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## **TABLE OF CONTENTS**

### **Brownfield Cleanup Program Application**

### **Attachment to Brownfield Cleanup Program Application**

- Exhibit A - Current Site Photographic Log**
- Exhibit B - Site Map with Outline of Proposed Brownfield Cleanup Area**
- Exhibit C - Annotated Aerial Site Map**
- Exhibit D - Historical Use Map with Sanborn Overlay**
- Exhibit E - Preliminary Environmental Justice Screen**
- Exhibit F - Legal Description**
- Exhibit G - USGS Quad Map**
- Exhibit H - Tax Map and Parcel Information**
- Exhibit I - Document Repository Letter**
- Exhibit J - Malcolm Pirnie Phase I Report**
- Exhibit K - Soil Sampling Analytical Results Summary Table**
- Exhibit L - Zoning Map**
- Exhibit M - Land Use Map**
- Exhibit N - City of Buffalo Comprehensive Plan**
- Exhibit O - Natural Resource Map**
- Exhibit P - Estimated Project Schedule**



NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION



**BROWNFIELD CLEANUP PROGRAM (BCP)**

ECL ARTICLE 27 / TITLE 14

DEPARTMENT USE ONLY  
BCP SITE #:

07/07

Section I. Requestor Information			
NAME Flexo Transparent, Inc.			
ADDRESS 28 Wasson Street			
CITY/TOWN Buffalo		ZIP CODE 14240	
PHONE N/A	FAX	E-MAIL rmabry@flexotransparent.com	
NAME OF REQUESTOR'S REPRESENTATIVE Ron Mabry			
ADDRESS 28 Wasson Street			
CITY/TOWN Buffalo		ZIP CODE 14240	
PHONE 716-825-7710	FAX 716-825-0139	E-MAIL rmabry@flexotransparent.com	
NAME OF REQUESTOR'S CONSULTANT Malcolm Pirnie, Inc.			
ADDRESS 50 Fountain Plaza, Suite 600			
CITY/TOWN Buffalo		ZIP CODE 14202	
PHONE 716-667-0900	FAX 716-667-0279	E-MAIL kmcmanus@pirnie.com	
NAME OF REQUESTOR'S ATTORNEY Robert G. Murray, Esq.			
ADDRESS Harris Beach PLLC, 726 Exchange Street, Suite 1000			
CITY/TOWN Buffalo		ZIP CODE 14210	
PHONE 716-200-5180	FAX 716-200-5224	E-MAIL bmurray@harrisbeach.com	
THE REQUESTOR MUST CERTIFY THAT HE/SHE IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL § 27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:			
<input type="checkbox"/> PARTICIPANT A requestor who either 1) was the owner of the site at the time of the disposal of hazardous waste or discharge of petroleum or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.		<input checked="" type="checkbox"/> VOLUNTEER A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.  NOTE: By checking this box, the requestor certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; and iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.	
Requestor Relationship to Property (check one):			
<input type="checkbox"/> Previous Owner <input type="checkbox"/> Current Owner <input checked="" type="checkbox"/> Potential /Future Purchaser <input type="checkbox"/> Other _____			
If requestor is not the site owner, requestor will have access to the property throughout the BCP project. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
(Note: proof of site access must be submitted for non-owners)			

Section II Property Information Summary Sheet											
PROPERTY NAME: 1146 Seneca Street											
ADDRESS/LOCATION 1146 Seneca Street		CITY/TOWN Buffalo		ZIP CODE 14240							
MUNICIPALITY(IF MORE THAN ONE, LIST ALL): City of Buffalo											
COUNTY Erie		SITE SIZE (ACRES) 2.176									
LATITUDE (degrees/minutes/seconds) -78 ° 50 ' 8.3466 "			LONGITUDE (degrees/minutes/seconds) 42 ° 52 ' 17.8 "								
HORIZONTAL COLLECTION METHOD: <input type="checkbox"/> SURVEY <input type="checkbox"/> GPS <input checked="" type="checkbox"/> MAP			HORIZONTAL REFERENCE DATUM: USGS								
FOR EACH PARCEL, FILL OUT THE FOLLOWING TAX MAP INFORMATION (if more than three parcels, attach additional information)											
Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage						
1146 Seneca Street	83422	123	29-1	10	2.176						
<p>1. Do the property boundaries correspond to tax map metes and bounds? <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p style="padding-left: 40px;">If no, please attach a metes and bounds description of the property.</p> <p>2. Is the required property map attached to the application? (application will not be processed without map) <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>3. Is the property part of a designated En-zone pursuant to Tax Law § 21(b)(6)? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>For more information go to: <a href="http://www.nylovesbiz.com/BrownField_Redevelopment/default.asp">http://www.nylovesbiz.com/BrownField_Redevelopment/default.asp</a>.</p> <p>If yes, identify area (name) _____</p> <p><input type="checkbox"/> 50% <input type="checkbox"/> 100% of the site is in the En-zone (check one)</p>											
<p>PROPERTY DESCRIPTION NARRATIVE:</p> <p>See Attachment.</p>											
<p>List of Existing Easements (type here or attach information)</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black; width: 50%;">Easement Holder</th> <th style="text-align: left; border-bottom: 1px solid black; width: 50%;">Description</th> </tr> </thead> <tbody> <tr> <td colspan="2" style="padding-top: 10px;">See survey information in Phase I Report - Exhibit J, Appendix C, Tab 3.</td> </tr> </tbody> </table>						Easement Holder	Description	See survey information in Phase I Report - Exhibit J, Appendix C, Tab 3.			
Easement Holder	Description										
See survey information in Phase I Report - Exhibit J, Appendix C, Tab 3.											
<p>List of Permits issued by the NYSDEC or USEPA Relating to the Proposed Site (type here or attach information)</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black; width: 25%;">Type</th> <th style="text-align: left; border-bottom: 1px solid black; width: 35%;">Issuing Agency</th> <th style="text-align: left; border-bottom: 1px solid black; width: 40%;">Description</th> </tr> </thead> <tbody> <tr> <td colspan="3" style="padding-top: 10px;">None.</td> </tr> </tbody> </table>						Type	Issuing Agency	Description	None.		
Type	Issuing Agency	Description									
None.											

Initials of each Requestor: DSM \_\_\_\_\_

**Section III. Current Site Owner/Operator Information**

OWNER'S NAME (if different from requestor) Harrison Industrial Park, Inc.		
ADDRESS PO Box 1011		
CITY/TOWN Buffalo		ZIP CODE 14240
PHONE	FAX	E-MAIL
OPERATOR'S NAME (if different from requestor or owner) Not Applicable -		
ADDRESS The Site is currently vacant property, overgrown with shrubs, with no structures or buildings.		
CITY/TOWN		ZIP CODE
PHONE	FAX	E-MAIL

**Section IV. Requestor Eligibility Information (Please refer to ECL § 27-1407)**

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

1. Are any enforcement actions pending against the requestor regarding this site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. Is the requestor subject to an existing order relating to contamination at the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
4. Has the requestor been determined to have violated any provision of ECL Article 27?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
5. Has the requestor previously been denied entry to the BCP?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving contaminants?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
7. Has the requestor been convicted of a criminal offense that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
8. Has the requestor knowingly falsified or concealed material facts or knowingly submitted or made use of a false statement in a matter before the Department?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.8(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**Section V. Property Eligibility Information (Please refer to ECL § 27-1405)**

1. Is the property listed on the National Priorities List?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. Is the property listed on the NYS Registry of Inactive Hazardous Waste Disposal Sites? If yes, please provide: Site # _____ Class # _____	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3. Is the property subject to a permit under ECL Article 27, Title 9, other than an Interim Status facility? If yes, please provide: Permit type: _____ EPA ID Number: _____ Date permit issued: _____ Permit expiration date: _____	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
4. Is the property subject to a cleanup order under navigation law Article 12 or ECL Article 17 Title 10? If yes, please provide: Order # _____	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
5. Is the property subject to a state or federal enforcement action related to hazardous waste or petroleum? If yes, please provide explanation as an attachment.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**Section VI. Project Description**

What stage is the project starting at? ☒ investigation ☐ remediation

Please attach a description of the project which includes the following components: \*\*\*See Attachment, pp. 1-3

- Purpose and scope of the project
- Estimated project schedule

**Section VII: Property's Environmental History**

To the extent that existing information/studies/reports are available to the requestor, please attach the following:

**1. Environmental Reports \*\*\*See Exhibit J and Attachment\*\*\***

A phase I environmental site assessment report prepared in accordance with ASTM E 1527 (American Society for Testing and Materials: Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process), and all environmental reports related to contaminants on or emanating from the site.

If a final investigation report is included, indicate whether it meets the requirements of ECL Article 27-1415(2): ☐ Yes ☐ No

**2. Sampling Data: Indicate known contaminants and the media which are known to have been affected:**

Contaminant Category	Soil	Groundwater	Surface Water	Sediment	Soil Gas
Petroleum	X				
Chlorinated Solvents					
Other VOCs	X				
SVOCs					
Metals					
Pesticides					
PCBs					
Other*					

\*Please describe: \_\_\_\_\_

**3. Suspected Contaminants: Indicate suspected contaminants and the media which may have been affected:**

Contaminant Category	Soil	Groundwater	Surface Water	Sediment	Soil Gas
Petroleum	X	X			
Chlorinated Solvents					
Other VOCs	X	X			
SVOCs	X	X			
Metals	X	X			
Pesticides					
PCBs	X	X			
Other*					

\*Please describe: \_\_\_\_\_

**4. INDICATE KNOWN OR SUSPECTED SOURCES OF CONTAMINANTS:**

- |   |   |  |  |
|---|---|--|--|
| <input checked="" type="checkbox"/> Above Ground Pipeline or Tank | <input type="checkbox"/> Lagoons or Ponds                       | <input checked="" type="checkbox"/> Underground Pipeline or Tank | <input checked="" type="checkbox"/> Surface Spill or Discharge |
| <input type="checkbox"/> Routine Industrial Operations            | <input checked="" type="checkbox"/> Dumping or Burial of Wastes | <input type="checkbox"/> Septic tank/lateral field               | <input type="checkbox"/> Drums or Storage Containers           |
| <input checked="" type="checkbox"/> Adjacent Property             | <input type="checkbox"/> Seepage Pit or Dry Well                | <input type="checkbox"/> Foundry Sand                            | <input type="checkbox"/> Electroplating                        |
| <input type="checkbox"/> Coal Gas Manufacture                     | <input type="checkbox"/> Industrial Accident                    | <input type="checkbox"/> Unknown                                 |  |

Other: \_\_\_\_\_

**5. INDICATE PAST LAND USES:**

- |   |   |   |                                      |   |                                     |
|---|---|---|--------------------------------------|---|-------------------------------------|
| <input type="checkbox"/> Coal Gas Manufacturing | <input checked="" type="checkbox"/> Manufacturing   | <input type="checkbox"/> Agricultural Co-op | <input type="checkbox"/> Dry Cleaner | <input type="checkbox"/> Salvage Yard   | <input type="checkbox"/> Bulk Plant |
| <input type="checkbox"/> Pipeline               | <input checked="" type="checkbox"/> Service Station | <input type="checkbox"/> Landfill           | <input type="checkbox"/> Tannery     | <input type="checkbox"/> Electroplating | <input type="checkbox"/> Unknown    |

Other: \_\_\_\_\_

**6. Owners \*\*\*See Attachment\*\*\***

A list of previous owners with names, last known addresses and telephone numbers (describe requestor's relationship, if any, to each previous owner listed. If no relationship, put "none").

**7. Operators \*\*\* See Attachment\*\*\***

A list of previous operators with names, last known addresses and telephone number (describe requestor's relationship, if any, to each previous operator listed. If no relationship, put "none").

### Section VIII: Contact List Information

Please attach, at a minimum, the names and addresses of the following: \*\*\*See Attachment for Responses to Section VIII\*\*\*

1. The chief executive officer and planning board/dept. chair of each county, city, town and village in which the property is located.
2. Residents, owners, and occupants of the property and properties adjacent to the property.
3. Local news media from which the community typically obtains information.
4. The public water supplier which services the area in which the property is located.
5. Any person who has requested to be placed on the contact list.
6. The administrator of any school or day care facility located on or near the property.
7. The location of a document repository for the project (e.g., local library). In addition, attach a copy of a letter sent to the repository acknowledging that it agrees to act as the document repository for the property.

### Section IX: Land Use Factors (Please refer to ECL § 27-1415(3))

Current Use: ☐ Residential ☐ Commercial ☐ Industrial ☒ Vacant ☐ Recreational (check all that apply)

Intended Use: ☐ Unrestricted ☐ Residential ☐ Commercial ☒ Industrial (check all that apply)

Please check the appropriate box and provide an explanation as an attachment if appropriate. Provide a copy of the local zoning classifications, comprehensive zoning plan designations, and/or current land use approvals.

	Yes	No
1. Do current historical and/or recent development patterns support the proposed use? (See #12 below re: discussion of area land uses) ***See Attachment***	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Is the proposed use consistent with applicable zoning laws/maps? ***See Attachment***	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, designated Brownfield Opportunity Area plans, other adopted land use plans? ***See Attachment***	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Are there any Environmental Justice Concerns? (See §27-1415(3)(p)). ***See Attachment***	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Are there any federal or state land use designations relating to this site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Do the population growth patterns and projections support the proposed use?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Is the property accessible to existing infrastructure?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Are there important cultural resources, including federal or state historic or heritage sites or Native American religious sites within ½ mile?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Are there important federal, state or local natural resources, including waterways, wildlife refuges, wetlands, or critical habitats of endangered or threatened species within ½ mile?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Are there floodplains within ½ mile?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Are there any institutional controls currently applicable to the property?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. Describe on attachment the proximity to real property currently used for residential use, and to urban, commercial, industrial, agricultural, and recreational areas. ***See Attachment***		
13. Describe on attachment the potential vulnerability of groundwater to contamination that might migrate from the property, including proximity to wellhead protection and groundwater recharge areas. ***See Attachment***		
14. Describe on attachment the geography and geology of the site. ***See Attachment***		

**Statement of Certification and Signature**

(By requestor who is an individual)

I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

(By an requestor other than an individual)

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

Date: 12/28/07 Signature: Daniel J. Steger Print Name: Daniel Steger

**SUBMITTAL INFORMATION:**

Three (3) complete copies are required.

- Two (2) copies, one paper copy with original signatures and one electronic copy in Portable Document Format (PDF) on a CD or diskette, must be sent to:

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

- One (1) paper copy must be sent to the DEC regional contact in the regional office covering the county in which the site is located. Please check our website for the address of our regional offices: <http://www.dec.ny.gov/about/776.html>

**FOR DEPARTMENT USE ONLY**

BCP SITE T&A CODE: \_\_\_\_\_ LEAD OFFICE: \_\_\_\_\_

**Section II. Property Information Summary Sheet**

**Property and Project Description - Purpose and Scope of Project and Estimated Project Schedule:**

Founded in 1954 in Buffalo, New York, applicant Flexo Transparent, Inc. ("Flexo" or the "Applicant") is recognized as an expert in the manufacture of custom printed poly/plastic packaging bags. Flexo has made its mark as one of the leading flexible plastic packaging manufacturers and poly bag manufacturers in the United States. Currently employing a payroll of 113 employees, Flexo engages in the manufacture of everything from custom-made flexible plastic packaging bags and wholesale poly bags; custom printed poly/plastic packaging bags and flexible packaging printing; and quality custom printed rollstock, sleeves, shrink sleeves, and pouches. Flexo's target markets include: Retail Products; Bakery; Micro-Perf Bakery; Deli; Dairy; Produce; Frozen Foods; Candy/Snacks; Sweet Snacks; Personal Care; Textiles (Non-Woven); Medical; Consumer Products; Industrial and Poultry. Flexo has recently been rated "Superior" by the American Baking Institute (A.I.B.) for 2005-2006 for its exceptional flexible food packaging capabilities and service.

Due in large part to its superior product offerings and performance, Flexo has grown an astounding 450% in the last 20 years, increasing sales from \$4.5 million in 1987 to approximately \$18.2 million in 2007. During that time, Flexo expanded its manufacturing facilities twice (currently operating at 28 Wasson Street in the City of Buffalo), and now seeks to once again keep pace with its continued and projected future growth, by undertaking a \$7,564,000 investment in its manufacturing operations ("Project") in an area adjacent to its current operations. The proposed expansion would entail the construction of a \$2,000,000, 75,000 square foot, single-story manufacturing facility to house a \$4,600,000 investment in new equipment, including a new press and laminator, and construction of a warehousing facility, to be located at the proposed project site located on vacant industrial land at 1146 Seneca Street (Project Site), with additional manufacturing operations to take place at 1132 Seneca Street (location of a vacant manufacturing facility). Flexo is currently the contract vendee to purchase both the 1132 and 1146 Seneca Street Parcels. Closing is anticipated to take place in early 2008.

Flexo estimates that the Project investment will create 7 additional jobs within three years, in the areas of shipping / receiving, pressroom and the ink dispensing department, paying wages in the \$15-25 range (inclusive of benefits). Retention of its current and anticipated workforce equates to the employment of approximately 120 well paying jobs in the core of the City of Buffalo. Further, the Project would allow Flexo's operations, which currently run 24 hours a day, 5 days a week, to increase to a 7 day a week operation.

As described below, the proposed Project Site, located at 1146 Seneca Street (*See Exhibits A, B, C, D, G, and H*) is a brownfield site and its development and reuse for manufacturing purposes has been and is currently being complicated by the confirmed presence (*see below for a discussion regarding the Phase I Environmental Site Assessment that was*



undertaken which respect to the Project site in September of 2007) of contamination. Given the proposed use of the Project site, the known presence of contamination in excess of unrestricted use soil cleanup objects is complicating the redevelopment and re-use of the Project site. As set forth below, significant PCB soil contamination (3,500 mg/kg) has been documented on the nearby Westinghouse property, the highest concentrations of which have been detected near the Project Site's property boundary. Further, review of environmental documents revealed that USTs and ASTs have existed in the past and may still be present at the Project Site. The contamination is the result of the site's historical use as an industrial facility for the last 100 years.

Given the presence of known environmental intrusions identified in the attached reports, and given the uncertainty of the presence of additional contamination in light of the Project site's over 100-year long history of use and proximity to heavy industrial use, it is imperative that a comprehensive remediation plan be undertaken in order to transform this site into a vibrant part of Flexo's expansion and continued commitment to the City of Buffalo, securing 113 existing jobs and creating 7 new full-time positions for residents of the surrounding neighborhood.

### **Section III. Current Site Owner/Operator Information**

#### **Owner's Name and Contact Information**

*Current Site Owner* (as listed on the Erie County GIS Website) - Harrison Industrial Park, PO Box 1011, Buffalo, NY 14240.

### **Section VII. Property's Environmental History**

The Project Site is zoned vacant industrial and is located in a highly developed industrial area that has been used for industrial purposes since the late 1800s. 1146 Seneca Street is currently a vacant property that is entirely overgrown with 6 to 8 feet tall shrubs. No structures or buildings remain on the Project Site. A 123 ft by 19 ft concrete foundation/pad is located on the property, the use of which is unknown. An abandoned playground is located on the southeastern portion of the property. Flexo's existing manufacturing building is located adjacent to the northeastern portion of the Project Site.

Site development for the location began in the late 1800s. The Project Site was used by lumber companies from the late 1800s to 1920s. According to Sanborn maps, the Project Site was used by Robinson Clay Products in the 1920s and as a gas station from the 1930s to the 1950s (*See Exhibits D and J*). Westinghouse/Eastern Electric, the property located directly to the west, may also have used 1146 Seneca Street for manufacturing activities. **Significant PCB soil contamination (3,500 mg/kg) has been documented on the Westinghouse property, the highest concentrations of which have been detected near the Project Site's property boundary.**

**Review of the following documents revealed that USTs and ASTs have existed in the past and may still be present at the Project Site:**

Environmental Audit's May 2001 Letter – Review of Environmental Audit's (EA) May 3, 2001 letter to Mr. Roman Bolubash indicated the following:

- Review of City of Buffalo files indicated that Gulf Oil operated a filling station on the property that included at least four USTs of unknown size and contents.
- Review of City of Buffalo files also indicated that Robinson Clay Products was issued a permit to install a 50,000-gallon gasoline UST. The location of this UST was not specified in the City's files.
- EA's May 2001 letter indicated that during their site visit, evidence of bio-treatment of petroleum contaminated soil was observed on 1146 Seneca Street. EA's site inspection also stated that "oily-greasy" soil was observed in the central portion of the parcel.

Evergreen's 2001 Phase II Report - Review of Evergreen's report dated September 28, 2001 indicated that a geophysical survey was conducted by Baron and Associates in July 2001 to identify the location of any magnetic anomalies which could be indicative of USTs. The Evergreen report indicated that there was a UST area on the property. Four soil borings were advanced in this UST area. One of the four samples was submitted for laboratory analysis of VOCs by EPA Method 8021 and SVOCs by EPA Method 8270. Laboratory analytical results indicated no exceedences of NYSDEC STARS criteria for SVOCs, but several exceedences of NYSDEC criteria for VOCs (ethylbenzene, o-xylene, n-propylbenzene, and n-butylbenzene), see attached table for concentrations and guidance values. The report concluded that additional subsurface testing and excavation/removal/disposal would be required.

## **Conclusions**

The Project Site has a long history of heavy industrial use dating back over 100 years. Redevelopment of the site is significantly complicated by the known and potential site contamination.

If admitted into the State's Brownfield Cleanup Program, a thorough, site-wide, Remedial Investigation (RI) will be competed to determine the nature, extent, and potential risks of site contamination. The RI would include sampling not only surface and subsurface soil, but investigation of groundwater and sub-slab soil vapor impacts. If sub-slab soil vapor is confirmed to be impacted by subsurface soil and/or groundwater contamination, mitigation measures would be recommended and may include installation of a vapor barrier and/or installation of a sub-slab ventilation system.

6. Owners

The applicant is under contract to purchase the subject property. The applicant is not related to any prior owner of the subject property. Upon information and belief, the prior owner of the subject property was Fibreright Manufacturing, Inc., 1132 Seneca Street, Buffalo, New York 14240. Prior to that, the prior owner was Eastern Electric Apparatus Repair Company, Inc., 130 East Randolph, Suite 2900, Chicago, Illinois 60601. The applicant is not in possession of additional chain of title records.

7. Operators

The applicant is not related to any prior operator of the parcel in question. As of the date of this Application, known prior and/or current operators included (telephone numbers are unknown): Robinson Clay Products; Westinghouse/Eastern Electric; and Gulf Oil.

**Section VIII. Contact List Information**

1. Chief Executive Officers and Zone Board Chairpersons Addresses:

Erie County Executive Christopher C. Collins, Rath Building, 95 Franklin Street, Buffalo, New York 14202, (716) 858-8500.

City of Buffalo Mayor Byron Brown, 201 City Hall, Buffalo, New York 14202, (716) 851-4200.

James Lewis, III, Chairman, City of Buffalo Zoning Board of Appeals, 301 City Hall, Buffalo, NY 14202.

2. Residents, owners, and occupants of the site and properties adjacent to the site:

Address	Owner
1132 Seneca Street	Harrison Industrial Park, Inc. PO Box 1011 Buffalo, NY 14240
<b>1146 Seneca Street</b>	Harrison Industrial Park, Inc. PO Box 1011 Buffalo, NY 14240
1122 Seneca Street	Harrison Industrial Park, Inc. PO Box 1011 Buffalo, NY 14240
1070 Seneca Street	1070 Seneca Street, Inc. 11 Park Pl, Cheektowaga, NY 14227
28 Wasson Street	Marbry Enterprises, LLC, 28 Wason, Buffalo, NY 14210
26 Wasson Street	James McAndrew, 26 Wasson, Buffalo, NY 14210
24 Wasson Street	James McAndrew, 26 Wasson, Buffalo, NY 14210
22 Wasson Street	Michael & Margare Bogucki, 15 Wasson, Buffalo, NY 14210
18 Wasson Street	Michael & Margare Bogucki, 15 Wasson, Buffalo, NY 14210
16 Wasson Street	Daniel Gerace, 16 Wasson, Buffalo, NY 14210
14 Wasson Street	Gary C. Gugliuzza, Sr., 14 Wasson, Buffalo, NY 14210
1168 Seneca Street	City of Buffalo Human Resources, 1701 City Hall, Buffalo, NY 14202

See also Exhibit J at pages 3-6 and 4-1 of Phase I Report prepared by Malcolm Pirnie in September of 2007.

3. Local news media:

The Buffalo News, One News Plaza, PO Box 100, Buffalo, NY 14240 (716) 849-4444.

4. Public Water Supplier:

City of Buffalo Water Authority, 281 Exchange Street, Buffalo, NY 14204

5. Persons who have requested to be placed on the site contact list:

None

6. Administrator of Day Care Facility:

Valley Child Care Center  
93 Leddy Street  
Buffalo, NY 14210  
(716) 845-5440

7. Document Repository:

Buffalo & Erie County Public Library, Central Library, 1 Lafayette Square, Buffalo, NY 14203; (716) 842-0051. See confirming letter attached as Exhibit I hereto.

**Section IX. Land Use Factors**

Response to Land Use Factors number (1), (2), (3) and (8).

The Project consists of rehabilitating and putting to use a vacant, likely contaminated industrial property located in a historically industrial area of the Seneca-Babcock neighborhood in the City of Buffalo and adjacent to a vacant manufacturing facility. By utilizing a vacant industrial parcel where the known presence of environmental contamination exists, the Project is consistent with the City of Buffalo's "Queen City in the 21st Century: City of Buffalo Comprehensive Plan" (hereinafter, the "Comprehensive Plan") (described below) and, conversely, does not alter the essential character of the neighborhood in which the Project resides.

Specifically, the Project's use of potentially contaminated industrial property located at 1146 Seneca Street by transforming it into a vibrant part of the Flexo operating expansion is

consistent with the stated policies of the City's Comprehensive Plan to clean up brownfields as follows:

- A detailed survey and analysis of brownfield potential, with specific recommendations for short, medium and long-term reinvestment locations, has been identified as a priority for the City of Buffalo;
- The New York State Brownfield cleanup Program has been identified as a powerful tool available to the City of Buffalo to facilitate brownfield clean up, allowing localities to be eligible for incentives to support clean-up and redevelopment; and
- The recommendation from the City's Environmental Management Commission that developed a Buffalo Environmental Policy aimed at achieving a "safer, more attractive, more productive, more suitable environment for Buffalo." *See Exhibit N attached hereto.*

Additionally, the Project is in line with current Land Use patterns in the area, as depicted in Exhibit M attached hereto.

The Project Site is currently zoned for Industrial use, and a use variance would not be required for the proposed Project (*See Exhibit L*).

12. Proximity to real property used for residential use and to urban, commercial, industrial, agricultural, and recreations areas:

The Project Site is zoned vacant industrial and is located in a highly developed industrial area that has been used for industrial purposes since the late 1800s. As such, there are many brownfields located within close proximity and upgradient of the Site.

North: The Site is bordered immediately to the north by an area of overgrown brush (1070 Seneca Street). Beyond the overgrown brush are railroad tracks and industrial properties.

South: The Site is bordered immediately by Seneca Street. Beyond Seneca Street are residential and commercial properties.

East: The Site is bordered to the east by a community center and Flexo Transparent. Farther east, beyond these are Wasson Street and residential properties.

West: The Site is bordered to the west by 1132 Seneca Street (the former Westinghouse/Eastern Electric Property), beyond which is the City of Buffalo Engineering Garage. Farther west, beyond the City Garage property is CTS Concrete Mixing Plant and Rock and Stone Crushing Plant (1070 Seneca Street). Farther west are railroad tracks.

13. Potential Vulnerability of Groundwater Contamination:

The Project Site is located in a highly developed industrial area that has been used for industrial purposes since the late 1800s. As such, there are many potential sources of groundwater contamination within close proximity of the Site.

No surface water bodies are located on the Site. The Buffalo River is located one-half mile south of the Site. Based on information obtained through EDR, no public water supply wells were identified within a one-mile radius of the Site and all of the local population is provided with municipally supplied potable water from Lake Erie and the Niagara River.

14. Geography and Geology:

The elevation of the Project Site is approximately 590 feet above mean sea level. The Site is located in an area of generally flat terrain with a general topographic gradient sloping towards the south. According to the EDR report, the Site is located outside 100-year and 500-year flood zones. Based on local topography and the location of the nearest surface water body, groundwater at the Site is expected to flow south towards the Buffalo River located approximately one-half mile from the Site.

According to the EDR, surface soils are comprised of sandy loam and have been identified as Urban Land. Boreholes drilled by geoprobe at the Site extended down to 8 feet below ground surface (bgs). Based on information collected through previous site assessments the Site soils included miscellaneous fill materials ranging in depth from ground surface to about two (2) to four (4) feet bgs. The fill materials included brown sand, silt and clay mixed with concrete, bricks, cinders, stone, wood, coal, ash. The natural soils encountered beneath the fill materials included brown-gray moist mottled and layered silt and clay with trace to little sand. These native soils are lacustrine deposits of proglacial lakes of the most recent (late Wisconsinan) glacial period. These fine grained deposits can be as thick as 100 meters in Western New York. Beneath the lacustrine deposits is limestone bedrock of the Middle Devonian aged Onondaga Limestone. The sedimentary rock sequence in Western New York is nearly flat with a slight dip of approximately 50 feet per mile to the south. Depth to bedrock at the site is expected to be greater than 15 feet below surface.

ERIE COUNTY CLERKS OFFICE  
County Clerk's Recording Page

Return To:

HARTER SECREST & EMERY  
ONE MARINE MIDLAND CENTER  
SUITE 3550  
BUFFALO NY 14203

EASTERN ELECTRIC APPARATUS  
REPAIR COMPANY INC  
HARRISON INDUSTRIAL PARK INC

Index DEED LIBER

Book 10922 Page 5151

No. Pages 0004

Instrument DEED

Date : 10/16/1997

Time : 11:05:15

Control # 199710160371

TT# TT 1997 005480

Employee ID MHA

MORTGAGE TAX

COUNTY	\$	27.00
STATE	\$	25.00
COE	\$	5.00
TRANSFER	\$	600.00
	\$	.00
NFTA TT	\$	750.00
	\$	.00
	\$	.00
	\$	.00
Total:	\$	1,407.00

Basic	\$	.00
Special	\$	.00
Special Addl	\$	.00
Total	\$	.00

STATE OF NEW YORK  
ERIE COUNTY CLERKS OFFICE

TRANSFER TAX

WARNING - THIS SHEET CONSTITUTES THE CLERKS  
ENDORSEMENT, REQUIRED BY SECTION 316-a(5) &  
SECTION 319 OF THE REAL PROPERTY LAW OF THE  
STATE OF NEW YORK. DO NOT DETACH

CONSIDERATN	\$	150,000.00
Transfer Tax	\$	1,350.00

DAVID J SWARTS  
COUNTY CLERK



D109225151

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT — THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY

THIS INDENTURE, made the 01<sup>st</sup> day of July, nineteen hundred and  
ninety-seven  
BETWEEN

EASTERN ELECTRIC APPARATUS REPAIR COMPANY, INC.  
130 East Randolph  
Suite 2900  
Chicago, Illinois 60601

party of the first part, and

HARRISON INDUSTRIAL PARK, INC.  
P.O. Box 1011 c/o SUITE 3550 MARINE MIDLAND CENTER  
Buffalo, New York 14203

party of the second part,

**WITNESSETH**, that the party of the first part, in consideration of Ten Dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

**ALL** that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the

SEE SCHEDULE A ATTACHED HERETO

Subject to all covenants, easements and restrictions of record.

The Premises hereby conveyed are not substantially all of the assets of the Party of the First Part.

**TOGETHER** with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; **TOGETHER** with the appurtenances and all the estate and rights of the party of the first part in and to said premises; **TO HAVE AND TO HOLD** the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

**AND** the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

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

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

**IN WITNESS WHEREOF**, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

EASTERN ELECTRIC APPARATUS REPAIR COMPANY, INC.

By: Thomas M. Fitzpatrick  
Name: THOMAS M. FITZPATRICK  
Title: VICE PRESIDENT

0371 CTY-150m  
DIB-3



Reserve this space for use of Recording Office.

HARTER, SECREST & EMERY  
One Marine Midland Center  
Suite 3550  
Buffalo, New York 14203  
Zip No.

RETURN BY MAIL TO:

HARRISON INDUSTRIAL PARK, INC.  
TO

COMPANY, INC.  
EASTERN ELECTRIC APPARATUS REPAIR

COUNTY OR TOWN

LOT

BLOCK

SECTION

OFFICIAL SEAL  
CHRISTINE A. GEMBLA  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 9-23-98

witness thereto.  
and that he, said witness, at the same time subscribed h name as  
subscribing witness, was present and saw  
execute the same;  
described in and who executed the foregoing instrument; that he, said  
to be the individual

that he knows

he resides at No.

personally acquainted, who, being by me duly sworn, did depose and say that  
the subscribing witness to the foregoing instrument, with whom I am  
personally came

On the day of 19 , before me

STATE OF NEW YORK, COUNTY OF

ss:

to me known to be the individual described in and who executed the  
foregoing instrument, and acknowledged that  
same.

personally came

On the day of 19 , before me

STATE OF NEW YORK, COUNTY OF

ss:

With COVENANT AGAINST GRANTOR'S ACTS  
Mortgage and Sale deed

Notary Public

Board of Directors of said corporation.  
and that he signed his name thereto by like order of the  
seal, that it was so affirmed by order of the board of directors of said corporation.  
of said corporation, that the seal affixed to said instrument is such corporate  
in and which executed the foregoing instrument; that he knows the seal  
Company, Inc., the corporation described  
of Eastern Electric Apparatus Repair

Chicago, IL 60606  
resides at No. 20 N. Wacker, St. 2200,  
to me known, who, being by me duly sworn, did depose and say that he  
personally came Thomas M. Fitzpatrick  
On the 14 day of OCTOBER 19 97, before me

STATE OF NEW YORK, COUNTY OF COOK

ss:

to me known to be the individual described in and who executed the  
foregoing instrument, and acknowledged that  
same.

personally came

On the day of 19 , before me

STATE OF NEW YORK, COUNTY OF

ss:

## SCHEDULE A DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being parts of Lots Numbers twenty-seven (27) and thirty (30), Township ten (10), Range eight (8) of the Buffalo Creek Reservation, bounded and described as follows:

BEGINNING at a point on the northerly line of Seneca Street, sixty-six (66) feet wide, a distance of one hundred (100) feet westerly from its intersection with the westerly line of Wasson Street, forty-nine and five tenths (49.5) feet wide, said point being the southeasterly corner of lands conveyed by deed to Westinghouse Electrical Corporation recorded in the Erie County Clerk's Office in Liber 8337 of Deeds at page 561; running thence north  $60^{\circ} 10' 02''$  west along the northerly line of Seneca Street, a distance of three hundred thirty-seven and sixty-two hundredths (337.62) feet to the southwest corner of lands conveyed by deed to Westinghouse Electrical Corporation recorded in the Erie County Clerk's Office in Liber 4374 of Deeds at page 272, said point also being the southeasterly corner of lands conveyed to the City of Buffalo by deed recorded in the Erie County Clerk's Office in Liber 7285 of Deeds at page 599; running thence north  $29^{\circ} 50' 38''$  east along the west line of Westinghouse and the east line of the City of Buffalo, a distance of two hundred twenty-seven and four hundredths (227.04) feet to a point; running thence north  $60^{\circ} 09' 22''$  west along the south line of Westinghouse and the north line of the City of Buffalo, a distance of twenty-nine and ten hundredths (29.10) feet to a point; running thence north  $29^{\circ} 50' 38''$  east along the west line of Westinghouse and the east line of the City of Buffalo, a distance of two hundred forty-seven and sixteen hundredths (247.16) feet to a point on the southerly line of the Western New York and Pennsylvania Railroad, said point also being the northwest corner of Westinghouse and the northeast corner of the City of Buffalo; running thence north  $88^{\circ} 43' 39''$  east along the northerly line of Westinghouse by the aforementioned deed and also the northerly line of lands conveyed by deed to Westinghouse Electric and Manufacturing Company recorded in the Erie County Clerk's Office in Liber 2192 of Deeds at page 180, a distance of seventy and eighty-nine hundredths (70.89) feet to a point; running thence south  $68^{\circ} 18' 20''$  east along the northerly line of Westinghouse by last mentioned deed, a distance of one hundred twenty-one and thirty-two hundredths (121.32) feet to a point being the northeast corner of last mentioned deed, also being the northwest corner of lands conveyed by deed to Westinghouse by the last mentioned deed; running thence south  $60^{\circ} 10' 02''$  east along the north line of Westinghouse by first mentioned deed, a distance of one hundred eighty-five and seven hundredths (185.07) feet to the northeast corner thereof; running thence south  $29^{\circ} 44' 58''$  west along the east line of Westinghouse by first mentioned deed, a distance of five hundred twenty-eight (528) feet to the point or place of beginning.

HARRIS BEACH PLLC

ATTORNEYS AT LAW

726 EXCHANGE STREET, SUITE 1000  
BUFFALO, NY 14210  
(716) 200-5050

PIETRA G. LETTIERI, ESQ.

DIRECT: (716) 200-5112  
FAX: (716) 200-5215  
PLETTIERI@HARRISBEACH.COM

FILE COPY

December 18, 2007

Mary Jean Jakubowski  
Buffalo & Erie County Public Library  
Central Library  
1 Lafayette Square  
Buffalo, NY 14203

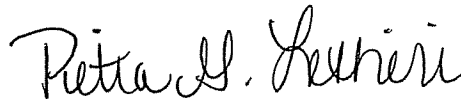
Re: Brownfield Cleanup Program Document Repository

Dear Ms. Jakubowski:

Please allow this to confirm my conversation with you on December 14, whereby you agreed to allow the Central Library to serve as a document repository for the New York State Brownfield Cleanup application, along with related attachments and exhibits, with regard to the development of property located at 1070 and 1146 Seneca Street, in the City of Buffalo, New York.

The New York State Department of Environmental Conservation requires that these materials be made available at a local document repository. A copy of the completed application will be forwarded to you shortly. Should you have any questions, please do not hesitate to contact me at (716) 200-5112.

Very truly yours,



Pietra G. Lettieri, Esq.

PGL:kd

Summary of Soil Analytical Results  
Evergreen 2001 Environmental Evaluation Data  
1146 Seneca Street  
Buffalo, NY

Analytes (mg/kg), Test Method	Unrestricted Use Soil Cleanup Objectives (mg/kg)	Restricted Use Cleanup Objectives (mg/kg)				Probe Hole (PH)- number (mg/kg)
		Residential	Residential Restricted	Commerical	Industrial	
						PH-23
VOCs, EPA Method 8021						
ethylbenzene	1	100 <sup>a</sup>	100 <sup>a</sup>	500 <sup>b</sup>	1000 <sup>c</sup>	1.2
n-propylbenzene	3.9	100 <sup>a</sup>	100 <sup>a</sup>	500 <sup>b</sup>	1000 <sup>c</sup>	0.32
n-butylbenzene	12	100 <sup>a</sup>	100 <sup>a</sup>	500 <sup>b</sup>	1000 <sup>c</sup>	0.57
o-xylene	0.26	100 <sup>a</sup>	100 <sup>a</sup>	500 <sup>b</sup>	1000 <sup>c</sup>	0.55
SVOCs, EPA Method 8270						
SVOCs	NA	NA	NA	NA	NA	--

Notes:

<sup>a</sup>The Soil Cleanup Objectives (SCO) for residential, restricted-residential and ecological resources were capped at a maximum value of 100 mg/kg.

<sup>c</sup>The SCOs for rcommerical use were capped at a maximum value of 500 mg/kg.

<sup>b</sup>The SCOs for rindustiral use were capped at a maximum value of 1,000 mg/kg.

NA = Not Applicable.

-- = Analytes not detected above the laboratory practical quantitation limit.

Bold value indicates an exceedance.



6105001

Created by: JM on 11/27/2007

Checked by: TH on 11/28/2007