maria Baczhold, deceased, to August Aichinger and Mary his wife dated December 10, 1910 and recorded in said Clerk's Office in Liber 1170 of Deeds page 102; running thence southerly along the easterly line of said land so described in said deed to August Aichinger and Mary his wife, as aforesaid, 150 feet to the northerly line of lands conveyed by August Aichinger and Mary his wife to Joseph J. Stoll by deed dated June 1, 1911 and recorded in said Clerk's Office in Liber 1204 of Deeds page 66; running thence westerly along the northerly line of said lands so conveyed to Joseph J. Stoll, as aforesaid, .17 of a foot more or less to the westerly line of the lands so conveyed to Joseph J. Stoll, as aforesaid; running thence southerly along the said westerly line of said lands so conveyed to Joseph Stoll, as aforesaid 147.21 feet to the northerly line of Peterson Street; thence southwesterly along the northerly line of Peterson Street 47.63 feet to the easterly line of lands so conveyed to the Central Oil Company Inc.; thence northerly along the easterly line of lands so conveyed to the Central Oil Company Inc. 9.07 feet to the northeast corner of lands so conveyed to the Central Oil Company Inc.; thence westerly along the northerly line of lands so conveyed to the Central Oil Company Inc., 72 feet to the easterly line of Fillmore Avenue at the point or place of beginning.

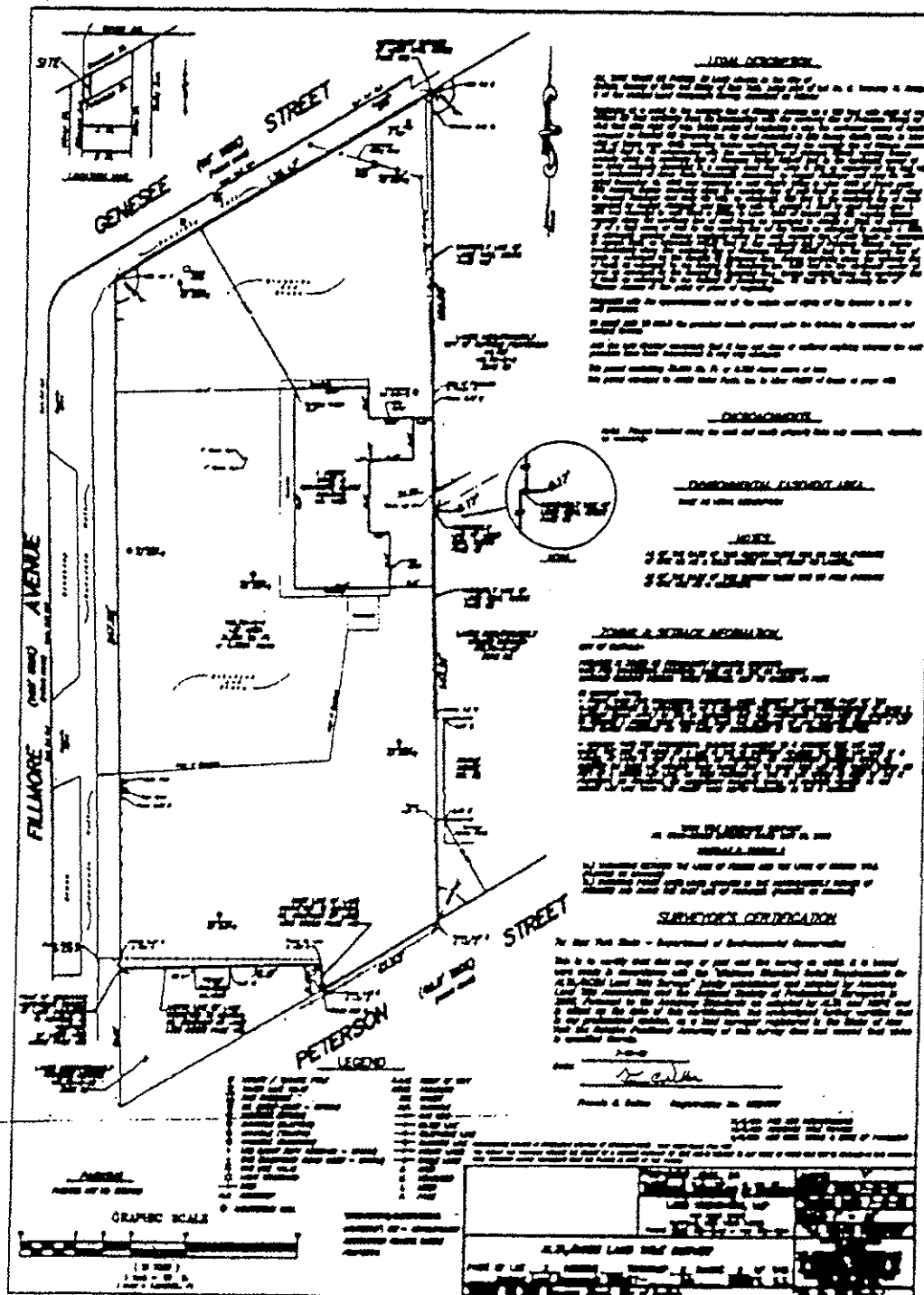
TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the Grantee, its successors and assigns forever.

AND the said Grantor covenants that it has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

This parcel containing 31,604 Sq. Ft. or 0.726 Acres more or less

This parcel conveyed to NOCO Motor Fuels, Inc. in Liber 10566 of Deeds at page 432.



NOTICE OF CERTIFICATE OF COMPLETION

Brownfield Cleanup Program

6 NYCRR Part 375-1.9(d)

NOCO #S41, Site# C915211
1055 Genesee Street, Buffalo, NY 14212

PLEASE TAKE NOTICE, the New York State Department of Environmental Conservation (Department) has issued a Certificate of Completion (Certificate) pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law (ECL) to NOCO Energy Corp. for a parcel approximately 0.75 acres located at the 1055 Genesee Street in the City of Buffalo, Erie County.

PLEASE TAKE NOTICE, the Certificate was issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and data submitted pursuant to the Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the Site; that the remediation requirements set forth in ECL Article 27, Title 14 have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

PLEASE TAKE NOTICE, the remedial program for the Site has achieved a cleanup level that would be consistent with the following categories of uses (actual site use is subject to local zoning requirements):

- ☐ Residential Use, as set forth in 6 NYCRR 375-1.8(g)(2)i.
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- ☒ Commercial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iii.
- ☐ Industrial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iv.

Further, the use of groundwater is restricted and may not be used, unless treated in accordance with the requirements provided by the New York State Department of Health, or a local County Health Department with jurisdiction in such matters and such is approved by the Department as not inconsistent with the remedy.

PLEASE TAKE NOTICE, since the remedial program relies upon use restrictions or the long term employment of institutional or engineering controls; such institutional or engineering controls are contained in an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Erie County as CTRL#:2009254868, BK/PG:D11175/2301.

PLEASE TAKE NOTICE, the Environmental Easement requires that the approved site management plan (SMP) for this property be adhered to. The SMP, which may be amended from time to time, may include sampling, monitoring, and/or operating a treatment system on the property, providing certified reports to the NYSDCE, and generally provides for the management of any and all plans and limitations on the property. A copy of the SMP is available upon request by writing to the Department's Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, New York 12233.

PLEASE TAKE NOTICE, provided that the Environmental Easement, SMP and Certificate are complied with, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

PLEASE TAKE NOTICE, the Certificate may entitle the Certificate holder(s) to tax credits in

NOCO #S41, C915211, 1055 Genesee Street, Buffalo, NY 14212

accordance with Tax Law Sections 21, 22 and 23.

PLEASE TAKE NOTICE, any change of use of the site, as defined in 6 NYCRR 375, must be preceded by notice to the Department in accordance with 6 NYCRR 375-1.11(d). A transfer of any or all of the property constitutes a change of use.

PLEASE TAKE NOTICE, the Certificate may be only be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by ECL Section 27-1419.5 and 6 NYCRR Part 375-1.9. Failure to comply with the regulatory requirements for transfer **WILL** bar the successors and assigns from the benefits of the Certificate.

PLEASE TAKE NOTICE, the Certificate may be modified or revoked by the Commissioner as set forth in the applicable regulations.

PLEASE TAKE NOTICE, the Certificate may be revoked if the Environmental Easement as implemented, if applicable, is not protective or enforceable.

PLEASE TAKE NOTICE, a copy of the Certificate can be reviewed at the NYDEC's Region 9 located at 270 Michigan Avenue, Buffalo, NY 14203-2999, by contacting the Regional Environmental Remediation Engineer.

WHEREFORE, the undersigned has signed this Notice of Certificate

NOCO Energy Corp.

By: _____

Title: _____

Date: _____

STATE OF NEW YORK) SS:
COUNTY OF ERIE)

On the _____ day of _____, in the year 20____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of individual
taking acknowledgment

Please record and return to:

NOCO Energy Corp. _____
2440 Sheridan Drive _____
Tonawanda, NY 14150 _____

12/03/09

SCHEDULE "A" PROPERTY DESCRIPTION

Address: 1055 Genesee Street, Buffalo, NY
Erie County
Tax Map: 100.76-3-1

Attachment A

LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Lot No. 5, Township 11, Range 8 of the Holland Land Company's Survey, described as follows:

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TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the Grantee, its successors and assigns forever.

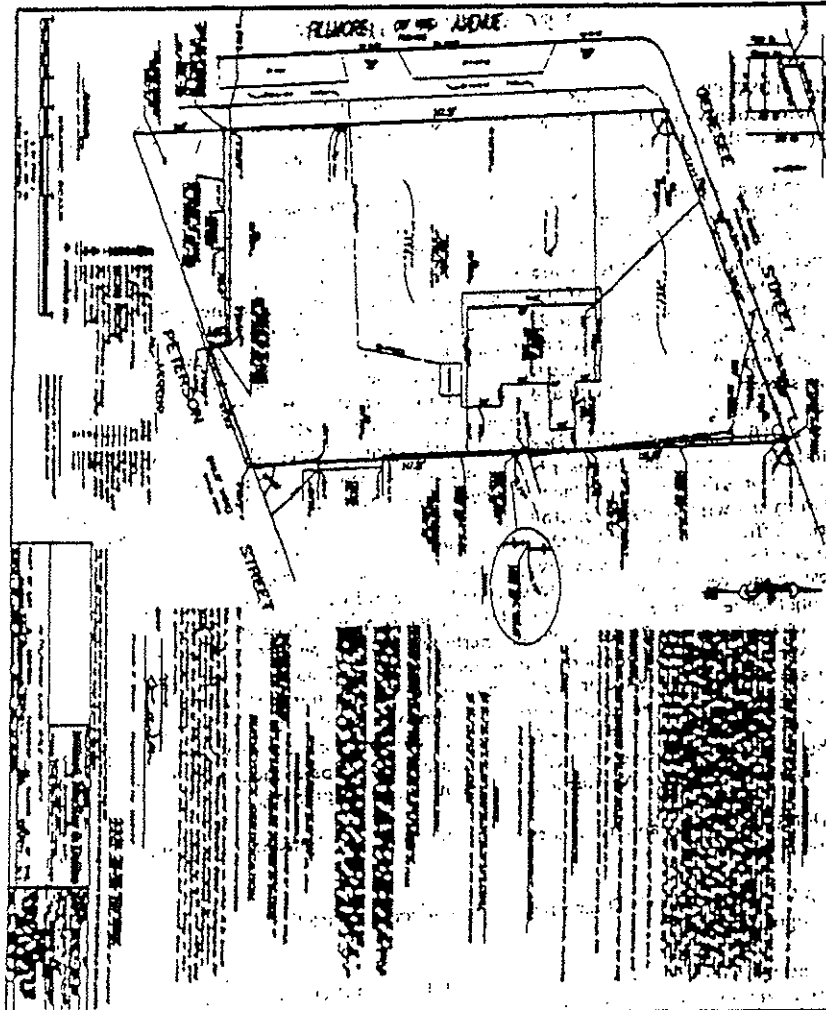
AND the said Grantor covenants that it has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

This parcel containing 31,604 Sq. Ft. or 0.726 Acres more or less

This parcel conveyed to NOCO Motor Fuels, Inc. in Liber 10566 of Deeds at page 432.

Attachment B

SURVEY





NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Site Management Form
12/24/2009



SITE DESCRIPTION

SITE NO. C915211

SITE NAME NOCO #341

SITE ADDRESS: 1055 Genesee Street ZIP CODE: 14212

CITY/TOWN: Buffalo

COUNTY: Erie

ALLOWABLE USE: Commercial and Industrial

SITE MANAGEMENT DESCRIPTION

SITE MANAGEMENT PLAN INCLUDES:	YES	NO
IC/EC Certification Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Monitoring Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Operation and Maintenance (O&M) Plan	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Periodic Review Frequency:	Annually	
First Periodic Review Date:	June 2011	

Description of Institutional Control

NOCO Energy Express Properties, LLC
1055 Genesee Street
Environmental Easement
Block: 5
Lot: 1
Sublot:
Section: 100
Subsection: 78
S_B_L Image: 100.78-5-1
Ground Water Use Restriction
IC/EC Plan
Landuse Restriction
Monitoring Plan
Site Management Plan
Soil Management Plan

Description of Engineering Control

NONE

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

60-Day Advance Notification of Site Change of Use, Transfer of
Certificate of Completion, and/or Ownership



(to be submitted to: Chief, Site Control Section, New York State Department of Environmental Conservation, Division of Environmental Remediation, 625 Broadway, Albany NY 12233-7020; at least 60 days prior to any change of use, transfer of a Certificate of Completion, or change in ownership of a site as required by 6NYCRR Part 375-1.11(d) and 375-1.9(f))

I. Site Name: 1055 Genesee Street, LLC DEC Site ID No. C915211

II. Contact Information of Person Submitting Notification:

Name: 1055 Genesee Street, LLC, David E. Pawlik, Member
Address1: 700 Parkside Avenue, Suite 100
Address2: Buffalo, NY 14216
Phone: (716) 882-1226 E-mail: davidp@cssconstruction.biz

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)

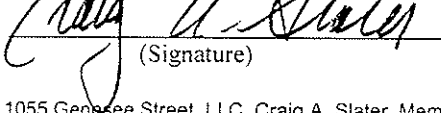
Proposed Date of Change (mm/dd/yyyy): 04/15/2012

IV. Description: Describe proposed change(s) indicated above. Provide maps, drawings, and/or parcel information as applicable. If "Other," explain how such change may affect the site's proposed, ongoing, or completed remedial program (attach additional sheets if needed).

Transfer of ownership of Parcel located at 1055 Genesee Street, Buffalo, NY bearing Tax Map Identification Number 100.76-5-1

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: 
(Signature)
1055 Genesee Street, LLC, Craig A. Slater, Member
(Print Name)

2/22/12
(Date)

Address1: 700 Parkside Avenue, Suite 100
Address2: Buffalo, NY 14216
Phone: (716) 882-1226 E-mail: davidp@cssconstruction.biz cslater@hselaw.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: Inland Diversified Buffalo Genesee, LLC
Address1: 2901 Butterfield Road
Address2: Oak Brook, IL 60523
Phone: (630) 645-2084 E-mail: gpechter@inlandgroup.com

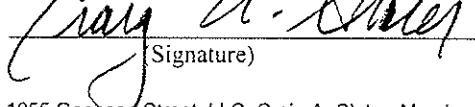
Certifying Party Name: _____
Address1: _____
Address2: _____
Phone: _____ E-mail: _____

VII. Agreement to Notify DEC after Property Transfer/Sale: 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 a 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/recording requirements (see Part 375-1.9(f)).

Signing below indicates that a post transfer letter of notification for the sale of the property will be provided to the DEC within the specified timeframe. 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 post transfer notice required by VII.1 (to 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)
1055 Genesee Street, LLC, Craig A. Slater, Member
(Print Name)

02/22/2012
(Date mm/dd/yyyy)

Address1: 700 Parkside Avenue, Suite 100
Address2: Buffalo, NY 14216
Phone: (716) 882-1226 E-mail: davidp@cssconstruction.biz cslater@hslaw.com

Reset Page

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: _____

Reset Page

NOTICE OF TRANSFER OF CERTIFICATE OF COMPLETION

Brownfield Cleanup Program

Pursuant to 6 NYCRR Part 375-1.9(f)

NOCO #S41 Site ID No. C915211

1055 Genesee Street, Buffalo, New York (Erie County)

PLEASE TAKE NOTICE, that pursuant to Article 27, title 14 of the Environmental Conservation Law and 6 NYCRR 375-1.9(f), 1055 Genesee Street, LLC hereby transfer(s) the Certificate of Completion (COC) issued by the Department of Environmental Conservation on December 30, 2009 for the site described below. Such COC was issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and data submitted pursuant to the Brownfield Cleanup Agreement, as well as any other relevant information regarding the Site, that the remediation requirements set forth in ECL Article 27, title 14 had been or would be achieved in accordance with the time frame, if any, established in the remedial work plan.

PLEASE TAKE NOTICE, that NOCO #S41 (site) is located at 1055 Genesee Street, Buffalo, New York (Erie County). The Site is bearing DEC site number: C915211 and is more fully described on Schedule A attached hereto ("Site"). The Tax Map Identification Number for the Site is: 100.76-5-1.1.

PLEASE TAKE NOTICE, that a Notice of Certificate of Completion for the Site was filed in the Erie County Clerk's Office on January 11, 2010 in Liber 11176 of Deeds at Page 3231.

PLEASE TAKE NOTICE, that on March ⁹, 2012, 1055 Genesee Street, LLC conveyed title to the Site to Inland Diversified Buffalo Genesee, L.L.C. by Deed recorded in Liber _____ of Deeds at Page _____ in the Erie County Clerk's Office.

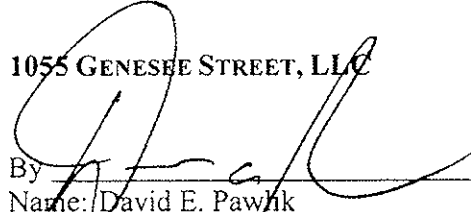
PLEASE TAKE NOTICE, 1055 Genesee Street, LLC hereby transfers the Certificate to the following new property owner(s) as provided for pursuant to Article 27, title 14 of the Environmental Conservation Law and 6 NYCRR 375-1.9(f):

Attn: Gary Pechter, Esq., Assistant General Counsel
Inland Diversified Buffalo Genesee, L.L.C.
2901 Butterfield Road
Oak Brook, IL 60523
EIN: 35-2439642

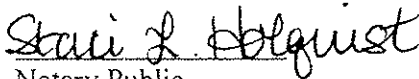
PLEASE TAKE FURTHER NOTICE, that if there is an environmental easement for this Site, that Inland Diversified Buffalo Genesee, L.L.C. recognize(s) and agree(s) to implement the Department-approved Site Management Plan, and any amendments thereto, and to fully comply with all restrictions and affirmative obligations contained therein as well as in the Environmental Easement for the Site.

WHEREFORE, the undersigned have signed this Notice of Transfer of Certificate of Completion as of this ____ day of March, 2012.

1055 GENESEE STREET, LLC

By: 
Name: David E. Pawlik
Title: Managing Member

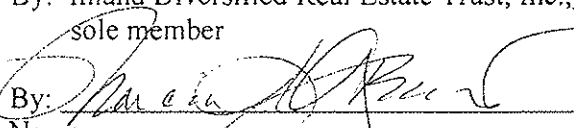
Sworn to before me this
8th day of March, 2012.



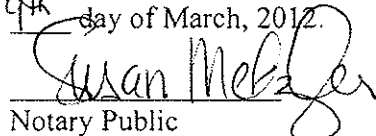
Notary Public
STACI L. HOLQUIST
Notary Public, State of New York
Qualified in Erie County
Commission Expires June 30, 2012

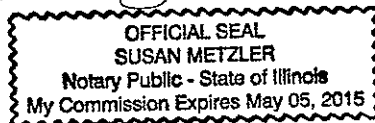
INLAND DIVERSIFIED BUFFALO GENESEE, L.L.C.

By: Inland Diversified Real Estate Trust, Inc., its
sole member

By: 
Name: Marcia L. Grant
Title: Assistant Secretary

Sworn to before me this
9th day of March, 2012.


Notary Public



New York State Department of Environmental Conservation
Division of Environmental Remediation, 12th Floor
625 Broadway, Albany, New York 12233-7011
Phone: (518) 402-9706 • **FAX:** (518) 402-9020
Website: www.dec.state.ny.us



Alexander B. Grannis
Commissioner

December 24, 2009

Mr. Michael Yount
NOCO Energy Corp.
700 Grand Island Boulevard
Tonawanda, New York 14150

Re: Certificate of Completion
Site Name: NOCO S#41
Site #: C915211
Site Address: 1055 Genesee Street, Buffalo

Dear Mr. Yount:

Congratulations on having satisfactorily completed the remedial program at the NOCO #S41 Site. Enclosed please find an original, signed Certificate of Completion. The New York State Department of Environmental Conservation (NYSDEC) is pleased to inform you that the Final Engineering Report is hereby approved, allowing the Certificate of Completion (COC) to be issued for the above-referenced site.


Please note that you are required to perform the following tasks:

- If you are the site owner, you must record a notice of the COC in the recording office for the County (or Counties) where any portion of the site is located within 30 days of the date of this letter; or if you are a prospective purchaser of the site, you must record a notice of the COC within 30 days of the date that you acquire the site. A standard notice form is attached to this letter;
- Provide a notice of the COC and a fact sheet describing the institutional and engineering controls (IC/EC) that are required at the site to the Brownfield Site Contact list within 10 days of the date of this letter;
- Implement the Department-approved Site Management Plan (SMP) which details the activities necessary to assure the performance, effectiveness, and protectiveness of the remedial program; and you must report the results of these activities to the Department in a Periodic Review Report (PRR) which also includes any required IC/EC Certifications. The site IC/ECs are identified on the attached Site Management Form. The first PRR including the certification of the IC/ECs is due to the Department in June 2011; and

- You and your lessees must submit an annual report to the New York State Department of Taxation and Finance within one year and for each of the following eleven years after the execution of the Brownfield Site Cleanup Agreement. The Report must provide the information required by Chapter 390 of the Laws of 2008, Tax Law Section 171-s.

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

Sincerely,



Dale A. Desnoyers

Director

Division of Environmental Remediation

cc w/o enc.:

Bill Murray

Martin Doster

Kelly Lewandowski

Robert Knizek

Ian Ushe

Jim Charles, Esq.

G. Litwin - NYSDOH

NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)
CERTIFICATE OF COMPLETION

CERTIFICATE HOLDER(S):

Name

NOCO ENERGY CORPORATION

Address

2440 Sheridan Drive, Tonawanda

BROWNFIELD CLEANUP AGREEMENT:

Application Approval: 7/2/07

Agreement Execution: 7/7/07

Agreement Index No.: B9-0741-07-04

SITE INFORMATION

Site No.: C915211 Site Name: NOCO #841

Site Owner: NOCO ENERGY EXPRESS PROPERTIES, LLC

Street Address: 1455 Genesee Street

Municipality: Buffalo County: Erie DEC Region: 9

Site Size: 0.726 Acres

Tax Map Identification Number(s): 100.76.5.1

Percentage of site located in an E1 Zone: 100%

A description of the property subject to this Certificate is attached as Attachment A and a site survey is attached as Attachment B.

CERTIFICATE ISSUANCE

This Certificate of Completion, hereinafter referred to as the "Certificate," is issued pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law ("ECL").

This Certificate has been issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and then submitted pursuant to the Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the Site, that the applicable remediation requirements set forth in the ECL have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

The remedial program for the Site has achieved a cleanup level that would be consistent with the following categories of uses (actual site use is subject to local zoning requirements):

Allowable Uses under the BCP: Commercial and Industrial

Cleanup Track: Track 2: Restricted use with generic soil cleanup objectives

Tax Credit Provisions for Entities Taxable Under Article 9, 9-A, 32, and 33:

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 20 %.

Tangible Property Credit Component Rate is 20 %.

Tax Credit Provisions for Entities Taxable Under Article 22 & S Corporations:

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 18 %.

Tangible Property Credit Component Rate is 18 %.

The Remedial Program includes use restrictions or reliance on the long term employment of institutional or engineering controls; such institutional or engineering controls are contained in an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Erie County as 2009254868.

LIABILITY LIMITATION

Upon issuance of this Certificate of Completion, and subject to the terms and conditions set forth herein, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

CERTIFICATE TRANSFERABILITY

This Certificate may be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by ECL Section 27-1419.5 and 6NYCRR Part 375-1.9.

CERTIFICATE MODIFICATION/REVOCATION

This Certificate of Completion may be modified or revoked by the Commissioner following notice and an opportunity for a hearing in accordance with ECL Section 27-1419 and 6NYCRR Part 375-1.9 upon a finding that:

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

The Certificate holder(s) (including its successors or assigns) shall have thirty (30) days within which to cure any deficiency or to seek a hearing. If the deficiency is not cured or a request for a hearing received within such 30-day period, the Certificate shall be deemed modified or vacated on the 31st day after the Department's notice.

Alexander B. Gramis,
Commissioner
New York State Department of Environmental Conservation

By:


Dale A. Desnoyers, Director
Division of Environmental Remediation

Date:

12/24/09

SCHEDULE "A" PROPERTY DESCRIPTION

Address: 1055 Genesee Street, Buffalo, NY
 Erie County
 Tax Map: 100.76-5-1

Attachment A

LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Lot No. 5, Township 11, Range 8 of the Holland Land Company's Survey, described as follows:

Beginning at a point in the easterly line of Fillmore Avenue as a 100 foot wide right of way, distant 50 feet northerly from its intersection with the northerly line of Peterson Street as a 49.5 foot wide right of way, (which point of beginning is also the northwest corner of lands conveyed to Central Oil Company Inc. by deed recorded in Erie County Clerk's Office in Liber 1355 of Deeds page 405); running thence northerly along the easterly line of Fillmore Avenue 247.52 feet to its intersection with the southerly line of Genesee Street; running thence easterly along the southerly line of Genesee Street 130.47 feet to the northeast corner of the lands secondly described in a certain deed from John G. Bilz as executor of the last will and testament of Anna Maria Baeczhold, deceased, to August Aichinger and Mary his wife dated December 10, 1910 and recorded in said Clerk's Office in Liber 1170 of Deeds page 102; running thence southerly along the easterly line of said land so described in said deed to August Aichinger and Mary his wife, as aforesaid, 150 feet to the northerly line of lands conveyed by August Aichinger and Mary his wife to Joseph J. Stoll by deed dated June 1, 1911 and recorded in said Clerk's Office in Liber 1204 of Deeds page 66; running thence westerly along the northerly line of said lands so conveyed to Joseph J. Stoll, as aforesaid, .17 of a foot more or less to the westerly line of the lands so conveyed to Joseph J. Stoll, as aforesaid; running thence southerly along the said westerly line of said lands so conveyed to Joseph Stoll, as aforesaid 147.21 feet to the northerly line of Peterson Street; thence southwesterly along the northerly line of Peterson Street 47.63 feet to the easterly line of lands so conveyed to the Central Oil Company Inc.; thence northerly along the easterly line of lands so conveyed to the Central Oil Company Inc. 9.07 feet to the northeast corner of lands so conveyed to the Central Oil Company Inc.; thence westerly along the northerly line of lands so conveyed to the Central Oil Company Inc., 72 feet to the easterly line of Fillmore Avenue at the point or place of beginning.

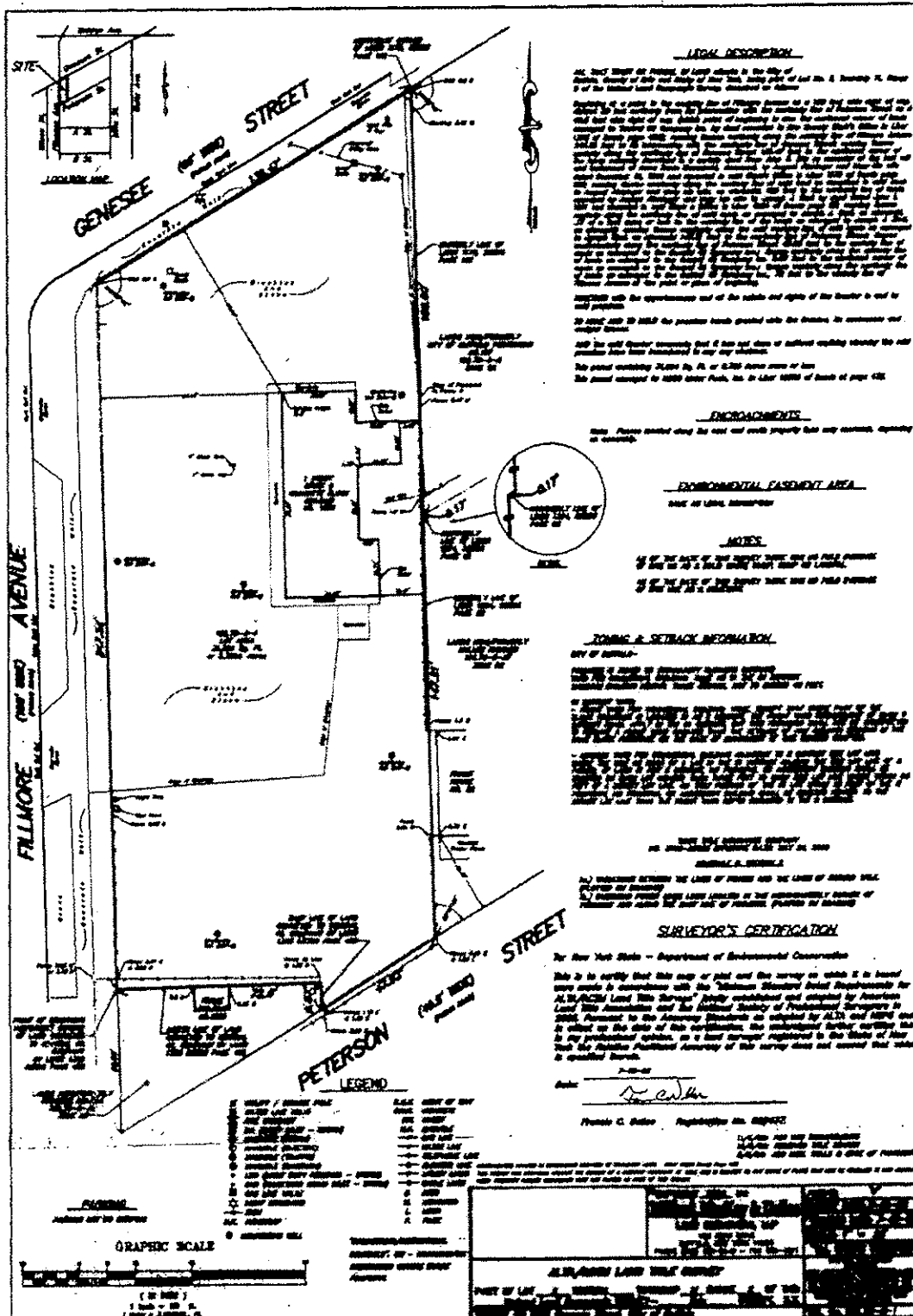
TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the Grantee, its successors and assigns forever.

AND the said Grantor covenants that it has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

This parcel containing 31,604 Sq. Ft. or 0.726 Acres more or less

This parcel conveyed to NOCO Motor Fuels, Inc. in Liber 10566 of Deeds at page 432.



NOTICE OF CERTIFICATE OF COMPLETION

Brownfield Cleanup Program 6 NYCRR Part 375-1.9(d)

**NOCO #S41, Site# C915211
1055 Genesee Street, Buffalo, NY 14212**

PLEASE TAKE NOTICE, the New York State Department of Environmental Conservation (Department) has issued a Certificate of Completion (Certificate) pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law (ECL) to NOCO Energy Corp. for a parcel approximately 0.75 acres located at the 1055 Genesee Street in the City of Buffalo, Erie County.

PLEASE TAKE NOTICE, the Certificate was issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and data submitted pursuant to the Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the Site; that the remediation requirements set forth in ECL Article 27, Title 14 have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

PLEASE TAKE NOTICE, the remedial program for the Site has achieved a cleanup level that would be consistent with the following categories of uses (actual site use is subject to local zoning requirements):

- ☐ Residential Use, as set forth in 6 NYCRR 375-1.8(g)(2)i.
- ☐ Restricted Residential Use, as set forth in 6 NYCRR 375-1.8(g)(2)ii.
- ☒ Commercial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iii.
- ☐ Industrial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iv.

Further, the use of groundwater is restricted and may not be used, unless treated in accordance with the requirements provided by the New York State Department of Health, or a local County Health Department with jurisdiction in such matters and such is approved by the Department as not inconsistent with the remedy.

PLEASE TAKE NOTICE, since the remedial program relies upon use restrictions or the long term employment of institutional or engineering controls; such institutional or engineering controls are contained in an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Erie County as CTRL#:2009254868, BK/PG:D11175/2301.

PLEASE TAKE NOTICE, the Environmental Easement requires that the approved site management plan (SMP) for this property be adhered to. The SMP, which may be amended from time to time, may include sampling, monitoring, and/or operating a treatment system on the property, providing certified reports to the NYSDEC, and generally provides for the management of any and all plans and limitations on the property. A copy of the SMP is available upon request by writing to the Department's Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, New York 12233.

PLEASE TAKE NOTICE, provided that the Environmental Easement, SMP and Certificate are complied with, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

PLEASE TAKE NOTICE, the Certificate may entitle the Certificate holder(s) to tax credits in

NOCO #S41, C915211, 1055 Genesee Street, Buffalo, NY 14212

accordance with Tax Law Sections 21, 22 and 23.

PLEASE TAKE NOTICE, any change of use of the site, as defined in 6 NYCRR 375, must be preceded by notice to the Department in accordance with 6 NYCRR 375-1.11(d). A transfer of any or all of the property constitutes a change of use.

PLEASE TAKE NOTICE, the Certificate may be only be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by ECL Section 27-1419.5 and 6 NYCRR Part 375-1.9. Failure to comply with the regulatory requirements for transfer **WILL** bar the successors and assigns from the benefits of the Certificate.

PLEASE TAKE NOTICE, the Certificate may be modified or revoked by the Commissioner as set forth in the applicable regulations.

PLEASE TAKE NOTICE, the Certificate may be revoked if the Environmental Easement as implemented, if applicable, is not protective or enforceable.

PLEASE TAKE NOTICE, a copy of the Certificate can be reviewed at the NYSDEC's Region 9 located at 270 Michigan Avenue, Buffalo, NY 14203-2999, by contacting the Regional Environmental Remediation Engineer.

WHEREFORE, the undersigned has signed this Notice of Certificate

NOCO Energy Corp.

By: _____

Title: _____

Date: _____

STATE OF NEW YORK) SS:
COUNTY OF ERIE)

On the _____ day of _____, in the year 20____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of individual
taking acknowledgment

Please record and return to:

NOCO Energy Corp. _____
2440 Sheridan Drive _____
Tonawanda, NY 14150 _____

12/03/09

SCHEDULE "A" PROPERTY DESCRIPTION

Address: 1055 Genesee Street, Buffalo, NY

Erie County

Tax Map: 100.76-5-1

Attachment A

LEGAL DESCRIPTION

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TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the Grantee, its successors and assigns forever.

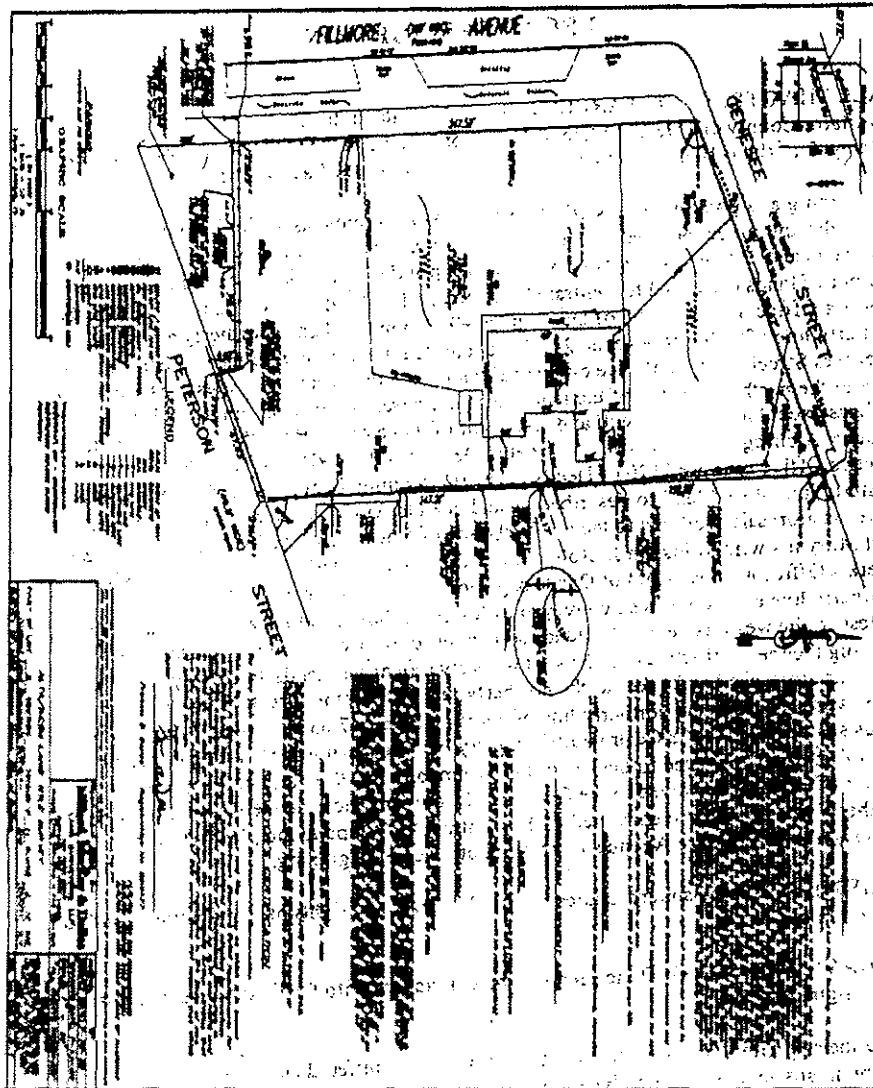
AND the said Grantor covenants that it has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

This parcel containing 31,604 Sq. Ft. or 0.726 Acres more or less

This parcel conveyed to NOCO Motor Fuels, Inc. in Liber 10566 of Deeds at page 432.

Attachment B

SURVEY





NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Site Management Form
12/24/2009



SITE DESCRIPTION

SITE NO. C915211

SITE NAME NOCO #S41

SITE ADDRESS: 1055 Genesee Street ZIP CODE: 14212

CITY/TOWN: Buffalo

COUNTY: Erie

ALLOWABLE USE: Commercial and Industrial

SITE MANAGEMENT DESCRIPTION

SITE MANAGEMENT PLAN INCLUDES:	YES	NO
IC/EC Certification Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Monitoring Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Operation and Maintenance (O&M) Plan	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Periodic Review Frequency:	Annually	
First Periodic Review Date:	June 2011	

Description of Institutional Control

NOCO Energy Express Properties, LLC
1055 Genesee Street
Environmental Easement
Block: 5
Lot: 1
Sublot:
Section: 100
Subsection: 76
S_B_L Image: 100.76-5-1
Ground Water Use Restriction
IC/EC Plan
Landuse Restriction
Monitoring Plan
Site Management Plan
Soil Management Plan

Description of Engineering Control

NONE

APPENDIX C

SITE PHOTOGRAPH LOG

SITE PHOTOGRAPHS

Photo 1:



Photo 2:



Photo 3:



Photo 4:

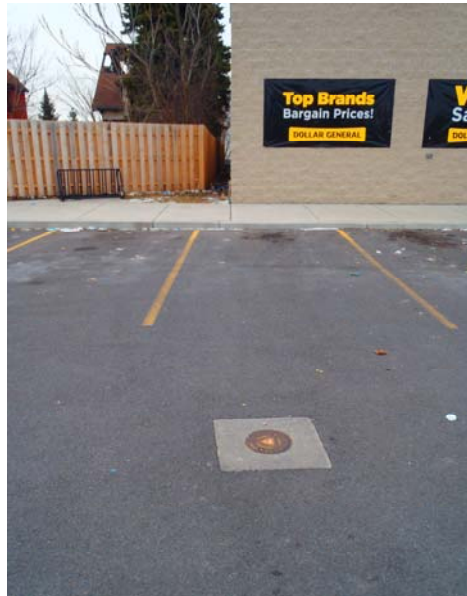


Photo 1: Subject Property – Site Location; corner of Genesee Street and N Fillmore Ave – (looking southwest).

Photo 2: Subject Property – Site Conditions; north parking area (looking northeast).

Photo 3: Subject Property – Site Conditions; north parking area (looking south).

Photo 4: Subject Property – Site Conditions; monitoring well (looking south).

BCP Site No. C915211
1055 Genesee Street
Buffalo, New York



SITE PHOTOGRAPHS

Photo 5:



Photo 6:



Photo 7:



Photo 8:



Photo 5: Subject Property – Site Conditions; west side of building (looking north).

Photo 6: Subject Property – Site Conditions; storm drain (looking south).

Photo 7: Subject Property – Site Conditions; south side/rear of building (looking east).

Photo 8: Subject Property – Site Conditions; monitoring well (looking west).

BCP Site No. C915211
1055 Genesee Street
Buffalo, New York

