

# SITE MANAGEMENT PLAN

Realty Income Buffalo Genesee LLC  
NOCO #S41 Site  
BCP Site No. C915211  
1055 Genesee Street  
Buffalo, New York

Prepared For:

Realty Income Buffalo Genesee LLC  
c/o Realty Income Corporation  
11995 El Camino Real  
San Diego, CA 92130

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NOCO #S41 Site  
Erie County  
Buffalo, New York

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NYSDEC Site Number: C915211

**Prepared for:**

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**Revisions to Final Approved Site Management Plan:**

<b>Revision No.</b>	<b>Date Submitted</b>	<b>Summary of Revision</b>	<b>NYSDEC Approval Date</b>
1	Feb 2021	Update to 2009 SMP	
2	May 2021	Update to SMP	
3	June 2021	Update to SMP	

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**June 2021**

CERTIFICATION STATEMENT

I Austin Drooger certify that I am currently a Qualified Environmental Professional as in defined in 6 NYCRR Part 375 and that this Site Management Plan was prepared in accordance with all applicable statutes and regulations and in substantial conformance with the DER Technical Guidance for Site Investigation and Remediation (DER-10).

\_\_\_\_\_ [QEP]

06/18/2021 \_\_\_\_\_ DATE

## **List of Acronyms**

AS	Air Sparging
ASP	Analytical Services Protocol
BCA	Brownfield Cleanup Agreement
BCP	Brownfield Cleanup Program
CERCLA	Comprehensive Environmental Response, Compensation and Liability
CAMP	Act Community Air Monitoring Plan
C/D	Construction and Demolition
CFR	Code of Federal Regulation
CLP	Contract Laboratory Program
COC	Certificate of Completion
CO2	Carbon Dioxide
CP	Commissioner Policy
DER	Division of Environmental Remediation
EC	Engineering Control
ECL	Environmental Conservation Law
ELAP	Environmental Laboratory Approval Program
ERP	Environmental Restoration Program
EWP	Excavation Work Plan
GHG	Green House Gas
GWE&T	Groundwater Extraction and Treatment
HASP	Health and Safety Plan
IC	Institutional Control
NYSDEC	New York State Department of Environmental Conservation
NYSDOH	New York State Department of Health
NYCRR	New York Codes, Rules and Regulations
O&M	Operation and Maintenance
OM&M	Operation, Maintenance and Monitoring
OSHA	Occupational Safety and Health Administration
OU	Operable Unit
PID	Photoionization Detector
PRP	Potentially Responsible Party
PRR	Periodic Review Report
QA/QC	Quality Assurance/Quality Control
QAPP	Quality Assurance Project Plan
RAO	Remedial Action Objective
RAWP	Remedial Action Work Plan
RCRA	Resource Conservation and Recovery Act
RI/FS	Remedial Investigation/Feasibility Study
ROD	Record of Decision
RP	Remedial Party
RSO	Remedial System Optimization
SAC	State Assistance Contract
SCG	Standards, Criteria and Guidelines

SCO	Soil Cleanup Objective
SMP	Site Management Plan
SOP	Standard Operating Procedures
SOW	Statement of Work
SPDES	State Pollutant Discharge Elimination System
SSD	Sub-slab Depressurization
SVE	Soil Vapor Extraction
SVI	Soil Vapor Intrusion
TAL	Target Analyte List
TCL	Target Compound List
TCLP	Toxicity Characteristic Leachate Procedure
USEPA	United States Environmental Protection
UST	Agency Underground Storage Tank
VCA	Voluntary Cleanup Agreement
VCP	Voluntary Cleanup Program

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**EXECUTIVE SUMMARY**

The following provides a brief summary of the controls implemented for the NOCO #S41 (“Site”), as well as the inspections, monitoring, maintenance and reporting activities required by this Site Management Plan:

**Table 1: Site Management Plan Summary**

Site Identification:                   BCP Site No. C915211  
   NOCO #S41  
   1055 Genesee Street  
   Buffalo, New York

Institutional Controls:	1. The property may be used for commercial use only. The property may not be used for a higher level of use, such as unrestricted or restricted residential use, without additional remediation and amendment of the Environmental Easement, as approved by the NYSDEC.
	2. Groundwater and other environmental or public health monitoring must be performed as defined in this SMP.
	3. Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in this SMP.
	4. Compliance with the Environmental Easement and this SMP by the Grantor and the Grantor’s successors and assigns.
	5. All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with this SMP.
	6. The use of the groundwater underlying the property is prohibited without treatment rendering it safe for intended use.
	7. All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with this SMP.
	8. Vegetable gardens and farming on the property are prohibited.

	<p>9. The site owner or remedial party will submit to NYSDEC a written statement that certifies, under penalty of perjury, that: (1) controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls were approved by the NYSDEC; and, (2) nothing has occurred that impairs the ability of the controls to protect public health and environment or that constitute a violation or failure to comply with the SMP. NYSDEC retains the right to access such Controlled Property at any time in order to evaluate the continued maintenance of any and all controls. This certification shall be submitted annually, or an alternate period of time that NYSDEC may allow and will be made by an expert that the NYSDEC finds acceptable.</p>
Inspections:	Frequency
1. Site-Wide Inspection	Every 3 years
Evaluations:	
1. Climate Change Vulnerability Assessment	Upon change in use/as needed
Reporting:	
1. Inspections	Every 3 years
2. Certification/Periodic Review Report	Every 3 years

Further descriptions of the above requirements are provided in detail in the latter sections of this Site Management Plan.

## 1.0 INTRODUCTION

### 1.1 General

This Site Management Plan (SMP) is a required element of the remedial program for the NOCO Site #S41 located in Buffalo, Erie County, New York (hereinafter referred to as the “Site”; see attached Figure 1 – Site Location).

The Site is currently in the New York State (NYS) Brownfield Cleanup Program (BCP), referenced as Site No. BCP #C915211, which is administered by New York State Department of Environmental Conservation (NYSDEC).

Realty Income Buffalo Genesee LLC assumed the status as the Remedial Party in 2012, when it acquired the Site from NOCO Energy Corporation. NOCO Energy Corporation entered into a Brownfield Cleanup Agreement (BCA) on July 9, 2007 with the NYSDEC to remediate the site. The BCA is referenced as Index #B9-0741-07-04. A figure showing the site location and boundaries is provided as Figure 2. The boundaries of the Site are more fully described in the metes and bounds site description that is part of the Environmental Easement included in Appendix B.

After completion of the remedial work at the Site, some contamination was left in place, which is hereafter referred to as “remaining contamination”. Institutional controls (ICs) were incorporated into the Site Remedy to control exposure to remaining contamination to ensure protection of public health and the environment. The Environmental Easement granted to the NYSDEC, and recorded with the Erie County Clerk, requires compliance with the SMP and all ICs placed on the Site.

A SMP was developed by NOCO Energy Corporation in December 2009 to manage remaining contamination at the Site until the Environmental Easement is extinguished in accordance with Environmental Conservation Law (ECL) Article 71, Title 36. The 2009 SMP was approved by the NYSDEC, and compliance with this plan is required by the grantor of the Environmental Easement and the grantor’s successors and assigns. The SMP may only be revised with the approval of the NYSDEC. This updated SMP was prepared at the request of the NYSDEC, pursuant to the department letter dated October 15, 2020.

It is important to note that:

- This updated SMP details the site-specific implementation procedures that are required by the Environmental Easement. Failure to properly implement the SMP is a violation of the Environmental Easement, which is grounds for revocation of the Certificate of Completion (COC);
- Failure to comply with this updated SMP is also a violation of ECL 6NYCRR Part 375 and the BCA (Index # B9-0741-07-04; Site #C915211) for the site, and thereby subject to applicable penalties.

All reports associated with the Site can be viewed by contacting the NYSDEC or its successor agency managing environmental issues in New York State. A list of contacts for persons involved with the Site is provided in Appendix A of this SMP.

This updated SMP was prepared by SCS Engineers, on behalf of Realty Income Buffalo Genesee LLC, in accordance with the requirements of the NYSDEC's DER-10 ("Technical Guidance for Site Investigation and Remediation"), dated 5/3/2010 (Errata Sheet revised 4/9/2019), and the guidelines provided by the NYSDEC. This SMP addresses the means for implementing the ICs and/or ECs that are required by the Environmental Easement for the site.

## **1.2 Revisions**

Revisions to this plan will be proposed in writing to the NYSDEC's project manager. Revisions will be necessary upon, but not limited to, the following occurring: a change in media monitoring requirements, upgrades to or shut-down of a remedial system, post-remedial removal of contaminated sediment or soil, or other significant change to the site conditions. In accordance with the Environmental Easement for the Site, the NYSDEC will provide a notice of any approved changes to the SMP, and append these notices to the SMP that is retained in its files.

## **1.3 Notifications**

Notifications will be submitted by the property owner to the NYSDEC, as needed, in accordance with NYSDEC's DER – 10 for the following reasons:

- 60-day advance notice of any proposed changes in site use that are required under the terms of the BCA, 6NYCRR Part 375 and/or Environmental Conservation Law.
- 7-day advance notice of any field activity associated with the remedial program.
- Written 15-day advance notice of any proposed ground-intrusive activity pursuant to the Excavation Work Plan (EWP). This updated SMP incorporates the EWP that was included in the 2009 SMP prepared by Benchmark.

Any change in the ownership of the site or the responsibility for implementing this SMP will include the following notifications:

- At least 60 days prior to the change, the NYSDEC will be notified in writing of the proposed change. This will include a certification that the prospective purchaser/Remedial Party has been provided with a copy of the BCA, and all approved work plans and reports, including this SMP.
- Within 15 days after the transfer of all or part of the site, the new owner's name, contact representative, and contact information will be confirmed in writing to the NYSDEC.

Table 2 on the following page includes contact information for the above notification. The information on this table will be updated as necessary to provide accurate contact information. A full listing of site-related contact information is provided in Appendix A.

**Table 2: Notifications\***

Name	Contact Information
<u>NYSDEC Project Manager:</u> Megan Kuczka	(716) 851-7220 <a href="mailto:Megan.Kuczka@dec.ny.gov">Megan.Kuczka@dec.ny.gov</a>
<u>NYSDEC Regional Manager:</u> Andrea Caprio	(716) 851-7220 <a href="mailto:Andrea.Caprio@dec.ny.gov">Andrea.Caprio@dec.ny.gov</a>
NYSDEC Site Control Contact: <a href="#">Kelly Lewandowski</a>	(518) 402-9553

\* Note: Notifications are subject to change and will be updated as necessary.

## **2.0 SUMMARY OF PREVIOUS INVESTIGATIONS AND REMEDIAL ACTIONS**

### **2.1 Site Location and Description**

The Site is located in Buffalo, Erie County, New York and is identified as Section 100.76, Block 5, Lot 1.1 on the Erie County Tax Map (see Figure 3). The Site is an estimated 0.73-acres and is bounded by Genesee Street to the north, a used car dealer to the south, vacant land to the east, and Fillmore Avenue to the west (see Figure 2 – Site Plan). The boundaries of the Site are more fully described in Appendix B. The Site was purchased by 1055 Genesee St, LLC. in 2011. The current owner (purchased in 2012) of the Site parcel at the time of issuance of this SMP is:

Realty Income Buffalo Genesee  
LLC c/o Realty Income Corporation  
11995 El Camino Real  
San Diego, California 92130

### **2.2 Physical Setting**

#### **2.2.1 Land Use**

The Site consists of the following: an approximate 10,000 square foot commercial building, and asphalt pavement on the north and west sides of the building. The Site is zoned commercial and the building currently operates as a Dollar General store.

The properties adjoining the Site and in the neighborhood surrounding the Site primarily include mixed commercial and residential properties. The property immediately south of the Site is commercial (used car sales); the properties immediately north of the Site across Genesee Street include commercial (Rite Aid) and residential properties; the properties immediately east of the Site include vacant land and residential properties; and the properties to the west of the Site across Fillmore Avenue include commercial (deli market, barber shop) and residential properties.

#### **2.2.2 Geology**

In the 2009 SMP, overburden geologic conditions at the Site were described as follows: “...urban land, indicating level to gently sloping land with at least 80 percent of the soil surface covered by asphalt, concrete, buildings, or other impervious structures typical of an urban environment. The presence of overburden fill material is widespread and common throughout the City of Buffalo”.

“The geology at the Site is generally described as fill materials overlying dense brown/reddish-brown silty clay. The fill materials consist of silt, sand, and gravel with varying amounts of brick fragments at depths ranging from 1.5 to 8 feet below ground surface (fbgs). Much of the fill material appears to be former building materials that were

left in-place prior to construction of the existing building and site features. Native materials consist of dense clay with varying amounts of sand and gravel to depths up to 20 fbs.”

Bedrock conditions were described in the 2009 SMP. The SMP reported: “Based on the bedrock geologic map of Erie County, the Site is situated over the Onondaga Formation of the Middle Devonian Series. The Onondaga Formation is comprised of a varying texture from coarse to very finely crystalline with a dark gray to tan color and chert and fossils within. The unit has an approximate thickness of 110 to 160 feet. Structurally, the bedrock formations strike in an east-west direction and exhibit a regional dip that approximates 40 feet per mile (3 to 5 degrees) toward the south and southwest. As a result of this dip, the older Onondaga limestone outcrops or subcrops north of the Hamilton Group. An intersecting, orthogonal pattern of fractures and joint sets are common throughout the bedrock strata. The surficial geomorphology of the bedrock strata was modified by period subaerial erosion and continental glaciation. Bedrock was not encountered during RI soil boring advancement”.

### 2.2.3 Hydrogeology

The 2009 SMP described the hydrogeologic conditions at the Site as follows:

“Groundwater within the shallow overburden zone varies in depth from 5.6 to 13.0 fbs, as indicated by depth to water measurements recorded on June 20, 2009 from on-site monitoring wells (i.e., BCP MW-1 through BCP MW-7). Shallow groundwater at the Site generally flows south/southeast.”

## 2.3 **Investigation and Remedial History**

### 2.3.1 Site History

The 2009 SMP provided a summary of the site history, as presented below.

“The site was used as a gasoline service station from approximately 1950 until 2007. Based on City of Buffalo permits and NYSDEC records reviewed, previous gas station owner/operators on-Site included Gulf Oil Corporation, Northeast Stations, Inc. and Cumberland Farms.

### 2.3.2 Investigation/Remediation

The 2009 SMP provided a summary of the investigation and remedial action history at the Site, as presented below.

“A Subsurface Investigation Report was completed by Sentinel Technologies, Inc. (Sentinel) in October 2004 to further investigate groundwater impacts previously identified in a tank field observation well. Ten soil borings were completed in the area of the underground storage tanks (USTs) and pump islands and in an area where impacted soil was biologically treated on-site. Groundwater samples were collected from three of

the soil boring locations via temporary wells. The results of that study indicated that petroleum-related volatile organic compounds (VOCs) were present above NYSDEC Technical and Administrative Guidance Memorandum (TAGM) 4046 Recommended Soil Cleanup Objectives (RSCOs) and groundwater quality standards (GWQS) on-site.

Benchmark completed a Supplemental Environmental Investigation on-Site in June 2006. A geophysical survey, thirteen test borings (SB-1 through SB-13) and three temporary monitoring wells (TPMW1-TPMW3) were completed in accessible areas of the subject property. No metallic objects were encountered in the area of geophysical anomalies. Soil samples detected the presence of VOCs in several soil boring locations across the site. Soil samples SB-1, SB-3, and SB-7 detected VOCs above NYSDEC RSCOs. Groundwater samples TPMW-1, TPMW-2, TPMW-3, OW-1, OW-2 and OW-3 detected VOCs above GWQS.

NOCO elected to pursue cleanup of the Site under the BCP, and executed a BCA with the NYSDEC in July 2007. A Remedial Investigation/Alternatives Analysis Report/Interim Remedial Measures (RI/AAR/IRM) Work Plan was approved in November 2007 and Benchmark performed RI/IRM activities on behalf of NOCO at the Site from February 2008 through June 2009. The IRM fieldwork, which was completed in February 2008, generally included: product dispenser island demolition; removal of USTs and product dispensers; petroleum-impacted soil excavation and off-Site disposal; groundwater extraction and treatment during soil excavation; and backfill/Site restoration. A RI was completed immediately following the IRM fieldwork to characterize the nature and extent of contamination at the Site. Remedial Investigation field activities included: soil borings; monitoring well installation; soil and groundwater sampling; and, soil gas sampling. Based on the Alternatives Analysis evaluation, it was concluded that the IRM, together with implementation of a Site Management Plan, satisfies the remedial action objectives and is protective of human health and the environment, and was selected as the final remedial approach for the NOCO #S-41 Site.” The results of the RI are described in detail in the following report:

- Benchmark Environmental Engineering & Science, PLLC. Remedial Investigation/Alternatives Analysis Report/Interim Remedial Measures (RI/AAR/IRM) Report, NOCO S-41 Site, Buffalo, New York. Revised July 2009.

Appendix D includes summary data tables for the detected analytes in soil, groundwater and soil gas during the RI efforts.

### 2.3.3 Soil Results (from 2009 SMP)

- Based on the soil data collected during the RI, concentrations of VOCs, metals, pesticides, and PCBs were below Part 375 commercial SCOs. Four SVOCs [i.e., benzo(a)anthracene, benzo(b)fluoranthene, benzo(a)pyrene, and dibenzo(a,h)anthracene] were detected at concentrations slightly above their respective Part 375 commercial SCOs at sample location BCP MW-4 in the 0 to 4-foot interval. Based on the depth of the sample collected (i.e., 0-4 fbs), the

sample location (i.e., not in an area of historic petroleum storage), lack of elevated PID readings, as well as absence of any visual or olfactory evidence of contamination, the elevated SVOCs do not appear to be attributable to a petroleum release, but appear to be associated with the historic fill materials encountered in that sample location.

Soil data tables are included in Appendix D.

#### 2.3.4 Site-Related Groundwater Results (from 2009 SMP)

- Based on the groundwater data collected in during the RI, residual concentrations of petroleum-related VOCs were detected in monitoring wells BCP MW-1, BCP MW-3, BCP MW-4, BCP MW-6 and BCP MW-7. One SVOC, naphthalene, was also detected in BCP MW-4 slightly above it GWQS. Metals detected at concentrations above GWQS are limited to naturally occurring minerals. The source of residual VOCs in BCP MW-6 is not known; this well is located on the northern property boundary hydraulically up-gradient of the source soils that were removed during the IRM. The petroleum-impacted soil/fill upgradient of wells BCP MW-1, BCP-MW-3, BCP MW-4 and BCP MW-7 was removed to residential SCOs as part of the IRM activities. It is noted that the residual groundwater concentrations in the wells with VOC concentrations above GWQS range from 18 ug/L to 210 ug/L total VOCs, which are significantly lower than historic concentrations of petroleum VOCs on-site (i.e., up to 99,990 ug/L). The decrease in groundwater concentrations is attributable to the contaminant source removal (note- post-excavation confirmatory samples show excavation sidewalls and bottoms meet NYSDEC residential SCOs for all sample locations and also meet unrestricted SCOs, with minor exceptions as shown on Table 5), and extraction and treatment of impacted groundwater during the IRM. As the on-Site UST system and petroleum-impacted source soils have been removed, these concentrations will continue to naturally attenuate over time. It is also noted that there were no detections of VOCs in groundwater above GWQS in BCP-MW-2, which is the hydraulically down-gradient monitoring well. Overall, the groundwater data indicates: a potential off-site source of on-Site petroleum VOCs in groundwater; a significant decrease of petroleum VOCs concentrations in the monitoring wells with the highest residual impacts (i.e., BCP MW-3, BCP MW-4 and BCP MW-6) from the February 2008 to the June 2009 sampling events; and, an overall decrease in dissolved-phase VOCs.

Groundwater data tables from the RI efforts are included in Appendix

#### D. 2.3.5 Site-Related Soil Vapor Intrusion (from 2009 SMP)

- Based on the soil vapor data collected during the RI, primary constituents of concern (COCs) detected in the soil vapor samples included benzene, ethylbenzene, toluene, and xylene (BTEX), MtBE and 1,3,5-trimethylbenzene. However, concentrations of COCs were also detected in the ambient air sample.

One chlorinated VOC (PCE) was detected in SV-2, located on the northern property boundary, at a concentration of 23 ug/m<sup>3</sup>, below the NYSDOH indoor air guideline of 100 ug/m<sup>3</sup>. However, PCE was also detected in the ambient air sample. NYSDEC and NYSDOH do not currently have standards, criteria or guidance values for concentrations of petroleum compounds in soil vapor. The highest individual COC concentration was 90 ug/m<sup>3</sup> toluene. Published studies regarding transport of petroleum VOCs (e.g., Hers et al, 2006 (Ref. 7)) have shown that petroleum compounds subject to aerobic degradation, such as the Site COCs, have low soil gas to indoor air attenuation factors and are much less likely to cause indoor air concerns compared to chlorinated VOCs. Furthermore, the NYSDOH has indicated that, based on the low levels of VOCs in groundwater and soil gas samples, a subslab depressurization system is not required at the Site.

Soil-gas data from the RI efforts are tabulated in Appendix D.

## **2.4 Summary of Remedial Actions**

The site was remediated in accordance with the NYSDEC-approved Remedial Investigation/Alternatives Analysis Report/Interim Remedial Measures (RI/AAR/IRM) Work Plan dated November 2007. The following is a summary of the Remedial Actions performed at the site:

- Removal of three 8,000-gallon fiberglass-reinforced plastic gasoline USTs, four product dispensers and associated underground product piping, and demolition of the product dispenser canopy. Approximately 1,054-gallons of gasoline/water mixture was extracted from the USTs and disposed of at Environmental Products and Services of Vermont, Inc. facility in Syracuse, New York. The area of the former UST System is shown on Figures 4 and 5.
- Excavation of approximately 1,212 tons of non-hazardous petroleum impacted soil/fill followed by off-site transportation and disposal at Modern Landfill in Model City, New York. The excavation in the product dispenser island area was completed to approximately four fbgs and the excavation in the UST area was completed to approximately 12 fbgs. Fifteen post excavation confirmation samples were collected and analyzed for NYSDEC STARS List VOCs, semi-volatile organic compounds (SVOCs), and lead; all post-excavation soil sample results were below 6NYCRR Part 375 Commercial Soil Cleanup Objectives (SCOs). The results of the postexcavation soil samples compared to the SCOs for the primary COCs and applicable land use for this site is provided in Table 5. The excavated area is shown on Figure 5.
- Extraction and treatment of approximately 17,790-gallons of groundwater from the excavation during remediation activities. The treated water was discharged to the City of Buffalo Municipal Sewer with permission from the Buffalo Sewer Authority.
- Placement and compaction of approximately 1,431 tons of 2" crusher run stone backfill from the Buffalo Crushed Stone, Inc. quarry in Lancaster, NY to pre-existing grade.
- 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 Site Management Plan for long term management of remaining contamination as required by the Environmental Easement, which includes plans for: (1) Institutional Controls, (2) monitoring, (3) future excavations and (4) reporting; Remedial activities were completed at the site February 2008 (excavation, soil removal, groundwater extraction and treatment, site restoration).

## **2.5 Remaining Contamination**

As described in the 2009 SMP approved by the NYSDEC:

“The contamination remaining at the Site includes certain SVOCs, xylene, certain pesticides and certain metals that exceed the Track 1 (unrestricted) SCOs as summarized in Table 6 and located within the approximate areas shown on Figure 6. The SVOC-impacted soil/fill observed in the area of BCP MW-4, which is representative of typical urban fill encountered throughout the City of Buffalo, is estimated to extend to a maximum depth of approximately 4.0 fbs and is located beneath asphalt pavement. The other contaminants are also located within the upper approximately 5.0 fbs and located beneath the existing pavement and clean imported gravel.”

The results of the post-excavation soil samples, outlining the soil results that exceeded the Unrestricted Use SCOs and Commercial SCOs, are presented in Appendix D.

### **3.0 INSTITUTIONAL CONTROL PLAN**

#### **3.1 General**

Since remaining contamination exists at the site, Institutional Controls (ICs) are required to protect human health and the environment. This IC Plan describes the procedures for the implementation and management of all ICs at the site. The IC Plan is one component of the SMP and is subject to revision by the NYSDEC.

This plan provides:

- A description of all ICs on the site;
- The basic implementation and intended role of each IC;
- A description of the key components of the ICs set forth in the Environmental Easement;
- A description of the controls to be evaluated during each required inspection and periodic review;
- A description of plans and procedures to be followed for implementation of ICs, such as the implementation of the Excavation Work Plan (as provided in Appendix C) for the proper handling of remaining contamination that may be disturbed during maintenance or redevelopment work on the site; and
- Any other provisions necessary to identify or establish methods for implementing the ICs required by the site remedy, as determined by the NYSDEC.

#### **3.2 Institutional Controls**

A series of ICs is required to: (1) prevent future exposure to remaining contamination; and, (2) limit the use and development of the site to commercial uses only. Adherence to these ICs on the site is required by the Environmental Easement and will be implemented under this SMP. ICs identified in the Environmental Easement may not be discontinued without an amendment to or extinguishment of the Environmental Easement. The ICs, which are described and illustrated in Appendix B (Environmental Easement), include:

- The property may be used for commercial use only. The property may not be used for a higher level of use, such as unrestricted or restricted residential use, without additional remediation and amendment of the Environmental Easement, as approved by the NYSDEC.
- Groundwater and other environmental or public health monitoring must be performed as defined in this SMP.
- Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in this SMP.

- Compliance with the Environmental Easement and this SMP by the Grantor and the Grantor's successors and assigns.
- The property may only be used for commercial use provided that the long-term Institutional Controls included in this SMP are employed.
- The property may not be used for a higher level of use, such as unrestricted or restricted residential use without additional remediation and amendment of the Environmental Easement, as approved by the NYSDEC.
- All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with this SMP.
- The use of the groundwater underlying the property is prohibited without treatment rendering it safe for intended use.
- Vegetable gardens and farming on the property are prohibited.
- The site owner or remedial party will submit to NYSDEC a written statement that certifies, under penalty of perjury, that: (1) controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls were approved by the NYSDEC; and, (2) nothing has occurred that impairs the ability of the controls to protect public health and environment or that constitute a violation or failure to comply with the SMP. NYSDEC retains the right to access such Controlled Property at any time in order to evaluate the continued maintenance of any and all controls. This certification shall be submitted annually, or an alternate period of time that NYSDEC may allow and will be made by an expert that the NYSDEC finds acceptable.

### **3.3 Site – wide Inspection**

Site-wide inspections have been conducted triennially since April 2014 when DEC approved a switch from annual inspections. Site-wide inspections will be performed in conjunction with the 3-year periodic reviews. Site-wide inspections will also be performed after a severe weather event, to assess compliance with the ICs. The site-wide inspection will address the following:

- Compliance with all ICs, including site usage.
- General site conditions at the time of the inspection.
- The site management activities being conducted including, where appropriate, confirmation sampling and a health and safety inspection.
- If these controls continue to be protective of human health and the environment.
- Compliance with requirements of this SMP and the Environmental Easement.

- If site records are complete and up to date.

Reporting requirements are outlined in Section 5.0 of this SMP.

Inspections will also be performed in the event of an emergency. An inspection of the site will be conducted within 5 days of the event to verify the effectiveness of the ICs implemented at the site by a qualified environmental professional, as determined by the NYSDEC. Written confirmation must be provided to the NYSDEC within 7 days of the event that includes a summary of actions taken, or to be taken, and the potential impact to the environment and the public.

## **4.0 PERIODIC ASSESSMENTS/EVALUATIONS**

### **4.1 Climate Change Vulnerability Assessment**

Increases in both the severity and frequency of storms/weather events, an increase in sea level elevations along with accompanying flooding impacts, shifting precipitation patterns and wide temperature fluctuation, resulting from global climactic change and instability, have the potential to significantly impact the performance, effectiveness and protectiveness of a given site and associated remedial systems. Vulnerability assessments provide information so that the site and associated remedial systems are prepared for the impacts of the increasing frequency and intensity of severe storms/weather events and associated flooding.

This section provides a summary of vulnerability assessments that will be conducted for the site during periodic assessments, and briefly summarizes the vulnerability of the site controls to severe storms/weather events and associated flooding.

Based on a review of the available data, sea level rise may result in the saturation of previously-unsaturated soils beneath the Site. However, based on current site use and the institutional controls climate change is expected to have a low likelihood of mobilizing contaminants that would impact potential human receptors (existing communities) through direct contact with groundwater.

## 5.0 REPORTING REQUIREMENTS

### 5.1 Site Management Reports

All site management inspection, maintenance and monitoring events will be recorded on the appropriate site management forms provided in Appendix F. These forms are subject to NYSDEC revision.

All applicable inspection forms and other records, including media sampling data and system maintenance reports, generated for the site during the reporting period will be provided in electronic format to the NYSDEC in accordance with the requirements of Table 7 and summarized in the Periodic Review Report.

**Table 3: Schedule of Inspection Reports**

<b>Task/Report</b>	<b>Reporting Frequency*</b>
Inspection Report	Every 3 years

\* The frequency of events will be conducted as specified until otherwise approved by the NYSDEC.

All interim monitoring/inspections reports will include, at a minimum:

- Date of event or reporting period;
- Name, company, and position of person(s) conducting monitoring/inspection activities;
- Description of the activities performed;
- Where appropriate, color photographs or sketches showing the approximate location of any problems or incidents noted (included either on the checklist/form or on an attached sheet);
- Type of samples collected (e.g., sub-slab vapor, indoor air, outdoor air, etc);
- Copies of all field forms completed (e.g., well sampling logs, chain-of-custody documentation, etc.);
- Sampling results in comparison to appropriate standards/criteria;
- A figure illustrating sample type and sampling locations;
- Copies of all laboratory data sheets and the required laboratory data deliverables required for all points sampled (to be submitted electronically in the NYSDEC-identified format);

- Any observations, conclusions, or recommendations; and
- A determination as to whether contaminant conditions have changed since the last reporting event.

Routine maintenance event reporting forms will include, at a minimum:

- Date of event;
- Name, company, and position of person(s) conducting maintenance activities;
- Description of maintenance activities performed;
- Any modifications to the system;
- Where appropriate, color photographs or sketches showing the approximate location of any problems or incidents noted (included either on the checklist/form or on an attached sheet); and,
- Other documentation such as copies of invoices for maintenance work, receipts for replacement equipment, etc., (attached to the checklist/form).

Non-routine maintenance event reporting forms will include, at a minimum:

- Date of event;
- Name, company, and position of person(s) conducting non-routine maintenance/repair activities;
- Description of non-routine activities performed;
- Where appropriate, color photographs or sketches showing the approximate location of any problems or incidents (included either on the form or on an attached sheet); and
- Other documentation such as copies of invoices for repair work, receipts for replacement equipment, etc. (attached to the checklist/form).

Data will be reported in digital format as determined by the NYSDEC. Currently, data is to be supplied electronically and submitted to the NYSDEC EQUIS™ database in accordance with the requirements found at this link:

<http://www.dec.ny.gov/chemical/62440.html>

## 5.2 Periodic Review Report

The Periodic Review Report will consist only of the certification as specified in Section 5.2.1 except in the event where there have been changes to the site or data gathered during the certifying period. Given such an event, the submittal of a comprehensive PR report will be necessary, as specified below.

It should be noted that groundwater sampling was conducted semi-annually through 2012, when NYSDEC approved cessation of those activities. In February of 2021, NYDEC approved decommissioning of the groundwater monitoring wells on-site. Figures detailing the locations of the abandoned monitoring wells are located in Appendix D.

A Periodic Review Report (PRR) will be submitted to the Department beginning sixteen (16) months after the Certificate of Completion is issued. After submittal of the initial Periodic Review Report, the next PRR shall be submitted annually to the Department or at another frequency as may be required by the Department. In 2014, the Department approved PRR's to be submitted triennially. In the event that the Site is subdivided into separate parcels with different ownership, a single Periodic Review Report will be prepared that addresses the Site as described in Appendix B (Environmental Easement). The report will be prepared in accordance with NYSDEC's DER-10 and submitted within 30 days of the end of each certification period. Media sampling results (as applicable) will also be incorporated into the Periodic Review Report.

The report will include:

- Identification, assessment and certification of all ICs required by the remedy for the site.
- Results of the required annual site inspections and severe condition inspections, if applicable.
- All applicable site management forms and other records generated for the site during the reporting period in the NYSDEC-approved electronic format, if not previously submitted.
- A summary of any data and/or information generated during the reporting period, with comments and conclusions, if any
- A site evaluation, which includes the following:
  - The compliance of the remedy with the requirements of the site-specific RAWP, ROD or Decision Document;
  - Any new conclusions or observations regarding site contamination based on inspections or data generated;
  - Recommendations regarding any necessary changes to the remedy; and
  - The overall performance and effectiveness of the remedy.

## 5.21 Certification of Institutional Controls

Within 30 days after the end of each certifying period, as determined by the NYSDEC, the following certification will be provided to the Department:

*“For each institutional control identified for the site, I certify that all of the following statements are true:*

- *The institutional control employed at this site is unchanged from the date the control was put in place, or last approved by the Department;*
- *Nothing has occurred that would impair the ability of the control to protect the public health and environment;*
- *Nothing has occurred that would constitute a violation or failure to comply with any site management plan for this control;*
- *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;*
- *If a financial assurance mechanism is required under the oversight document for the site, the mechanism remains valid and sufficient for the intended purpose under the document;*
- *Use of the site is compliant with the environmental easement.*
- *The information presented in this report is accurate and complete.*

*I certify that all information and statements in this certification form 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, [name], of [business address], am certifying as [Owner or Owner’s Designated Site Representative] (and if the site consists of multiple properties): [and I have been authorized and designated by all site owners to sign this certification] for the site.”*

For BCP projects, every five years the following certification will be added:

- *The assumptions made in the qualitative exposure assessment remain valid.*

The signed certification will be included in the Periodic Review Report, if such report is required for the period. Otherwise, the Certification will be submitted as a stand-alone document.

The Periodic Review Report/Certification will be submitted, in electronic format, to the NYSDEC Central Office, the NYSDEC Regional Office in which the site is located and the NYSDOH Bureau of Environmental Exposure Investigation. The Periodic Review Report/Certification may need to be submitted in hard-copy format, as requested by the NYSDEC project manager.

### **5.3 Corrective Measures Workplan**

If any component of the remedy is found to have failed, or if the periodic certification cannot be provided due to the failure of an institutional control, a Corrective Measures Work Plan will be submitted to the NYSDEC for approval. This plan will explain the failure and provide the details and schedule for performing work necessary to correct the failure. Unless an emergency condition exists, no work will be performed pursuant to the Corrective Measures Work Plan until it has been approved by the NYSDEC. Upon completion of the Corrective Measure, a signed certification form must be submitted to the Department.

## **6.0 REFERENCES**

6NYCRR Part 375, Environmental Remediation Programs. December 14, 2006.

NYSDEC DER-10 – “Technical Guidance for Site Investigation and Remediation”.

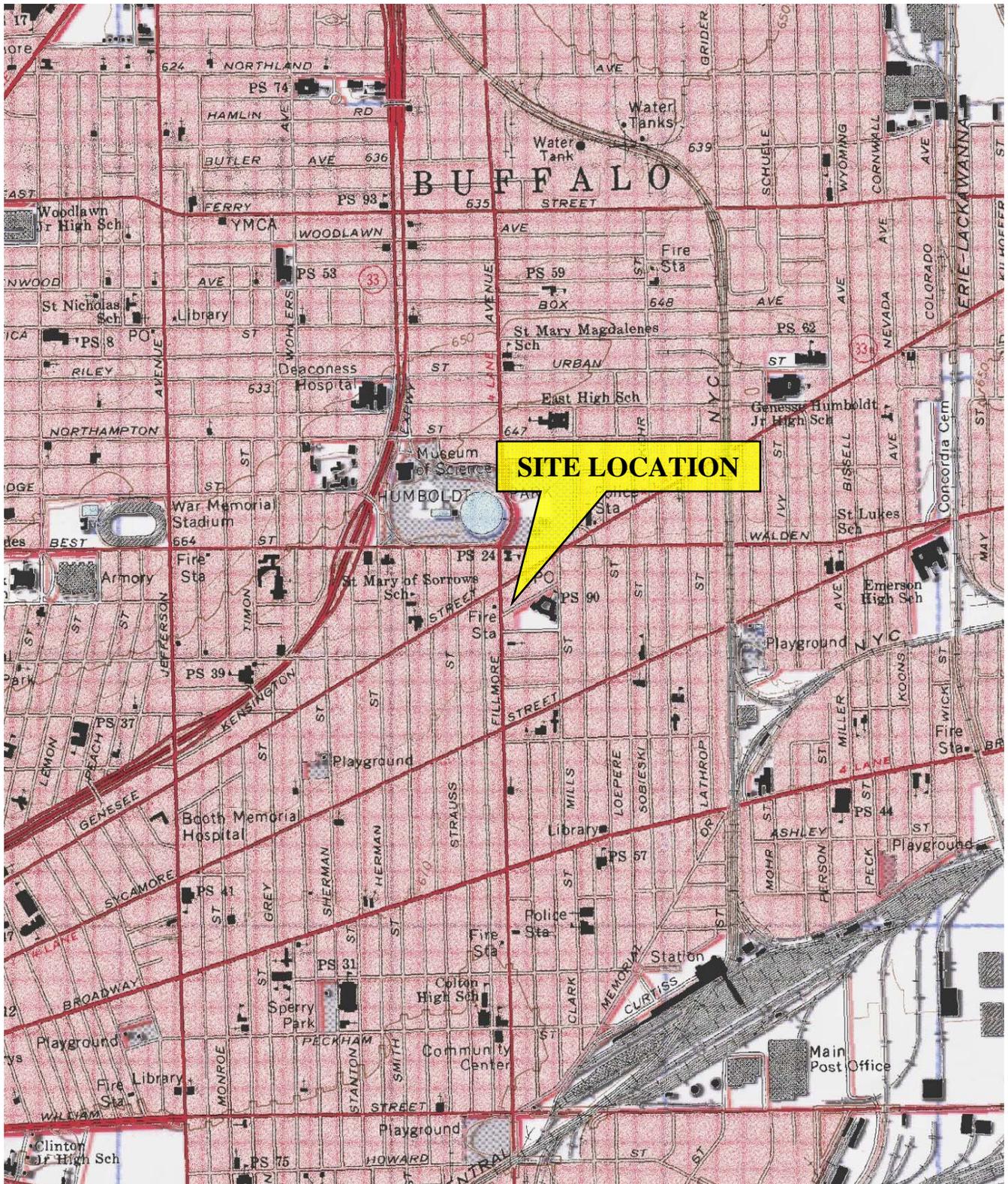
NYSDEC, 1998. Ambient Water Quality Standards and Guidance Values and Groundwater Effluent Limitations Division of Water Technical and Operational Guidance Series (TOGS) 1.1.1. June 1998 (April 2000 addendum).

SENTINEL Technologies, Inc. Subsurface Investigation Report, NOCO Express, 1055 Genesee Street, Buffalo, NY. NYSDEC Spill# 0275425. October 2004.

Benchmark Environmental Engineering & Science, PLLC. Supplemental Environmental Investigation Report. 1055 Genesee Street, Buffalo, NY. June 2006.

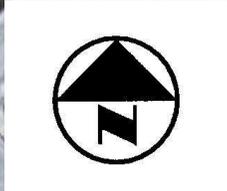
Benchmark Environmental Engineering & Science, PLLC. Remedial Investigation/Alternatives Analysis Report / Interim Remedial Measures Work Plan, NOCO #S-41 Site, 1055 Genesee Street, Buffalo, NY. November 2007.

Benchmark Environmental Engineering & Science, PLLC. Site Management Plan, NOCO #S-41 Site, 1055 Genesee Street, Buffalo, NY. December 2009.



**Figure 1. Site Location Map**  
**1055 Genesee Street, Buffalo, NY 14211**  
**File No. 02220052.00**

Source: Mytopo ([www.mytopo.com](http://www.mytopo.com)), USGS topographic quadrangle

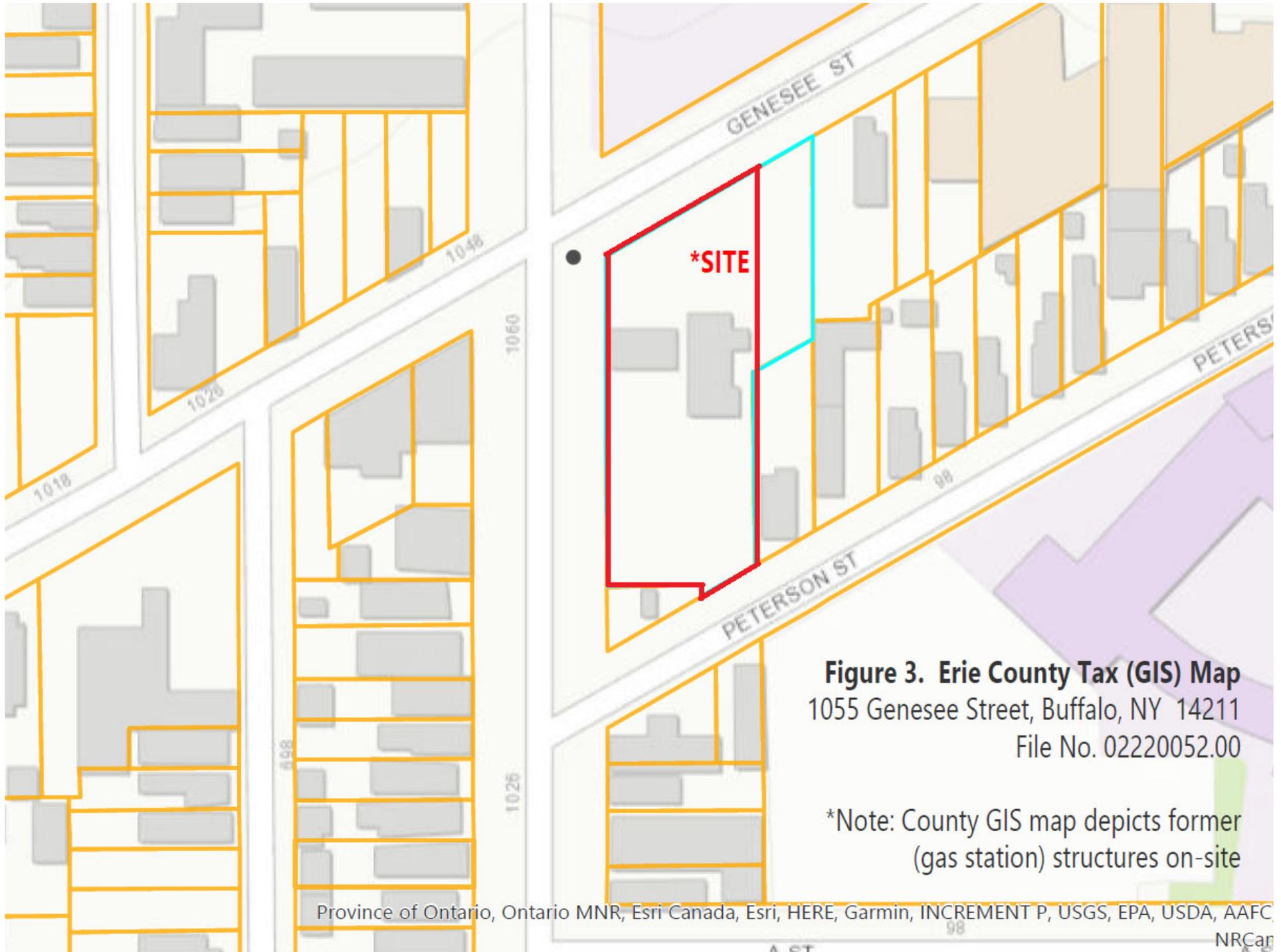


— Property Boundary (approx.)

● Existing Monitoring Wells to be Decommissioned (approx.)

Figure 2 – Site Plan  
1055 Genesee Street, Buffalo, NY  
November 2020  
SCS File No. 02220052.00

Source: Google Earth



**Figure 3. Erie County Tax (GIS) Map**  
1055 Genesee Street, Buffalo, NY 14211  
File No. 02220052.00

\*Note: County GIS map depicts former (gas station) structures on-site

**APPENDIX A**  
**LIST OF SITE CONTACTS**

<b>Name</b>	<b>Phone/Email Address</b>
<u>Site Owner/Remedial Party:</u> Realty Income Buffalo Genesee LLC Attn: Matthew McClellan	(858) 284-5366 <a href="mailto:mmcclellan@realtyincome.com">mmcclellan@realtyincome.com</a>
<u>Qualified Environmental Professional:</u> John E. Tabella, PG, LEED AP SCS Engineers	(571) 353-2026 <a href="mailto:jtabella@scsengineers.com">jtabella@scsengineers.com</a>
<u>NYSDEC DER Project Manager:</u> Megan Kuczka	(716) 851-7220 <a href="mailto:Megan.Kuczka@dec.ny.gov">Megan.Kuczka@dec.ny.gov</a>
<u>NYSDEC Regional Manager:</u> Andrea Caprio	(716) 851-7220 <a href="mailto:Andrea.Caprio@dec.ny.gov">Andrea.Caprio@dec.ny.gov</a>
NYSDOH PM: Shaun Surani	(518) 402-7860 <a href="mailto:Shaun.Surani@health.ny.gov">Shaun.Surani@health.ny.gov</a>
NYSDEC DER Site Control: Kelly Lewandowski	(518) 402-9553 <a href="mailto:Kelly.Lewandowski@dec.ny.gov">Kelly.Lewandowski@dec.ny.gov</a>

**APPENDIX B**  
**Brownfield Cleanup Agreement and Environmental Easment**

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of a Remedial Program for  
NOCO #S41, 1055 Genesee Street, Buffalo, New York  
under Article 27,  
Title 14 of the Environmental Conservation Law  
by NOCO Energy Corp.

BROWNFIELD SITE  
CLEANUP AGREEMENT  
Index # B9-0741-07-04  
Site # C915211

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**WHEREAS**, the Brownfield Cleanup Program was enacted to encourage the voluntary remediation of brownfield sites for reuse and redevelopment so as to advance the policy of the State of New York to conserve, improve, and protect its natural resources and environment, and control water, land, and air pollution; and

**WHEREAS**, the Department of Environmental Conservation (the "Department") is authorized to administer the Brownfield Cleanup Program contained in Article 27, Title 14 of the Environmental Conservation Law ("ECL"); and

**WHEREAS**, by a certified application dated April 9, 2007, Applicant NOCO Energy Corp., a domestic business corporation organized under the laws of New York State, with offices at 2440 Sheridan Drive, Tonawanda, New York, submitted a request to participate in the Brownfield Cleanup Program relative to property located at 1055 Genesee Street in the City of Buffalo, County of Erie; the Department has accepted the application for real property described as Tax Map Number 100.76-5-1 (the "Site"). A map of the Site showing its general location is attached as Exhibit "A"; and

**WHEREAS**, the current and intended use of the Site is commercial, gasoline filling station and convenience store; and

**WHEREAS**, an opportunity for public comment on Applicant's request to participate in the Brownfield Cleanup Program was provided; and

**WHEREAS**, upon consideration of the factors enumerated in ECL 27-1407(8) and (9), the Department made a determination, based upon the information contained in the application and the certifications made by the Applicant, as well as any public comment received, that Applicant is eligible to participate in the Brownfield Cleanup Program as a Participant as defined in ECL 27-1405(1)(a).

**NOW, THEREFORE**, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Citizen Participation Plan

Within twenty (20) Days after the effective date of this Agreement, Applicant shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of ECL 27-1417 and 6 NYCRR 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Agreement.

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

The work plans (“Work Plan” or “Work Plans”) under this Agreement shall be prepared and implemented in accordance with the requirements of ECL Article 27, Title 14, 6 NYCRR 375-1.6(a), 375-3.6, and 375-6, and all applicable laws, rules, regulations, and guidance documents. The Work Plans shall be captioned as follows:

1. “Remedial Investigation Work Plan” if the Work Plan provides for the investigation of the nature and extent of contamination within the boundaries of the Site and emanating from such Site;
2. “Remedial Work Plan” if the Work Plan provides for the development and implementation of a Remedial Program for contamination within the boundaries of the Site and contamination that has emanated from such Site;
3. “IRM Work Plan” if the Work Plan provides for an interim remedial measure; or
4. “Site Management Plan” if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy.

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted no later than thirty (30) Days after the effective date of this Agreement. Thereafter, the Applicant can submit such other and additional work plans as it deems appropriate.

2. Any proposed Work Plan shall be submitted for the Department’s review and approval and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. The Department shall use best efforts in accordance with 6 NYCRR 375-3.6(b) to approve, modify, or reject a proposed Work Plan

within forty-five (45) Days from its receipt or within fifteen (15) Days from the close of the comment period, if applicable, whichever is later.

i) Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Agreement and shall be implemented in accordance with the schedule contained therein.

ii) If the Department requires modification of a Work Plan, the reason for such modification shall be provided in writing and the provisions of 6 NYCRR 375-1.6(d)(3) shall apply.

iii) If the Department disapproves a Work Plan, the reason for such disapproval shall be provided in writing and the provisions of 6 NYCRR 375-1.6(d)(4) shall apply.

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

4. During all field activities conducted under a Department-approved Work Plan, Applicant shall have on-Site a representative who is qualified to supervise the activities undertaken in accordance with the provisions of 6 NYCRR 375-1.6(a)(3).

#### C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Report for an Investigation Work Plan prepared in accordance with ECL 27-1411(1) and 6 NYCRR 375-1.6. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track 1, Applicant shall submit an Alternatives Analysis prepared in accordance with ECL 27-1413 and 6 NYCRR 375-3.8(f) that supports such determination.

2. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Engineering Report certifying that remediation of the Site has been performed in accordance with the requirements of ECL 27-1419(1) and (2) and 6 NYCRR 375-1.6©). The Department shall review such Report, the submittals made pursuant to this Agreement, and any other relevant information regarding the Site and make a determination as to whether the goals of the remedial program have been or will be achieved in accordance with established timeframes; if so, a written Certificate of Completion will be issued in accordance with ECL 27-1419, 6 NYCRR 375-1.9 and 6 NYCRR 375-3.9.

3. Within sixty (60) Days of the Department's approval of a Final Report, Applicant shall submit such additional Work Plans as it proposes to implement. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicant, result in the

termination of this Agreement pursuant to Paragraph XIII.

D. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicant in writing of its approval or disapproval of each submittal other than a Work Plan. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reason for its disapproval and may request Applicant to modify or expand the submittal. Within fifteen (15) Days after receiving written notice that Applicant's submittal has been disapproved, Applicant shall elect in writing to either (i) modify or expand it within thirty (30) Days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIV; or (iv) terminate this Agreement pursuant to Paragraph XIII. If Applicant submits a revised submittal and it is disapproved, the Department and Applicant may pursue whatever remedies may be available under this Agreement or under law.

E. Department's Determination of Need for Remediation

The Department shall determine upon its approval of each Final Report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed for protection of public health and the environment.

1. If the Department makes a preliminary determination that remediation, or additional remediation, is not needed for protection of public health and the environment, the Department shall notify the public of such determination and seek public comment in accordance with ECL 27-1417(3)(f). The Department shall provide timely notification to the Applicant of its final determination following the close of the public comment period.

2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Applicant shall cause to be recorded an Environmental Easement in accordance with 6 NYCRR 375-1.8(h).

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL 27-1415(3) and 6 NYCRR 375-1.8(f). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL 27-1417(3)(f) and the Citizen Participation

Plan developed pursuant to this Agreement. If the Department determines following the close of the public comment period that modifications to the proposed Remedial Work Plan are needed, Applicant agrees to negotiate appropriate modifications to. If Applicant elects not to develop a Work Plan under this Subparagraph or if either party concludes that a mutually acceptable Work Plan under this Subparagraph cannot be negotiated, then this Agreement shall terminate in accordance with Subparagraph XIII.

F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Applicant shall submit a written certification in accordance with 6 NYCRR 375-1.8(h)(3) and 375-3.8(h)(2).

III. Enforcement

This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event as described at 6 NYCRR 375-1.5(b)(4) provided Applicant complies with the requirements set forth therein.

IV. Entry upon Site

A. Applicant hereby agrees to provide access to the Site and to all relevant information regarding activities at the Site in accordance with the provisions of ECL 27-1431.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Agreement.

V. Payment of State Costs

A. Within forty-five (45) Days after the effective date of this Agreement, Applicant shall pay to the Department the sum of \$ 00.00, which shall represent reimbursement for past State Costs incurred prior to the effective date of this Agreement. A cost summary is attached in Exhibit "B". Applicant acknowledges that all past State Costs are not itemized on the cost summary and that additional charges may be billed at a later date for State Costs incurred prior to the effective date of this Agreement.

B. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Applicant shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR 375-1.5 (b)(3)(i).

C. Personal service costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law

D. Invoices shall be sent to Applicant at the following address:

Michael Yount, NOCO Energy Corporation  
700 Grand Island Boulevard  
Tonawanda, New York 14150

E. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233-7012

F. Each party shall provide written notification to the other within ninety (90) Days of any change in the foregoing addresses.

G. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR 375-1.5 (b)(3)(v) and (vi) shall apply.

#### VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant shall be entitled to the Liability Limitation set forth at ECL 27-1421, subject to the terms and conditions stated therein and to the provisions of 6 NYCRR 375-1.9 and 375-3.9.

#### VII. Reservation of Rights

A. Except as provided in Subparagraph VII.B, Applicant reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Department, including any assertion of remedial liability by the Department against Applicant, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Applicant's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by

Applicant, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Notwithstanding the foregoing, Applicant hereby waives any right it may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site and releases the State and the New York Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that Applicant may have as a result of Applicant's entering into or fulfilling the terms of this Agreement.

#### VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. The Department shall provide Applicant with written notice no less than thirty (30) Days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

#### IX. Change of Use

Applicant shall notify the Department at least sixty (60) Days in advance of any change of use, as defined in ECL 27-1425, which is proposed for the Site, in accordance with the provisions of 6 NYCRR 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) Days of receipt of such notice.

#### X. Environmental Easement

A. Within thirty (30) Days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within thirty (30) Days after the Department's determination pursuant to Subparagraph II.E.2 that additional remediation is not needed based upon use restrictions, Applicant shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36 and 6 NYCRR 375-1.8(h)(2). Applicant shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) Days after the Department's approval of such instrument. Applicant shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy

within thirty (30) Days of such recording (or such longer period of time as may be required to obtain a certified copy provided Applicant advises the Department of the status of its efforts to obtain same within such thirty (30) Day period), which shall be deemed to be incorporated into this Agreement .

B. Applicant or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can certify that the Site is protective of human health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or other expert approved by the Department. The Department will not unreasonably withhold its consent.

XI. Progress Reports

Applicant shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph XII.A.1 by the 10<sup>th</sup> day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Applicant in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XII. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Applicant shall be sent to:

Martin Doster  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
270 Michigan Avenue  
Buffalo, New York 14203  
mldoster@gw.dec.state.ny.us

Note: three hard copies (one unbound) of work plans are required, as well as one electronic copy.

Gary Litwin  
Bureau of Environmental Exposure Investigation  
New York State Department of Health  
Flanigan Square  
547 River Street  
Troy, New York 12180-2216

Note: two copies of work plans are required, and

Maura C. Desmond  
Division of Environmental Enforcement  
New York State Department of Environmental Conservation  
270 Michigan Avenue  
Buffalo, New York 14203  
mcdesmon@gw.dec.state.ny.us

Correspondence only

2. Communication from the Department to Applicant shall be sent to:

Michael Yount, NOCO Energy Corporation  
700 Grand Island Boulevard  
Tonawanda, New York 14150

Craig Slater  
Harter, Secrest and Emery  
Twelve Fountain Plaza, Suite 400  
Buffalo, New York 14202

B. The Department and Applicant reserve the right to designate additional or different addressees for communication on written notice to the other.

C. Each party shall notify the other within ninety (90) Days after any change in the addresses listed in this Paragraph XII or in Paragraph V.

XIII. Termination of Agreement

Applicant or the Department may terminate this Agreement consistent with the provisions of 6 NYCRR 375-3.5(b), (c), and (d) by providing written notification to the

parties listed in Subparagraph XII.A.

XIV. Dispute Resolution

In the event disputes arise under this Agreement, Applicant may, within fifteen (15) Days after Applicant knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2).

XV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, VII.B, and VIII, shall be null and void *ab initio* fifteen (15) Days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) Days after issuance of a final decision resolving a dispute pursuant to Paragraph XIV, whichever is later, unless Applicant submits information within that fifteen (15) Day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void *ab initio*, and the Department shall reserve all rights that it may have under law.

B. By entering into this Agreement, Applicant agrees to comply with and be bound by the provisions of 6 NYCRR Subparts 375-1, 375-3 and 375-6; the provisions of such Subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Agreement to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Agreement.

C. The Department may exempt Applicant from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Agreement in accordance with 6 NYCRR 375-1.12(b), ©), and (d).

D. 1. Applicant shall use "best efforts" to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Applicant's obligations under this Agreement, including all Department-approved Work Plans and the schedules contained therein. If, despite Applicant's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Applicant shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Applicant in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Applicant to modify the Work Plan pursuant to 6 NYCRR 375-1.6(d)(3) to reflect changes necessitated by Applicant's inability to obtain such interest.

E. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Agreement.

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Applicant of Applicant's obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s). Applicant consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. i. Except as set forth herein, if Applicant desires that any provision of this Agreement be changed, Applicant shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XII.A.1.

ii. If Applicant seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph XII.A.1.

iii. Requests for a change to a time frame set forth in this Agreement shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Applicant promptly.

G. 1. If there are multiple parties signing this Agreement, the term "Applicant" shall be read in the plural, the obligations of each such party under this Agreement are joint and several, and the insolvency of or failure by any Applicant to implement any obligations under this Agreement shall not affect the obligations of the remaining Applicant(s) under this Agreement.

2. If Applicant is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Agreement are joint and

several and the insolvency or failure of any general partner to implement any obligations under this Agreement shall not affect the obligations of the remaining partner(s) under this Agreement.

3. Notwithstanding the foregoing Subparagraphs XV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

H. Applicant shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL 27-1421(6) and 6 NYCRR 375-1.5(b)(5).

I. Applicant shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

J. Applicant and Applicant's agents, grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Applicant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Applicant's responsibilities under this Agreement.

K. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

L. Applicant's obligations under this Agreement represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

M. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

N. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED: JUL -9 2007

ALEXANDER B. GRANNIS  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:



Dale A. Desnoyers, Director  
Division of Environmental Remediation

CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, waives Applicant's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

NOCO Energy Corp.

By: [Signature]

Title: Erie Compliance Manager

Date: 6/22/07

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

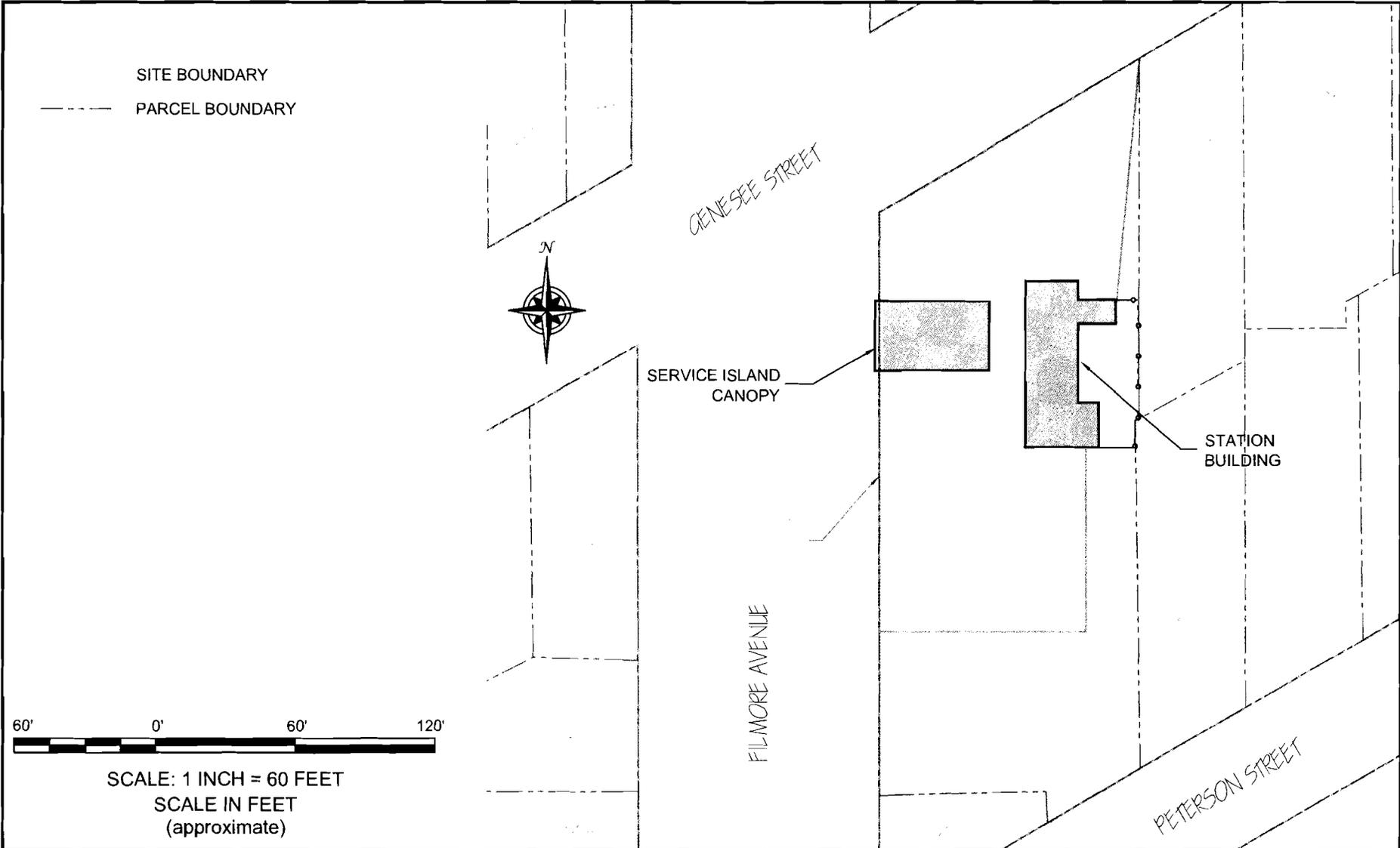
On the 22<sup>nd</sup> day of June, in the year 2007, before me, the undersigned, personally appeared Michael Young, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that 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]  
Signature and Office of individual  
taking acknowledgment

MARY ELLEN SEMLITSCH  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 5/15/2010

**EXHIBIT "A"**

**Map**



**BENCHMARK**  
ENVIRONMENTAL  
ENGINEERING &  
SCIENCE, PLLC

726 EXCHANGE STREET  
SUITE 024  
BUFFALO, NEW YORK 14210  
(716) 856-0599

PROJECT NO.: 0112-010-100

DATE: MARCH 2007

DRAFTED BY: BCH/NTM

**SITE PLAN**  
BROWNFIELD CLEANUP AGREEMENT

1055 GENESEE STREET SITE  
BUFFALO, NEW YORK

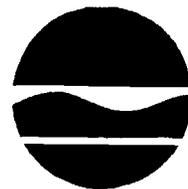
PREPARED FOR  
NOCO ENERGY CORPORATION

**FIGURE 1-2**

**EXHIBIT "B"**

**Cost Summary**

**New York State Department of Environmental Conservation**  
**Division of Environmental Remediation**  
Bureau of Program Management, Room 1224  
625 Broadway, Albany, New York 12233-7012  
Phone: (518) 402-9764 • FAX: (518) 402-9722  
Website: www.dec.state.ny.us



Alexander B. Grannis  
Commissioner

**MEMORANDUM**

**TO:** James Charles, Division of Environmental Enforcement, Region 9

**FROM:** Laura Zeppetelli, Bureau of Program Management, DER *LZ*

**SUBJECT:** **Past Costs Associated with Pending Brownfield Cleanup Agreement**  
**NOCO #S41, BCP #C915211, Related Spill ID #0275425**

**DATE:** **MAY 14 2007**

---

The purpose of this cost summary is to provide the past costs figure to the Division of Environmental Enforcement for insertion into the pending Brownfield Cleanup Program (BCP) Agreement. That is, whenever an applicant is a participant, Paragraph V. Payment of State Costs of the boilerplate agreement requires the applicant to pay past costs within 45 days of the effective date of the agreement.

On April 25, 2007, a letter was sent to NOCO Energy Corporation indicating that their BCP application was complete and an eligibility determination is expected to be made within 45 days of the date of the letter. This cost recovery summary provides available costs incurred by the Department of Environmental Conservation (the "Department") to date. There may be additional future costs associated with this site that are not included in this summary.

The total unreimbursed costs incurred by the Department through March 21, 2007, in association with the NOCO #S41 Site are \$0.00. This amount includes emergency response costs incurred at the site by a hazardous material spill, if any. Spill ID #0275425 is a petroleum spill, any costs incurred by the Oil Spill Fund would be recovered separately by the Office of the State Comptroller and are not included in this summary. Costs incurred by the Department of Health are not included since they are not readily available. Please note that there are no open contracts for this site at this time for which we have outstanding obligations.

Please contact S. Bolesky at (518) 402-9732, if you have any questions on this summary.

Attachments

c: D. Christian

bc: M. Doster, Region 9  
C. Staniszewski, Region 9  
S. Bolesky/file

# KEY TITLE DOCUMENT SUMMARY

Building ID #: 4449Index: 5CSTORE NAME: Dollar General Insert: \_\_\_\_\_CITY AND STATE: Buffalo, NYInitials: CFDOCUMENT TITLE (& LIST ANY AMENDMENTS): Environmental EasementDOCUMENT DATE: 12/4/2009RI SUCCEEDING TO: Grantor UNDER DOCUMENT (E.G. DECLARANT, OR LIST OTHER ENTITY PRECEDING RI)SUBJECT PROPERTY REFERRED TO AS (E.G. LOT 1, PARCEL A, ETC.): Controlled Property

DESCRIPTION OF COMMON AREAS/EASEMENT AREAS: YES / N/A SECTION: \_\_\_\_\_

PARKING REQUIREMENTS, RESTRICTIONS AND CROSS ACCESS RIGHTS: YES / N/A SECTION: \_\_\_\_\_

PERMITTED USES OR EXCLUSIVES: YES / N/A SECTION: \_\_\_\_\_

PROHIBITED USES: to be used as industrial or commercial . . . . .  YES / N/A SECTION: 2.A.

BUILDING/CONSTRUCTION/ALTERATION RESTRICTIONS: YES / N/A SECTION: \_\_\_\_\_

THIRD PARTY APPROVAL/NOTICE REQ'D?: YES / N/A SECTION: \_\_\_\_\_

SIGN RESTRICTIONS: YES / N/A SECTION: \_\_\_\_\_

MAINTENANCE - RESPONSIBLE PARTY / CAM MANAGER: YES / N/A SECTION: \_\_\_\_\_

CAM (% , AMOUNT , ETC.): YES / N/A SECTION: \_\_\_\_\_

INSURANCE REQ'D:	Y/N/A	SECTION: _____
"GOING DARK" RECAPTURES: (I.E. IN THE EVENT OF A CASUALTY OR OTHER CLOSURE)	YES/N/A	SECTION: _____
NOTICES: - Annual Certification Received . . . .	YES/N/A	SECTION: <u>6</u>
OTHER NOTES: Grantee - must provide the site management plan Section <u>2.B</u> . the Department has approved and any amendments to any person(s) acquiring an interest . . . .		
PREPARED BY: <u>U.P.</u>	DATE: <u>11/13/2013</u>	ATTORNEY APPRV'L: _____



*BIT  
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francine*

**ERIE COUNTY CLERKS OFFICE**  
**County Clerk's Recording Page**

Book: 11175 Page: 2301

Return To:

BOX 29

Page Count: 10

Doc Type: EASEMENT/RTWY <500

Rec Date: 12/18/2009

Rec Time: 02:44:35 PM

Control #: 2009254868

User ID: francine

Trans Num: 823189

DEED SEQ: TT2009009689

MTG SEQ:

UCC:

SCAR:

INDEX:

Party 1:

**NOCO EXPRESS PROPERTIES LLC**

Party 2:

**PEOPLE OF THE STATE OF NEW YORK (THE)**

Recording Fees:

RECORDING	\$70.00
COE CO \$1 RET	1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75
TP584	\$10.00

Consideration Amount:

	<b>\$1.00</b>
BASIC	\$0.00
SONYMA	\$0.00
ADDL	\$0.00
NFTA MT	\$0.00
TRANSFER	\$0.00
NFTA TT	\$0.00

**Total: \$100.00**

**STATE OF NEW YORK**  
**ERIE COUNTY CLERK'S OFFICE**

**WARNING - THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT,  
REQUIRED BY SECTIONS 310&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**

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

THIS INDENTURE made this 4<sup>th</sup> day of December, 2009, between Owner(s) NOCO Express Properties, LLC, having an office at 2440 Sheridan Drive, Tonawanda, New York 14150, (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 of ensuring the potential 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 1055 Genesee Street in the City of Buffalo, Erie County, State of New York, known and designated on the tax map of the County Clerk of Erie as tax map parcel numbers: Section 100.76 Block 5 Lot 1, being the same as that property conveyed to Grantor by Bargain and Sale Deed dated December 23, 2008 and recorded in the Erie County Clerk's Office in Book 11153 at page 7875 of deeds, comprising of approximately 0.726 ± acres, and hereinafter more fully described in the ALTA/ACSM Land Title Survey dated July 10, 2009, prepared by Millard, MacKay & Delles Land Surveyors, LLP and corresponding Schedule "A" property description, both documents are attached hereto and made a part hereof (the "Controlled Property"); and

**WHEREAS**, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this 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 covenants and mutual promises contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number B9-0741-07-04, Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

*F-254 1061*  
*CTY-0-90*  
*785-9-0*

*[FILING REQUESTED]*  
*Typ 1/25/10*  
*8 PT*

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 potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. **Institutional and Engineering Controls.** The following controls 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. The Controlled Property may be used for industrial or commercial use as described within 6 NYCRR Part 375- 1.8 (g) (2) (iii) and (iv), as long as the following long-term engineering controls are employed and the land use restrictions specified below are adhered to:

- (i) All Engineering Controls on the Controlled Property must be operated and maintained as specified in the Site Management Plan (SMP);
- (ii) All Engineering Controls on the Controlled Property must be inspected and certified at a frequency and in a manner defined in the SMP;
- (iii) Groundwater, soil vapor and other environmental or public health monitoring must be performed as defined in the SMP;
- (iv) Data and information pertinent to the Site Management for the Site must be reported at the frequency and in a manner defined in the SMP;
- (v) Site-wide Inspection and On-Site environmental monitoring devices, including but not limited to groundwater monitoring wells must be protected and replaced as necessary to ensure continued functioning in a manner specified in the Site Monitoring Plan;
- (vi) Use of groundwater underlying the Controlled Property is prohibited without treatment rendering it safe for the intended use. Approval by the New York State Department of Health must be obtained prior to such intended use;
- (vii) All future intrusive activities and soil/fill handling at the Site must be completed in a safe and environmentally responsible manner and conducted in accordance with the Excavation Work Plan;

B. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the Site Management Plan ("SMP") that the Department has approved for the Controlled Property and all Department-approved amendments to that SMP.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated December, 2009. 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 on the Controlled Property, 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. Upon notice of not less than thirty (30) days the Department in exercise of its discretion and consistent with applicable law may revise the SMP. The notice shall be a final agency determination. 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:

Provide to  
New owner  
"Plan"

Regional Remediation Engineer  
 NYSDEC - Region 9  
 Division of Environmental Remediation  
 270 Michigan Avenue  
 Buffalo, NY 14203-2999  
 Phone: (716) 851-7200 fax: (716) 851-7211

or Site Control Section  
 Division of Environmental Remediation  
 NYS DEC  
 625 Broadway  
 Albany, New York 12233

C. The Controlled Property may not be used for a higher level of use such as unrestricted residential or restricted residential use and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

D. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of 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 of Title 36 to Article 71 of the Environmental Conservation Law.**

E. 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.

F. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

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 Controlled 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 the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, 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 intentionally violates this Environmental Easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 56, Title 5 or ECL Article 27 Title 14 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. Grantor shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

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 its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental Easement.

6. Notice. Whenever notice to the State (other than the annual certification) or approval from the State 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 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: C 915211  
Department of Environmental Enforcement  
Office of General Counsel  
NYSDEC  
625 Broadway  
Albany New York 12233-5500

Such correspondence shall be delivered by hand, or 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. This Environmental Easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation 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 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.

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

Grantor's Name: NOCO Express Properties, LLC .

By: [Signature]  
Manager - Michael F. Newman

Title: MANAGER Date: 12/4/09

**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation**

By: [Signature]  
Alexander B. Grannis, Commissioner

By: [Signature]  
Dale A. Desnoyers, Director  
Division of Remediation

**Grantor's Acknowledgment**

STATE OF NEW YORK )  
COUNTY OF ERIE ) SS:

On the 4<sup>TH</sup> day of DECEMBER, in the year 2009, before me, the undersigned, personally appeared MICHAEL F. NEWMAN, 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.

Mary Ellen Semlitsch (Sheehan)  
Notary Public - State of New York

MARY ELLEN SEMLITSCH  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 5/15/2010

**Grantee's Acknowledgment**

STATE OF NEW YORK )  
COUNTY OF ALBANY ) ss:

On the 15<sup>th</sup> day of December, in the year 2009, before me, the undersigned, personally appeared Dale Desautels 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 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.

[Signature]  
Notary Public - State of New York

DAVID S. SAMPSON 02SA5013268  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN ORANGE/ALBANY COUNTY  
COMMISSION EXPIRES JULY 15, ~~20~~ 2011

**SCHEDULE "A" PROPERTY DESCRIPTION**

Address: 1055 Genesee Street, Buffalo, NY

Erie County

Tax Map: 100.76-5-1

**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.



**APPENDIX C**  
**EXCAVATION WORK PLAN (EWP)**  
**(from 2009 smp prepared by benchmark environmental)**

**C-1 NOTIFICATION**

At least 15 days prior to the start of any activity that is anticipated to encounter remaining contamination, the Site Owner or their representative will notify the NYSDEC. Table C-1 includes contact information for the above notification. The information on this table will be updated as necessary to provide accurate contact information. A full listing of site-related contact information is provided in Appendix A of this SMP.

Name	Contact Information
<u>NYSDEC Project Manager:</u> Megan Kuczka	(716) 851-7220 <u>Megan.Kuczka@dec.ny.gov</u>
<u>NYSDEC Regional Manager:</u> Andrea Caprio	(716) 851-7220 Andrea.Caprio@dec.ny.gov
NYSDEC Site Control: Kelly Lewandowski	(518) 402-9553 Kelly.Lewandowski@dec.

\* Note: Notifications are subject to change and will be updated as necessary.

This notification will include:

- A detailed description of the work to be performed, including the location and areal extent of excavation, plans/drawings for site re-grading, intrusive elements or utilities to be installed below the soil cover, estimated volumes of contaminated soil to be excavated and any work that may impact an engineering control;
- A summary of environmental conditions anticipated to be encountered in the work areas, including the nature and concentration levels of contaminants of

concern, potential presence of grossly contaminated media, and plans for any pre-construction sampling;

- A schedule for the work, detailing the start and completion of all intrusive work;
- A summary of the applicable components of this EWP;
- A statement that the work will be performed in compliance with this EWP and 29 CFR 1910.120;
- A copy of the contractor's health and safety plan (HASP), in electronic format;
- Identification of disposal facilities for potential waste streams; and
- Identification of sources of any anticipated backfill, along with all required chemical testing results.

## **C-2 SOIL SCREENING METHODS**

Visual, olfactory and instrument-based (e.g. photoionization detector) soil screening will be performed by a qualified environmental professional during all excavations into known or potentially contaminated material (remaining contamination). Soil screening will be performed when invasive work is done and will include all excavation and invasive work performed during development, such as excavations for foundations and utility work, after issuance of the COC.

Soils will be segregated based on previous environmental data and screening results into material that requires off-site disposal and material that requires testing to determine if the material can be reused on-site as soil beneath a cover or if the material can be used as cover soil. Further discussion of off-site disposal of materials and on-site reuse is provided in Section C-6 and C-7 of this Appendix.

### **C-3 SOIL STAGING METHODS**

Material that requires testing and/or off-Site disposal will be placed on and covered with polyethylene sheeting to prevent infiltration of precipitation and wind erosion. If off-site disposal of material is planned, the stockpiled impacted material will be characterized per the requirements of a permitted disposal facility. Stockpiled impacted material will not remain on-site for more than 90 days. Upon obtaining an approved waste profile , the impacted material will be transported and disposed of off-site.

If soil stockpiles are generated, piles will be continuously encircled with a berm and/or silt fence. Hay bales will be used as needed near catch basins, surface waters and other discharge points.

Stockpiles will be kept covered at all times with appropriately anchored tarps. Stockpiles will be routinely inspected and damaged tarp covers will be promptly replaced.

Stockpiles will be inspected at a minimum once each week and after every storm event. Results of inspections will be recorded in a logbook and maintained at the site and available for inspection by the NYSDEC.

### **C-4 MATERIALS EXCAVATION AND LOAD-OUT**

A qualified environmental professional or person under their supervision will oversee all invasive work and the excavation and load-out of all excavated material. The owner of the property and remedial party (if applicable) and its contractors are responsible for safe execution of all invasive and other work performed under this Plan.

The presence of utilities and easements on the site will be investigated by the qualified environmental professional. It will be determined whether a risk or impediment to the planned work under this SMP is posed by utilities or easements on the site.

Loaded vehicles leaving the site will be appropriately lined, tarped, securely covered, manifested, and placarded in accordance with appropriate Federal, State, local, and NYSDOT requirements (and all other applicable transportation requirements). A truck wash will be operated on-site, as appropriate. The qualified environmental professional will be responsible for ensuring that all outbound trucks will be washed at the truck wash before leaving the site until the activities performed under this section are complete. Truck wash waters will be collected and disposed of off-site in an appropriate manner. Locations where vehicles enter or exit the site shall be inspected daily for evidence of off-site soil tracking.

The qualified environmental professional will be responsible for ensuring that all egress points for truck and equipment transport from the site are clean of dirt and other materials derived from the site during intrusive excavation activities. Cleaning of the adjacent streets will be performed as needed to maintain a clean condition with respect to site-derived materials.

#### **C-5 MATERIALS TRANSPORT OFF-SITE**

All transport of materials will be performed by licensed haulers in accordance with appropriate local, State, and Federal regulations, including 6 NYCRR Part 364. Haulers will be appropriately licensed and trucks properly placarded. Material transported by trucks exiting the site will be secured with tight-fitting covers. Loose-fitting canvas-type truck covers will be prohibited. If loads contain wet material capable of producing free liquid, truck liners will be used.

All trucks will enter the Site from Genesee Street for loading of site materials, and will exit the Site onto Fillmore Avenue to leave for disposal. All trucks loaded with site materials will adhere to these approved truck routes. This is the most appropriate route and takes into account: (a) limiting transport through residential areas and past sensitive sites; (b) use of city mapped truck routes; (c) prohibiting off-site queuing of trucks entering the facility; (d) limiting total distance to major highways; (e) promoting safety in access to highways; and (f) overall safety in transport; [(g) community input [where necessary]].

Trucks will be prohibited from stopping and idling in the neighborhood outside the project site.

Egress points for truck and equipment transport from the site will be kept clean of dirt and other materials during site remediation and development.

Queuing of trucks will be performed on-site in order to minimize off-site disturbance. Off-site queuing will be prohibited.

## **C-6 MATERIALS DISPOSAL OFF-SITE**

All material excavated and removed from the site will be treated as contaminated and regulated material and will be transported and disposed in accordance with all local, State and Federal regulations. If disposal of material from this site is proposed for unregulated off-site disposal (i.e. clean soil removed for development purposes), a formal request with an associated plan will be made to the NYSDEC. Unregulated off-site management of materials from this site will not occur without formal NYSDEC approval.

Off-site disposal locations for excavated soils will be identified in the pre-excavation notification. This will include estimated quantities and a breakdown by class of disposal facility if appropriate, i.e. hazardous waste disposal facility, solid waste landfill, petroleum treatment facility, C&D debris recovery facility, etc. Actual disposal quantities and associated documentation will be reported to the NYSDEC in the Periodic Review Report. This documentation will include: waste profiles, test results, facility acceptance letters, manifests, bills of lading and facility receipts.

Non-hazardous historic fill and contaminated soils taken off-site will be handled consistent with 6NYCRR Parts 360, 361, 362, 363, 364 and 365. Material that does not meet Unrestricted SCOs is prohibited from being taken to a New York State C&D debris recovery facility (6NYCRR Subpart 361-5 registered or permitted facility).

## **C-7 MATERIALS REUSE ON-SITE**

The qualified environmental professional will ensure that procedures defined for materials reuse in this SMP are followed and that unacceptable material does not remain on-site. Contaminated on-site material, including historic fill and contaminated soil, that is acceptable for reuse on-site will be placed below the demarcation layer or impervious surface, and will not be reused within a cover soil layer, within landscaping berms, or as backfill for subsurface utility lines.

Proposed materials for reuse on-site must be sampled for full suite analytical parameters including per- and polyfluoroalkyl substances (PFAS) and 1,4-dioxane. The sampling frequency will be in accordance with DER-10 Table 5.4(e)10 unless prior approval is obtained from the NYSDEC project manager for modification of the sampling frequency. The analytical results of soil/fill material testing must meet the site use criteria presented in NYSDEC DER-10 Appendix 5 – Allowable Constituent Levels for Imported Fill or Soil for all constituents listed, and the NYSDEC Sampling, Analysis, and Assessment of Per- and Polyfluoroalkyl Substances [October 2020 or date of current version, whichever is later] guidance values. Approvals for modifications to the analytical parameters must be obtained from the NYSDEC project manager prior to the sampling event.

Soil/fill material for reuse on-site will be segregated and staged as described in Sections C-2 and C-3 of this EWP. The anticipated size and location of stockpiles will be provided in the 15-day notification to the NYSDEC project manager. Stockpile locations will be based on the location of site excavation activities and proximity to nearby site features. Material reuse on-site will comply with requirements of NYSDEC DER-10 Section 5.4(e)4. Any modifications to the requirements of DER-10 Section 5.4(e)4 must be approved by the NYSDEC project manager.

Any demolition material proposed for reuse on-site will be sampled for asbestos and the results will be reported to the NYSDEC for acceptance. Concrete crushing or processing on-site will not be performed without prior NYSDEC approval. Organic matter (wood, roots, stumps, etc.) or other solid waste derived from clearing and grubbing of the site will not be reused on-site.

## **C-8 FLUIDS MANAGEMENT**

All liquids to be removed from the site, including but not limited to, excavation dewatering, decontamination waters and groundwater monitoring well purge and development waters, will be handled, transported and disposed in accordance with applicable local, State, and Federal regulations. Dewatering, purge and development fluids will not be recharged back to the land surface or subsurface of the site, and will be managed off-site, unless prior approval is obtained from NYSDEC.

Discharge of water generated during large-scale construction activities to surface waters (i.e. a local pond, stream or river) will be performed under a SPDES permit.

## **C-10 BACKFILL FROM OFF-SITE SOURCES**

All materials proposed for import onto the site will be approved by the qualified environmental professional and will be in compliance with provisions in this SMP prior to receipt at the site. A Request to Import/Reuse Fill or Soil form, which can be found at <http://www.dec.ny.gov/regulations/67386.html>, will be prepared and submitted to the NYSDEC project manager allowing a minimum of 5 business days for review.

Material from industrial sites, spill sites, or other environmental remediation sites or potentially contaminated sites will not be imported to the site.

All imported soils will meet the backfill and cover soil quality standards established in 6 NYCRR 375-6.7(d) and DER-10 Appendix 5 for [insert site use (ex. commercial use)]. Based on an evaluation of the land use, protection of groundwater and protection of ecological resources criteria, the resulting soil quality standards are listed in Table 2. Soils that meet 'general' fill requirements under 6 NYCRR Part 360.13, but do not meet backfill or cover soil objectives for this site, will not be imported onto the site without prior approval by NYSDEC project manager. Soil material will be sampled for the full suite of analytical parameters, including PFAS and 1, 4-dioxane. Solid waste will not be imported onto the site.

Trucks entering the site with imported soils will be securely covered with tight fitting covers. Imported soils will be stockpiled separately from excavated materials and covered to prevent dust releases.

## **C-11 STORMWATER POLLUTION PREVENTION**

A stormwater pollution prevention plan (SWPPP) will be prepared prior to excavation work on-site if over one acre of soil is disturbed. Barriers and hay bale checks will be installed and inspected once a week and after every storm event. Results of inspections will be recorded in a logbook and maintained at the site and available for inspection by the NYSDEC. All necessary repairs shall be made immediately.

Accumulated sediments will be removed as required to keep the barrier and hay bale check functional.

All undercutting or erosion of the silt fence toe anchor shall be repaired immediately with appropriate backfill materials. Manufacturer's recommendations will be followed for replacing silt fencing damaged due to weathering.

Erosion and sediment control measures identified in the SMP shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters.

Silt fencing or hay bales will be installed around the entire perimeter of the construction area.

## **C-12 EXCAVATION CONTINGENCY PLAN**

If underground tanks or other previously unidentified contaminant sources are found during post-remedial subsurface excavations or development related construction, excavation activities will be suspended until sufficient equipment is mobilized to address the condition.

Sampling will be performed on product, sediment and surrounding soils, etc. as necessary to determine the nature of the material and proper disposal method. Chemical analysis will be performed for a full list of analytes [TAL metals, TCL volatiles and semi-volatiles (including 1,4-dioxane), TCL pesticides and PCBs, and PFAS], unless the site history and previous sampling results provide sufficient justification to limit the list of analytes. In this case, a reduced list of analytes will be proposed to the NYSDEC project manager for approval prior to sampling. Any tanks will be closed as per NYSDEC regulations and guidance.

Identification of unknown or unexpected contaminated media identified by screening during invasive site work will be promptly communicated by phone to NYSDEC's Project Manager. Reportable quantities of petroleum product will also be reported to the NYSDEC spills hotline. These findings will be also included in the Periodic Review Report.

### **C-13 COMMUNITY AIR MONITORING PLAN**

The New York State Department of Health's Generic Community Air Monitoring Plan requires monitoring for volatile organic compounds and particulates. The location of air sampling stations will be positioned at the Site, based on the nature of the work and the prevailing wind conditions. At least two, and preferably three, air sampling stations will be used. These locations will be adjusted on a daily or more frequent basis based on actual wind directions to provide an upwind and at least two downwind monitoring stations. Exceedances of action levels listed in the CAMP will be reported to NYSDEC and NYSDOH Project Managers.

#### **Organic Vapor Community Air Monitoring:**

Community air monitoring for organic vapors will be performed at the downwind perimeter of the exclusion zone on a continuous basis during intrusive activities performed outdoors that may be reasonably expected to potentially release organic vapors, or when sustained readings are detected in the work zone (i.e., proximate to the source of the intrusive activity). Otherwise, the monitoring will be performed on an hourly basis. A photoionization detector or other equipment will be suitable to the types of contaminants known or suspected to be present will be used, and will be capable of calculating 15-minute running average concentrations. All air monitoring equipment will be calibrated at least daily and an upwind concentration will be taken at least daily to establish background conditions. The 15-minute average concentrations will be compared to the levels specified below.

- If the 15-minute ambient air concentration of organic vapors at the downwind perimeter of the exclusion zone exceeds 5 ppm above background, work activities

will be halted and monitoring continued. If the organic vapor decreases (per instantaneous readings) below 5 ppm over background, work activities can resume with continued monitoring.

- If the ambient air concentration of organic vapors at the downwind perimeter of the exclusion zone persists at levels above 5 ppm over background but less than 25 ppm, activities must be halted, the source of vapors identified, corrective actions to abate the emissions taken, and monitoring continued. After these steps, work activities can resume provided that: the organic vapor level 200 feet downwind of the exclusion zone or half the distance to the nearest off-site potential receptor or residential or commercial structure, whichever is less - but in no case less than 20 feet - is below 5 ppm over background for the 15-minute average.
- If the organic vapor level is above 25 ppm at the perimeter of the exclusion zone, work activities must be shut down and the following activities will be performed:
  - All Emergency Response Contacts as listed in the HASP and the Emergency Response Plan (to be attached to the HASP) will be advised.
  - The local police authorities will immediately be contacted by the Site Health and Safety Officer and advised of the situation.
  - Air monitoring will be continued at 1/2 the distance from the exclusion zone to the nearest receptor.

All readings will be recorded and will be available for NYSDEC and NYSDOH personnel to review.

**Explosive Vapor Community Air Monitoring:**

Explosive vapor community air monitoring will be performed at the downwind perimeter of the site on a continuous basis whenever sustained atmospheric concentrations of greater than 10% of the LEL are recorded in the exclusion zone. If sustained atmospheric concentrations of greater than 10% LEL are recorded at the downwind site perimeter, the

local Fire Department will be contacted (see Section 2.5.1 of the SMP for phone number).

### **Airborne Particulate Community Air Monitoring:**

Respirable (PM-10) particulate monitoring will be performed on a continuous basis at the upwind and downwind perimeter of the exclusion zone. The monitoring will be performed using real-time monitoring equipment capable of measuring PM-10 and integrating over a period of 15-minutes for comparison to the airborne particulate action levels. The equipment will be equipped with an audible alarm to indicate exceedance of the action level. In addition, fugitive dust migration will be visually assessed during all work activities. All readings will be recorded and will be available for NYSDEC and NYSDOH review. Readings will be interpreted as follows:

- If the downwind PM-10 particulate level is 100 micrograms per cubic meter (ug/m<sup>3</sup>) greater than the background (upwind perimeter) reading for the 15-minute period or if airborne dust is observed leaving the work area, then dust suppression techniques must be employed. Work may continue with dust suppression provided that the downwind PM-10 particulate levels do not exceed 150 ug/m<sup>3</sup> above the upwind level and that visible dust is not migrating from the work area.

If, after implementation of dust suppression techniques downwind PM-10 levels are greater than 150 ug/m<sup>3</sup> above the upwind level, work activities must be stopped and dust suppression controls re-evaluated. Work can resume provided that supplemental dust suppression measures and/or other controls are successful in reducing the downwind PM-10 particulate concentration to within 150 ug/m<sup>3</sup> of the upwind level and in preventing visible dust migration.

### **C-14 ODOR CONTROL PLAN**

As presented in the 2009 SMP:

“This odor control plan is capable of controlling emissions of nuisance odors off-site and on-site. Specific odor control methods to be used on a routine basis are described below. If

nuisance odors are identified at the site boundary, or if odor complaints are received, work will be halted and the source of odors will be identified and corrected. Work will not resume until all nuisance odors have been abated. NYSDEC and NYSDOH will be notified of all odor events and of any other complaints about the project. Implementation of all odor controls, including the halt of work, is the responsibility of the property owner's Remediation Engineer, and any measures that are implemented will be discussed in the Periodic Review Report.

All necessary means will be employed to prevent on- and off-site nuisances. At a minimum, these measures will include: (a) limiting the area of open excavations and size of soil stockpiles; (b) shrouding open excavations with tarps and other covers; and (c) using foams to cover exposed odorous soils. If odors develop and cannot be otherwise controlled, additional means to eliminate odor nuisances will include: (d) direct load-out of soils to trucks for off-site disposal; (e) use of chemical odorants in spray or misting systems; and, (f) use of staff to monitor odors in surrounding neighborhoods.

If nuisance odors develop during intrusive work that cannot be corrected, or where the control of nuisance odors cannot otherwise be achieved due to on-site conditions or close proximity to sensitive receptors, odor control will be achieved by sheltering the excavation and handling areas in a temporary containment structure equipped with appropriate air venting/filtering systems.”

#### **C-15 DUST CONTROL PLAN**

A dust suppression plan that addresses dust management during invasive on-site work will include, at a minimum, the items listed below:

- Dust suppression will be achieved through the use of a dedicated on-site water truck for road wetting. The truck will be equipped with a water cannon capable of spraying water directly onto off-road areas including excavations and stockpiles.
- Clearing and grubbing of larger sites will be done in stages to limit the area of exposed, unvegetated soils vulnerable to dust production.

- Gravel will be used on roadways to provide a clean and dust-free road surface.
- On-site roads will be limited in total area to minimize the area required for water truck sprinkling.

## **C-16 OTHER NUISANCES**

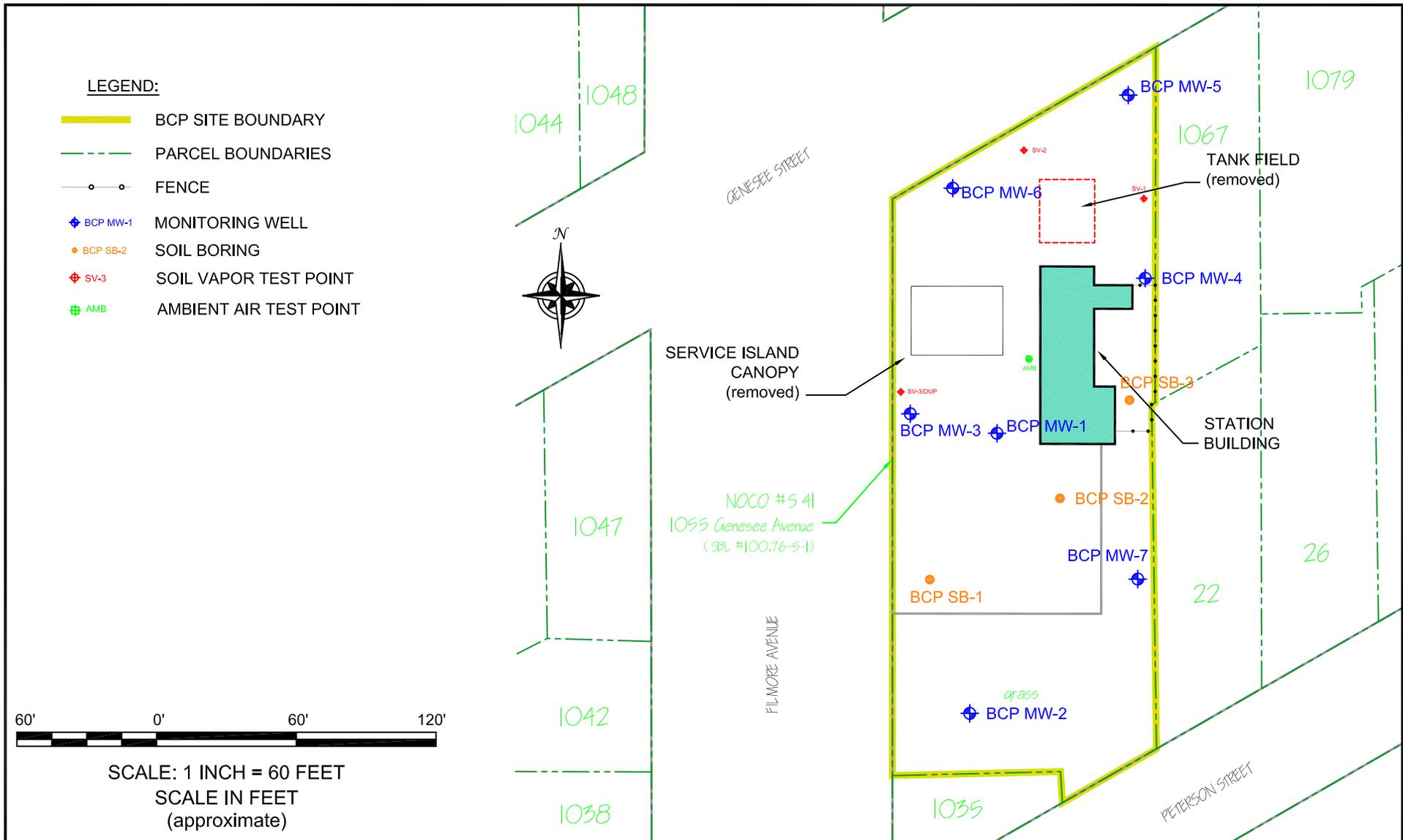
A plan for rodent control will be developed and utilized by the contractor prior to and during site clearing and site grubbing, and during all future remedial work (if any).

A plan will be developed and utilized by the contractor for all remedial work to ensure compliance with local noise control ordinances.

## **C-17 REPORTING**

A report is to be submitted to the NYSDEC within 90 days of completion of the activities performed under this EWP. This report shall contain a summary of the activities performed; a summary of all data gathered and results; information about any media that was removed from the site: volume, contamination levels, area from which removed; and any other information that may indicate a change to the “remaining contamination” that is at the site. Such changes may require revision of the SMP.

**APPENDIX D**  
**SUMMARY ANALYTICAL RESULTS OF**  
**REMEDIAL INVESTIGATION ACTIVITES**



**BENCHMARK**  
ENVIRONMENTAL  
ENGINEERING &  
SCIENCE, PLLC

2558 HAMBURG TURNPIKE  
SUITE 300  
BUFFALO, NY 14218  
(716) 856-0599

PROJECT NO.: 0112-010-300

DATE: JULY 2009

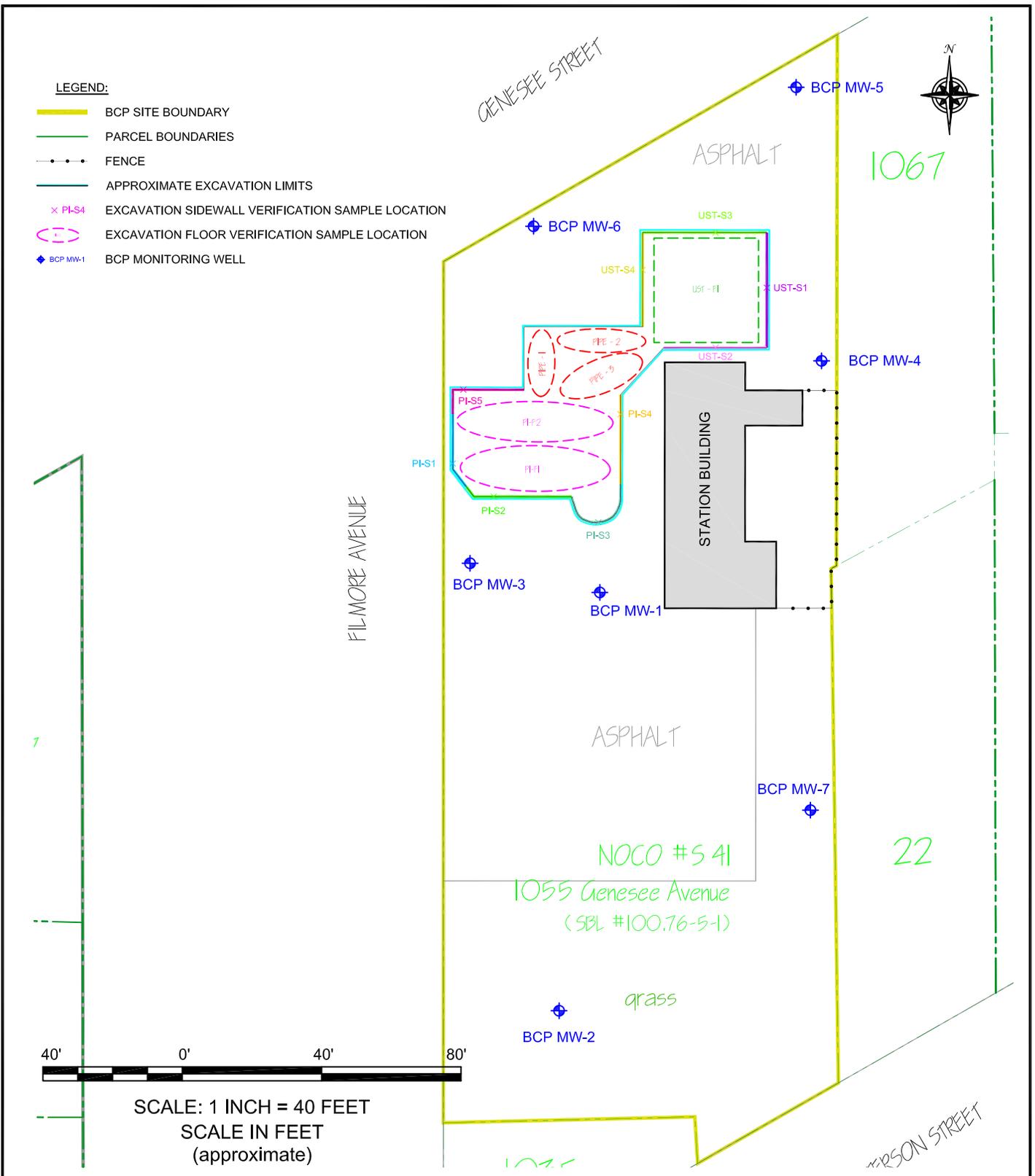
DRAFTED BY: BCH/NTM

**REMEDIAL INVESTIGATION SAMPLE LOCATIONS**  
SITE MANAGEMENT PLAN

NOCO #S 41 SITE  
BCP SITE No. C915211  
BUFFALO, NEW YORK  
PREPARED FOR  
NOCO ENERGY CORPORATION

**FIGURE 4**

**FIGURE 5**



2558 HAMBURG TURNPIKE  
SUITE 300  
BUFFALO, NY 14218  
(716) 856-0599

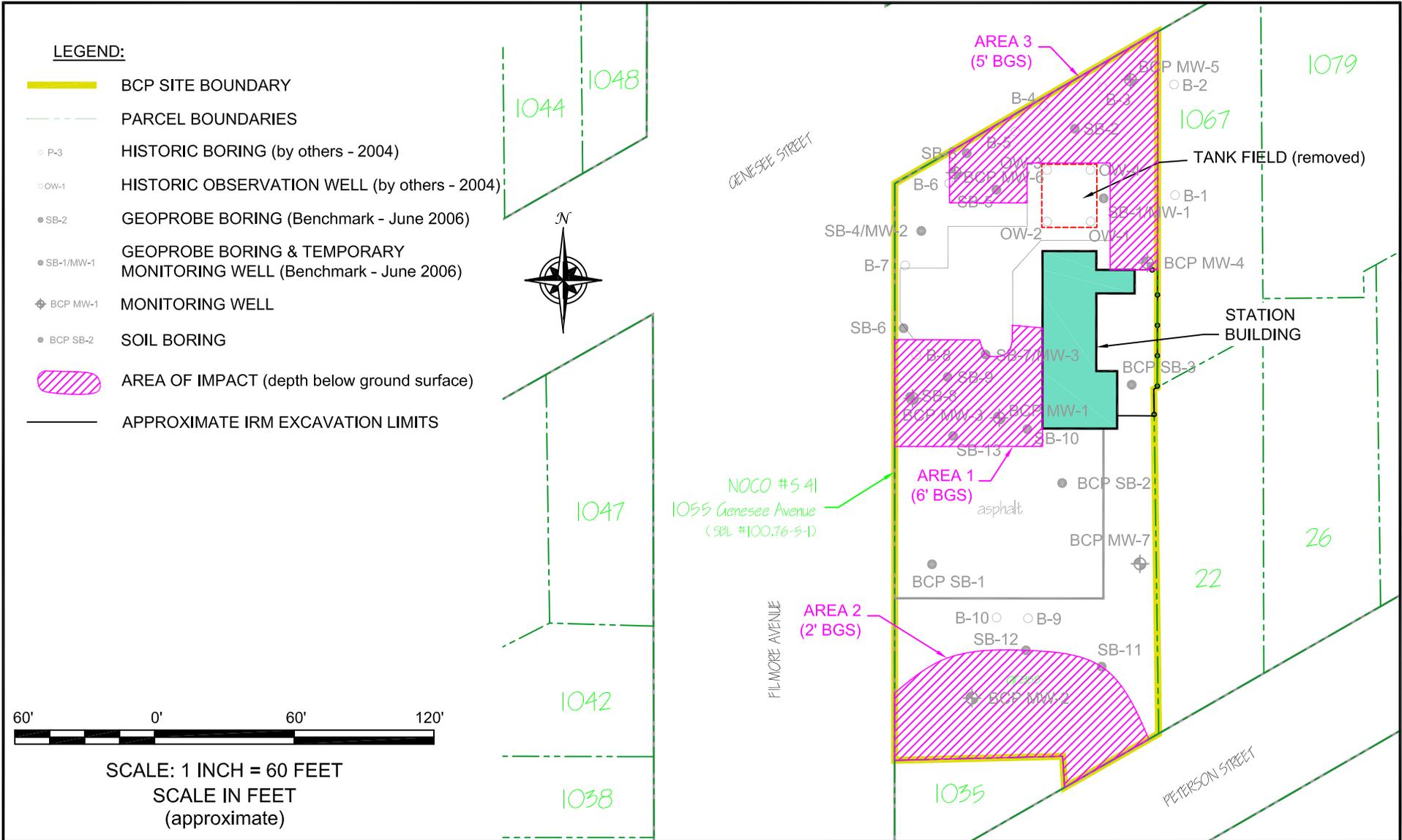
**SUMMARY OF REMEDIAL MEASURES**  
SITE MANAGEMENT PLAN

NOCO #S 41  
BCP SITE No. C915211  
BUFFALO, NEW YORK  
PREPARED FOR  
NOCO ENERGY CORP.

PROJECT NO.: 0112-010-300

DATE: SEPTEMBER 2009

DRAFTED BY: NTM



**BENCHMARK**  
ENVIRONMENTAL  
ENGINEERING &  
SCIENCE, PLLC

2558 HAMBURG TURNPIKE  
SUITE 300  
BUFFALO, NEW YORK 14218  
(716) 856-0599

PROJECT NO.: 0112-010-300

DATE: SEPTEMBER 2009

DRAFTED BY: AJZ

**APPROXIMATE AREAS WITH CONSTITUENTS ABOVE UNRESTRICTED USE SCOs**

SITE MANAGEMENT PLAN

NOCO #S 41 SITE  
BCP SITE No. C915211  
BUFFALO, NEW YORK  
PREPARED FOR  
NOCO ENERGY CORP.

**FIGURE 6**

**TABLE 2  
SOIL BORING ANALYTICAL DATA SUMMARY  
COMPARISON TO NYSDEC PART 375 SOIL CLEANUP OBJECTIVES**

**SITE MANAGEMENT PLAN  
NOCO SITE #S-41  
1055 GENESEE STREET  
BUFFALO, NEW YORK**

Parameter <sup>1</sup>	Boring Locations							Commercial SCOs <sup>4</sup> (ppm)	Unrestricted SCOs <sup>4</sup> (ppm)
	BCP MW-1 (0-5')	BCP MW-2 (0-2')	BCP MW-3 (0-4')	BCP MW-4 (0-4')	BCP MW-5 (0-4')	BCP MW-6 <sup>2</sup> (0-4')	DUP <sup>3</sup> (0-4')		
<b>8260B Full List Volatile Organic Compounds (VOCs) - mg/kg <sup>5</sup></b>									
Acetone	0.007 J	ND	0.008 J	ND	0.009 J	ND	ND	500	0.05
n-Butylbenzene	ND	ND	ND	ND	0.001 J	ND	ND	500	12
Ethylbenzene	0.002 J	ND	ND	ND	ND	ND	ND	390	1
Methylene chloride	0.01	0.009	0.008	0.012	0.01	ND	ND	500	0.05
Toluene	0.003 J	ND	ND	ND	ND	ND	ND	500	0.7
1,2,4-Trimethylbenzene	0.007	ND	ND	ND	0.004 J	ND	ND	190	3.6
1,3,5-Trimethylbenzene	0.002 J	ND	ND	ND	0.001 J	ND	ND	190	8.4
Total Xylene	0.013 J	ND	ND	ND	ND	ND	ND	500	0.26
<b>Total VOCs</b>	<b>0.044</b>	<b>0.009</b>	<b>0.016</b>	<b>0.012</b>	<b>0.025</b>	<b>0</b>	<b>0</b>	<b>--</b>	<b>--</b>
<b>TCL Semi-Volatile Organic Compounds (SVOCs) - mg/kg <sup>5</sup> (Base/Neutral Compounds)</b>									
Acenaphthene	ND	ND	NA	0.88 J	NA	NA	NA	500	20
Acenaphthylene	ND	ND	NA	0.28 J	NA	NA	NA	500	100
Anthracene	ND	0.1 J	NA	2.7 J	NA	NA	NA	500	100
Benzo(a)anthracene	1.8 J	0.52 J	NA	8.2	NA	NA	NA	5.6	1
Benzo(b)fluoranthene	ND	0.58 J	NA	8.9	NA	NA	NA	5.6	1
Benzo(k)fluoranthene	ND	0.23 J	NA	3.5 J	NA	NA	NA	56	0.8
Benzo(g,h,i)perylene	ND	0.38 J	NA	5.4	NA	NA	NA	500	100
Benzo(a)pyrene	ND	0.48 J	NA	7.2	NA	NA	NA	1	1
Carbazole	ND	0.05 J	NA	1.2 J	NA	NA	NA	--	--
Chrysene	ND	0.53 J	NA	7.9	NA	NA	NA	56	1
Dibenzo(a,h)anthracene	ND	0.1 J	NA	1.5 J	NA	NA	NA	0.56	0.33
Dibenzofuran	ND	ND	NA	0.73 J	NA	NA	NA	--	--
Fluoranthene	3.5 J	1.1	NA	20	NA	NA	NA	500	100
Fluorene	ND	ND	NA	1.4 J	NA	NA	NA	500	30
Indeno(1,2,3-cd)pyrene	ND	0.32 J	NA	5	NA	NA	NA	5.6	0.5
2-Methylnaphthalene	ND	ND	NA	ND	NA	NA	NA	--	--
Naphthalene	ND	ND	NA	ND	NA	NA	NA	500	12
Phenanthrene	2.1 J	0.74 J	NA	14	NA	NA	NA	500	100
Pyrene	2.4 J	0.9 J	NA	14	NA	NA	NA	500	100
<b>Total SVOCs</b>	<b>9.8</b>	<b>6.0</b>	<b>0</b>	<b>103</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>--</b>	<b>--</b>
<b>PCBs/Pesticides- mg/kg <sup>5</sup></b>									
4,4'-DDD	0.14 J	ND	NA	ND	NA	NA	NA	92	0.0033
4,4'-DDE	0.1 J	ND	NA	ND	NA	NA	NA	62	0.0033
4,4'-DDT	0.17 J	ND	NA	0.11 J	NA	NA	NA	47	0.0033
Aroclor 1260	0.036 J	ND J	NA	ND J	NA	NA	NA	--	0.1

**TABLE 2  
SOIL BORING ANALYTICAL DATA SUMMARY  
COMPARISON TO NYSDEC PART 375 SOIL CLEANUP OBJECTIVES**

**SITE MANAGEMENT PLAN  
NOCO SITE #S-41  
1055 GENESEE STREET  
BUFFALO, NEW YORK**

Parameter <sup>1</sup>	Boring Locations							Commercial SCOs <sup>4</sup> (ppm)	Unrestricted SCOs <sup>4</sup> (ppm)
	BCP MW-1 (0-5')	BCP MW-2 (0-2')	BCP MW-3 (0-4')	BCP MW-4 (0-4')	BCP MW-5 (0-4')	BCP MW-6 <sup>2</sup> (0-4')	DUP <sup>3</sup> (0-4')		
<b>TAL Metals - mg/kg</b>									
Aluminum	4680	10300	NA	4670	NA	NA	NA	--	--
Arsenic	3.8	6.5	NA	5.5	NA	NA	NA	<b>16</b>	<b>13</b>
Barium	70.4 N J	112 N J	NA	105 N J	NA	NA	NA	<b>400</b>	<b>350</b>
Beryllium	0.75	0.52	NA	0.27	NA	NA	NA	<b>590</b>	<b>7.2</b>
Cadmium	ND	ND	NA	0.87	NA	NA	NA	<b>9.3</b>	<b>2.5</b>
Calcium	192000 *	43600 E	NA	13800 E	NA	NA	NA	--	--
Chromium, trivalent	5.1	14.8	NA	10.4	NA	NA	NA	<b>1500</b>	<b>30</b>
Cobalt	1.8	7.3	NA	4.5	NA	NA	NA	--	--
Copper	8.7	36.2	NA	31.7	NA	NA	NA	<b>270</b>	<b>50</b>
Iron	5410 N*J	16600 N*J	NA	10600 N*J	NA	NA	NA	--	--
Lead	37.2 N J	<b>129 N J</b>	<b>66 N</b>	<b>337 N J</b>	<b>493 N</b>	<b>130</b>	<b>71.1</b>	<b>1000</b>	<b>63</b>
Magnesium	6860 N* J	16400 N* J	NA	4310 N* J	NA	NA	NA	--	--
Manganese	383 *	395 *	NA	190 *	NA	NA	NA	<b>10000</b>	<b>1600</b>
Mercury	ND	<b>0.231</b>	NA	<b>1.2</b>	NA	NA	NA	<b>2.8</b>	<b>0.18</b>
Nickel	6.5 E J	16.3 E J	NA	11.7 E J	NA	NA	NA	<b>310</b>	<b>30</b>
Potassium	696	2020	NA	790	NA	NA	NA	--	--
Sodium	596	179	NA	ND	NA	NA	NA	--	--
Vanadium	8.3	21.5	NA	10.8	NA	NA	NA	--	--
Zinc	23.8	<b>122</b>	NA	<b>351</b>	NA	NA	NA	<b>10000</b>	<b>109</b>

**Notes:**

1. Only those parameters detected at a minimum of one sample location are presented in this table; all other compounds were reported as non-detect.
2. BCP MW-6 was mislabeled on the chain-of-custody as BCP MW-8.
3. Blind duplicate collected from BCP MW-6.
4. Values per NYSDEC Part 375 Soil Cleanup Objectives (December 2006)
5. Sample results were reported by the laboratory in ug/kg and converted to mg/kg for comparison to SCOs.

**Definitions:**

- ND = Parameter not detected above laboratory detection limit.  
 NA = Sample not analyzed for parameter.  
 "--" = No SCO available.  
 B = Indicates a value greater than or equal to the instrument detection limit, but less than the quantitation limit.  
 \* = Indicates the spike or duplicate analysis is not within the quality control limits.  
 N = Indicates spike sample recovery is not within the quality control limits.  
 E = Indicates value estimated or not reported due to the presence of interferences.  
 J = Estimated value; result is less than the sample quantitation limit but greater than zero.

**BOLD** = Result exceeds Part 375 restricted-commercial SCO.

**BOLD** = Result exceeds Part 375 unrestricted SCO.

**TABLE 3  
GROUNDWATER ANALYTICAL DATA SUMMARY**

**SITE MANAGEMENT PLAN  
NOCO SITE #S-41  
1055 GENESEE STREET  
BUFFALO, NEW YORK**

Parameter <sup>1</sup>	Well Locations														Class GA GWQS <sup>2</sup>
	BCP MW-1		BCP MW-2		BCP MW-3		BCP MW-4		BCP MW-5		BCP MW-6		BCP MW-7		
	2/29/08	6/17/09	2/29/08	6/17/09	2/29/08	6/17/09	2/29/08	6/17/09	2/29/08	6/17/09	2/29/08	6/17/09	8/12/08	6/17/09	
<b>Volatile Organic Compounds (VOCs) - ug/L</b>															
Acetone	ND	ND	ND	ND	4 J	ND	ND	ND	ND	ND	ND	ND	ND	14	<b>50</b>
Benzene	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	<b>18 NJ</b>	ND	ND	<b>1.2</b>	1
2-Butanone (MEK)	ND	ND	ND	ND	6	ND	ND	ND	ND	ND	ND	ND	ND	ND	<b>50</b>
Carbon disulfide	5	ND	ND	ND	5	ND	ND	ND	ND	ND	ND	ND	ND	ND	--
Cyclohexane	ND	ND	ND	ND	0.8 J	ND	ND	ND	ND	ND	ND	ND	ND	0.61 J	--
Ethylbenzene	ND	ND	ND	ND	<b>25</b>	ND	<b>26</b>	ND	ND	ND	ND	ND	ND	ND	<b>5</b>
Isopropylbenzene (Cumene)	ND	ND	ND	ND	<b>8</b>	3.8	<b>9</b>	ND	ND	ND	ND	ND	ND	ND	<b>5</b>
Methylcyclohexane	ND	ND	ND	ND	3	ND	ND	ND	ND	ND	ND	ND	ND	ND	--
Methyl tert butyl ether (MTBE)	1	<b>13</b>	ND	ND	<b>11</b>	<b>130 D</b>	ND	<b>18</b>	6 J	3.2	<b>370</b>	<b>210</b>	ND	2.3	<b>10</b>
Toluene	ND	ND	ND	ND	<b>8</b>	ND	<b>14</b>	ND	ND	ND	<b>49</b>	ND	ND	ND	<b>5</b>
m/p-Xylenes	ND	ND	ND	ND	<b>69</b>	ND	<b>56</b>	ND	ND	ND	ND	ND	ND	ND	<b>5</b>
o-Xylenes	ND	ND	ND	ND	<b>35</b>	ND	<b>100</b>	ND	ND	ND	ND	ND	ND	ND	<b>5</b>
n-Butylbenzene	ND	ND	ND	ND	0	2.4	ND	ND	ND	ND	ND	ND	ND	ND	<b>5</b>
n-Propylbenzene	ND	ND	ND	ND	<b>14</b>	<b>5.3</b>	<b>10</b>	ND	ND	ND	ND	ND	ND	ND	<b>5</b>
p-Cymene (p-isopropyltoluene)	ND	ND	ND	ND	5	1.8	ND	ND	ND	ND	ND	ND	ND	ND	<b>5</b>
1,2,4-Trimethylbenzene	ND	ND	ND	ND	<b>120 D</b>	ND	<b>36</b>	ND	ND	ND	ND	ND	ND	ND	<b>5</b>
1,3,5-Trimethylbenzene	ND	ND	ND	ND	<b>42</b>	1.4	<b>40</b>	ND	ND	ND	ND	ND	ND	ND	<b>5</b>
sec-Butylbenzene	ND	ND	ND	ND	5	2.4	ND	ND	ND	ND	ND	ND	ND	ND	<b>5</b>
<b>Total TCL plus STARS VOCs</b>	<b>6</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>361</b>	<b>147</b>	<b>291</b>	<b>18</b>	<b>6</b>	<b>3.2</b>	<b>437</b>	<b>210</b>	<b>0</b>	<b>18.1</b>	
<b>Semi-Volatile Organic Compounds (SVOCs) - ug/L</b>															
Acenaphthene	ND	NA	NA	NA	NA	NA	1 J	NA	NA	NA	ND	NA	NA	NA	<b>20</b>
1,1'-Biphenyl	0.3 J	NA	NA	NA	NA	NA	4 J	NA	NA	NA	0.2 J	NA	NA	NA	<b>5</b>
Carbazole	0.2 J	NA	NA	NA	NA	NA	0.6 J	NA	NA	NA	ND	NA	NA	NA	--
Dibenzofuran	0.5 J	NA	NA	NA	NA	NA	0.8 J	NA	NA	NA	0.3 J	NA	NA	NA	--
Di-n-butylphthalate	ND	NA	NA	NA	NA	NA	ND	NA	NA	NA	ND	NA	NA	NA	<b>50</b>
Diethylphthalate	0.9 J	NA	NA	NA	NA	NA	0.3 J	NA	NA	NA	ND	NA	NA	NA	<b>50</b>
2,4-Dimethylphenol	ND	NA	NA	NA	NA	NA	7	NA	NA	NA	ND	NA	NA	NA	<b>50</b>
Fluorene	ND	NA	NA	NA	NA	NA	ND	NA	NA	NA	0.3 J	NA	NA	NA	<b>50</b>
2-Methylnaphthalene	0.7 J	NA	NA	NA	NA	NA	33 J	NA	NA	NA	ND	NA	NA	NA	--
2-Methylphenol (o-Cresol)	ND	NA	NA	NA	NA	NA	1 J	NA	NA	NA	1 J	NA	NA	NA	--
4-Methylphenol (p-Cresol)	ND	NA	NA	NA	NA	NA	0.6 J	NA	NA	NA	2 J	NA	NA	NA	--
Naphthalene	0.3 J	NA	NA	NA	NA	NA	<b>32</b>	NA	NA	NA	0.4 J	NA	NA	NA	<b>10</b>
Phenanthrene	2 J	NA	NA	NA	NA	NA	2 J	NA	NA	NA	2 J	NA	NA	NA	<b>50</b>
<b>Total TCL SVOCs</b>	<b>4.9</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>49.3</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>6.2</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	
<b>TAL Metals - ug/L</b>															
Aluminum	ND	NA	NA	NA	NA	NA	<b>212</b>	NA	NA	NA	ND	NA	NA	NA	<b>100</b>
Barium	34.4	NA	NA	NA	NA	NA	36.8	NA	NA	NA	189	NA	NA	NA	<b>1000</b>
Calcium	87000	NA	NA	NA	NA	NA	67300	NA	NA	NA	300000	NA	NA	NA	--
Iron	180	NA	NA	NA	NA	NA	234	NA	NA	NA	<b>529</b>	NA	NA	NA	<b>300</b>
Magnesium	<b>104000</b>	NA	NA	NA	NA	NA	<b>95600</b>	NA	NA	NA	<b>125000</b>	NA	NA	NA	<b>35000</b>
Manganese	159	NA	NA	NA	NA	NA	158	NA	NA	NA	288	NA	NA	NA	<b>300</b>
Potassium	3090ENJ	NA	NA	NA	NA	NA	2680ENJ	NA	NA	NA	31300ENJ	NA	NA	NA	--
Sodium	<b>96000</b>	NA	NA	NA	NA	NA	<b>68800</b>	NA	NA	NA	<b>777000</b>	NA	NA	NA	<b>20000</b>

**Notes:**

1. Only those parameters detected at a minimum of one sample location are presented in table; all other compounds reported as non-detect.

2. Regulatory limits are NYSDEC Class "GA" Groundwater Quality Standards (GWQS) as published in NYSDEC Ambient Water Quality Standards and Guidance Values and Groundwater Effluent Limitations (June 1998).

**Definitions:**

ND = Parameter not detected above laboratory detection limit.

NA = Sample not analyzed for parameter.

-- = No guidance value available.

J = Estimated value; result is less than the sample quantitation limit but greater than zero.

B = Indicates a value greater than or equal to the instrument detection limit, but less than the quantitation limit.

D = All compounds were identified in an analysis at the secondary dilution factor.

N = Indicates spike sample recovery is not within the quality control limits.

E = Indicates value estimated or not reported due to the presence of interferences.

**BOLD**

= Result exceeds NYSDEC Class GA Groundwater Quality Standard.

**TABLE 4  
SUMMARY OF SOIL VAPOR ANALYTICAL RESULTS**

**SITE MANAGEMENT PLAN  
NOCO SITE #S-41  
1055 GENESEE STREET  
BUFFALO, NEW YORK**

Parameter <sup>1</sup>	Sample Location				
	SV-1	SV-2	SV-3	DUP <sup>2</sup>	AMBIENT
<b><i>TCL Volatile Organic Compounds (VOCs) - ug/m<sup>3</sup></i></b>					
Benzene	1.8	15	0.61 J	23 J	0.61
1,3-Butadiene	ND	0.93	ND	ND	ND
Chloroform	0.83	ND	ND	ND	ND
Cyclohexane	1.4	5.5	ND J	62 J	0.65
Ethylbenzene	ND	2.6	ND J	12 J	ND
4-Ethyltoluene	ND	2.7	ND J	2.7 J	ND
n-Heptane	1.6	6.1	ND J	70 J	1.1
n-Hexane	1.9	6.7	ND J	160 J	ND
Methyl tert-Butyl Ether	ND	1.8	ND	ND	ND
Tetrachloroethene	ND	23	ND	ND	1.4
Toluene	3.2	21	2.5 J	90 J	3.1
Trichlorofluoromethane	1.3	1.2	0.96 J	ND J	1.0
1,3,5-Trimethylbenzene	ND	1.3	ND	ND	ND
2,2,4-Trimethylpentane	1.5	3.8	1.4 J	47 J	1.7
Xylene (m,p)	2.1	7.8	ND J	28 J	1.9
Xylene (o)	0.83	3.0	ND J	19 J	ND
Xylene (total)	3.0	11	ND J	48 J	2.0

**Notes:**

1. Only those compounds detected above the laboratory reporting limit are presented in this table.
2. Duplicate of SV-3.

**Definitions:**

ND = Not detected above laboratory detection limits.



**TABLE 5  
POST-EXCAVATION SOIL ANALYTICAL DATA SUMMARY**

**SITE MANAGEMENT PLAN  
NOCO SITE #S-41  
1055 GENESEE STREET  
BUFFALO, NEW YORK**

Parameter <sup>1</sup>	Sample Locations															Commercial SCOs <sup>3</sup> (ppm)	Unrestricted SCOs <sup>3</sup> (ppm)
	UST Area					Pump Island Area							Product Piping				
	UST 1- S1	UST 1-S2	UST 1-S3	UST 1-S4 <sup>2</sup>	UST 1-F1	PI-S1	PI-S2	PI-S3	PI-S4	PI-S5	PI-F1	PI-F2	Pipe 1	Pipe 2	Pipe 3		
<b>STARS List Volatile Organic Compounds (VOCs) - mg/kg <sup>4</sup></b>																	
Benzene	ND	0.001 J	ND	ND	ND	ND	0.059	ND	0.002 J	ND	ND	ND	0.014	0.02	0.008	44	0.06
Ethylbenzene	ND	0.028	ND	ND	ND	ND	0.31	ND	0.002 J	ND	ND	0.012	0.068	0.087 DJ	0.08	390	1
Isopropylbenzene (Cumene)	ND	0.004 J	ND	ND	ND	ND	0.14	ND	0.003 J	ND	ND	0.007	0.01	0.042	0.012	--	--
n-Butylbenzene	ND	0.014	ND	0.002 J	ND	ND	0.25	ND	0.001 J	ND	ND	0.016	0.016	0.08	0.018	500	12
n-Propylbenzene	ND	0.016	ND	ND	ND	ND	0.58	ND	0.006	ND	ND	0.035	0.044	0.19	0.045	500	3.9
p-Cymene (p-isopropyltoluene)	ND	ND	ND	ND	ND	ND	0.02 J	ND	ND	ND	ND	ND	0.001 J	0.006	0.003 J	--	--
sec-Butylbenzene	ND	0.003 J	ND	ND	ND	ND	0.055	ND	ND	ND	ND	0.009	0.004 J	0.018	0.004 J	500	11
tert-Butylbenzene	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	500	5.9
1,2,4-Trimethylbenzene	ND	0.12	0.003 J	0.005 J	ND	0.001 J	0.16 D	ND	0.026	ND	ND	0.044	0.14	0.35 D	0.15	190	3.6
1,3,5-Trimethylbenzene	ND	0.036	ND	0.001 J	ND	ND	0.38	ND	0.006	ND	ND	ND	0.035	0.12 DJ	0.048	190	8.4
Total Xylene	ND	0.07	ND	ND	ND	ND	0.42	ND	0.013 J	ND	ND	0.007 J	0.093	0.13 DJ	0.09	500	0.26
Methyl tert butyl ether (MTBE)	0.037	0.04	0.18	0.5 D	0.35 D	0.002 J	ND	ND	ND	ND	0.006	ND	0.012	0.12	0.028	190	0.93
Toluene	ND	ND	ND	ND	ND	0.001 J	0.009 J	ND	ND	ND	ND	0.003 J	0.003 J	0.004 J	0.002 J	500	0.7
Total VOCs	0.037	0.332	0.183	0.508	0.35	0.004	2.383	0	0.059	0	0.006	0.133	0.44	1.167	0.488	--	--
<b>STARS List Semi-Volatile Organic Compounds (SVOCs) - mg/kg</b>																	
Acenaphthylene	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	500	100
Acenaphthene	ND	ND	ND	ND	ND	ND	ND	ND	ND	0.18 J	ND	ND	ND	ND	ND	500	20
Anthracene	ND	ND	ND	ND	ND	0.04 J	ND	0.016 J	ND	0.095 J	ND	ND	ND	ND	ND	500	100
Benzo(a)anthracene	ND	ND	ND	ND	0.0064 J	0.11 J	0.022 J	0.076 J	0.13 J	0.5	0.0081 J	ND	ND	ND	ND	5.6	1
Benzo(b)fluoranthene	ND	ND	ND	ND	ND	0.11 J	0.023 J	0.076 J	0.098 J	0.56	ND	ND	ND	ND	ND	5.6	1
Benzo(k)fluoranthene	ND	ND	ND	ND	ND	0.028 J	0.011 J	0.026 J	ND	0.16 J	ND	ND	ND	ND	ND	56	0.8
Benzo(g,h,i)perylene	ND	ND	ND	ND	ND	0.058 J	0.02 J	0.046 J	0.06 J	0.34 J	ND	ND	ND	ND	ND	500	100
Benzo(a)pyrene	ND	ND	ND	ND	ND	0.085 J	0.02 J	0.064 J	0.092 J	0.45	ND	ND	ND	ND	ND	1	1
Chrysene	ND	ND	ND	ND	ND	0.098 J	0.021 J	0.065 J	0.11 J	0.42	ND	ND	ND	ND	ND	56	1
Dibenzo(a,h)anthracene	ND	ND	ND	ND	ND	0.02 J	ND	0.011 J	ND	0.1 J	ND	ND	ND	ND	ND	0.56	0.33
Fluoranthene	ND	ND	ND	ND	ND	0.22	0.034 J	0.12 J	0.18 J	0.82	ND	ND	ND	ND	ND	500	100
Fluorene	ND	ND	ND	ND	ND	0.02 J	ND	ND	ND	0.021 J	ND	ND	ND	ND	ND	500	30
Indeno(1,2,3-cd)pyrene	ND	ND	ND	ND	ND	0.048 J	0.015 J	0.043 J	0.052 J	0.3 J	ND	ND	ND	ND	ND	5.6	0.5
Naphthalene	ND	0.012 J	ND	ND	ND	ND	0.012 J	0.0082 J	ND	0.04 J	ND	ND	0.074 J	0.13 J	0.036 J	500	12
Phenanthrene	ND	ND	0.0064 J	ND	0.0061 J	0.19 J	0.023 J	0.074 J	0.13 J	0.41	ND	ND	ND	ND	ND	500	100
Pyrene	ND	ND	ND	ND	ND	0.2 J	0.028 J	0.11 J	0.16 J	0.67	ND	ND	ND	ND	ND	500	100
Total SVOCs	0	0.012	0.0064	0	0.0125	1.227	0.229	0.7352	1.012	5.066	0.0081	0	0.074	0.13	0.036	--	--
<b>Total Lead - mg/kg</b>																	
Lead	13.2	14.7	12.5	11.3	11.3	275	25.3	32.5	198	94.3	15.3	20.7	23.4	12.6	14.5	1000	63

- Notes:**
1. Only those parameters detected at a minimum of one sample location are presented in this table; all other compounds were reported as non-detect.
  2. Blind Duplicate was taken on UST 1-S4.
  3. Values per NYSDEC Part 375 Soil Cleanup Objectives (December 2006).
  4. Sample results were reported by the laboratory in ug/kg and converted to mg/kg for comparison to SCOs.

**Definitions:**  
 ND = Parameter not detected above laboratory detection limit. J = Estimated value; result is less than the sample quantitation limit but greater than zero.  
 NA = Sample not analyzed for parameter. D = All compounds were identified in an analysis at the secondary dilution factor.  
 "--" = No SCO available. Exceeds NYSDEC Part 375 SCOs for Unrestricted standards

**TABLE 6  
RI/IRM SOIL ANALYTICAL DATA SUMMARY  
ANALYTES ABOVE NYSDEC PART 375 UNRESTRICTED SOIL CLEANUP OBJECTIVES**

**SITE MANAGEMENT PLAN  
NOCO SITE #S-41  
1055 GENESEE STREET  
BUFFALO, NEW YORK**

Parameter	Sample Locations										Unrestricted SCOs <sup>1</sup> (ppm)
	BCP MW-1 (0-5')	BCP MW-2 (0-2')	BCP MW-3 (0-4')	BCP MW-4 (0-4')	BCP MW-5 (0-4')	BCP MW-6 <sup>2</sup> (0-4')	PI-S1	PI-S2	PI-S4	PI-S5	
<b><i>Volatile Organic Compounds (VOCs) - mg/kg</i></b>											
Total Xylene	0.013 J	ND	ND	ND	ND	ND	ND	<b>0.42</b>	0.013 J	ND	<b>0.26</b>
<b><i>Semi-Volatile Organic Compounds (SVOCs) - mg/kg</i></b>											
Benzo(a)anthracene	<b>1.8 J</b>	0.52 J	NA	<b>8.2</b>	NA	NA	0.11 J	0.022 J	0.13 J	0.5	<b>1</b>
Benzo(b)fluoranthene	ND	0.58 J	NA	<b>8.9</b>	NA	NA	0.11 J	0.023 J	0.098 J	0.56	<b>1</b>
Benzo(k)fluoranthene	ND	0.23 J	NA	<b>3.5 J</b>	NA	NA	0.028 J	0.011 J	ND	0.16 J	<b>0.8</b>
Benzo(a)pyrene	ND	0.48 J	NA	<b>7.2</b>	NA	NA	0.058 J	0.02 J	0.06 J	0.34 J	<b>1</b>
Chrysene	ND	0.53 J	NA	<b>7.9</b>	NA	NA	0.098 J	0.021 J	0.11 J	0.42	<b>1</b>
Dibenzo(a,h)anthracene	ND	0.1 J	NA	<b>1.5 J</b>	NA	NA	0.02 J	ND	ND	0.1 J	<b>0.33</b>
Indeno(1,2,3-cd)pyrene	ND	0.32 J	NA	<b>5</b>	NA	NA	0.048 J	0.015 J	0.052 J	0.3 J	<b>0.5</b>
<b><i>PCBs/Pesticides- mg/kg</i></b>											
4,4'-DDD	<b>0.14 J</b>	ND	NA	ND	NA	NA	NA	NA	NA	NA	<b>0.0033</b>
4,4'-DDE	<b>0.1 J</b>	ND	NA	ND	NA	NA	NA	NA	NA	NA	<b>0.0033</b>
4,4'-DDT	<b>0.17 J</b>	ND	NA	<b>0.11 J</b>	NA	NA	NA	NA	NA	NA	<b>0.0033</b>
<b><i>TAL Metals - mg/kg</i></b>											
Lead	37.2 N J	<b>129 N J</b>	<b>66 N</b>	<b>337 N J</b>	<b>493 N</b>	<b>130</b>	<b>275</b>	<b>25.3</b>	<b>198</b>	<b>94.3</b>	<b>63</b>
Mercury	ND	<b>0.231</b>	NA	<b>1.2</b>	NA	NA	NA	NA	NA	NA	<b>0.18</b>
Zinc	23.8	<b>122</b>	NA	<b>351</b>	NA	NA	NA	NA	NA	NA	<b>109</b>

**Notes:**

1. Values per NYSDEC Part 375 Soil Cleanup Objectives (December 2006)

**Definitions:**

ND = Parameter not detected above laboratory detection limit.

NA = Sample not analyzed for parameter.

N = Indicates spike sample recovery is not within the quality control limits.

J = Estimated value; result is less than the sample quantitation limit but greater than zero.

**BOLD** = Result exceeds Part 375 unrestricted SCO.

## **APPENDIX E**

### **HEALTH AND SAFETY PLAN**

A Health and Safety plan (HASP) and associated Community Air Monitoring Plan (CAMP) will be prepared by a qualified person in accordance with the most recently adopted and applicable general industry (29 CFR 1910) and construction (29 CFR 1926) standards of OSHA, the U.S. Department of Labor, as well as any other federal, state or local applicable statutes or regulations. Furthermore, the HASP and CAMP will be prepared in accordance with NYSDEC's DER-10.

The HASP will be developed prior to site disturbance activities, and tailored to the specific type of work being undertaken. Typically, the contractor performing the site disturbance or invasive activities is responsible for developing a HASP for the protection of its employees and the general public. A copy of the HASP will be available at the site during the conduct of all activities to which it is applicable.

The CAMP will include the appropriate requirements identified by the NYSDOH, and be tailored to the specific type of work being undertaken (e.g., building demolition, site excavation).

## Appendix 1A

### New York State Department of Health Generic Community Air Monitoring Plan

#### Overview

A Community Air Monitoring Plan (CAMP) requires real-time monitoring for volatile organic compounds (VOCs) and particulates (i.e., dust) at the downwind perimeter of each designated work area when certain activities are in progress at contaminated sites. The CAMP is not intended for use in establishing action levels for worker respiratory protection. Rather, its intent is to provide a measure of protection for the downwind community (i.e., off-site receptors including residences and businesses and on-site workers not directly involved with the subject work activities) from potential airborne contaminant releases as a direct result of investigative and remedial work activities. The action levels specified herein require increased monitoring, corrective actions to abate emissions, and/or work shutdown. Additionally, the CAMP helps to confirm that work activities did not spread contamination off-site through the air.

The generic CAMP presented below will be sufficient to cover many, if not most, sites. Specific requirements should be reviewed for each situation in consultation with NYSDOH to ensure proper applicability. In some cases, a separate site-specific CAMP or supplement may be required. Depending upon the nature of contamination, chemical-specific monitoring with appropriately-sensitive methods may be required. Depending upon the proximity of potentially exposed individuals, more stringent monitoring or response levels than those presented below may be required. Special requirements will be necessary for work within 20 feet of potentially exposed individuals or structures and for indoor work with co-located residences or facilities. These requirements should be determined in consultation with NYSDOH.

Reliance on the CAMP should not preclude simple, common-sense measures to keep VOCs, dust, and odors at a minimum around the work areas.

#### Community Air Monitoring Plan

Depending upon the nature of known or potential contaminants at each site, real-time air monitoring for VOCs and/or particulate levels at the perimeter of the exclusion zone or work area will be necessary. Most sites will involve VOC and particulate monitoring; sites known to be contaminated with heavy metals alone may only require particulate monitoring. If radiological contamination is a concern, additional monitoring requirements may be necessary per consultation with appropriate DEC/NYSDOH staff.

**Continuous monitoring** will be required for all ground intrusive activities and during the demolition of contaminated or potentially contaminated structures. Ground intrusive activities include, but are not limited to, soil/waste excavation and handling, test pitting or trenching, and the installation of soil borings or monitoring wells.

**Periodic monitoring** for VOCs will be required during non-intrusive activities such as the collection of soil and sediment samples or the collection of groundwater samples from existing monitoring wells. "Periodic" monitoring during sample collection might reasonably consist of taking a reading upon arrival at a sample location, monitoring while opening a well cap or

overturning soil, monitoring during well baling/purging, and taking a reading prior to leaving a sample location. In some instances, depending upon the proximity of potentially exposed individuals, continuous monitoring may be required during sampling activities. Examples of such situations include groundwater sampling at wells on the curb of a busy urban street, in the midst of a public park, or adjacent to a school or residence.

### VOC Monitoring, Response Levels, and Actions

Volatile organic compounds (VOCs) must be monitored at the downwind perimeter of the immediate work area (i.e., the exclusion zone) on a continuous basis or as otherwise specified. Upwind concentrations should be measured at the start of each workday and periodically thereafter to establish background conditions, particularly if wind direction changes. The monitoring work should be performed using equipment appropriate to measure the types of contaminants known or suspected to be present. The equipment should be calibrated at least daily for the contaminant(s) of concern or for an appropriate surrogate. The equipment should be capable of calculating 15-minute running average concentrations, which will be compared to the levels specified below.

1. If the ambient air concentration of total organic vapors at the downwind perimeter of the work area or exclusion zone exceeds 5 parts per million (ppm) above background for the 15-minute average, work activities must be temporarily halted and monitoring continued. If the total organic vapor level readily decreases (per instantaneous readings) below 5 ppm over background, work activities can resume with continued monitoring.

2. If total organic vapor levels at the downwind perimeter of the work area or exclusion zone persist at levels in excess of 5 ppm over background but less than 25 ppm, work activities must be halted, the source of vapors identified, corrective actions taken to abate emissions, and monitoring continued. After these steps, work activities can resume provided that the total organic vapor level 200 feet downwind of the exclusion zone or half the distance to the nearest potential receptor or residential/commercial structure, whichever is less - but in no case less than 20 feet, is below 5 ppm over background for the 15-minute average.

3. If the organic vapor level is above 25 ppm at the perimeter of the work area, activities must be shutdown.

4. All 15-minute readings must be recorded and be available for State (DEC and NYSDOH) personnel to review. Instantaneous readings, if any, used for decision purposes should also be recorded.

### Particulate Monitoring, Response Levels, and Actions

Particulate concentrations should be monitored continuously at the upwind and downwind perimeters of the exclusion zone at temporary particulate monitoring stations. The particulate monitoring should be performed using real-time monitoring equipment capable of measuring particulate matter less than 10 micrometers in size (PM-10) and capable of integrating over a period of 15 minutes (or less) for comparison to the airborne particulate action level. The equipment must be equipped with an audible alarm to indicate exceedance of the action level. In addition, fugitive dust migration should be visually assessed during all work activities.

1. If the downwind PM-10 particulate level is 100 micrograms per cubic meter ( $\text{mcg}/\text{m}^3$ ) greater than background (upwind perimeter) for the 15-minute period or if airborne dust is observed leaving the work area, then dust suppression techniques must be employed. Work may continue with dust suppression techniques provided that downwind PM-10 particulate levels do not exceed  $150 \text{ mcg}/\text{m}^3$  above the upwind level and provided that no visible dust is migrating from the work area.

2. If, after implementation of dust suppression techniques, downwind PM-10 particulate levels are greater than  $150 \text{ mcg}/\text{m}^3$  above the upwind level, work must be stopped and a re-evaluation of activities initiated. Work can resume provided that dust suppression measures and other controls are successful in reducing the downwind PM-10 particulate concentration to within  $150 \text{ mcg}/\text{m}^3$  of the upwind level and in preventing visible dust migration.

3. All readings must be recorded and be available for State (DEC and NYSDOH) and County Health personnel to review.

December 2009

## **Appendix 1B**

### **Fugitive Dust and Particulate Monitoring**

A program for suppressing fugitive dust and particulate matter monitoring at hazardous waste sites is a responsibility on the remedial party performing the work. These procedures must be incorporated into appropriate intrusive work plans. The following fugitive dust suppression and particulate monitoring program should be employed at sites during construction and other intrusive activities which warrant its use:

1. Reasonable fugitive dust suppression techniques must be employed during all site activities which may generate fugitive dust.
2. Particulate monitoring must be employed during the handling of waste or contaminated soil or when activities on site may generate fugitive dust from exposed waste or contaminated soil. Remedial activities may also include the excavation, grading, or placement of clean fill. These control measures should not be considered necessary for these activities.
3. Particulate monitoring must be performed using real-time particulate monitors and shall monitor particulate matter less than ten microns (PM<sub>10</sub>) with the following minimum performance standards:
  - (a) Objects to be measured: Dust, mists or aerosols;
  - (b) Measurement Ranges: 0.001 to 400 mg/m<sup>3</sup> (1 to 400,000 :ug/m<sup>3</sup>);
  - (c) Precision (2-sigma) at constant temperature: +/- 10 :g/m<sup>3</sup> for one second averaging; and +/- 1.5 g/m<sup>3</sup> for sixty second averaging;
  - (d) Accuracy: +/- 5% of reading +/- precision (Referred to gravimetric calibration with SAE fine test dust (mmd= 2 to 3 :m, g= 2.5, as aerosolized);
  - (e) Resolution: 0.1% of reading or 1g/m<sup>3</sup>, whichever is larger;
  - (f) Particle Size Range of Maximum Response: 0.1-10;
  - (g) Total Number of Data Points in Memory: 10,000;
  - (h) Logged Data: Each data point with average concentration, time/date and data point number
  - (i) Run Summary: overall average, maximum concentrations, time/date of maximum, total number of logged points, start time/date, total elapsed time (run duration), STEL concentration and time/date occurrence, averaging (logging) period, calibration factor, and tag number;
  - (j) Alarm Averaging Time (user selectable): real-time (1-60 seconds) or STEL (15 minutes), alarms required;
  - (k) Operating Time: 48 hours (fully charged NiCd battery); continuously with charger;
  - (l) Operating Temperature: -10 to 50° C (14 to 122° F);
  - (m) Particulate levels will be monitored upwind and immediately downwind at the working site and integrated over a period not to exceed 15 minutes.
4. In order to ensure the validity of the fugitive dust measurements performed, there must be appropriate Quality Assurance/Quality Control (QA/QC). It is the responsibility of the remedial party to adequately supplement QA/QC Plans to include the following critical features: periodic instrument calibration, operator training, daily instrument performance (span) checks, and a record keeping plan.
5. The action level will be established at 150 ug/m<sup>3</sup> (15 minutes average). While conservative,

this short-term interval will provide a real-time assessment of on-site air quality to assure both health and safety. If particulate levels are detected in excess of 150 ug/m<sup>3</sup>, the upwind background level must be confirmed immediately. If the working site particulate measurement is greater than 100 ug/m<sup>3</sup> above the background level, additional dust suppression techniques must be implemented to reduce the generation of fugitive dust and corrective action taken to protect site personnel and reduce the potential for contaminant migration. Corrective measures may include increasing the level of personal protection for on-site personnel and implementing additional dust suppression techniques (see paragraph 7). Should the action level of 150 ug/m<sup>3</sup> continue to be exceeded work must stop and DER must be notified as provided in the site design or remedial work plan. The notification shall include a description of the control measures implemented to prevent further exceedances.

6. It must be recognized that the generation of dust from waste or contaminated soil that migrates off-site, has the potential for transporting contaminants off-site. There may be situations when dust is being generated and leaving the site and the monitoring equipment does not measure PM<sub>10</sub> at or above the action level. Since this situation has the potential to allow for the migration of contaminants off-site, it is unacceptable. While it is not practical to quantify total suspended particulates on a real-time basis, it is appropriate to rely on visual observation. If dust is observed leaving the working site, additional dust suppression techniques must be employed. Activities that have a high dusting potential--such as solidification and treatment involving materials like kiln dust and lime--will require the need for special measures to be considered.

7. The following techniques have been shown to be effective for the controlling of the generation and migration of dust during construction activities:

- (a) Applying water on haul roads;
- (b) Wetting equipment and excavation faces;
- (c) Spraying water on buckets during excavation and dumping;
- (d) Hauling materials in properly tarped or watertight containers;
- (e) Restricting vehicle speeds to 10 mph;
- (f) Covering excavated areas and material after excavation activity ceases; and
- (g) Reducing the excavation size and/or number of excavations.

Experience has shown that the chance of exceeding the 150ug/m<sup>3</sup> action level is remote when the above-mentioned techniques are used. When techniques involving water application are used, care must be taken not to use excess water, which can result in unacceptably wet conditions. Using atomizing sprays will prevent overly wet conditions, conserve water, and provide an effective means of suppressing the fugitive dust.

8. The evaluation of weather conditions is necessary for proper fugitive dust control. When extreme wind conditions make dust control ineffective, as a last resort remedial actions may need to be suspended. There may be situations that require fugitive dust suppression and particulate monitoring requirements with action levels more stringent than those provided above. Under some circumstances, the contaminant concentration and/or toxicity may require additional monitoring to protect site personnel and the public. Additional integrated sampling and chemical analysis of the dust may also be in order. This must be evaluated when a health and safety plan is developed and when appropriate suppression and monitoring requirements are established for protection of health and the environment.

SITE-SPECIFIC HEALTH AND SAFETY PLAN

**NOCO #S41 SITE – BCP SITE NO. C915211**

**1055 GENESEE STREET, BUFFALO, NY**

April 21, 2020

**1 GENERAL PROJECT SITE INFORMATION**

Job Name:	NOCO #S41 Site – BCP Site No. C915211
Site Address:	1055 Genesee Street, Buffalo, NY
Client Contact Information	Realty Income Buffalo Genesee LLC c/o Realty Income Corp

**ON-SITE ORGANIZATION AND COORDINATION**

Project or Site Team Leader:

On-site Safety  
Representative:

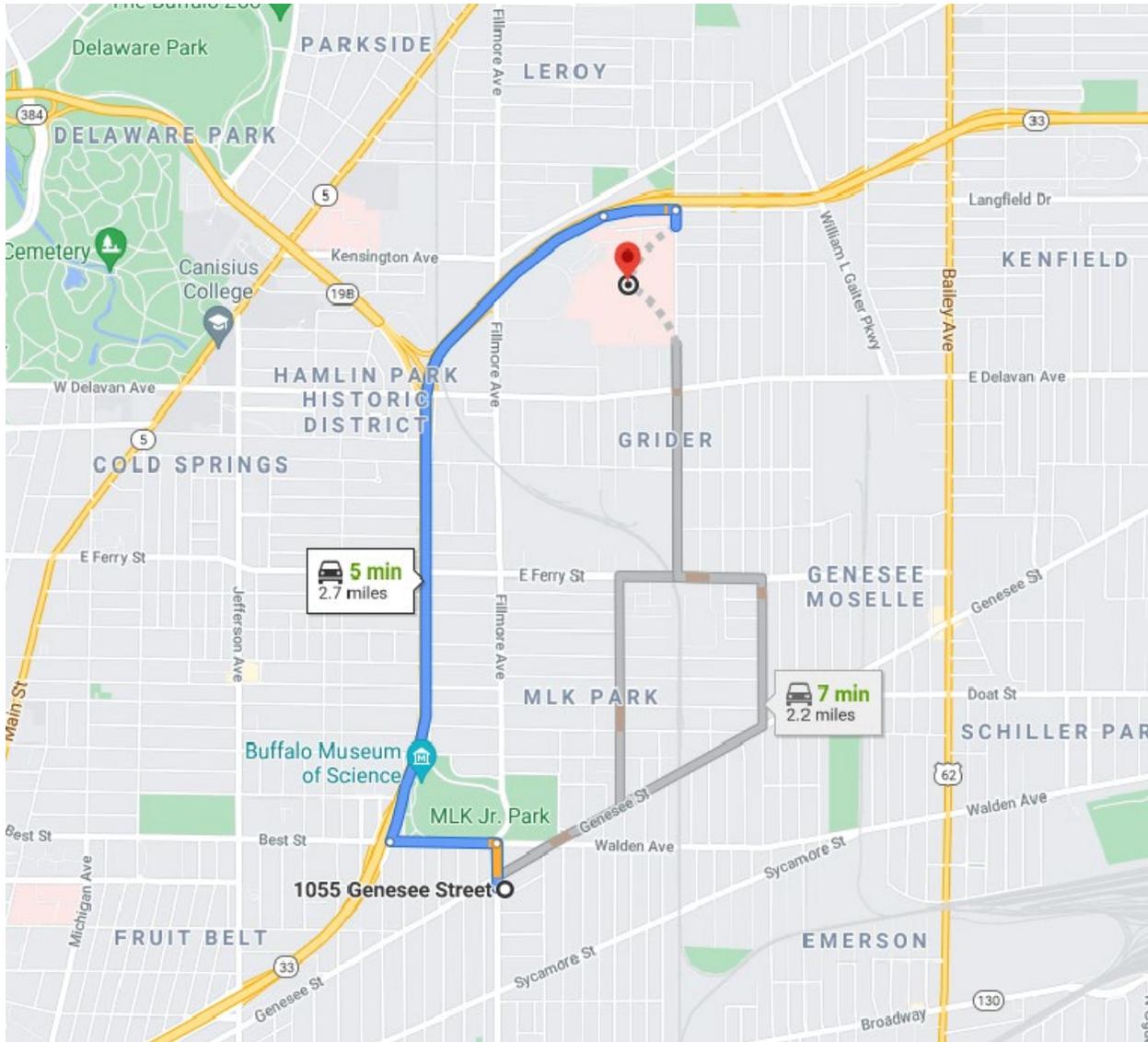
Primary H&S Representative:

## 2 EMERGENCY CONTACT AND NOTIFICATION INFORMATION

<b>Nearest Hospital Address (attach directions and map):</b>	ECMC Hospital, 462 Grider Street, Buffalo, NY
<b>Police/Fire/Ambulance:</b>	911
<b>Describe Client Emergency Notification System (if available)</b>	Non-applicable
<b>Describe Emergency Procedures and medical care</b>	<p>Stop work activities when injury or accident occurs. If the incident is life threatening or requires emergency response, the On-site safety representative must seek medical attention first by dialing 911. Administer first aid if possible.</p> <p>In the event of encountering potential hazardous materials that may have been historically used or disposed on the site, work will be stopped immediately and the appropriate contacts will be notified in order to safely manage the materials.</p>

ECMC Hospital, 462 Grider Street, Buffalo, NY Approximately 2.7 miles (5 minutes)

1. Head west toward Fillmore Avenue.
2. Turn right at Fillmore Avenue.
3. Turn left onto Best Street.
4. Turn right to merge onto NY-33E.
5. Take the Grider Street exit.
6. Turn right onto Grider Street.
7. Arrive at ECMC Hospital.



## Emergency Procedures and Medical Care

Stop work when injury or accident occurs. If the injury is life threatening or requires emergency response, the On-site Safety Representative must immediately call 911 and give the dispatcher the following information:

- Name of Injured
- Type of Injury
- Condition of Injured
- Site Location

The On-site Safety Representative shall administer first aid and CPR as required and prioritize the safety and well-being of the injured individual. Once the injured individual is safe, calm and first aid has been administered, he shall call the Project Manager and the Safety and Health coordinator as soon as possible.

If the injury is not life threatening and does not require emergency response, he shall contact the Project Manager and Safety Coordinator with all applicable information and then send to the nearest hospital or clinic for evaluation.

### 3 FIRE RESPONSE

- Stop operations and shut off equipment in the immediate work area.
- Stay calm and above all do not jeopardize your personal safety.
- Help anyone in immediate danger.
- Notify workers in the immediate area.
- Notify the site On-site Safety Representative. On-site Safety Representative or a designated individual notifies local fire department.
- If the fire can safely be put out, use available fire extinguishers on site to extinguish the fire. - If a second extinguisher is necessary, cease the attempt and evacuate the area.
- Remove or isolate flammable liquids or other hazardous materials, which may contribute to the fire, if it does not pose an additional threat.
- Confine the fire by closing windows and doors as much as possible.
- Report to the designated location (safe area) if the On-site Safety Representative activates the warning system or communication system indicating the need to evacuate the site. Workers should remain at the designated safe meeting area until the On-site Safety Representative provides further instructions.
- The On-site Safety Representative assists and advises the local fire department of the location, nature, and identification of the hazardous materials on site.

#### Evacuation due to Fire or Casualty

All workers shall be familiar with fire evacuation procedures based on the location of work. On-site Safety Representative or designated competent person will discuss fire evacuation procedures as frequently as necessary.

- If the fire/casualty cannot be immediately contained evacuate the area. There is a possibility of toxic fumes or explosions from burning materials and especially from compressed gas.
- Stay low when moving through smoke.
- When passing through an exit, move quickly away from the exit to avoid creating a bottleneck that slows the escape of others.
- If you are trapped inside a room, keep the doors closed and seal any cracks with wet towels if available. - Open a window for air and call for help. Do not break the glass unless necessary (outside smoke could be drawn into the room).
- Do not panic or jump.
- Close as many doors between you and the fire as possible.
- Do not reenter the building after you have exited, but proceed directly to the designated assembly area. - If someone is missing, do not attempt to reenter the area. Notify the firefighters or emergency personnel at the scene and describe where the individual was last seen.
- Follow the directions of the On-site Safety Representative present and the emergency personnel at the scene.

## 4 CHEMICAL SPILLS OR LEAKS

Stop operations, shut off equipment or locate the source of the chemical spill/leak and stop the flow if it can be done safely.

Warn others in area.

Isolate area by installing some form of barrier (extension cords, white lightening or caution tape)

Minimize exposure. Contain spill/leak using spill absorbent materials and by constructing a dike or berm area around the spill.

- Clean up spill absorbent material after the spill/leak is stopped. Clean up is performed only by properly trained personnel using appropriate personal protective equipment.
- If the spill or chemical release cannot be immediately controlled, individuals should evacuate the area. The On-site Safety Representative should implement the emergency warning or communication system and alert the appropriate outside agencies for assistance. In addition, the On-site Safety Representative must begin to gather the following information to complete an incident report:
  - The specific material spilled or released
  - The specific location of the release or spill
  - An estimate of the quantity released and the rate at which it is being released
  - Any injuries involved
  - Fire and/or explosion possibility
  - Secure the area
  - If the control and clean-up of the spill or release is within the capabilities of on-site personnel, then the Police or emergency management personnel will not be notified unless the release migrates beyond the perimeter of the site. Reporting of spills or releases is in accordance with federal, state, and local regulations.

### Hazard Communication Program

To comply with 29 CFR 1910.1200 (OSHA standard on hazard communication), the following written Hazard Communication Program should be followed. The On-site Safety Representative at each site is responsible for maintaining the day to day requirements of this program.

Container Labeling – Incoming chemicals (paints, solvents, thinners, etc.) must have the proper label from the manufacturer on the container. Old stock on hand and transferred material shall be re-labeled to meet the OSHA standard. For assistance with labeling, contact the Project On-site Safety Representative. All containers of hazardous chemicals are labeled to include:

- Identity of hazardous chemical(s)
- Signal word
  - Hazard statement(s)
  - Pictogram(s)
  - Precautionary statement(s)
  - Name, address, and telephone number of the chemical manufacturer, importer, or other responsible party.

Safety Data Sheets –SDSs are available to all workers at the specified jobsite for review during each work shift. If SDSs are not available for new chemicals in use, the chemical is not to be used. Contact the On-site Safety Representative to obtain a SDS.

Training will review the following items prior to the start of the job. Retraining is necessary when a new chemical is brought into the work site.

- On-site location of SDS
- Facility specific procedures to following in case of chemical releases/spills
- Facility specific proper handling of chemical waste
- Facility specific clean-up procedures of spills
- Emergency contact procedures of facility/local authorities

List of Hazardous Chemicals used in work area – A listing of hazardous chemicals is filed in front of the SDS notebook. The list is updated as required and a SDS obtained for every chemical listed. The following is an example of the information required:

- Date Brought on to Site
- Chemical Name or Product Name
- Work Area for Final Use
- Hazards associated with chemical

Non-Routine Task – Whenever a worker is required to perform non-routine hazardous tasks, the On-site Safety Representative should review with the worker, the nature of the hazardous chemical or work required. The worker is informed of any special safety measures to be taken in the performance of the task.

Container Labeling – Incoming chemicals (paints, solvents, thinners, etc.) must have the proper (Global Harmonization Specific) label from the manufacturer on the container. Chemicals are only transferred to portable containers for immediate use. Labels meeting the same requirements as the original manufacturer label must be applied to the portable container before use.

## **5 CONFINED SPACES**

Whenever employees or sub-contractors are expected to work in isolated areas or confined spaces they will be paired up with another individual, given specific information on the potential hazards of the location they are conducting work in, be checked on regularly by the project superintendent or dedicated representative and surveilled regularly by a competent person (provided by the sub-contractor).

No employee or sub-contractor shall enter a confined space that has not been tested and inspected for that day/shift. Confined space awareness training and permitting procedures will be followed as applicable.

## **6 TEMPORARY SERVICES**

Temporary services are required for production work. These temporary services can include:

- Temporary lighting
- High Pressure air hoses
- Extension cords
- Ventilation ducting
- Ventilation fan motors

Regardless of the temporary service being used, sub-contractor should inspect the service prior to and during use.

Work areas shall be illuminated based on the type of area present. Most typically, illumination requirements are between 5-10 candle-foot except for first aid stations that require 30 candle-foot. On-site Safety Representative will ensure that adequate lighting is available at work sites to preclude unseen hazards.

## **7 HEAVY WEATHER PLAN**

Employees and contractors should adhere to the heavy weather plan and direction provided by the local weather stations on any given project, and such direction shall take precedence over this plan.

- Gale/Storm/Hurricane Condition IV (Possible threat of destructive winds within 72 hours):
  - Inspect work sites, property, buildings and material owned or under contract. Take steps to secure buildings, convex boxes, equipment, work sites, and material that could become wind-borne that will not be used in the next 36 hours shall all be secured for severe weather conditions.
  - Remaining equipment, material left out for work shall be put into a condition that items can be secured for severe weather conditions within a 12-hour period.
  - The procedures of this program will be explained to all workers prior to the end of the current shift.
  - Verify roster of all workers of the company and emergency number that they can be reached at.
- Gale/Storm/Hurricane Condition III (Destructive winds possible within 48 hours):
  - Inspect work sites, property, buildings and material owned or under contract, take steps to secure equipment, work sites, and material that could become wind-borne that will not be used in the next 24 hours shall all be secured for severe weather conditions.
  - Remaining equipment, material left out for work shall be put into a condition that items can be secured for severe weather conditions within an 8-hour period.
- Gale/Storm/Hurricane Condition II (Destructive winds anticipated within 24 hours):
  - All work sites, property, buildings and material shall be inspected for severe weather conditions to include high winds and flooding. Steps shall be taken to secure all work sites, property, buildings and material owned or under contract that could become wind-borne or damaged by flooding prior to the end of the shift.
- Gale/Storm/Hurricane Condition I (Destructive winds anticipated within 12 hours or less):
  - The current trend of the storm indicates that a threat of winds of a destructive force is imminent. The safety of personnel is paramount, followed by the security of property and equipment.
  - Call in procedures will be implemented for non-essential workers. Only necessary personnel may be required to report to work.

- Thunderstorm/Tornado Condition II (Destructive winds accompanying the phenomenon are reported or expected in the general area within 6 hours. Lightning and thunder are also anticipated):
  - Inspected all work sites, property, buildings and material for severe weather conditions. Steps shall be taken to secure all work sites, property, buildings and material owned or under contract that could become wind-borne.
  - Personnel shall be instructed where and when to take protective cover until the storm has passed or it is safe to resume work.
- Thunderstorm/Tornado Condition I (Destructive winds accompanying the phenomenon are imminent. Lightning and thunder are also anticipated): The safety of personnel is paramount, followed by the security of property and equipment

## **8 COMMUNICATIONS**

Employees and sub-contractors shall use personal communication sources as their primary communication devices for reporting all fires, casualties, injuries hazardous spills, etc. These communication devices may be in the form of:

- Air horns
- Face to face communications
- Cell phones

On-site Safety Representatives will familiarize themselves with the communication system to be used and shall inform their employees and sub-contractors on how to use them correctly. This information will be included in the pre-job brief and monitored in project areas to ensure employees are aware of them.

## **9 SANITATION FACILITIES**

Wash and sanitary facilities should be present and should be kept clean and functional as needed.

Potable water should be present at work sites for employees and sub-contractors.

## **10 SAFETY POLICIES WITH TRAINING SCHEDULE**

Training is provided at the beginning of the work. Training will focus on the site specifics and known problems encountered during previous jobs.

## 11 GENERAL HAZARDS

**PHYSICAL HAZARDS:** The following physical hazards should be considered before performing any task or work at the facility. Depending on the task(s) being performed, any or all of these hazards may be present.

- Tripping, Slipping and Falling Hazards – Field personnel shall maintain sure footing on all surfaces. Avoid work surfaces of unknown or suspect integrity.
- Head, Eye and Back Injuries - Protective eyewear will be used when there is an imminent danger to the eyes or head during specific work activities. Hardhats will be used during all site inspection work.
- Heavy Equipment – Drill rigs and large trucks will be present at the facility. The use of heavy equipment, loud noise and limited visibility can increase the potential for injury to personnel. Wear high visibility vests and coordinate with vehicle operators when working in the vicinity of these pieces of equipment.
- Noise - Prolonged exposure to loud noise may result in permanent hearing loss. As a result, hearing protection devices shall be used as appropriate during drilling activities at the facility. SCS employees, contractors, and subcontractors who enter noisy environments will use ear plugs or ear muffs, even when their cumulative exposure for the day probably will not exceed the OSHA limit. These devices can diminish the actual exposure level by over 10 dBA. Ear plugs must be inserted into the ear canal with care, and muffs must fit tightly around the ear. Employees should seek guidance from the HSO when they suspect that excessive noise exposures are possible.
- Electrical – Electrical hazards fall into two categories. The first category includes buried or aerial electrical power lines that may be encountered. The location of all electrical power lines should be determined before any digging or excavation is performed. The presence of aerial electrical power lines should also be determined so that contact with tall equipment (loaders or track hoes) can be prevented. Contracted locator services and /or physical protective measures (barriers or line covers) should be used as needed. The second category of electrical hazard includes working on energized (powered) equipment or systems. When possible power should be disconnected before working on these systems. Lock-out Tag-out procedures should be followed. Only properly trained personnel should perform electrical work. Special care should be taken when working in wet areas where electrical power is present. Additionally, when working in the proximity of electrical power care should be given to accidental contact with pipes, ladders, tools or body parts.
- Lightning - The danger of lightning strike is increased when work occurs on the elevated surface. Lightning can strike miles ahead of a storm when no rain is present. All operations should be stopped immediately when lightning is visible or thunder is audible. All personnel should seek shelter off the elevated surface of the facility and remain inside a building (primary) or vehicle (secondary) until the danger passes. Do not take shelter near tall objects such as power lines, trees, antennas, or the flare stack. Work can resume when the lightning is no longer visible and the thunder cannot be heard.

- Cold Stress – The hazards of cold weather may include freezing rain, sleet, snow, frostbit, hypothermia, and dangerous driving conditions. When we work in cold temperatures, there is a potential for cold-related illness to occur. There are several types of cold-related illness and injury, including frostbite and hypothermia. A description of each is listed below, along with basic first aid procedures that can be utilized.

- Frostbite - Frostbite is literally the freezing of body tissue (usually skin). Fingers, toes, ears, and the nose are the areas that are most vulnerable to frostbite. There are three degrees of frostbite, including: Frostnip, which usually affects the face, ears, or fingertips. While the skin may feel numb, frostnip does not lead to permanent tissue damage; Superficial frostbite, in which the outer skin is affected; and Deep frostbite, in which the skin and underlying tissue freezes. Permanent damage is possible, depending on how long and how deeply the tissue is frozen. Frostbite is caused by either prolonged exposure to cold temperatures or shorter exposure to very cold temperatures. Many people with frostnip or frostbite experience numbness. “Pins and needles” sensation, severe pain, itching and burning are all common when the affected area is warmed and blood starts flowing again. Skin may look white, grayish-yellow, or even black (with severe frostbite), and it may feel hard, waxy, and numb. Blistering is also common.

Treatment and First Aid - Get out of the cold, and take off wet clothing as soon as possible. Also, remove all restrictive jewelry or clothing. Immerse the affected area in warm, but not hot, water. If water is not available, warm the tissue with body heat. For example, warm your hands by tucking them into your armpits and warm your nose, ears, or face by covering them with dry hands.

Do not: Thaw frostbitten tissue if there is a chance that it will refreeze before you get medical attention (increases the likelihood of permanent damage); Rub or massage frostbitten skin or disturb blisters (which can further damage tissue); or Use direct dry heat (like heating pads or a campfire) to thaw frostbitten tissue. Many people with frostbite may also experience hypothermia (body temperature that is too low), which can be lethal (see description, below). This is why it is so important to seek medical attention immediately.

- Hypothermia - Hypothermia can occur in cold work environments. Prolonged exposure to cold temperatures can cause the body’s core temperature to drop. Blood flow to the outer limbs is reduced as the body attempts to keep the core warm.

Treatment and First Aid: Treatment and First Aid for Hypothermia include the following: The patient should be removed from the cold environment and placed in a warm shelter away from the wind. Wet clothing should be removed and replaced with a warm, dry covering including head covering. Emergency medical services should be activated (call 911 if available) as soon as possible. The patient's breathing should be monitored; if it becomes dangerously slow or stops, CPR should be initiated. Rough handling or jerking of the patient should be minimized if the person is lethargic or unconscious. This can cause an already irritable heart to develop abnormalities (e.g., a heart attack). Rewarming should be started by applying warm compresses to the chest, neck, and groin. Hot water should not be used. Because there may be associated frostbite, direct heat should not be applied to the body. Instead, warm blankets and body-to-body contact may be needed as a first aid measure. The severity of hypothermia and the patient's mental status and ability to

function will determine what further treatment is necessary. Passive rewarming with warm clothing in a warm environment may be all that is required for a conscious person who is shivering. Active rewarming may be considered for patients who do not respond to passive rewarming methods, and who are showing signs of confusion. Warmed intravenous fluids, warming blankets, and warmed humidified air may be provided in the hospital.

The following measures should be taken to prevent cold stress ailments:

- Wear appropriate clothing for the weather. When appropriate, wear insulated coveralls and a hat.
- Prepare for the worst when performing outdoor tasks if cold weather is a possibility.
- Wear mittens or protective gloves, or wear mittens alone if protective gloves are not required. Wearing two pairs of socks is advised, with wool recommended for the outer layer.
- Move your body or perform warm-up exercises. Increasing physical activity will help your body stay warm. Wiggle fingers and toes if they start to feel numb.
- Don't smoke. Smoking constricts blood vessels and increases the risk for frostbite.

Employees who work in cold environments should be trained in the recognition, treatment and prevention of cold stress. Anyone familiar with cold stress symptoms, first aid, and prevention can lead the training, which can be conducted as a part of a project tailgate safety session (e.g., when cold weather is expected).

**NATURAL HAZARDS:** Natural hazards are not expected on the project. The areas of interest are used for parking and paved or occupied by buildings.

## 12 CHEMICAL AND PHYSICAL AGENT HAZARDS

The following chemical hazards should be considered before performing any task or work at the facility. Depending on the task(s) being performed, the following hazards may be present:

- Toxic Compounds – Potential for volatile organic compounds (VOCs) and other compounds related to waste oil including semi-volatile organic compounds (SVOCs), polychlorinated biphenyls (PCBs) and metals. These potential hazards should be evaluated on a case-by-case basis. Additional precautions will be established as needed in this plan.
- Poisons – Insecticide, cleaners, or other toxic materials of various types may be present in the waste at the facility. Avoid contact with these items. Pay close attention to where you walk and what you touch such that materials do not accidentally come into contact with skin, eyes, mouth or clothing. Immediately remove any contaminated clothing and wash exposed skin with hot soapy water. Avoid contact at all times.
- Flammables and Energetics – The primary risk of these materials is fire or explosion. Keep all ignition sources away from flammable materials. Do not smoke, unless in designated areas. Pay close attention to where you walk and what you touch such that materials do not accidentally come into contact with skin, eyes, mouth or clothing. Immediately remove any contaminated clothing and wash exposed skin with hot soapy water. Avoid contact at all times. When augering be aware of what material is being drilled through underground, as the risk is present for buried materials.
- Oxidizers – Fertilizer, pool chemicals, chlorine or other oxidizers may be present at the facility. The primary risk of oxidizers is an increased fire potential. Keep fire and fuel or oil away from oxidizers. Do not smoke, unless in designated areas. Pay close attention to where you walk and what you touch such that materials do not accidentally come into contact with skin, eyes, mouth or clothing. Immediately remove any contaminated clothing and wash exposed skin with hot soapy water. Avoid contact at all times.
- Corrosives – Acid and caustic materials may be present at the facility. The primary risk of corrosives is damage to skin or eyes. Pay close attention to where you walk and what you touch such that materials do not accidentally come into contact with skin, eyes, mouth or clothing. Immediately remove any contaminated clothing and wash exposed skin with hot soapy water. Avoid contact at all times.

### **13 SITE SECURITY AND CONTROL, DECONTAMINATION AND DISPOSAL MEASURES**

The site owner is responsible for providing SCS employees and contractors with safe site access, and that includes one free of threats from transients, aggressive people, animals, and similar threats. If an employee or contractor encounters an aggressive person or animal (e.g. dog), they should withdraw from the site and contact the Site Representative and their employer supervisor. The site owner is responsible for removing the threat and employees/contractors should not take action of their own.

In terms of decontamination and disposal measures, SCS employees and contractors will use disposable materials, to the extent practicable, associated with the site work. Disposable items will be collected at the completion of each workday for disposal as non-hazardous solid waste. Use of hazardous materials and generation of hazardous wastes will be avoided for site activities.

## 14 EXCAVATION AND CONSTRUCTION EARTHWORK

This section provides guidance on the prevention of injury or death from excavation accidents, including cave-in or collapse, hazardous atmospheres, objects falling onto persons in an excavation, or striking subsurface encumbrances, such as underground utilities. An excavation is any man-made cut, cavity, trench, or depression in the earth's surface. Because construction projects typically include excavation or similar earthwork, and because excavation accidents can be deadly, understanding excavation hazards is very important. This section outlines measures required for construction projects with excavations, regardless of depth (for shoring, laying back of slopes at stable angles, etc.). Hazards associated with earthwork and protective systems related to these hazards are discussed.

A competent person will be assigned the responsibility of applying regulations. Workers in any excavation must be protected from cave-in by shoring, benching or sloping unless one of the following criteria is met:

- The excavation is entirely in stable rock, or
- The excavation is less than 5 feet deep and examination of the excavation by a competent person provides no indication of a potential cave-in.

Since excavations deeper than 4 feet may contain hazardous atmospheres and have limited egress, all persons working at excavations deeper than 4 feet must be trained in effective air monitoring and operation of the specific air monitoring devices that they will be using.

A permit may be required for excavations deeper than 4 feet (check local regulations). Excavations greater than 20 feet deep must be designed by a registered Professional Engineer.

### Competent Person

A competent person is required where any excavation will be entered. The competent person is responsible for inspecting the excavation at the beginning of the shift and periodically throughout the shift, evaluating soils and potential hazards, correcting hazards, and stopping work when necessary. Workers cannot enter an excavation until a competent person has examined it and found no indication of potential cave-in. An excavation competent person is a person who, by way of training and/or experience, meets the following criteria:

- Is knowledgeable of applicable standards
- Is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees
- Has authorization to take prompt corrective measures to eliminate them.

### Hazardous Atmospheres

The following requirements apply to excavations where a hazardous atmosphere exists or could reasonably be expected to exist before employees are allowed to enter for any reason:

- A competent person will conduct atmospheric testing and document results if the excavation is greater than 4 feet deep, or the excavation is at or near a landfill, or there is another reason to suspect that a hazardous atmosphere might form in the excavation.

- For potentially hazardous atmospheres, continuous monitoring should be practiced while workers are in the excavation. Readings must be documented at least every 2 hours, or every 15 minutes if a hazard is present.
- Precautions must be taken to prevent employee exposure to atmospheres containing less than 19.5 percent oxygen, or containing a concentration of a flammable gas in excess of 20 percent of the lower flammable limit of the gas, or other hazardous atmospheres. These precautions include providing ventilation and proper respiratory protection if necessary.
- Appropriate emergency rescue equipment, such as breathing apparatus, a safety harness and line, or a basket stretcher, must be readily available where hazardous atmospheric conditions exist or may reasonably be expected to develop during work in an excavation. All persons expected to perform rescues must be trained in rescue procedures and must have practiced at least one rescue within the last 12 months.

### **Access and Egress**

Excavations greater than 4 feet in depth require a means of access and egress, such as stairways, ladders, or ramps. The method of access and egress must be located no more than 25 feet horizontally in any direction. Egress devices will be secured to prevent slippage or movement. Ramps that will be used for equipment access and egress at an excavation must be designed and constructed in accordance with design specifications of a Professional Engineer Ramps that will be used only by workers (no equipment) must be designed by a competent person.

### **Fall Protection**

Where employees or equipment are required or permitted to cross over excavations over 6-feet in depth and wider than 30 inches, walkways or bridges with standard guardrails must be provided. Adequate barrier physical protection must be provided at all remotely located excavations. All wells, pits, shafts, etc., must be barricaded or covered. Upon completion of exploration and other similar operations, temporary wells, pits, shafts, etc., must be backfilled

### **Falling Materials**

Adequate protection must be provided to protect employees in an excavation from loose rock or soil that could pose a hazard by falling or rolling from an excavation face. For example, the excavation face can be scaled to remove loose material, or protective barricades can be installed at intervals as necessary on the face to stop and contain falling material, etc. Employees are not permitted underneath loads handled by lifting or digging equipment. They must stand away from any vehicle being loaded or unloaded to avoid being struck by spillage or falling materials.

### **Warning System for Mobile Equipment**

When mobile equipment is operated adjacent to an excavation, or when such equipment is required to approach the edge of an excavation, and the operator does not have a clear and direct view of the edge of the excavation, a warning system must be utilized such as barricades, hand or mechanical signals, or stop logs. If possible, the grade should be away from the excavation.

### **Soil Classification**

Soil classification by a competent person is required in the following situations:

- When a sloping or benching system is designed as a method of protection for employees from cave-ins
- When timber shoring or aluminum hydraulic shoring for excavations is designed as a method of protection from cave-ins
- When other protective systems are designed and selected for use from prepared data and the use of the data is predicated on the use of the soil classification system

The benching or slope of the excavation walls must be appropriate for the soil classification determined by the competent person in accordance with OSHA 29 CFR 1926 Subpart P, Appendix A or state OSHA regulations. Soil classification may be determined by the competent person using a visual test and either:

- A pocket penetrometer or
- A hand-operated shear-vane

As mentioned above, protective systems for excavations greater than 20 feet deep must be designed by a registered Professional Engineer.

### **Protective Systems**

Protective systems include sloping, benching, support systems, shield systems, and other systems. When support systems, shield systems, or other protective systems are not provided by the client or rented from a manufacturer's representative, excavation plans must be reviewed by a Registered Professional Engineer. Recommendations for specific protective systems are to be documented and implemented prior to excavating and before employees are permitted to enter the excavation. As noted above, protective systems are not needed when excavations are made entirely in stable rock, or they are less than 5 feet deep and examination by a competent person provides no indication of potential cave-in.

The Registered Professional Engineer's recommended protective system is to be documented in sufficient detail to establish compliance with federal or state OSHA regulations (e.g., 29 CFR 1926.652). The recommendations of the Registered Professional Engineer are to be signed and sealed by the Registered Professional Engineer. The excavation plans and recommendations must remain at the site. When manufactured support systems are to be utilized, the manufacturer's written specifications, recommendations, and limitations must also remain at the site. A competent person must monitor the construction and maintenance of protective systems and their use in excavations.

## 15 ACKNOWLEDGEMENT PAGE

“I have read the attached Health and Safety Plan, dated June 12, 20202. I have discussed any questions that I have regarding the materials with the person(s) in charge of site safety and I understand the requirements.”

Name	Signature	Company	Date

Approved by: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX F**  
**SITE MANAGEMENT FORMS**



**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	
<b>Site No.</b>	<b>C915211</b>		
<b>Site Name</b> NOCO #S41			
Site Address: 1055 Genesee Street		Zip Code: 14212	
City/Town: Buffalo			
County: Erie			
Site Acreage: 0.7			
Reporting Period: <del>December 13, 2013 to January 10, 2018</del>			
<b>Date to Date</b>			
		YES	NO
1.	Is the information above correct?	<input 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 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 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 type="checkbox"/>
	<b>If you answered YES to questions 2 thru 4, include documentation or evidence that documentation has been previously submitted with this certification form.</b>		
5.	Is the site currently undergoing development?	<input type="checkbox"/>	<input type="checkbox"/>
		<b>Box 2</b>	
		YES	NO
6.	Is the current site use consistent with the use(s) listed below? Commercial and Industrial	<input type="checkbox"/>	<input type="checkbox"/>
7.	Are all ICs/ECs in place and functioning as designed?	<input type="checkbox"/>	<input type="checkbox"/>
<b>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.</b>			
<b>A Corrective Measures Work Plan must be submitted along with this form to address these issues.</b>			
_____ Signature of Owner, Remedial Party or Designated Representative		_____ Date	

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

<b>SITE NO. C915211</b>	<b>Box 3</b>	
<b>Description of Institutional Controls</b>		
<u>Parcel</u> <b>100.76-5-1</b>	<u>Owner</u> Realty Income Buffalo Genesee, LLC	<u>Institutional Control</u> Ground Water Use Restriction Soil Management Plan Landuse Restriction Monitoring Plan Site Management Plan IC/EC Plan
<p>No engineering controls. IC includes Environmental Easement, Site Management Plan, ground water monitoring, and periodic certification.</p>		

	<b>Box 4</b>
<b>Description of Engineering Controls</b>	
None Required	
Not Applicable/No EC's	

**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 \_\_\_\_\_ at \_\_\_\_\_,  
print name print business address

am certifying as \_\_\_\_\_ (Owner or Remedial Party)

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

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

\_\_\_\_\_  
Date