

New York State Department of Environmental Conservation

Division of Environmental Remediation, 12th Floor

625 Broadway, Albany, New York 12233-7011

Phone: (518) 402-9706 • FAX: (518) 402-9020

Website: www.dec.state.ny.us



Alexander B. Grannis
Commissioner

December 24, 2009

Mr. Corey Stewart
1093 Group, LLC
295 Main Street
Suite 210
Buffalo, New York 14203-2219

Re: Certificate of Completion
Site Name: Niagara Street and Pennsylvania Avenue
Site #: C915223
Site Address: 517 Niagara Street, Buffalo

Dear Mr. Stewart:

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

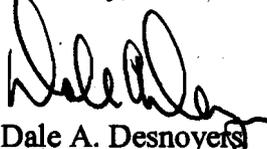
Please note that you are required to perform the following tasks:

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

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

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

Sincerely,



Dale A. Desnoyers

Director

Division of Environmental Remediation

cc w/o enc. for NYS:

Bill Murray

Martin Doster

Kelly Lewandowski

Robert Knizek

Ian Ushe

Jim Charles, Esq.

G. Litwin

cc w enc. to Applicant's representatives:

Craig Slater (cslater@hselaw.com)

Paul Werthman (pwerthman@benchmarkees.com)

Bill Paladino (bpaladino@ellicottdevelopment.com)

NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)

CERTIFICATE OF COMPLETION

CERTIFICATE HOLDER(S):

Name: 1093 GROUP, LLC Address: 295 Main Street, Suite 210, Buffalo

BROWNFIELD CLEANUP AGREEMENT:

Application Approval: 7/28/08 Agreement Execution: 10/15/08 Agreement Index No.: B9-0759-07-11

SITE INFORMATION

Site No.: C915223 Site Name: Niagara Street and Pennsylvania Avenue Site
Site Owner: 1093 GROUP, LLC
Street Address: 517 Niagara Street
Municipality: Buffalo County: Erie DEC Region: 9
Site Size: 0.27 Acres
Tax Map Identification Number(s): 110-27-5-1-1
Percentage of site located in an EnZone: 100%

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

CERTIFICATE ISSUANCE

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

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

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

Allowable Uses under the BCP: Restricted-Residential, Commercial, and Industrial
Cleanup Track: Track 2: Restricted use with generic soil cleanup objectives

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

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 40 %
Tangible Property Credit Component Rate is 20 %

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

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 40 %
Tangible Property Credit Component Rate is 18 %

The Remedial Program includes use restrictions or reliance on the long term employment of institutional or engineering controls; such institutional or engineering controls are contained in an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Erie County as 2009255053.

LIABILITY LIMITATION

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

CERTIFICATE TRANSFERABILITY

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

CERTIFICATE MODIFICATION/REVOCATION

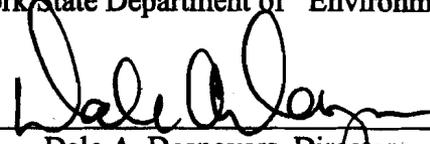
This Certificate of Completion may be modified or revoked by the Commissioner following notice and an opportunity for a hearing in accordance with ECL Section 27-1419 and 6NYCRR Part 375-1.9(e) upon a finding that:

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

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

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

By:



Dale A. Desnoyers, Director
Division of Environmental Remediation

Date:

12/24/09

Attachment A

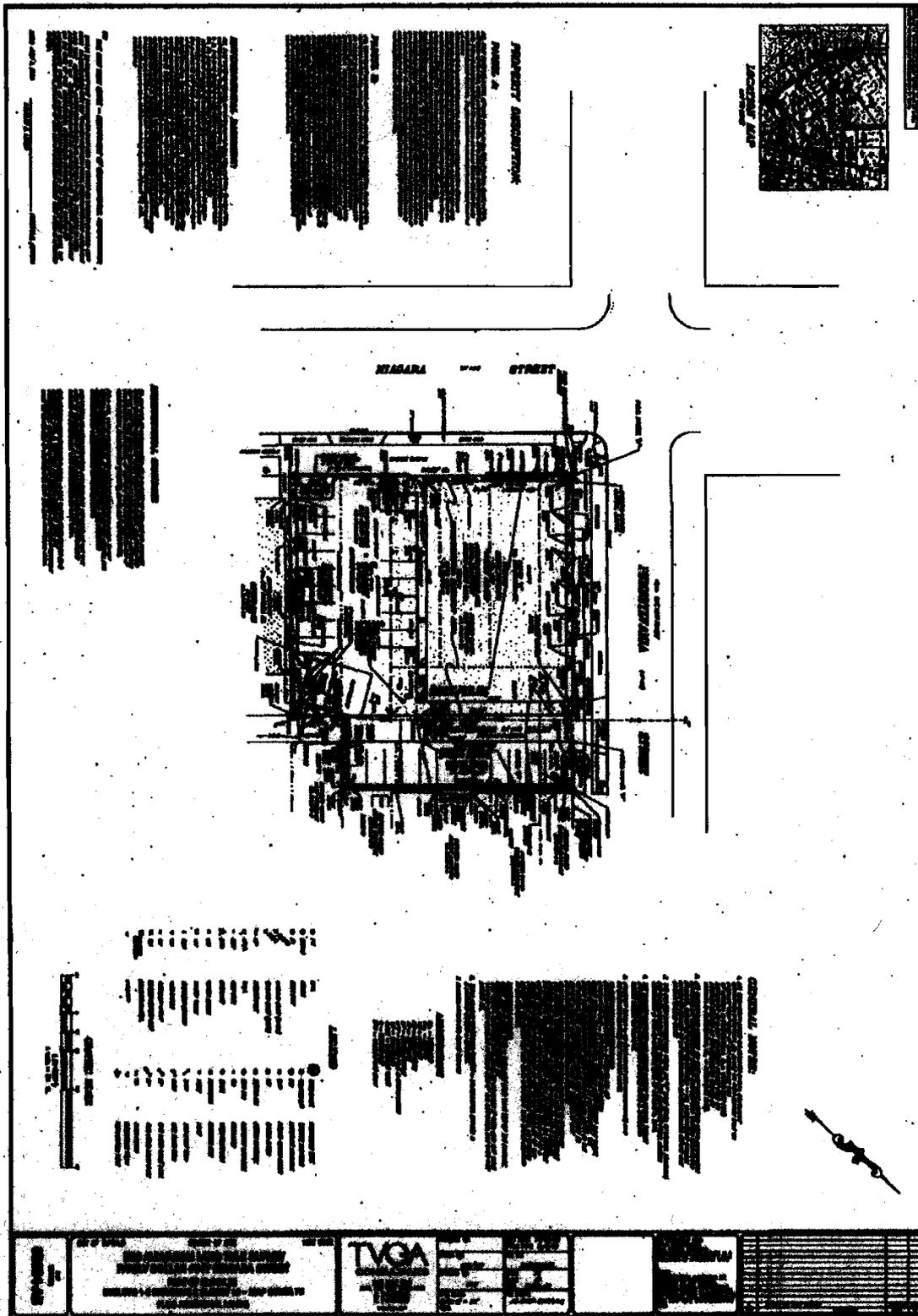
LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Block No. 78 also being subdivision lot numbers 1, 2, 3 and 5 as shown on a map filed in Erie County Clerk's Office under Cover No. 75, plus additional lands further bounded and described as follows:

Beginning at the point of intersection between the northeasterly line of Niagara Street (as a street 99 feet wide) and the southeasterly line of Pennsylvania Street (as a street 66 feet wide); running thence northeasterly along said southeasterly line of Pennsylvania Street one hundred twenty-five (125') feet more or less to the westerly line of an alley as shown on said Cover No. 75 also known as Reynolds Alley; running thence southeasterly at right angles along said westerly line Reynolds Alley ninety-one and one half (91.5') feet to the southeasterly corner of said subdivision lot no. 5; thence southwesterly at right angles and parallel with Pennsylvania Street one hundred twenty-five (125') feet more or less to a point in the northeasterly line of Niagara Street, also being the southwesterly corner of said subdivision lot number 3; thence southwesterly at right angles along said northeasterly line ninety-one and one-half (91.5') feet to the point of beginning containing .26 acres of land more or less.

Attachment B

SURVEY



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

Niagara Street and Pennsylvania Avenue Site, C915223
517 Niagara Street, Buffalo, NY 14201

PLEASE TAKE NOTICE, the New York State Department of Environmental Conservation (Department) has issued a Certificate of Completion (Certificate) pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law (ECL) to 1093 Group, LLC for a parcel approximately 0.27 acres located at 517 Niagara Street in the City of Buffalo, Erie County.

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

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

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

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

PLEASE TAKE NOTICE, since the remedial program relies upon use restrictions or the long term employment of institutional or engineering controls; such institutional or engineering controls are contained in an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Erie County as CTRL#: 2009255053.

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

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

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

Niagara Street and Pennsylvania Avenue Site, C915223, 517 Niagara Street, Buffalo, NY 14201

accordance with Tax Law Sections 21, 22 and 23.

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

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

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

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

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

WHEREFORE, the undersigned has signed this Notice of Certificate

1093 Group, LLC.

By: _____

Title: _____

Date: _____

STATE OF NEW YORK) SS:
COUNTY OF ERIE)

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

Signature and Office of individual
taking acknowledgment

Please record and return to:
1093 Group LLC. _____
295 Main Street, Suite 210 _____
Buffalo, NY 14203-2219 _____

12/03/09

SCHEDULE "A" PROPERTY DESCRIPTION

Attachment A

RECORD DEED**LEGAL DESCRIPTION****PARCEL A (517 Niagara Street)**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of the north 1/3 of Block 78 and according to map filed in Erie County Clerk's Office under Cover No. 75, is known as Subdivision Lot Nos. 2 and 3 and part of Subdivision Lot No. 5 and map filed under Cover No. 52 is described as follows:

Beginning at a point in the northeasterly line of Niagara Street, 41 1/2 feet southeasterly from its intersection with the southeasterly line of Pennsylvania Avenue (as a 4 rod street); thence southeasterly along said line of Niagara Street, 50 feet; thence northeasterly parallel with Pennsylvania Avenue, 125 feet to an alley; thence northwesterly along said alley, 50 feet; thence southwesterly parallel with Pennsylvania Avenue, 125 feet to the point or place of beginning and being further intended to describe those premises as shown on the City of Buffalo and County of Erie tax rolls as 30 feet front and 125 feet in depth on the northeast side Niagara Street, 41.50 feet southeast Pennsylvania Street.

PARCEL B (521 Niagara Street)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Block 78, bounded and described as follows:

Commencing at the point of intersection of the northeasterly line of Niagara Street with the southeasterly line of Pennsylvania Street (as a street 66 feet wide); running thence southeasterly along said line of Niagara Street forty-one and one-half (41 1/2) feet; running thence northeasterly on a line parallel with said line of Pennsylvania Street one hundred twenty-five (125) feet more or less to the westerly line of an alley known as Reynold's Alley; running thence northwesterly along said line of said alley forty-one and one-half (41 1/2) feet to the southeasterly line of Pennsylvania Street; running thence southwesterly along the southeasterly line of Pennsylvania Street one hundred and twenty-five (125) feet more or less to the place of beginning.

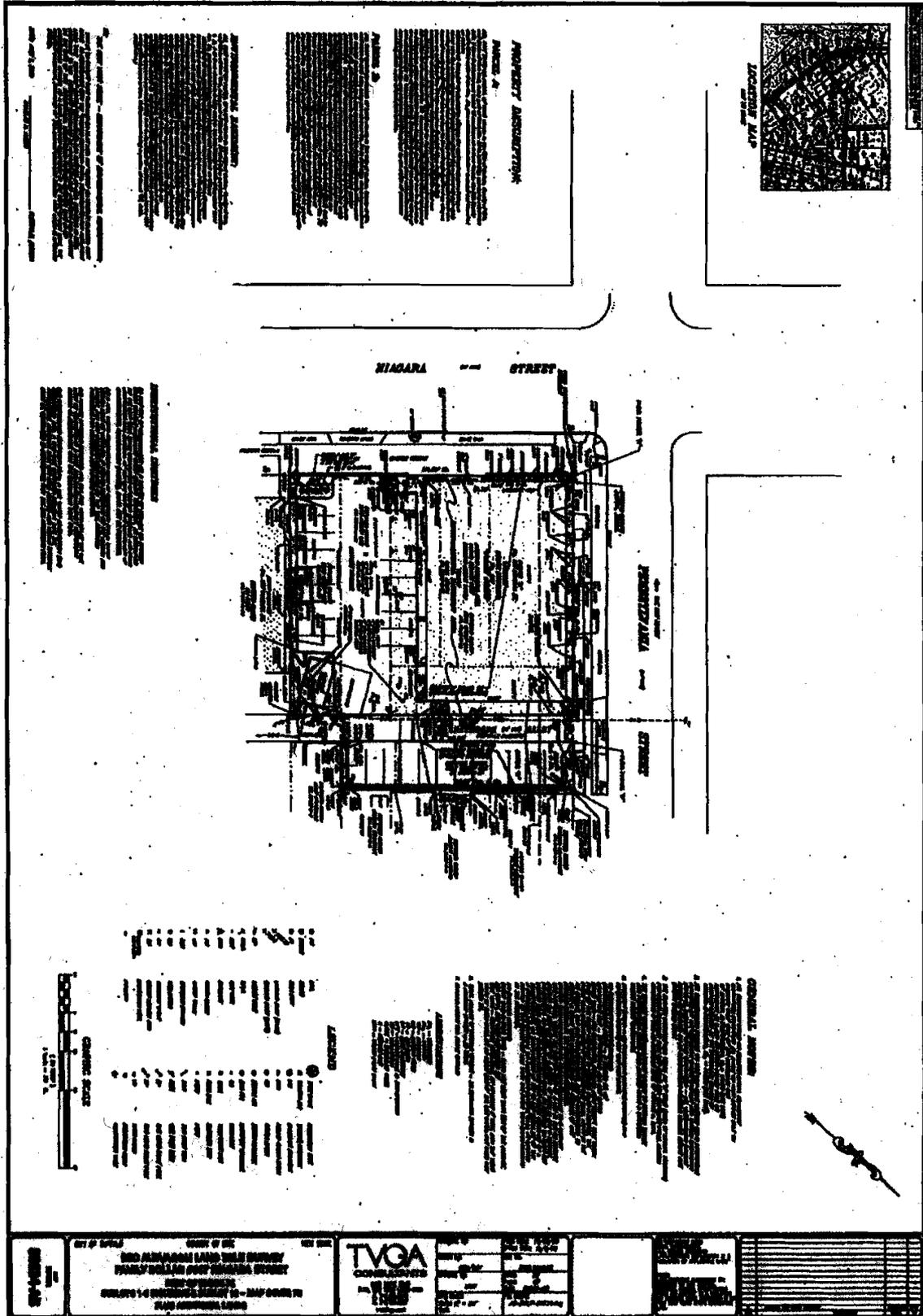
ENVIRONMENTAL EASEMENT**LEGAL DESCRIPTION**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Block No. 78 also being subdivision lot numbers 1, 2, 3 and 5 as shown on a map filed in Erie County Clerk's Office under Cover No. 75, plus additional lands further bounded and described as follows:

Beginning at the point of intersection between the northeasterly line of Niagara Street (as a street 99 feet wide) and the southeasterly line of Pennsylvania Street (as a street 66 feet wide); running thence northeasterly along said southeasterly line of Pennsylvania Street one hundred twenty-five (125') feet more or less to the westerly line of an alley as shown on said Cover No. 75 also known as Reynolds Alley; running thence southeasterly at right angles along said westerly line Reynolds Alley ninety-one and one half (91.5') feet to the southeasterly corner of said subdivision lot no. 5; thence southwesterly at right angles and parallel with Pennsylvania Street one hundred twenty-five (125') feet more or less to a point in the northeasterly line of Niagara Street, also being the southwesterly corner of said subdivision lot number 3; thence southwesterly at right angles along said northeasterly line ninety-one and one-half (91.5') feet to the point of beginning containing .26 acres of land more or less.

Attachment B

SURVEY





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



SITE DESCRIPTION

SITE NO. C915223

SITE NAME Niagara Street and Pennsylvania Avenue Site

SITE ADDRESS: 517 Niagara Street **ZIP CODE:** 14201

CITY/TOWN: Buffalo

COUNTY: Erie

ALLOWABLE USE: Restricted-Residential, Commercial, and Industrial

SITE MANAGEMENT DESCRIPTION

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

Description of Institutional Control

1093 Group, LLC
 517 Niagara Street
 Environmental Easement
 Block: 5
 Lot: 1
 Sublot: 1
 Section: 110
 Subsection: 27
 S_B_L Image: 110.27-5-1.1
 Ground Water Use Restriction
 IC/EC Plan
 Landuse Restriction
 Monitoring Plan
 Site Management Plan
 Soil Management Plan

Description of Engineering Control

NONE