

Section VII – Property’s Environmental History
Phase I Environmental Site Assessment

PHASE I ENVIRONMENTAL SITE ASSESSMENT

**COLVIN-EGGERT PLAZA
EGGERT ROAD AND COLVIN BOULEVARD
TONAWANDA, NEW YORK**

REARU ID #5861

APRIL 1998

Prepared for:

**MARINE MIDLAND BANK
ONE MARINE MIDLAND CENTER - 15TH FLOOR
BUFFALO, NEW YORK 14203**



**THE
SEAR-BROWN
GROUP**

Standards in Excellence



THE SEAR-BROWN GROUP
FULL-SERVICE DESIGN PROFESSIONALS

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April 10, 1998

Mr. Robert Szustakowski
Marine Midland Bank
Environmental Risk Analysis
One Marine Midland Center - 15th Floor
Buffalo, New York 14203

RE: REARU ID# 5861
Colvin-Eggert Plaza
Eggert Road and Colvin Boulevard
Tonawanda, New York

14960.02

Dear Mr. Szustakowski:

Pursuant to our contractual agreement, please find enclosed our Phase I Environmental Site Assessment (ESA) for the above referenced property. The Phase I ESA was conducted to fulfill the requirements of ASTM Standard Practice E 1527-97 for Phase I Environmental Site Assessments, using the guidelines of Marine Midland Bank. All the information contained herein is true to the best of our knowledge and can be relied upon by Marine Midland Bank.

Should you have any questions, please call.

Sincerely,

FOR
Michael P. Storonsky
Associate

MPS:PWL:14960.02\R0001.doc
Enclosure

c. Patrick Harrigan w/Enclosure

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ROCHESTER, NEW YORK 14623**

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DISCLAIMER

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Executive Summary

The subject property is a 9.35[±] acre parcel located on Eggert Road and Colvin Boulevard in the Town of Tonawanda, Erie County, New York. The property is zoned for general business use and is currently used as a strip plaza. It is understood that the recent purchasers of the subject property intend to demolish all but the Big Lots store.

The subject property has been developed as a retail shopping plaza and is improved with four one-story buildings of masonry construction. Three of the buildings are multi-tenant structures, and one is a branch bank building. The three multi-tenant buildings are identified as: the West Shops, the Northeast Shops, and the Southeast Shops. The West Shops building comprises 26,500[±] sq. ft., and includes five tenant spaces, three of which are currently vacant. Big Lots and Our Cleaners currently occupy this building. The Northeast Shops building covers 25,300[±] sq. ft. and has five tenant spaces, only two of which are occupied, by the Mar Jon School of Beauty, and Buffalo Physical Therapy. The Southeast Shops building covers 39,500[±] sq. ft. and contains fifteen tenant spaces, four of which are occupied. The tenants in this building include: Comix Cafe, Paramount Liquors, Carol Anne's Hair Fashions, and Phoenix Martial Arts Center. The fourth building is a 2,050[±] sq. ft. brick building occupied by Chase Manhattan Bank.

The subject property is bounded by Interstate Route 290 (I-290), and residential and commercial properties to the north. Single-family residential homes are located to the east of the subject property. Eggert Road, the Augustana Lutheran Church, and residential properties are located to the south. Eggert Road and its intersection with Colvin Boulevard are located immediately to the west of the subject property. Past these roadways are a Kwik Fill gas station and residential townhouses.

The Sear-Brown Group, Inc. (Sear-Brown) has performed a Phase I Environmental Site Assessment (ESA) of the Colvin-Eggert Plaza, located the intersection of Colvin Boulevard and Eggert Road in the Town of Tonawanda, New York, in conformance with the scope and limitations of ASTM Standard Practice E 1527-97, such that it satisfies the requirements of Marine Midland Bank. Any exceptions to, or deletions from, this practice are described in Sections 1.2, 1.3, and 1.4 of this report. This assessment has revealed no evidence of recognized environmental conditions in connection with the property, except for the following:

Findings/Conclusions

- At the time of the property visit, hazardous substances were observed at the Our Cleaners dry cleaners in the West Shops building. This facility uses Dowper solvent, a stabilized perchloroethylene dry-cleaning fluid, which is used in the one on-site Multi-matic Shop Star cleaning machine. There were two empty 5-gallon pails of this material in the rear boiler room. In addition, there were numerous small (8-10 oz.) squeeze bottles of spot removers and similar chemicals on a cleaning station. There were no readily apparent indications of spills, stains, or damaged floor tile in the vicinity of the washing machine, empty pails, or spot removing fluids.

There were two short plastic drums observed in this store. The owner of the business indicated that the drums (approximately 6 cu. ft., or 20 gallons) are used to store spent machine filter cartridges or liquid solvent waste. Approximately one drum of each waste material is removed from the store per month by Safety Kleen for off-site disposal. He indicated that Safety Kleen has been under contract to remove this waste since he has been at that location, for approximately the last ten years. There were no readily apparent indications of spills, stains, or damaged floor tiles observed in the vicinity of these drums, and the business owner indicated that there had been no spills or hazardous materials incidents on the property.

There was one 20-gallon plastic drum in the vacant Living Well Lady (fitness center) tenant space in the Northeast Shops building, which was labeled as containing non-butyl heavy duty cleaner. In addition, there was a 5-gallon pail that was hand painted "acid" and was presumed to contain hydrochloric acid, which is used to clean swimming pools. The fitness center had an indoor pool and spa. There were no readily apparent indications of spills, stains or leaks in the vicinity of these containers.

There were two 30-gallon drums located to the east (rear) of the Southeast Shops building, near the location of the ASTs. These drums were hand painted "NA1993", and were full of an unknown material. There were no readily apparent indications of stains, spills, or leaks in the vicinity of these drums.

- There are six 275-gallon fuel oil above ground storage tanks (ASTs) located at the rear (east side) of the Southeast Shops building. Each tank is used to heat an individual tenant space, although at least four are not currently being used as the associated tenant spaces are currently vacant. There were no readily apparent indications of spills, stains, or leaks observed in the vicinity of these tanks.
- A 1958 aerial photograph indicated that three buildings had been constructed on the subject property, on previously vacant land. The two smaller buildings were located on the western portion of the property, near the intersection of Eggert Road and Colvin Boulevard, and the third building was located on the southwestern portion of the subject property. According to a 1995 PSI report of the subject property, these buildings were used as a car wash and gas station, respectively. The PSI report indicated that the Town of Tonawanda has historically issued permits from 1958 to 1988 for the installation and removal of gas tanks on this former gas station: in 1958 (for the construction of the gas station), in 1969 (to replace two 300 gallon tanks with one 4,000-gallon tank), in 1972 (to replace a 200-gallon tank with a 3,000-gallon tank), in 1981 (to remove and release (sic) two 6,000-gallon tanks).

This former gas station most recently had two 6,000-gallon gasoline USTs. These tanks, and two others, were removed in September 1988 when the facility closed down its operations. A groundwater monitoring well was installed at this former gas station in December 1989 following a spill report on the westerly adjacent Kwik Fill gas station. Three additional monitoring wells were installed on this former gas station in June 1992, and petroleum contamination was discovered at levels above DEC groundwater standards.

Sear-Brown conducted a March 1998 Phase II Investigation of this former gas station which involved the advancement of five soil borings at depths ranging from 10 to 24 ft. bgs and the collection of soil and groundwater samples, which were submitted for laboratory analysis of volatile organic compounds (VOCs). One soil sample exhibited levels of VOCs above DEC soil guidance values. In addition, two groundwater samples, including one from the previously existing well C/E-3, exhibited levels of VOCs above their respective DEC Class GA groundwater standards. The data suggested that petroleum impacts persist in a narrow zone adjacent to Eggert Road. Given the depth of the contamination, the documented fact that groundwater flow in this vicinity is artificially influenced towards the westerly adjacent Kwik Fill as a result of groundwater recovery wells on that property; and, the DEC's inactive status for the on-site spill, the data collected as part of this March 1998 Phase II investigation suggested that no further action appeared necessary as long as future site development does not require excavation of soils below a depth of 8 to 10 ft. bgs.

- During the property visit, suspect ACM which were observed included drywall and associated patching compounds, lay-in ceiling tiles, floor tile, linoleum, and associated mastics. These materials were observed in good condition, with the exception of the 9-in floor tile in the vacant Lee Chu Chinese restaurant, which had several areas where the tile had delaminated from the floor due to water leaks in the roof. In addition, roofing materials, which were not observed, may also contain ACM. No samples of the suspect ACM were collected as part of this Phase I ESA.

The February 1992 Day Engineering Phase I ESA indicated that the 9-in. floor tile in the former Rite Aid Pharmacy tested positive for asbestos, although the report does not indicate the location of the store in the plaza. There is no reference in the subsequent Phase I reports which were reviewed for this ESA which indicated the location of the former Rite Aid store. It is assumed that this 9-in. floor tile was removed, as the only tenant space which was observed to have 9-in. floor tile at the time of the Sear-Brown 1998 property visit was the vacant Lee Chu restaurant.

The 1995 PSI Phase I ESA included an asbestos sampling and analysis program. Four types of 12 in. floor tile tested positive for asbestos in stores in the Southeast Shops building, including samples collected from the former card store, Slo-Poke store, Something Special store, and J&L Sales. These materials were determined to be in good condition.

- The inside of the structures were outfitted with fluorescent lighting fixtures. Historically, fluorescent lighting ballasts were manufactured with PCBs. This manufacturing practice was required to be discontinued by the 1979 Toxic Substance Control Act (TSCA) ban. The observed fixtures appeared to be in good condition with no readily apparent signs of leakage. Seven light fixtures in the vacant former billiards store in the West Shops building were observed and the ballasts were labeled as "non-PCB". Given the pre-1979 construction dates of the majority of the buildings (with the exception of the Northeast Shops building's 1983 construction), it is possible that some ballasts, which might contain PCBs, may still be in place

The DEC includes fluorescent light ballasts, which have volumes of less than 100 cu. inches and weigh less than nine lbs. and have less than three lbs. of dielectric fluid under the "small capacitors" exclusion when defining hazardous waste (6 NYCRR Part 371). Accordingly, they do not have to be disposed of as PCB-containing wastes. However, they are considered industrial waste, and are subject to regulations for that type of waste.

Given the absence of readily apparent leakage and the DEC exemption of "small" fluorescent light ballasts from the hazardous waste regulations, it is not considered necessary to verify the PCB content of the ballasts at this time.

- Painted surfaces on the interiors of the buildings appeared to be in good condition with no readily apparent indications of damage. Because three of the four buildings were constructed prior to 1978, and there was no documentation concerning lead levels, it is possible that these buildings contain lead-based paint (LBP). Painted surfaces in the building were observed and most appeared in good condition with no readily apparent indications of damage (i.e. peeling, flaking, cracking and dusting) which would constitute a health hazard.

Although on-site conditions cannot be determined without a LBP survey, given the above noted information, and the commercial nature of the building, the potential presence of LBP does not appear to present a significant human health concern at this time in these buildings. However, if the buildings are intended to be demolished, the resulting debris must be assumed to contain LBP and disposed properly in a landfill licensed to accept construction and demolition (C&D) debris.

- There is one property adjacent to the subject property which maintains USTs which are registered with the DEC. This facility, the Red Apple Kwik Fill (DEC I.D. No. 9-498017), located at 2309 Colvin Boulevard, has three USTs tanks which are registered with the DEC. These 10,000-gallon fiberglass-reinforced plastic (FRP) tanks contain gasoline and were installed in January 1986. Two of the tanks passed tightness tests in February 1997, and the third was passed testing one month later. The tanks are due to be re-tested in February and March 2002.

There has been one spill reported to the DEC from this adjacent property. This spill (DEC I.D. No. 8907656) occurred in November 1989 when soil and groundwater contamination was discovered. The most grossly contaminated soil was removed and, as previously mentioned, Matrix Environmental Technologies has been performing remediation at this adjacent site using groundwater recovery wells and an on-site treatment system. Approximately 400 gallons of gasoline had been recovered as of November 1997.

Sampling from a groundwater monitoring well on the subject property has indicated that contamination has reached the subject property. A July 1995 Matrix Monitoring report indicated that BTEX contamination in this well (MW-7) fluctuated between May 1993 through May 1995, with a lowest reading of 7 parts per billion (ppb) in August 1993, to high reading of 1,940 ppb in May 1993.

From a liability perspective, pursuant to New York Navigation Law Article 12, Part 3, Section 181.1 "Any person who has discharged petroleum shall be strictly liable, without regard to fault, for all cleanup and removal costs and all direct and indirect damages, no matter by whom sustained, ..." In addition, in the event the discharger of the petroleum is unwilling or incapable of addressing the cleanup and removal, the New York Environmental Protection and Spill Compensation Fund is required to step in and cover the above-referenced costs as outlined in Section 181.2.

Furthermore, the EPA issued the "Policy Toward Owners of Property Containing Contaminated Aquifers" on May 24, 1994 which states: "Where hazardous substances have come to be located on or in a property solely as a result of subsurface migration in an aquifer from a source or sources outside the property, EPA will not take enforcement action against the owner of such property to require the performance of response actions or the payment of response costs." Based on the above information, and the involvement of the DEC, it does not appear that the owners of the Covin-Eggert Plaza should be held liable for the cleanup of this spill, and no further investigation of the subject property, relative to this adjacent off-site spill, is deemed necessary at this time.

Recommendations

- Although there were no readily apparent indications of spills or stains on the floor of the dry cleaner, spills of typical dry cleaning solvents, such as perchloroethylene, typically would not produce a visible stain. Given that dry cleaning has been performed on this property for at least ten years, it is recommended that a subsurface soil sampling program be performed below the slab floor of the tenant space, and in the asphalt parking outside the side access door, to the north of the building, to evaluate the potential that the dry cleaning operations may have impacted the underlying soils.
- Given the intended demolition, it is recommended that the drums and other containers be properly characterized and disposed off-site prior to any demolition activities. The fuel oil tanks and their contents should also be removed and properly disposed prior to any demolition activities. In addition, it is recommended that the fluorescent light fixtures be removed prior to demolition and properly recycled or disposed off-site as industrial waste.
- Given the intended demolition, it is recommended that a pre-demolition asbestos survey be conducted which would involve the sampling and analysis of any suspect materials. If the materials are asbestos-containing (greater than one percent asbestos), then pre-demolition removal of the asbestos-containing materials should be supervised by a licensed asbestos abatement contractor in accordance with state and federal regulations in effect at that time.
- Given the presence of suspect lead-based paint, the intended demolition of the buildings, and the fact that the disposal of lead-containing building materials is regulated by the DEC, it is recommended that any painted materials be removed and properly disposed, separate from municipal waste, in a permitted construction and demolition (C&D) debris landfill in accordance with DEC solid waste regulations (6 NYCRR Part 360).

1.0 Introduction and Background

1.1 Purpose

This investigation was requested to identify, to the extent feasible, recognized environmental conditions in connection with the subject property.

1.2 Special Terms and Conditions

This Phase I ESA includes discussions of several issues not within the scope of the ASTM Standard Practice E 1527-97, but which are required by Marine Midland Bank, namely asbestos-containing building materials (ACBM), lead-based paint, lead in drinking water, and radon.

1.3 Limiting Conditions and Methodology Used

There was no access to two of the tenant spaces on the subject property: Comix Cafe and the Phoenix Martial Arts Center. Each of these spaces are presently occupied. Observations were made from the front windows of the Phoenix Martial Arts Center, allowing observation of a large percentage of the rentable space, although a back storage area was not able to be seen. According to Mr. John Whissel, A representative of the owners, The Benchmark Group, the units that were not visited are similar to the units observed by Sear-Brown. However, given that not all units were observed, Sear-Brown can make no determinations as to the types of materials present in those areas, or their potential environmental liability or site contamination implications.

1.4 Outstanding Information

A written Freedom of Information Law (FOIL) request was submitted to the New York State Department of Environmental Conservation (DEC) to review their files regarding the subject property and properties in the immediate vicinity (see Appendix A). At the time this report was prepared, a complete response from the DEC had not been received. Their response will be forwarded as soon as it is received by Sear-Brown if the file information represents a significant contamination concern for the subject property.

2.0 Site Description

2.1 Location and Current Use

The subject property is a 9.35[±] acre parcel located on Eggert Road and Colvin Boulevard in the Town of Tonawanda, Erie County, New York (see Figure 1, Site Location Map). The property is zoned for general business use and is used as a strip plaza. It is understood that the recent purchasers of the subject property intend to demolish all but the Big Lots location described below.

2.2 Site and Area Features

The subject property has been developed as a retail shopping plaza and is improved with four one-story buildings of masonry construction. Three of the buildings are multi-tenant structures, and one is a branch bank building. The three multi-tenant buildings are identified as: the West Shops, the Northeast Shops, and the Southeast Shops. The West Shops building comprises 26,500[±] sq. ft., and includes five tenant spaces, three of which are currently vacant. Big Lots and Our Cleaners currently occupy this building. The Northeast Shops building covers 25,300[±] sq. ft. and has five tenant spaces, only two of which are occupied, by the Mar Jon School of Beauty, and Buffalo Physical Therapy. The Southeast Shops building covers 39,500[±] sq. ft. and contains fifteen tenant spaces, four of which are occupied. The tenants in this building include: Comix Cafe, Paramount Liquors, Carol Anne's Hair Fashions, and Phoenix Martial Arts Center. The fourth building is a 2,050[±] sq. ft. brick building occupied by Chase Manhattan Bank.

There are asphalt-paved parking areas located between the buildings. Access to the property is from Colvin Boulevard to the west, and Eggert Road to the southwest.

2.3 Abutters and Nearby Properties

The subject property is bounded by Interstate Route 290 (I-290), and residential and commercial properties to the north. Single-family residential homes are located to the east of the subject property. Eggert Road, the Augustana Lutheran Church, and residential properties are located to the south. Eggert Road and its intersection with Colvin Boulevard are located immediately to the west of the subject property. Past these roadways are a Red Apple Kwik Fill gas station and residential townhouses.

2.4 Topography, Surface Water Bodies and Drainage

The subject property, although it slopes very gradually to the north, is generally level and lies at an average elevation of 580[±] ft. above mean sea level. Surface water drainage on the subject property and surrounding properties is in multiple directions, being controlled by the many buildings, roadways, parking areas, and

their associated stormwater drainage systems. The closest water body is Ellicott Creek, located 1.4[±] miles north of the subject property.

2.5 *Utilities*

Potable water is supplied to the subject property by the municipal water supply system (Erie County Water Authority). The property is connected to the municipal sanitary and storm sewer systems (Town of Tonawanda). Natural gas service is provided to the subject property by National Fuel Gas Corporation, and electric service is provided by Niagara Mohawk Power Corporation (NiMo).

3.0 Geologic/Hydrogeologic Conditions

Geologic/hydrogeologic data reviewed for this ESA included the United States Geological Survey (USGS) 7.5 Minute map (Buffalo and Tonawanda East Quadrangles, 1965 and 1980, respectively) and the Erie County Soil Survey (1986), prepared by the United States Department of Agriculture (USDA) Soil Conservation Service (SCS).

According to the Erie County Soil Survey, soils on the subject property are identified as Urban Land in the Claverack Complex, which consist of nearly level areas of urban land (which have been so obscured by public works and development that identification of the soils is not feasible) and Claverack soils, which were formed in clayey lake-laid deposits mantled with sandy deposits.

A June 1992 Phase II investigation of the subject property, performed by Day Engineering, involved the advancement of soil borings and establishment of monitoring wells on the southwestern portion of the subject property. Fill material was found from ground surface down to 3 ft. below ground surface (bgs). Clay was found from 3 ft. to 10 ft. bgs. Sand was found from 10 ft. to 14 ft. bgs. Groundwater was found at depths ranging from 15 ft. to 17 ft. bgs, and had a slight south-southeasterly flow.

A March 1998 Phase II Investigation of a former gas station on the southwest portion of the subject property indicated that native soils in that area consisted of a red silty clay with pale gray mottling and occasional matrix supported pebble layers. A layer of pale red, well-sorted fine sand was present beneath the clay at depths ranging from 9 to 24 feet below ground surface.

Based on topographic gradient, regional groundwater flow in the vicinity of the subject property is anticipated to flow northwesterly, towards the Niagara River, located 2.6[±] miles northwest of the subject property.

4.0 Historical Information

4.1 *Historical Sources Used*

History of the subject property was compiled through review of historic aerial photographs available at the Erie County Department of Planning dated 1951, 1966, 1978, 1985 and 1990; and a July 1995 PSI Consulting Phase I ESA of the subject property, which included a review of: 1932 and 1948 aerial photographs at the Erie County Natural Resources Conservation Service, and a 1986 Sanborn Fire Insurance Map. The Abstract of Title was not made available for review.

4.2 *Past Uses of Property and Surrounding Properties*

The PSI report indicated that, in the 1938 and 1942 aerial photographs, the subject property and surrounding properties were used as farmland. Eggert Road and Colvin Boulevard were observed to the south/southeast and west, respectively, of the subject property. The report indicated that the original portion of the plaza was constructed in 1958 on previously undeveloped land.

The 1958 aerial photograph indicated that three buildings had been constructed on the subject property. The largest was the West Shops building, which was located on the northwest portion of the subject property. The second building was located on the western portion of the property, near the intersection of Eggert Road and Colvin Boulevard, and the third building was located on the southwestern portion of the subject property. According to the PSI report, the second and third buildings were used as a car wash and gas station, respectively. There did not appear to have been any significant development of the area to the north of the subject property. Residential properties had been developed to the east of the subject property. A building, which appeared to be the current church, and residential properties had been constructed to the south of the subject property. A gas station had been constructed to the west of the subject property, west of Eggert Road, in a triangular-shaped property to the immediate south of the intersection of Eggert Road and Colvin Boulevard.

In the aerial photograph from 1966, there did not appear to have been any significant changes to the subject property or the surrounding properties to the east, south, or west of the subject property. Interstate Route 290 had been constructed to the north of the subject property.

Review of the 1978 aerial photograph revealed that a long, rectangular building (the Southeast Shops) had been constructed on the southeast portion of the subject property. It appeared that the former car wash building had been removed and replaced in the same general vicinity by another small building, which is the current branch bank building. The surrounding properties did not appear to have changed significantly since the 1966 aerial photograph had been taken.

In the aerial photograph from 1985, it appeared that the Northeast Shops building had been constructed on the northeast portion of the subject property. There did not appear to have been any other significant changes to the remainder of the subject property or the surrounding properties since the 1978 aerial photograph had been taken.

The PSI report indicated that the 1986 Sanborn Fire Insurance Map revealed no sources of environmental concerns associated with the subject property.

Review of the 1990 aerial photograph revealed that the gas station building on the southwestern portion of the subject property had been removed since the 1985 aerial photograph had been taken. Neither the remainder of the subject property or the surrounding properties appeared to have changed significantly since the 1978 aerial photograph had been taken.

5.0 Site Reconnaissance and Interviews

The Phase I ESA property visit and an interview with Mr. John Whissel, Benchmark Leasing Agency were conducted on April 9, 1998. In addition, an exterior property visit was performed on March 13, 1998. Representative photographs of the subject property are presented in Appendix B.

5.1 Description of Site Processes

The property has been developed as a shopping plaza. Two of the multi-tenant buildings (West Shops and Southeast Shops) contain mostly retail tenant space, of which only six of nineteen stores are occupied. The Northeast Shops are/were occupied by professional tenants, including a beauty school and physical therapy facility, and former tenants including a fitness center, electronics repair, and medical office. The smallest building is used as a branch bank building.

5.2 Hazardous Substance Usage/Storage

At the time of the property visit, hazardous substances were observed at the Our Cleaners dry cleaners in the West Shops building. This facility uses Dowper solvent, a stabilized perchloroethylene dry-cleaning fluid, which is used in the one on-site Multi-matic Shop Star cleaning machine. There were two empty 5-gallon pails of this material in the rear boiler room. In addition, there were numerous small (8-10 oz.) squeeze bottles of spot removers and similar chemicals on a cleaning station. There were no readily apparent indications of spills, stains, or damaged floor tile in the vicinity of the washing machine, empty pails, or spot removing fluids.

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There was one 20-gallon plastic drum in the vacant Living Well Lady (fitness center) tenant space in the Northeast Shops building, which was labeled as containing non-butyl heavy duty cleaner. In addition, there was a 5-gallon pail that was hand painted "acid" and was presumed to contain hydrochloric acid, which is used to clean swimming pools. The fitness center had an indoor pool and spa. There were no readily apparent indications of spills, stains or leaks in the vicinity of these containers.

5.3 *Petroleum Products Usage/Storage*

Fuel oil is used on the property to heat six of the tenant spaces in the Southeast Shops building. The fuel oil is stored in six 275-gallon above ground storage tanks (ASTs) which are discussed further in Section 5.4.

5.4 *Underground and Aboveground Storage Tanks*

As stated in Section 5.3, there are six 275-gallon fuel oil ASTs located at the rear (east side) of the Southeast Shops building. Each tank is used to heat an individual tenant space, although at least four are not currently being used as the associated tenant spaces are currently vacant. There were no readily apparent indications of spills, stains, or leaks observed in the vicinity of these tanks.

Indications of a former vent line were observed on the east side of the Southeast Shops building, near the observed ASTs. A February 1992 Phase II investigation of the subject property, performed by Day Engineering, indicated that there were at least six underground storage tanks (USTs) along the east side of this building, and possibly as many as seven. A January 1996 letter from Environmental Products and Services (EP&S) indicated that they removed the USTs from this portion of the property in August 1995, although the letter did not indicate how many tanks were removed or if an assessment was performed of each tank excavation. The January 1996 EP&S letter indicated that three soil borings were advanced in the area where the USTs were removed, to determine the presence or absence of contamination resulting from the presence or removal of the USTs. The three borings were only advanced to 1.7 ft. to 2 ft. bgs, which was the depth to groundwater in this area, because of the unknown location of buried water lines in this area. Soil samples were collected and submitted for laboratory analysis of semi-volatile organic base/neutral compounds (SVBNs) using the Toxicity Characteristic Leaching Procedure (TCLP), and no constituents were found above method detection levels.

The 1995 PSI report indicated that the Town of Tonawanda has historically issued permits for the installation and removal of gas tanks on the former gas station on the southwest portion of the subject property. A permit was issued in 1958 for the construction of the gas station. In 1969, a permit was issued to allow the gas station to replace the two 300 gallon tanks with one 4,000-gallon tank. Then, in 1972, another permit was issued to replace a 200-gallon tank with a 3,000-gallon tank. A permit was issued in 1981 to remove and release (sic) two 6,000-gallon tanks. The former gas station most recently had two 6,000-gallon gasoline USTs. These tanks and two others were removed in September 1988 when the facility closed down its operations. A groundwater monitoring well was installed at this location in December 1989 following a spill report on the westerly adjacent gas station. Three additional monitoring wells were installed on this former gas station in June 1992, and petroleum contamination was discovered at levels above DEC groundwater standards. This adjacent spill and the on-site wells are discussed further in Section 6.10.

Sear-Brown's March 1998 Phase II Investigation of this former gas station involved the advancement of five soil borings at depths ranging from 10 to 24 ft. bgs and the collection of soil and groundwater samples, which were submitted for laboratory analysis of volatile organic compounds (VOCs). One soil sample exhibited levels of VOCs above DEC soil guidance values. In addition, two groundwater samples, including one from the previously existing well C/E-3, exhibited levels of VOCs above their respective DEC Class GA groundwater standards. The data suggested that petroleum impacts persist in a narrow zone adjacent to Eggert Road. Given the depth of the contamination, the documented fact that groundwater flow in this vicinity is artificially influenced towards the westerly adjacent Kwik Fill as a result of groundwater recovery wells on that property, and the DEC's inactive status for the site, the data collected as part of this March 1998 Phase II investigation suggested that no further action appeared necessary as long as future site development does not require excavation of soils below a depth of 8 to 10 ft. bgs.

5.5 *Drums and Containers*

As previously mentioned, there were two 20-gallon plastic drums in the Our Cleaners store, and a 20-gallon plastic drum in the former Living Well Lady fitness center. There were no readily apparent indications of stains, spills, or leaks in the vicinity of these containers.

There were two 30-gallon drums located to the east (rear) of the Southeast Shops building, near the location of the ASTs. These drums were hand painted "NA1993", and were full of an unknown material. There were no readily apparent indications of stains, spills, or leaks in the vicinity of these drums.

5.6 *PCBs*

At the time of the Sear-Brown property visit, there were 24 pole-mounted transformers located around the perimeter of the subject property. These transformers are owned by NiMo. Thirteen of the transformers were labeled "non-PCB", which, by definition, indicates that they contain less than 50 parts per million (ppm) of PCB oil. Non-PCB equipment would not be subject to EPA cleanup requirements (40 CFR Part 761) and their disposal would not be regulated by the Toxic Substance Control Act (TSCA).

TSCA banned the production of PCB equipment in the United States in 1979. Given the age of the buildings on the subject property, it is possible that some or all of the remaining transformers were installed before 1979. Therefore, it is possible that these transformers contain PCBs. At the time of the property visit, no visible evidence of transformer leakage, staining or distressed vegetation was observed around the poles

While it is not known if the transformers contain PCBs, they do not appear to present a significant site contamination concern in their present condition. In addition, since they are owned by NiMo, if PCB site contamination problems do occur from these transformers, they should be the responsibility of NiMo and should not present a liability issue for the property owner.

The inside of the structures were outfitted with fluorescent lighting fixtures. Historically, fluorescent lighting ballasts were manufactured with PCBs. This manufacturing practice was required to be discontinued by the 1979 TSCA ban. The observed fixtures appeared to be in good condition with no readily apparent signs of leakage. Seven light fixtures in the vacant former billiards store in the West Shops building were observed and the ballasts were labeled as "non-PCB". Given the pre-1979 construction dates of the majority of the buildings (with the exception of the Northeast Shops building's 1983 construction), it is possible that some ballasts, which might contain PCBs, may still be in place.

The DEC includes fluorescent light ballasts, which have volumes of less than 100 cu. inches and weigh less than nine lbs. and have less than three lbs. of dielectric fluid under the "small capacitors" exclusion when defining hazardous waste (6 NYCRR Part 371). Accordingly, they do not have to be disposed of as PCB-containing wastes. However, they are considered industrial waste, and are subject to regulations for that type of waste.

Given the absence of readily apparent leakage and the DEC exemption of "small" fluorescent light ballasts from the hazardous waste regulations, it is not considered necessary to verify the PCB content of the ballasts at this time.

5.7 *Stains, Corrosion, and Strained Vegetation*

There were no readily apparent indications of stains, corrosion or dead or distressed vegetation observed on the subject property.

5.8 *Fill/Solid Waste Disposal*

There were no readily apparent indications of fill materials or solid waste disposal on the subject property at the time of the property visit. However, previous drilling programs performed on the southwest portion of the property identified approximately three feet of fill material.

5.9 *Wastewater*

According to Mr. Whissel, to the best of his knowledge, wastewater from the buildings on the subject property discharge to the municipal sanitary sewer system.

5.10 Wells

There were no readily apparent indications of potable water wells on the subject property.

As previously mentioned, there are four groundwater monitoring wells on the southern portion of the subject property, at the location of the former gas station on the subject property. These wells are discussed further in Section 6.10. In addition, at the time of Sear-Brown's March 1998 Phase II Investigation, three temporary piezometers were installed for groundwater sample collection. Two of the piezometers were left in place.

There are four 4-in. diameter PVC pipe risers protruding approximately 4 ft. above the ground surface to the east (rear) of the Southeast Shops building, near the ASTs and former UST locations. These risers were capped with monitoring well plugs, although it could not be determined if the risers were actually associated with monitoring wells.

5.11 Sewage Disposal Systems

As previously mentioned, the sanitary wastewater on the subject property is discharged to the municipal sewer system, maintained by the Town of Tonawanda.

5.12 Drains and Sumps

As previously discussed in Section 5.9, the wastewater on the subject property discharges to the municipal sewer system.

There was a floor drain in the boiler room in the dry cleaners, which appeared to receive condensate and water from boiler blow-down activities. There were no readily apparent indications of spills, stains or chemical storage in the vicinity of this drain, which, according to Mr. Whissel, discharges to the sanitary sewer system.

5.13 Pits, Ponds, Lagoons

There were no readily apparent indications of pits, ponds or lagoons on the subject property at the time of the property visit.

5.14 Asbestos

During the property visit, suspect ACM which were observed included drywall and associated patching compounds, lay-in ceiling tiles, and floor tile, linoleum, and associated mastics. These materials were observed in good condition, with the exception of the 9-in. floor tile in the vacant Lee Chu Chinese restaurant, which had several areas where the tile had delaminated from the floor due to water leaks

in the roof. In addition, roofing materials, which were not observed, may also contain ACBM. No samples of the suspect ACBM were collected as part of this Phase I ESA.

The February 1992 Day Engineering Phase I ESA indicated that the 9-in. floor tile in the former Rite Aid Pharmacy tested positive for asbestos, although the report does not indicate the location of the store in the plaza. There is no reference in the subsequent Phase I reports which were reviewed for this ESA which indicated the location of the former Rite Aid store. It is assumed that this 9-in. floor tile was removed, as the only tenant space which was observed to have 9-in. floor tile at the time of the Sear-Brown 1998 property visit was the vacant Lee Chu restaurant.

The 1995 PSI Phase I ESA included an asbestos sampling and analysis program. Four types of 12 in. floor tile were found to be positive for asbestos in stores in the Southeast Shops building, including samples collected from the former card store, Slo-Poke store, Something Special store, and J&L Sales. These materials were determined to be in good condition.

5.15 *Lead Paint*

Painted surfaces on the interiors of the buildings appeared in good condition with no readily apparent indications of damage. Because three of the four buildings were constructed prior to 1978, and there was no documentation concerning lead levels, it is possible that these buildings contain lead-based paint (LBP). Painted surfaces in the building were observed and most appeared in good condition with no readily apparent indications of damage (i.e. peeling, flaking, cracking and dusting) which would constitute a health hazard.

Although on-site conditions cannot be determined without a LBP survey, given the above noted information, and the commercial nature of the building, the potential presence of LBP does not appear to present a significant human health concern at this time in these buildings. However, if the buildings are intended to be demolished, the resulting debris must be assumed to contain LBP and disposed properly in a landfill licensed to accept construction and demolition (C&D) debris.

5.16 *Lead In Drinking Water*

Mr. Shannon Carder, Erie County Water Authority (ECWA) Analytical Chemist, indicated that the ECWA samples the water in their municipal supply system quarterly for contaminants, including lead. He indicated that in each of the last several years, the lead content in the water has been less than 5 parts per billion (ppb). USEPA regulations state that this level of lead indicates the system has optimum corrosion control and only requires yearly subsequent testing. Although site-specific lead-in-water levels cannot be determined without a sampling and analysis program, given the results of the ECWA annual testing program, it appears that the water which is supplied to the subject property should not be a source of elevated levels of lead.

5.17 Radon

According to the NYSDOH Basement Radon Survey, 300 readings in the Town of Tonawanda yielded an average reading of 1.0 picoCurie/liter (pCi/l). This average value is below the 4 pCi/l action level suggested by the EPA.

Radon levels can vary depending on such factors as building construction and geologic conditions. For instance, radon tends to infiltrate and accumulate in basements and crawlspaces. Each of the subject buildings is constructed with a slab-on-grade floor. Although site-specific radon levels cannot be determined without site-specific testing, given the absence of a basement or crawl space in the buildings on the subject property, in conjunction with their commercial nature and the average Town reading, radon does not appear to present a significant environmental concern for the subject property.

6.0 Regulatory Information

Federal, state, and local environmental records were reviewed for ASTM-specified radii, using Sear-Brown's in-house state regulatory paper and magnetic disk files, and included: the U.S. Environmental Protection Agency (EPA) National Priorities List (NPL, September 1997), Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS, August 1997) sites, Resource Conservation and Recovery Act (RCRA, November 1997) notifiers, and Emergency Response Notification System (ERNS, September 1997); the New York State Department of Environmental Conservation (DEC) Registry of Inactive Hazardous Waste Disposal Sites (January 1998), the DEC Hazardous Substance Waste Disposal Site listing (HSWDS, January 1997), Active Solid Waste Disposal Facilities (ASWDF, June 1997), registered petroleum bulk storage (PBS) and chemical bulk storage (CBS) tanks (November 1997), and reported spill files (November 1997); and the Erie County Department of Planning Solid Waste Site Map (April 1998)

6.1 NPL Sites

The subject property does not appear on the EPA NPL. In addition, there are no EPA NPL sites within one mile of the subject property.

6.2 CERCLIS Sites

The subject property is not on the EPA CERCLIS listing. There is one CERCLIS site within one-half mile of the subject property. This property, identified as US ARC PFC Charles DeGlopper (EPA I.D. No. NY1210021886), is located at 2393 Colvin Boulevard, approximately 1,300 ft. north of the subject property. Based on topographical gradient, regional groundwater flow in the vicinity of this listed site is anticipated to flow northeasterly, away from the subject property. Given its distance and anticipated downgradient location, this site is not anticipated to be a contamination concern for the subject property.

6.3 RCRA TSD Facilities

The subject property is not an EPA RCRA hazardous waste Treatment, Storage, or Disposal (TSD) facility. There are no EPA RCRA hazardous waste TSD facilities within one mile of the subject property.

6.4 RCRA Generators

There is one facility on the subject property which is an EPA RCRA generator. This facility, Our Cleaners (EPA I.D. No. NYD986938561), located in the West Shops building, is identified as a large quantity generator (LQG) of hazardous waste, which is a facility which generates more than 1,000 kilograms of hazardous waste per month. This facility has notified the EPA of its RCRA status as a result of the waste dry cleaning solvents and spent filters which are removed monthly

from this facility by Safety Kleen. The presence of this facility on this listing only identifies, for regulatory purposes, that this facility generates hazardous waste. It does not infer that site contamination problems do, or do not, exist at this facility.

There is one EPA RCRA Generator located adjacent to the subject property. This facility, the Red Apple Kwik Fill gas station, located at 2309 Colvin Boulevard, is adjacent to the west of the subject property, across Eggert Road. This facility is identified as a small quantity generator (SQG) of hazardous waste, which is a facility which generates between 100 and 1,000 kilograms of hazardous waste per month.

6.5 *ERNS List*

The subject property is not on the EPA ERNS listing.

6.6 *State Hazardous Waste Sites*

The subject property is not on the DEC IHWDS Registry or the HSWDS survey. There are no sites within one mile of the subject property which are on the DEC IHWDS Registry or the HSWDS survey.

6.7 *State Landfill/Solid Waste Disposal Facilities*

The subject property is not on the DEC ASWDF list. There are no sites within one-half mile of the subject property which are on the ASWDF list.

6.8 *Underground Storage Tank Sites*

The former gas station on the subject property, Petro USA, is identified as having maintained USTs which were registered with the DEC. The facility (DEC I.D. No. 9-383414), which had an address of 3177 Eggert Road, is identified as being out-of-service, but having maintained two 6,000-gallon gasoline USTs which were of steel construction and were installed in June 1981. The DEC PBS database indicated that one of the tanks was removed in September 1988, while the second tank was removed in December 1988.

As previously mentioned, the PSI 1995 report indicated that permits had been issued by the Town of Tonawanda from 1958 until 1988 for the installation and removal of tanks at this former gas station. A 1958 permit was issued for the initial construction of the gas station. A permit was issued in 1969 to replace two 300-gallon tanks with one 4,000-gallon tank. Then, in 1972, a permit was issued for the replacement of a 200-gallon tank with a 3,000-gallon tank. A permit was issued in 1981 to remove and release (sic) two 6,000-gallon tanks. Finally, a permit was issued in 1988 for the removal of four tanks at this property, although the DEC records indicated that only two tanks were registered at the facility.

The Town of Tonawanda also issued permits in 1975 to the plaza in general for the installation of a 1,000-gallon propane tank and a 500-gallon oil tank.

The subject property is not on the registered DEC CBS tank listings.

There is one property adjacent to the subject property which maintains USTs which are registered with the DEC. This facility, the Red Apple Kwik Fill (DEC I.D. No. 9-498017), located at 2309 Colvin Boulevard, has three USTs tanks which are registered with the DEC. These 10,000-gallon fiberglass-reinforced plastic (FRP) tanks contain gasoline and were installed in January 1986. Two of the tanks passed tightness testing in February 1997, and the third passed testing one month later. The tanks are due to be re-tested in February and March 2002.

There are no properties adjacent to the subject property which maintain CBS tanks which are registered with the DEC.

6.9 *Leaking Registered Storage Tank Sites*

The DEC reported spills listing indicated that there has been one tank-related spill on the subject property which was reported to the DEC. This spill event report (DEC I.D. No. 9308794) occurred in October 1993 when rainwater leaked into an open fill port of a fuel oil UST to the east of the Southeast Shops building, spilling oil onto the ground and neighboring residential properties. The oil was cleaned up, and affected soil was removed from the subject property and the adjacent residential properties. Soil samples collected by the DEC indicated that the affected soil had been sufficiently removed. However, the DEC requested that this UST be removed. As previously mentioned in Section 5.4, several fuel oil USTs were removed from behind the Southeast Shops building in January 1996. This spill file was subsequently closed by the DEC in February 1996. Given its closed status, which suggests that it was resolved to the satisfaction of the DEC, this spill report does not appear to be a significant site contamination concern.

There has been one tank-related spill which occurred within one-half mile of the subject property and was reported to the DEC. This spill (DEC I.D. No. 8907656) occurred in November 1989 at the Stop-N-Go gas station (current Kwik Fill) located at 2309 Colvin Boulevard, adjacent to the west of the subject property, when groundwater contamination was discovered at this site. The most grossly contaminated soil was removed and, as previously mentioned, Matrix Environmental Technologies (Matrix) has been performing remediation at this adjacent site using groundwater recovery wells and an on-site treatment system. Approximately 400 gallons of gasoline had been recovered as of November 1997.

Sampling from a groundwater monitoring well on the subject property has indicated that contamination has reached the subject property. A July 1995 Matrix report indicated that BTEX contamination in this well (MW-7) fluctuated between

May 1993 through May 1995, with the lowest reading of 7 parts per billion (ppb) in August 1993, to the highest reading of 1,940 ppb in May 1993.

From a liability perspective, pursuant to New York Navigation Law Article 12, Part 3, Section 181.1 "Any person who has discharged petroleum shall be strictly liable, without regard to fault, for all cleanup and removal costs and all direct and indirect damages, no matter by whom sustained, ...". In addition, in the event the discharger of the petroleum is unwilling or incapable of addressing the cleanup and removal, the New York Environmental Protection and Spill Compensation Fund is required to step in and cover the above-referenced costs as outlined in Section 181.2. Furthermore, the EPA issued the "Policy Toward Owners of Property Containing Contaminated Aquifers" on May 24, 1994 which states: "Where hazardous substances have come to be located on or in a property solely as a result of subsurface migration in an aquifer from a source or sources outside the property, EPA will not take enforcement action against the owner of such property to require the performance of response actions or the payment of response costs." Based on the above information, and the involvement of the DEC, it does not appear that the owners of the Covin-Eggert Plaza should be held liable for the cleanup of this spill, and no further investigation of the subject property, relative to this adjacent spill, is deemed necessary at this time.

There has been one additional leaking storage tank spill which was reported to the DEC and occurred within one-half mile of the subject property. This spill (DEC I.D. No. 9309734) involved an unknown petroleum tank failure in November 1993 at the intersection of Colvin Boulevard and Eggert Road. It is unsure whether the spill occurred at the adjacent Kwik Fill gas station. This spill was cleaned up to standards in place at that time and the spill file was closed eight days after it occurred. Given its closed status, which suggests that it was resolved to the satisfaction of the DEC, this spill does not appear to be a significant contamination concern for the subject property.

6.10 Spills

There have been no reported spills to the DEC which occurred on the subject property.

There was one additional spill which occurred on the subject property which was reported to the DEC. This spill (DEC I.D. No. 9112834) was reported in March 1992 following an initial Phase II investigation of the former on-site gas station by Day Engineering. Three groundwater monitoring wells were subsequently installed on this portion of the property in June 1992 by Day Engineering. A test pit program was also performed at the same time. Their report indicated that there was no contamination found in the test pits down to a depth of 12 ft. bgs. Two soil samples from below this level showed elevated levels of BTEX compounds, suggestive of gasoline contamination. Of the three monitoring wells, only one showed detectable levels of BTEX contamination. It was concluded by

Day Engineering that the on-site contamination was not indicative of on-site activities. This spill report file was given an "inactive" status by the DEC in February 1996. With an inactive status, the DEC has the option to re-open the file at any time in the future and request that further investigation or remediation be performed, if there is reason to suspect the contamination is impacting a sensitive receptor or creating other concerns.

However, given the results of Sear-Brown's March 1998 Phase II investigation, based on the depth of the contamination, the documented fact that groundwater flow in this vicinity is artificially influenced towards the westerly adjacent Kwik Fill as a result of groundwater recovery wells on that property, and the DEC's inactive status for the site, the data collected as part of the March 1998 Phase II investigation suggested that no further action appeared necessary as long as future site development does not require excavation of soils below a depth of 8-10 ft. bgs.

7.0 Interviews and Information Requests

The following individuals/agencies were interviewed or requested to provide information on the subject property.

7.1 *Government Officials*

7.1.1 *State Agency*

Written Freedom of Information Law (FOIL) requests were submitted to the DEC to review their files regarding the subject property and neighboring parcels (see Appendix A). However, at the time this report was prepared, a complete response from the DEC had not been received. Their response will be forwarded as soon as it is received by Sear-Brown if the file information represents a potential contamination concern for the subject property.

7.1.2 *Department of Health*

The Erie County Department of Environmental Health/Planning Department files were reviewed regarding waste sites on the subject property and in the vicinity. There were no local waste sites which were identified on the subject property or in its vicinity.

7.1.3 *Fire/Building Department*

Sear-Brown contacted Mr. Richard Prem, Brighton Fire District in the Town of Tonawanda, who indicated that there are no reports in his files regarding spills or hazardous materials incidents on the subject property.

8.0 Findings and Conclusions

The subject property is a 9.35[±] acre parcel located on Eggert Road and Colvin Boulevard in the Town of Tonawanda, Erie County, New York. The property is zoned for general business use and is currently used as a strip plaza. It is understood that the recent purchasers of the subject property intend to demolish all but the Big Lots store.

The subject property has been developed as a retail shopping plaza and is improved with four one-story buildings of masonry construction. Three of the buildings are multi-tenant structures, and one is a branch bank building. The three multi-tenant buildings are identified as: the West Shops, the Northeast Shops, and the Southeast Shops. The West Shops building comprises 26,500[±] sq. ft., and includes five tenant spaces, three of which are currently vacant. Big Lots and Our Cleaners currently occupy this building. The Northeast Shops building covers 25,300[±] sq. ft. and has five tenant spaces, only two of which are occupied, by the Mar Jon School of Beauty, and Buffalo Physical Therapy. The Southeast Shops building covers 39,500[±] sq. ft. and contains fifteen tenant spaces, four of which are occupied. The tenants in this building include: Comix Cafe, Paramount Liquors, Carol Anne's Hair Fashions, and Phoenix Martial Arts Center. The fourth building is a 2,050[±] sq. ft. brick building occupied by Chase Manhattan Bank.

The subject property is bounded by Interstate Route 290 (I-290), and residential and commercial properties to the north. Single-family residential homes are located to the east of the subject property. Eggert Road, the Augustana Lutheran Church, and residential properties are located to the south. Eggert Road and its intersection with Colvin Boulevard are located immediately to the west of the subject property. Past these roadways are a Red Apple Kwik Fill gas station and residential townhouses.

The Sear-Brown Group, Inc. (Sear-Brown) has performed a Phase I Environmental Site Assessment (ESA) of the Colvin-Eggert Plaza, located the intersection of Colvin Boulevard and Eggert Road in the Town of Tonawanda, New York in conformance with the scope and limitations of ASTM Standard Practice E 1527-97, such that it satisfies the requirements of Marine Midland Bank. Any exceptions to, or deletions from, this practice are described in Sections 1.2, 1.3, and 1.4 of this report. This assessment has revealed no evidence of recognized environmental conditions in connection with the property, except for the following:

Findings/Conclusions

- At the time of the property visit, hazardous substances were observed at the Our Cleaners dry cleaners in the West Shops building. This facility uses Dowper solvent, a stabilized perchloroethylene dry-cleaning fluid, which is used in the one on-site Multi-matic Shop Star cleaning machine. There were two empty 5-gallon pails of this material in the rear boiler room. In addition, there were numerous small (8-10 oz.) squeeze bottles of spot removers and similar chemicals on a cleaning station. There were no readily apparent indications of spills, stains, or

damaged floor tile in the vicinity of the washing machine, empty pails, or spot removing fluids

There were two short plastic drums observed in this store. The owner of the business indicated that the drums (approximately 6 cu. ft., or 20 gallons) are used to store spent machine filter cartridges or liquid solvent waste. Approximately one drum of each waste material is removed from the store per month by Safety Kleen for off-site disposal. He indicated that Safety Kleen has been under contract to remove this waste since he has been at that location, for approximately the last ten years. There were no readily apparent indications of spills, stains, or damaged floor tiles observed in the vicinity of these drums, and the business owner indicated that there had been no spills or hazardous materials incidents on the property.

There was one 20-gallon plastic drum in the vacant Living Well Lady (fitness center) tenant space in the Northeast Shops building, which was labeled as containing non-butyl heavy duty cleaner. In addition, there was a 5-gallon pail that was hand painted "acid" and was presumed to contain hydrochloric acid, which is used to clean swimming pools. The fitness center had an indoor pool and spa. There were no readily apparent indications of spills, stains or leaks in the vicinity of these containers.

There were two 30-gallon drums located to the east (rear) of the Southeast Shops building, near the location of the ASTs. These drums were hand painted "NA1993", and were full of an unknown material. There were no readily apparent indications of stains, spills, or leaks in the vicinity of these drums.

- There are six 275-gallon fuel oil above ground storage tanks (ASTs) located at the rear (east side) of the Southeast Shops building. Each tank is used to heat an individual tenant space, although at least four are not currently being used as the associated tenant spaces are currently vacant. There were no readily apparent indications of spills, stains, or leaks observed in the vicinity of these tanks.
- A 1958 aerial photograph indicated that three buildings had been constructed on the subject property, on previously vacant land. The two smaller buildings were located on the western portion of the property, near the intersection of Eggert Road and Colvin Boulevard, and the third building was located on the southwestern portion of the subject property. According to a 1995 PSI report of the subject property, these buildings were used as a car wash and gas station, respectively. The PSI report indicated that the Town of Tonawanda has historically issued permits from 1958 to 1988 for the installation and removal of gas tanks on this former gas station: in 1958 (for the construction of the gas station), in 1969 (to replace two 300 gallon tanks with one 4,000-gallon tank), in 1972, (to replace a 200-gallon tank with a 3,000-gallon tank), in 1981 (to remove and release (sic) two 6,000-gallon tanks)

This former gas station most recently had two 6,000-gallon gasoline USTs. These tanks, and two others, were removed in September 1988 when the facility closed down its operations. A groundwater monitoring well was installed at this location in December 1989 following a spill report on the westerly adjacent Kwik Fill gas station. Three additional monitoring wells were installed on this former gas station in June 1992, and petroleum contamination was discovered at levels above DEC groundwater standards.

Sear-Brown conducted a March 1998 Phase II Investigation of this former gas station which involved the advancement of five soil borings at depths ranging from 10 to 24 ft. bgs and the collection of soil and groundwater samples, which were submitted for laboratory analysis of volatile organic compounds (VOCs). One soil sample exhibited levels of VOCs above DEC soil guidance values. In addition, two groundwater samples, including one from the previously existing well C/E-3, exhibited levels of VOCs above their respective DEC Class GA groundwater standards. The data suggested that petroleum impacts persist in a narrow zone adjacent to Eggert Road. Given the depth of the contamination; the documented fact that groundwater flow in this vicinity is artificially influenced towards the westerly adjacent Kwik Fill as a result of groundwater recovery wells on that property; and, the DEC's inactive status for the site, the data collected as part of this March 1998 Phase II investigation suggested that no further action appeared necessary as long as future site development does not require excavation of soils below a depth of 8 to 10 ft. bgs.

- During the property visit, suspect ACM which were observed included drywall and associated patching compounds, lay-in ceiling tiles, floor tile, linoleum, and associated mastics. These materials were observed in good condition, with the exception of the 9-in. floor tile in the vacant Lee Chu Chinese restaurant, which had several areas where the tile had delaminated from the floor due to water leaks in the roof. In addition, roofing materials, which were not observed, may also contain ACM. No samples of the suspect ACM were collected as part of this Phase I ESA.

The February 1992 Day Engineering Phase I ESA indicated that the 9 inch floor tile in the former Rite Aid Pharmacy tested positive for asbestos, although the report does not indicate the location of the store in the plaza. There is no reference in the subsequent Phase I reports which were reviewed for this ESA which indicated the location of the former Rite Aid store. It is assumed that this 9-in. floor tile was removed, as the only tenant space which was observed to have 9-in. floor tile at the time of the Sear-Brown 1998 property visit was the vacant Lee Chu restaurant.

The 1995 PSI Phase I ESA included an asbestos sampling and analysis program. Four types of 12 in. floor tile were found to be positive for asbestos in stores in the Southeast Shops building, including samples collected from the former card store, Slo-Poke store, Something Special store, and J&L Sales. These materials were determined to be in good condition

- The inside of the structures were outfitted with fluorescent lighting fixtures. Historically, fluorescent lighting ballasts were manufactured with PCBs. This manufacturing practice was required to be discontinued by the 1979 Toxic Substance Control Act (TSCA) ban. The observed fixtures appeared to be in good condition with no readily apparent signs of leakage. Seven light fixtures in the vacant former billiards store in the West Shops building were observed and the ballasts were labeled as "non-PCB". Given the pre-1979 construction dates of the majority of the buildings (with the exception of the Northeast Shops building's 1983 construction), it is possible that some ballasts, which might contain PCBs, may still be in place.

The DEC includes fluorescent light ballasts, which have volumes of less than 100 cu. inches and weigh less than nine lbs. and have less than three lbs. of dielectric fluid under the "small capacitors" exclusion when defining hazardous waste (6 NYCRR Part 371). Accordingly, they do not have to be disposed of as PCB-containing wastes. However, they are considered industrial waste, and are subject to regulations for that type of waste.

Given the absence of readily apparent leakage and the DEC exemption of "small" fluorescent light ballasts from the hazardous waste regulations, it is not considered necessary to verify the PCB content of the ballasts at this time.

- Painted surfaces on the interiors of the buildings appeared in good condition with no readily apparent indications of damage. Because three of the four buildings were constructed prior to 1978, and there was no documentation concerning lead levels, it is possible that these buildings contain lead-based paint (LBP). Painted surfaces in the building were observed and most appeared in good condition with no readily apparent indications of damage (i.e. peeling, flaking, cracking and dusting) which would constitute a health hazard.

Although on-site conditions cannot be determined without a LBP survey, given the above noted information, and the commercial nature of the building, the potential presence of LBP does not appear to present a significant human health concern at this time in these buildings. However, if the buildings are intended to be demolished, the resulting debris must be assumed to contain LBP and disposed properly in a landfill licensed to accept construction and demolition (C&D) debris.

- There is one property adjacent to the subject property which maintains USTs which are registered with the DEC. This facility, the Red Apple Kwik Fill (DEC I.D. No. 9-498017), located at 2309 Colvin Boulevard, has three USTs tanks which are registered with the DEC. These 10,000-gallon fiberglass-reinforced plastic (FRP) tanks contain gasoline and were installed in January 1986. Two of the tanks passed tightness testing in February 1997, and the third passed tightness testing one month later. The tanks are due to be re-tested in February and March 2002.

There has been one spill reported to the DEC from this adjacent property. This spill (DEC I.D. No. 8907656) occurred in November 1989 when soil and groundwater contamination was discovered. The most grossly contaminated soil was removed and, as previously mentioned, Matrix Environmental Technologies (Matrix) has been performing remediation at this adjacent site using groundwater recovery wells and an on-site treatment system. Approximately 400 gallons of gasoline had been recovered as of November 1997.

Sampling from a groundwater monitoring well on the subject property has indicated that contamination has reached the subject property. A July 1995 Matrix report indicated that BTEX contamination in this well (MW-7) fluctuated between May 1993 through May 1995, with the lowest reading of 7 parts per billion (ppb) in August 1993, and the highest reading of 1,940 ppb in May 1993.

From a liability perspective, pursuant to New York Navigation Law Article 12, Part 3, Section 181.1 "Any person who has discharged petroleum shall be strictly liable, without regard to fault, for all cleanup and removal costs and all direct and indirect damages, no matter by whom sustained, ..." In addition, in the event the discharger of the petroleum is unwilling or incapable of addressing the cleanup and removal, the New York Environmental Protection and Spill Compensation Fund is required to step in and cover the above-referenced costs as outlined in Section 181.2.

Furthermore, the EPA issued the "Policy Toward Owners of Property Containing Contaminated Aquifers" on May 24, 1994 which states: "Where hazardous substances have come to be located on or in a property solely as a result of subsurface migration in an aquifer from a source or sources outside the property, EPA will not take enforcement action against the owner of such property to require the performance of response actions or the payment of response costs." Based on the above information, and the involvement of the DEC, it does not appear that the owners of the Covin-Eggert Plaza should be held liable for the cleanup of this spill, and no further investigation of the subject property, relative to this adjacent off-site spill, is deemed necessary at this time.

Recommendations

- Although there were no readily apparent indications of spills or stains on the floor of the dry cleaner, spills of typical dry cleaning solvents, such as perchloroethylene, typically would not produce a visible stain. Given that dry cleaning has been performed on this property for at least ten years, it is recommended that a subsurface soil sampling program be performed below the slab floor of the tenant space, and in the asphalt parking outside the side access door, to the north of the building, to evaluate the potential that the dry cleaning operations may have impacted the underlying soils.

- Given the intended demolition, it is recommended that the drums and other containers be properly characterized and disposed off-site prior to any demolition activities. The fuel oil tanks and their contents should also be removed and properly disposed prior to any demolition activities. In addition, it is recommended that the fluorescent light fixtures be removed prior to demolition and properly recycled or disposed off-site as industrial waste.
- Given the intended demolition, it is recommended that a pre-demolition asbestos survey be conducted which would involve the sampling and analysis of any suspect materials. If the materials are asbestos-containing (greater than one percent asbestos), then pre-demolition removal of the asbestos-containing materials should be supervised by a licensed asbestos abatement contractor in accordance with state and federal regulations in effect at that time.
- Given the presence of suspect lead-based paint, the intended demolition of the buildings, and the fact that the disposal of lead-containing building materials is regulated by the DEC, it is recommended that any painted materials be removed and properly disposed, separate from municipal waste, in a permitted construction and demolition (C&D) debris landfill in accordance with DEC solid waste regulations (6 NYCRR Part 360).

9.0 Qualifications of Professionals Completing Assessment

Michael P. Storonsky

Associate, Project Manager

Patrick W. Luke

Senior Environmental Scientist

Resumes for these individuals are included on the following pages.

Education

B.S., Wildlife Biology, SUNY College of Environmental Science and Forestry, Syracuse, N Y , 1979

A.A.S , Fish and Wildlife Technology, SUNY Agricultural and Technical College, Cobleskill, N.Y., 1976

Professional Affiliations

The Rochester Committee for Scientific Information - President

Professional Experience

With more than 18 years of experience from both consulting and regulatory perspectives, Mr. Storonsky's experience has included preparation of work plans, agency negotiations, permitting, environmental investigations and remediation design and implementation oversight for industrial facilities, hazardous waste "Superfund" sites, landfills, military facilities, and contaminated commercial properties and buildings.

Since joining Sear-Brown, Mr. Storonsky has:

- coordinated, implemented and managed more than 1000 Phase I, Phase II and Phase III environmental investigations and/or cleanups. The hazardous waste investigations have included a 700,000-sq. ft. industrial complex in Horseheads, N.Y.; a 560,000-sq ft. industrial facility in Seneca Falls, N.Y., that was undergoing RCRA closure; a 550,000[±]-sq. ft. 80-year old industrial complex in Irvine, Pa.; a \$60-million hotel complex in San Juan, Puerto Rico; and a 310-acre vacant parcel being developed into a \$150-million multiple use complex in Henrietta, N.Y.
- coordinated and implemented a wide variety of soil and groundwater sampling and analysis programs. These programs have included investigations of solvent, PCB and oil contaminated industrial facilities, incinerator ash landfills, petroleum contaminated gasoline service stations, municipal landfills, heavy metal contaminated sites and construction and demolition debris landfills.
- managed the site investigation, evaluation of remedial alternatives, agency negotiations, design and construction oversight of a combined groundwater sparging/soil vapor extraction system for cleanup of a former dry cleaning facility that was the source of soil and groundwater contamination pursuant to a Voluntary Cleanup Agreement with the NYSDEC.
- managed a two-year investigation program, preparation of work plans, and subsequent cleanup of two former industrial facilities with PCB and metal soil and groundwater contamination pursuant to the first completed Voluntary Cleanup Agreement in New York State.
- managed the site investigations, evaluation of remedial alternatives, preparation of work plans and agency negotiations, for a Voluntary Cleanup Agreement with the NYSDEC at a former railroad yard in the Buffalo area where elevated levels of lead and various petroleum hydrocarbons were allowed to remain in place.
- managed investigations of three petroleum impacted sites which are currently at the stage of DEC negotiations regarding Voluntary Cleanup Agreements.

- managed the successful closure of five RCRA hazardous waste storage facilities in the Southern Tier of New York; a NYSDEC Phase II investigation at the site of a former municipal incinerator ash landfill in Rochester, N.Y., which resulted in the de-listing of the site from the Inactive Hazardous Waste Site Registry; and the design and implementation of an industrial wastewater treatment system and hydrogeologic investigation under the terms and conditions of a NYSDEC Consent Order.
- managed the preparation of work plans, agency negotiations, remedial investigations, design and cleanup oversight, and a risk assessment for a former gasoline station that involved several thousand yards of affected on-site and off-site soils
- managed emergency response, remedial investigations, design of a soil vapor extraction and groundwater collection and treatment system, permitting, agency negotiations, construction observation and system monitoring for an 800 gallon stoddard solvent spill at an industrial facility.
- reviewed and complied with federal, state and military environmental regulatory requirements for a new hazardous waste storage facility and a new pesticide storage building for the US Army Corps of Engineers at Ft. Drum, Watertown, N.Y.
- developed an investigation, testing, clean-up and removal program for 35 underground petroleum and fuel oil storage tanks at 23 facilities owned by the Rochester City School District. In addition, he was project manager for the Phase I Environmental Site Assessments and Environmental Impact Statements for four new school sites in Rochester, N.Y.
- oversaw a hazardous materials compliance audit for the 80 buildings that comprise Rochester Telephone, and several subsequent site assessment and engineering design projects.
- managed the development of EPA Spill Prevention Control and Countermeasure Plans, RCRA Hazardous Waste Management Plans, Asbestos Operation and Maintenance Plans, and Lead-Based Paint Operation and Maintenance Plans.

Prior to joining Sear-Brown, Mr. Storonsky was employed at an architectural/engineering consulting firm in Buffalo, N.Y., where he was substantially responsible for the development, implementation, evaluation and report preparation for the \$600,000 NYSDEC/USEPA NPL Superfund Remedial Investigation at the cadmium and nickel contaminated Foundry Cove, Cold Spring, N.Y.

Mr. Storonsky began his career working at the NYSDEC where he was involved with PCB studies on the Hudson River relating to the General Electric NPL Superfund site.

Mr. Storonsky is OSHA/EPA certified to work on hazardous waste sites.

Education

M. A., Biology, State University of
New York at Geneseo, Geneseo, N. Y.,
1992

B.S., Biology, State University of New
York at Geneseo, Geneseo, N. Y.,
1988

Certification

Certified Asbestos Inspector

Certified Environmental Inspector

Occupational Safety and Health
Administration 40-Hour Hazard
Waste Operations Course

Professional Affiliations

Ecological Society of America

Environmental Assessment Association

Professional Experience

With seven years of experience, Mr. Luke has been involved with numerous environmental projects, including residential, commercial and industrial site assessments, Phase II soil and groundwater investigations and ambient air quality monitoring.

Mr. Luke's Phase I site assessments include:

- assessment of a 5-acre general contractor's yard in an urban setting which subsequently became the subject of a Brownfield Redevelopment Program. Issues included two underground storage tank installations, unknown floor drain destinations, several abandoned above ground storage tanks, and an unpermitted construction and demolition debris landfill which had accepted waste for over 30 years. Phase II activities included subsurface test pitting, soil vapor, and soil and groundwater monitoring programs.
- assessment of a commercial auto repair facility adjacent to one state-listed hazardous waste site, and within 500 feet of two other state-listed hazardous waste sites. Documented groundwater contamination had migrated to the subject property.
- participation in Phase I assessments for a pool of over 150 divested commercial and industrial properties for a large, national bank.
- the evaluation of multiple properties for a new middle school proposed by the City of Rochester School District.
- an environmental site assessment of a 12-acre portion of a former airport which was adjacent to a proposed inactive hazardous waste site. Subsequent Phase II activities involved the installation of groundwater monitoring wells to evaluate potential subsurface contamination concerns.
- site assessment of a 12-acre industrial facility on the EPA CERCLIS listing as a potentially responsible party to illegal dumping. This property was adjacent to two listed inactive hazardous waste sites, which warranted recommendations concerning groundwater, surface water and soil contamination.
- site assessment of a five-building agricultural equipment manufacturing facility which necessitated a Phase II program examining a spray paint booth, floor drain dye tests and soil and sediment sampling which evaluated potential subsurface contamination concerns.

Patrick W. Luke

- site assessment that resulted in a Phase II program involving a printing company's suspect wastewater leachfield system. Subsequent test-pitting and soil sampling investigated potential subsurface contamination resulting from the improper disposal of chemical wastes.

Other Phase II site assessments included numerous subsurface test pit, soil vapor and groundwater monitoring well installation programs. Mr. Luke has also been involved in various underground storage tank removals as well as contaminated soil removal programs.

Mr. Luke began his career with a Rochester, N.Y. environmental consulting firm conducting Phase I environmental site assessments for diverse residential and commercial properties. One of these environmental site assessments involved 12 properties in Plattsburgh, N.Y. totaling approximately 95 acres. This assessment was conducted prior to construction of a proposed cogeneration plant and targeted suspect areas in which Phase II soil sampling was conducted in order to evaluate potential soil contamination concerns

Mr. Luke also acted as Field Manager for Eastman Kodak's highly touted and successful Ambient Air Monitoring Program, the largest independently funded program of its kind in the country. While overseeing weekly air sampling at seven sites around Kodak Park in accordance with federal and state mandated monitoring periods, he achieved over a 98 percent success rate in sample collection over a two-year span, surpassing New York State's DEC collection rate requirements. He also acted as liaison between the analytical laboratory, Kodak and DEC officials, ensuring communication along all facets of the project.

DISCLAIMER

This report has been prepared for the exclusive use of the client. It is a professional opinion and judgment, dependent upon Sear-Brown's knowledge, information supplied by the present owners of the property or their managers, employees, agents or tenants, and data and information provided by governmental agencies. Sear-Brown warrants only that it provides services in accordance with generally accepted practices in the environmental site assessment field. No other warranty or representation, either expressed or implied, is included or intended as part of its services, proposals, contracts or reports.

In addition, Sear-Brown cannot provide guarantees, certification or warranties that the property is or is not free of environmental impairment without a subsurface investigation involving drilling, vapor analysis, laboratory soil analysis, groundwater monitoring well installation, and laboratory groundwater analysis. Even with such a program, the data and samples from any given soil boring or monitoring well will indicate conditions that exist only at that location and may not necessarily apply to the general site as a whole.

Furthermore, Sear-Brown cannot provide guarantees, certifications or warranties that the buildings are or are not free of environmental impairment without exhaustive building material and ambient air sampling programs. Even with such a program, the results from any given sampling location will indicate conditions that apply only at that particular location, and such conditions may not necessarily apply to the buildings as a whole.