



NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION



BROWNFIELD CLEANUP PROGRAM (BCP)

ECL ARTICLE 27/ TITLE 14

07/2010

DEPARTMENT USE ONLY  
BCP SITE #:

Section I: Requestor Information

NAME Kensington Heights Revitalization Corporation

ADDRESS 300 Perry Street

CITY/TOWN Buffalo, New York

ZIP CODE 14204

PHONE 716-855-6711

FAX 716-855-6761

E-MAIL dsanders@bmhahousing.com

Is the requestor authorized to conduct business in New York State (NYS)?

☒ Yes ☐ No

-If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's Corporation & Business Entity Database. A print-out of entity information from the database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

NAME OF REQUESTOR'S REPRESENTATIVE Dawn E. Sanders- Garrett

ADDRESS 300 Perry Street

CITY/TOWN Buffalo, New York

ZIP CODE 14204

PHONE 716-855-6711

FAX 716-855-6761

E-MAIL dsanders@bmhahousing.com

NAME OF REQUESTOR'S CONSULTANT Stohl Environmental, LLC

ADDRESS 4169 Allendale Parkway

CITY/TOWN Blasdell, New York

ZIP CODE 14219

PHONE 716-855-6711

FAX 716-312-8092

E-MAIL bobs@rjsenviro.com

NAME OF REQUESTOR'S ATTORNEY Kavinsky Cook LLP, Attention: Deborah J. Chadsey, Esq.

ADDRESS 726 Exchange Street, Suite 800

CITY/TOWN Buffalo, New York

ZIP CODE 14210

PHONE 716-845-6000

FAX 716-845-6474

E-MAIL dchadsey@kavinskycook.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:

☐ 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.

☒ 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):

☐ Previous Owner

☐ Current Owner

☒ Potential /Future Purchaser

☐ Other

If requestor is not the site owner, requestor will have access to the property throughout the BCP project. ☒ Yes ☐ No

-Proof of site access must be submitted for non-owners



<b>Section II. Property Information</b> Check here if this application is to request significant changes to property set forth in an existing BCA: <input type="checkbox"/> Existing BCP site number: _____											
PROPERTY NAME: Kensington Heights Towers											
ADDRESS/LOCATION: 1827 Fillmore Avenue		CITY/TOWN: Buffalo		ZIP CODE: 14204							
MUNICIPALITY(OR MORE THAN ONE, LIST ALL):											
COUNTY: Erie		SITE SIZE (ACRES): 17.14 +/- acres									
LATITUDE (degrees/minutes/seconds): 42° 55' 53.908" N			LONGITUDE (degrees/minutes/seconds): -78° 50' 13.5774" W								
HORIZONTAL COLLECTION METHOD: <input type="checkbox"/> SURVEY <input type="checkbox"/> GPS <input checked="" type="checkbox"/> MAP			HORIZONTAL REFERENCE DATUM: NAD82								
COMPLETE TAX MAP INFORMATION FOR ALL TAX PARCELS INCLUDED WITHIN THE PROPERTY BOUNDARIES. ATTACH REQUIRED MAPS PER THE APPLICATION INSTRUCTIONS.											
Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acres						
1827 Fillmore Avenue	90	13	1	11	17.17 +/-						
1. Do the property boundaries correspond to tax map metes and bounds? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If no, please attach a metes and bounds description of the property.											
2. Is the required property map attached to the application? (application will not be processed without map) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No											
3. Is the property part of a designated En-zone pursuant to Tax Law § 21(b)(6)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No For more information please see Empire State Development's website. If yes, identify area (name): CANARUS TRAIL 40.02											
Percentage of property in En-zone (check one): <input type="checkbox"/> 0-49% <input type="checkbox"/> 50-99% <input checked="" type="checkbox"/> 100%											
4. Is this application one of multiple applications for a large development project, where the development project spans more than 25 acres (see additional criteria in BCP application instructions)? If yes, identify name of properties in related BCP applications: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No											
5. Property Description Narrative:  See Exhibit B attached hereto.											
6. List of Existing Easements (type here or attach information): <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">Easement Holder</th> <th style="width: 50%;">Description</th> </tr> </thead> <tbody> <tr> <td colspan="2">See Exhibit B attached hereto.</td> </tr> </tbody> </table>						Easement Holder	Description	See Exhibit B attached hereto.			
Easement Holder	Description										
See Exhibit B attached hereto.											
7. List of Permits issued by the NYSDEC or USEPA Relating to the Proposed Site (type here or attach information): <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;">Type</th> <th style="width: 30%;">Issuing Agency</th> <th style="width: 50%;">Description</th> </tr> </thead> <tbody> <tr> <td colspan="3" style="text-align: center;">None for this Site</td> </tr> </tbody> </table>						Type	Issuing Agency	Description	None for this Site		
Type	Issuing Agency	Description									
None for this Site											

If any changes to Section II are required prior to application approval, a new page, initialed by each requestor, must be submitted.

Initials of each Requestor:



**Section III: Current Property Owner/Operator Information**OWNER'S NAME **Buffalo Municipal Housing Authority**ADDRESS **300 Perry Street**CITY/TOWN **Buffalo**ZIP CODE **14204**PHONE **716-855-6711**FAX **716-855-6761**E-MAIL **dsanders@bmhahousing.com**OPERATOR'S NAME **No Current Property Operator**

ADDRESS:

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? ☒ Yes ☐ No
2. Is the requestor subject to an existing order relating to contamination at the site? ☐ Yes ☒ No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? ☐ Yes ☒ No
4. Has the requestor been determined to have violated any provision of ECL Article 27? ☐ Yes ☒ No
5. Has the requestor previously been denied entry to the BCP? ☐ Yes ☒ No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving contaminants? ☐ Yes ☒ 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? ☐ Yes ☒ 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? ☐ Yes ☒ 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? ☐ Yes ☒ No

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

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

**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:

- 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

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. LABORATORY REPORTS SHOULD BE REFERENCED AND COPIES INCLUDED.

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

\*Please describe:

### 3. SUSPECTED CONTAMINANTS: INDICATE SUSPECTED CONTAMINANTS AND THE MEDIA WHICH MAY HAVE BEEN AFFECTED. PROVIDE BASIS FOR ANSWER AS AN ATTACHMENT.

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

\*Please describe:

### 4. INDICATE KNOWN OR SUSPECTED SOURCES OF CONTAMINANTS (CHECK ALL THAT APPLY). PROVIDE BASIS FOR ANSWER AS AN ATTACHMENT.

- ☐ Above Ground Pipeline or Tank    ☐ Lagoons or Ponds    ☐ Underground Pipeline or Tank    ☐ Surface Spill or Discharge  
☐ Routine Industrial Operations    ☒ Dumping or Burial of Wastes    ☐ Septic tank/lateral field    ☐ Adjacent Property  
☐ Drums or Storage Containers    ☐ Seepage Pit or Dry Well    ☐ Foundry Sand    ☐ Electroplating  
☐ Coal Gas Manufacture    ☒ Industrial Accident    ☐ Unknown
- Other: Historic fill material (See attached narrative)

### 5. INDICATE PAST LAND USES (CHECK ALL THAT APPLY):

- ☐ Coal Gas Manufacturing    ☐ Manufacturing    ☐ Agricultural Co-op    ☐ Dry Cleaner    ☐ Salvage Yard    ☐ Bulk Plant  
☐ Pipeline    ☐ Service Station    ☐ Landfill    ☐ Tannery    ☐ Electroplating    ☐ Unknown
- Other: Quarry, City Landfill, then backfilled and used for housing development post WWII

### 6. PROVIDE A LIST OF PREVIOUS PROPERTY OWNERS AND OPERATORS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBERS AS AN ATTACHMENT. DESCRIBE REQUESTOR'S RELATIONSHIP, IF ANY, TO EACH PREVIOUS OWNER AND OPERATOR. IF NO RELATIONSHIP, PUT "NONE".



### Section VIII. Contact List Information

Please attach, at a minimum, the names and addresses of the following:

1. The chief executive officer and planning board chairperson 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))

1. Current Use: ☒ Residential ☐ Commercial ☐ Industrial ☒ Vacant ☐ Recreational (check all that apply)  
Provide summary of business operations as an attachment.

2. Intended Use Post Remediation: ☐ Unrestricted ☒ Residential ☐ Commercial ☐ Industrial (check all that apply)  
Provide specifics as an attachment.

3. Do current historical and/or recent development patterns support the proposed use? (See #14 below re: discussion of area land uses) ☒ Yes ☐ No

4. Is the proposed use consistent with applicable zoning laws/maps? ☒ Yes ☐ No

5. 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? ☒ Yes ☐ No

6. Are there any Environmental Justice Concerns? (See §27-1415(3)(p)). ☐ Yes ☒ No

7. Are there any federal or state land use designations relating to this site? ☐ Yes ☒ No

8. Do the population growth patterns and projections support the proposed use? ☒ Yes ☐ No

9. Is the property accessible to existing infrastructure? ☒ Yes ☐ No

10. Are there important cultural resources, including federal or state historic or heritage sites or Native American religious sites within 1/4 mile? ☐ Yes ☒ No

11. Are there important federal, state or local natural resources, including waterways, wildlife refuges, wetlands, or critical habitats of endangered or threatened species within 1/4 mile? ☐ Yes ☒ No

12. Are there floodplains within 1/4 mile? ☐ Yes ☒ No

13. Are there any institutional controls currently applicable to the property? ☐ Yes ☒ No

14. Describe the proximity to real property currently used for residential use, and to urban, commercial, industrial, agricultural, and recreational areas in an attachment.

15. Describe the potential vulnerability of groundwater to contamination that might migrate from the property, including proximity to wellhead protection and groundwater recharge areas in an attachment.

16. Describe the geography and geology of the site in an attachment.



### Section X. Statement of Certification and Signatures

(By requestor who is an individual)

If this application is approved, I acknowledge and agree to the general terms and conditions set forth in DER-32 *Brownfield Cleanup Program Applications and Agreements* and to execute a Brownfield Cleanup Agreement (BCA) within 60 days of the date of DEC's approval letter. I also agree that in the event of a conflict between the general terms and conditions of participation set forth in DER-32 and the terms contained in a site-specific BCA, the terms in the BCA shall control. 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 210.43 of the Penal Law.

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

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(By an requestor other than an individual)

I hereby affirm that I am Executive Director (title) of Kensington Heights Revitalization Corporation (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. If this application is approved, I acknowledge and agree to the general terms and conditions set forth in DER-32 *Brownfield Cleanup Program Applications and Agreements* and to execute a Brownfield Cleanup Agreement (BCA) within 60 days of the date of DEC's approval letter. I also agree that in the event of a conflict between the general terms and conditions of participation set forth in DER-32 and the terms contained in a site-specific BCA, the terms in the BCA shall control. 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 210.43 of the Penal Law.

Date: 12/17/14

Signature: \_\_\_\_\_

Print Name: Dawn E. Sanders-Garrett

### 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, 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.

### FOR DEPARTMENT USE ONLY

BCF SITE T&A CODE: \_\_\_\_\_

LEAD OFFICE: \_\_\_\_\_



FILING RECEIPT

ENTITY NAME: KENSINGTON HEIGHTS REVITALIZATION CORPORATION

DOCUMENT TYPE: INCORPORATION (DOM. BUSINESS)

COUNTY: ERIE

FILED:12/12/2012 DURATION:PERPETUAL CASH#:121212000138 FILM #:121212000121  
DOS ID:4331502

FILER:

KAVINOKY COOK LLP  
726 EXCHANGE STREET, SUITE 8-00  
LAURENCE K. RUBIN, ESQ.  
BUFFALO, NY 14210

DATE

2012

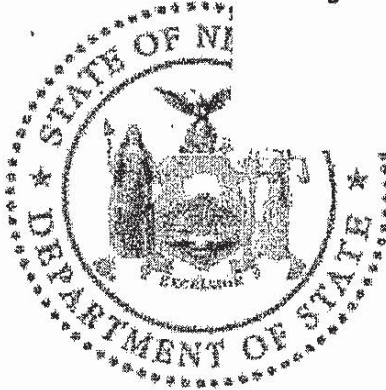
ADDRESS FOR PROCESS:

KENSINGTON HEIGHTS REVITALIZATION CORP  
BUFFALO MUNICIPAL HOUSING  
BUFFALO, NY 14204-2299

REGISTERED AGENT:

STOCK:

200 NPV



The corporation is required to file a Biennial Statement with the Department of State every two years pursuant to Business Corporation Law Section 408. Notification that the biennial statement is due will only be made via email. Please go to [www.email.ebiennial.dos.ny.gov](http://www.email.ebiennial.dos.ny.gov) to provide an email address to receive an email notification when the Biennial Statement is due.

SERVICE COMPANY: CORPORATION SERVICE COMPANY - 45

SERVICE CODE: 45 \*

FEES 195.00  
FILING 125.00  
TAX 10.00  
CERT 0.00  
COPIES 10.00  
HANDLING 50.00

PAYMENTS 195.00  
CASH 0.00  
CHECK 0.00  
CHARGE 0.00  
DRAWDOWN 195.00  
OPAL 0.00  
REFUND 0.00

451759JBA

DOS-1025 (04/2007)



**STATE OF NEW YORK**  
**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
December 12, 2012.

A handwritten signature in dark ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

Rev. 06/07



7-10-45  
DOWN

121212000 121

CERTIFICATE OF INCORPORATION

OF

KENSINGTON HEIGHTS REVITALIZATION CORPORATION

Under Section 402 of the  
Business Corporation Law

The undersigned, a person over the age of eighteen (18), in order to form and organize a corporation under Section 402 of the Business Corporation Law of the State of New York, hereby certifies that:

ARTICLE I: The name of the corporation is: Kensington Heights Revitalization Corporation (the "Corporation").

ARTICLE II: The purposes for which this Corporation is formed are as follows:

To engage in any lawful act or activity for which corporations may be organized under the Business Corporation Law; provided, however, that this Corporation is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency, or other body without such consent or approval first being obtained.

ARTICLE III: The aggregate number of shares which the Corporation shall have the authority to issue is 200 shares, all of which are common shares with no par value.

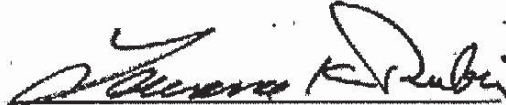
ARTICLE IV: The office of the Corporation is to be located in the County of Erie.

ARTICLE V: The Secretary of State of the State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: Kensington Heights Revitalization Corporation, c/o Executive Director, Buffalo Municipal Housing Authority, 300 Perry Street, Buffalo, New York 14204-2299.

ARTICLE VI: To the fullest extent that the Business Corporation Law of the State of New York, as the same exists or may hereafter be amended, permits elimination or a limitation of the liabilities of directors, no director of the Corporation may be liable to the Corporation or its shareholders for any breach of duty in such capacity. Any repeal or modification of this paragraph by the shareholders of the Corporation shall be prospective only and shall not adversely affect any elimination or limitation of the personal liability of a director of the Corporation for acts or omissions occurring prior to the effective date of such repeal or modification.



IN WITNESS WHEREOF, the undersigned has subscribed this Certificate and affirmed it as true under penalties of perjury this 6<sup>th</sup> day of December, 2012.

A handwritten signature in black ink, appearing to read "Laurence K. Rubin", is written over a horizontal line.

Laurence K. Rubin, Esq.

Incorporator

Kavinoky Cook LLP

726 Exchange Street, Suite 800

Buffalo, New York 14210



121212000 121

RECEIVED

2012 DEC 11 PM 4:02

CERTIFICATE OF INCORPORATION

OF

KENSINGTON HEIGHTS REVITALIZATION CORPORATION

Under Section 402 of the  
Business Corporation Law

RECEIVED

2012 DEC 11 AM 9:04

1cc

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED DEC 12 2012

TAXS 10

BY:

KWA

Eric

Kavinoky Cook LLP  
726 Exchange Street, Suite 800  
Laurence K. Rubin, Esq.  
Buffalo, NY 14210

CUSTOMER REF. #

451759 JBA

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FILED

2012 DEC 12 PM 12:04

CSC 45  
DRAW DOWN





ENVIRONMENTAL CONSULTANTS

4169 Allendale Parkway  
Buffalo, New York 14219  
(P) 716-312-0070 (F) 716-312-8092  
www.stohlenvironmental.com

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A MEMBER OF THE STOHL GROUP OF COMPANIES

October 31, 2014

Mr. Modesto Candelario  
Buffalo Municipal Housing Authority  
Assistant Executive Director  
300 Perry Street  
Buffalo, New York 14204

Re: Kensington Heights Complex  
Asbestos Abatement Project  
EPA Compliance Summary Report

Dear Mr. Candelario:

Enclosed please find the EPA Compliance Summary Report for the above listed project. A copy of this report should be kept with other abatement projects documentation for a minimum of 30 years.

Should you have any questions or concerns regarding this report, please do not hesitate to call me. Thank you for the opportunity to be of service to BMHA.

Sincerely,  
Stohl Environmental, LLC

A handwritten signature in dark ink, appearing to read "Chris Stohl". The signature is fluid and cursive, with the first name "Chris" and last name "Stohl" clearly distinguishable.

Christopher C. Stohl

enc.

DEC 001901



**EPA Compliance Summary Report**

**for**

**Asbestos Abatement**

**Located At**

**Kensington Heights Complex  
1827 N. Fillmore Avenue  
Buffalo, NY**

**Prepared by**



**ENVIRONMENTAL CONSULTANTS - A MEMBER OF THE STOHL GROUP OF COMPANIES**

**4169 ALLENDALE PKWY. BUFFALO, NEW YORK 14219**

**☎ (716) 312-0070 ☎ (716) 312-8092**

**[www.stohlenvironmental.com](http://www.stohlenvironmental.com)**

**October 31, 2014**



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Buffalo, New York 14219  
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## 1. Introduction

On or about September 6, 2011 the Buffalo Municipal Housing Authority (BMHA) received compliance order CAA-02-2011-1021 from the US Environmental Protection Agency (EPA) with regard to the site known as Kensington Heights. The EPA Compliance Order required the BMHA to submit a work plan and address various issues on the site.

This report details the the actions taken in response to the EPA's Compliance Order Number CAA-02-2011-1021 over the course of the project. Part of the EPA Compliance Order were six individual Orders that addressed various conditions on the site. Two of the Orders were for instructional purposes only. A summary of all six orders is located in Section 2 of this report.

Orders one and six were instructional and informative orders that were complied with throughout the course of this project. Response actions for Orders one and six are not included as part of this report for this reason.



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## 2. EPA Compliance Orders 1 Through 6

### Order I:

The provisions of this Order shall apply to Respondent and its officers, agents, servants, employees, successors and to all persons, firms and corporations acting under, through or for Respondent.

### Order II:

Respondent shall perform all renovation/demolition operations at the Kensington Heights Towers and any and all other facilities in which Friable asbestos is present in compliance with all applicable provisions of the Asbestos NESHAP.

### Order III:

Respondent shall immediately adequately wet and cover with polyethylene sheeting the two roll-off containers and associated spillage, and shall ensure that the containers and associated spillage remain adequately wet and covered until the RACM is properly collected for disposal. Respondent shall notify EPA that it has wet and covered the roll-off containers and associated spillage within 24 hours of completion.

### Order IV:

Respondent shall immediately cover all windows and openings in buildings 1 through 6 at Kensington Heights Towers. Respondent shall notify EPA that it has covered all windows and openings in buildings 1 through 6 at Kensington Heights Towers within 24 hours of completion.

### Order V:

Upon the effective date of this Order (which is specified below in the section entitled "Effective Date and Opportunity for a Conference") Respondent shall submit a comprehensive asbestos abatement plan for the entire site for EPA's approval. This plan shall be prepared by an AHERA accredited project designer. The plan shall include identification and delineation of the extent of asbestos soil contamination outside of buildings 1 through 6, and shall also include plans for taking a soil lift of adequate depth of these areas. The plan shall also include plans for daily perimeter air monitoring at the fence line during abatement. In addition, a site diagram with the expected sampling locations shall be submitted along with the abatement plan for EPA approval.

### Order VI:

The notifications required by Paragraphs III and IV above, as well as the asbestos abatement plan and site diagram required by Paragraph V above, shall be sent via overnight service to:

Mr. Ken Eng, Chief  
Air Compliance Branch  
Division of Enforcement and Compliance Assistance  
290 Broadway, 21<sup>st</sup> Floor  
New York, NY 10007

Stohl Env File #2011-667

Kensington Heights

DEC 001905





4169 Allendale Parkway  
Buffalo, New York 14219  
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### 3. Response Actions to EPA Compliance Orders 2 Through 5

#### Summary of actions taken in response to Order II:

Abatement and cleaning of the tarmac/soils was broken into 2 phases of work. Aria contracting completed phase 1 of work on September 28, 2012 and completed phase 2 of the work on November 2, 2013. Areas of contaminated tarmac and soil were wetted with amended water and vegetation was cut to access soil areas. All asbestos debris was removed from tarmac and soil areas and immediately bagged for disposal.

All building openings were sealed with 2 layers of polyethylene sheeting and decontamination systems were attached to the buildings. All asbestos containing debris and general debris located within the buildings was abated and disposed of as RACM. Upon completion of interior abatement and as required by the Site Specific Variance for each building, a NYS DOL inspector conducted the final visual inspection prior to clearance air sampling. Completion dates by building and activity are shown in the table below:

Activity	Date Final Clearance Air Samples Achieved
Abatement/cleaning of the interior of Building A1	September 12, 2012
Abatement/cleaning of the interior of Building B2	October 16, 2012
Abatement/cleaning of the interior of Building A3	February 6, 2014
Abatement/cleaning of the interior of Building B4	October 29, 2014
Abatement/cleaning of the interior of Building A5	September 9, 2013
Abatement/cleaning of the interior of Building B6	June 28, 2013

### 3. Response Actions to EPA Compliance Orders 2 Through 5 Continued

#### Summary of actions taken in response to Order III:

Clean-up operations around the dumpsters and sealing the dumpsters was completed by Arric Corporation on October 21, 2011. Arric wetted all asbestos inside the regulated work area and covered the dumpsters with 2X4 framing, plywood sheathing and two layers of six mil. plastic sheeting. The plastic sheeting was sealed airtight to the dumpsters with spray glue and waterproof tape. Holes in the dumpsters were sealed with plastic, spray glue and waterproof tape. Cleaning of the defined perimeter soil and tarmac took place using amended water, shovels and scrapers. Upon completion of the bulk removal of floor tile debris, HEPA vacuums were used to remove fine particles. Waste generated during the cleaning operation was containerized and properly labeled in compliance with the requirements of the NESHAP regulation.

Sealed dumpsters were left on site and continually checked by Stohl Environmental personnel until they were cleaned out and disposed of by Aria Contracting on August 28, 2012. Dumpsters were cleaned according to the approved EPA work plan. A negative pressure regulated abatement work area was constructed around the dumpsters. All waste was wetted with amended water and bagged for disposal. After all removals were complete the dumpsters and ground were wet wiped and HEPA vacuumed. Waste generated during the cleaning operation was containerized and properly labeled in compliance with the requirements of the NESHAP regulation.

#### Summary of actions taken in response to Order IV:

Aria Contracting framed all openings and attached two layers of polyethylene sheeting to all openings in all buildings. The sheeting was then sealed from the inside to prevent airflow to the exterior of the buildings. Sealing of all six buildings was completed on August 31, 2012.

As per the NYS DOL Site Specific Variance for each building, Stohl Environmental and Aria Contracting were responsible for continually checking and maintaining the integrity of the barriers. The barriers were checked until interior abatement of each building was completed. Please see table above in the summary of actions taken in response to Order II section of this report for interior abatement completion dates.

#### Summary of actions taken in response to Order V:

Stohl Environmental, LLC created a work plan for the Kensington Heights site in response to the EPA Compliance Order. The work plan addressed abatement and cleanup methods for the soil and tarmac, interior of buildings and sealing the contaminated dumpsters on site. As part of the plan Stohl Environmental performed inspection work of the contaminated soils and issued a Surficial Soils Asbestos Contamination Report in October 2011. A diagram was also submitted as part of the work plan to depict the locations of perimeter air sampling. The work plan was approved by the EPA on January 26, 2012.





4169 Allendale Parkway  
Buffalo, New York 14219  
(P) 716-312-0070 (F) 716-312-8092  
www.stohlenvironmental.com

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A MEMBER OF THE STOHL GROUP OF COMPANIES

#### 4. Conclusion

All items included in the EPA Compliance Order CAA-02-2011-1021 have been addressed for the Kensington Heights Site as observed by Stohl Environmental, LLC, the on site monitor for the project. All work completed as part of the EPA Compliance Order was done in accordance with the approved EPA Work Plan and NYS DOL Site Specific Variances for each building. The New York State Department of Labor confirmed, by visual inspection, that all friable asbestos has been removed.

**EXHIBIT A**  
**(Section II)**  
**Property Information**  
**Tax Map**



**Real Property Information**

<b>Parcel Status</b>	ACTIVE	<b>City/Town</b>	Buffalo	<b>Village</b>
<b>S-B-L</b>	90.13-1-11	<b>Owner</b>	BUFFALO MUNICIPAL HOUSING	
<b>Property Location</b>	1827 FILLMORE	<b>Mailing Address</b>	AUTHORITY	
<b>Property Class</b>	411 APARTMENT	<b>Line 2</b>		
<b>Assessment</b>	600000	<b>Line 3</b>		
<b>Taxable</b>	0	<b>Street</b>	300 PERRY ST	
<b>Desc</b>	559.27 S KENSINGTON	<b>City/State</b>	BUFFALO NY	
<b>Desc</b>	1131. IRR DEPTH	<b>Zip</b>	14204	
<b>Deed Book</b>	05721	<b>Deed Page</b>	00461	
<b>Frontage</b>	356.87	<b>Depth</b>	0	<b>Acres</b> 0
<b>Year Built</b>		<b>Square Ft</b>		
<b>Beds</b>		<b>Baths</b>		
<b>FirePlace</b>		<b>School</b>	BUFFALO SCHOOL DIST	
<b>History Link</b>	<b>Taxes</b>			

[Google maps](#)
[Click Here](#)


---

<b>Owner Name</b>	<input type="text"/>	<b>(Last Name First) or</b>
<b>Property Address</b>	<input type="text"/>	<b>No./ Street</b>
<b>S-B-L</b>	<input type="text"/>	
<b>Search All</b>	<input type="button" value="Submit Query"/>	<input type="button" value="Clear Form"/>



July 10, 2013

Barb Wolosen, Site Control Section  
New York State Department of Environmental Conservation  
Bureau of Technical Support  
625 Broadway, 11<sup>th</sup> Floor  
Albany, New York

RE: Brownfield Cleanup Application  
Kensington Heights Apartments  
BCP # C9915279  
1847 Fillmore, Buffalo, New York (the "Site")

Dear Ms. Wolosen:

Please allow this letter to confirm that Buffalo Municipal Housing Authority (the "Property Owner") hereby agrees to provide access to 1847 Fillmore, Buffalo, New York (the "Site") and to all relevant information regarding activities at the Site to Kensington Heights Revitalization Corporation (the "Applicant") in the Brownfield Cleanup Application (the "BCP") submitted to your office originally on May 31, 2013.

If you have any questions please call the undersigned at 716-845-6000.

Very truly yours,  
Kavinoky Cook LLP

A handwritten signature in black ink, appearing to read "Deborah J. Chadsey", is written over a horizontal line.

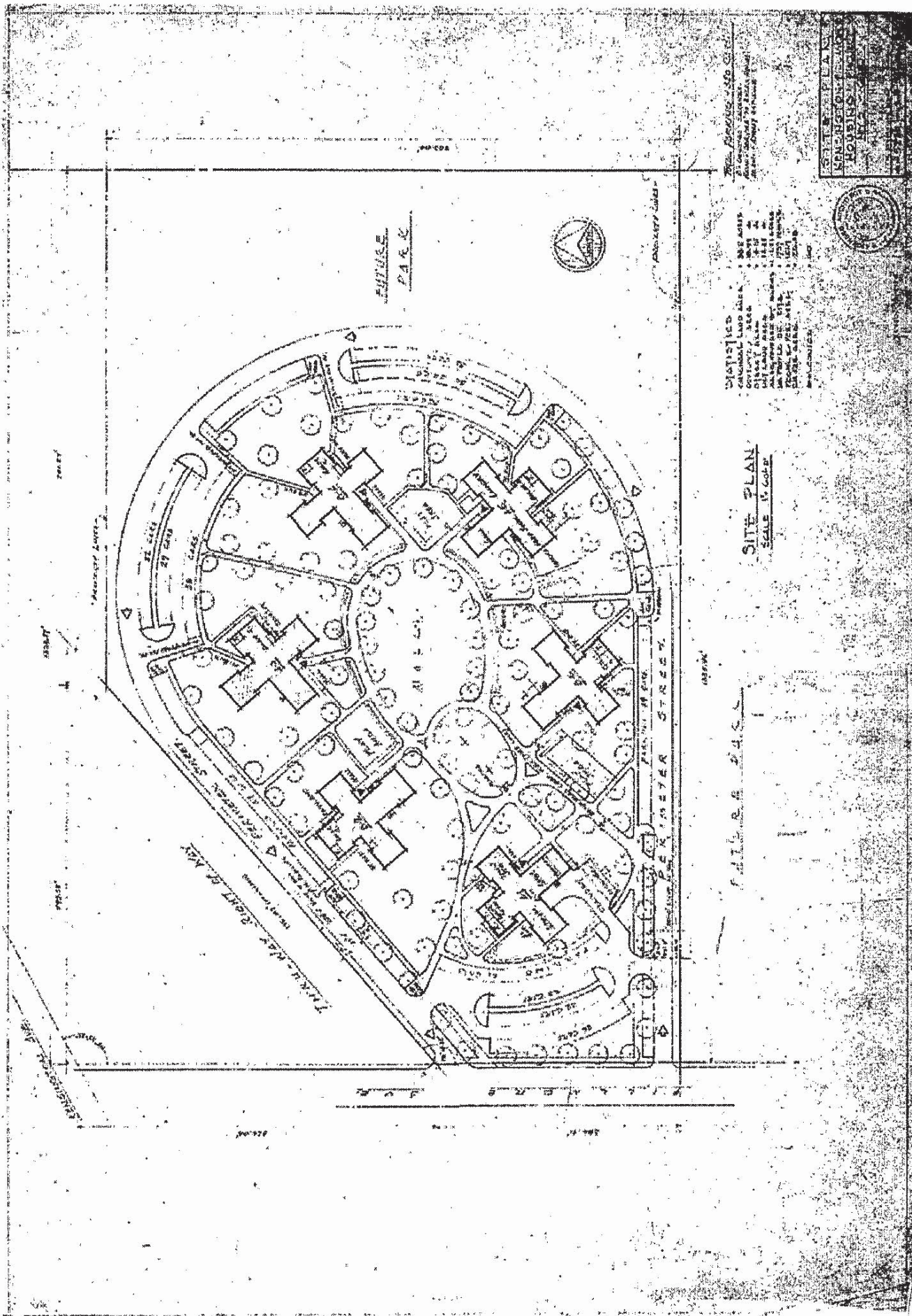
Deborah J. Chadsey

DJC/tmc











**EXHIBIT B**  
**(Section II)**  
**Property Information**  
**Property Narrative**

## **Section II. Property Information**

### **Property Description Narrative:**

Kensington Heights Apartments were built in 1958. The apartments were formerly a federal/state development. The site consists of six seven-story brick apartment buildings on 16 acres of land in the City of Buffalo. There are approximately 67 units per building as well as some common area space and onsite parking. The Site has been vacant since the 1980's.

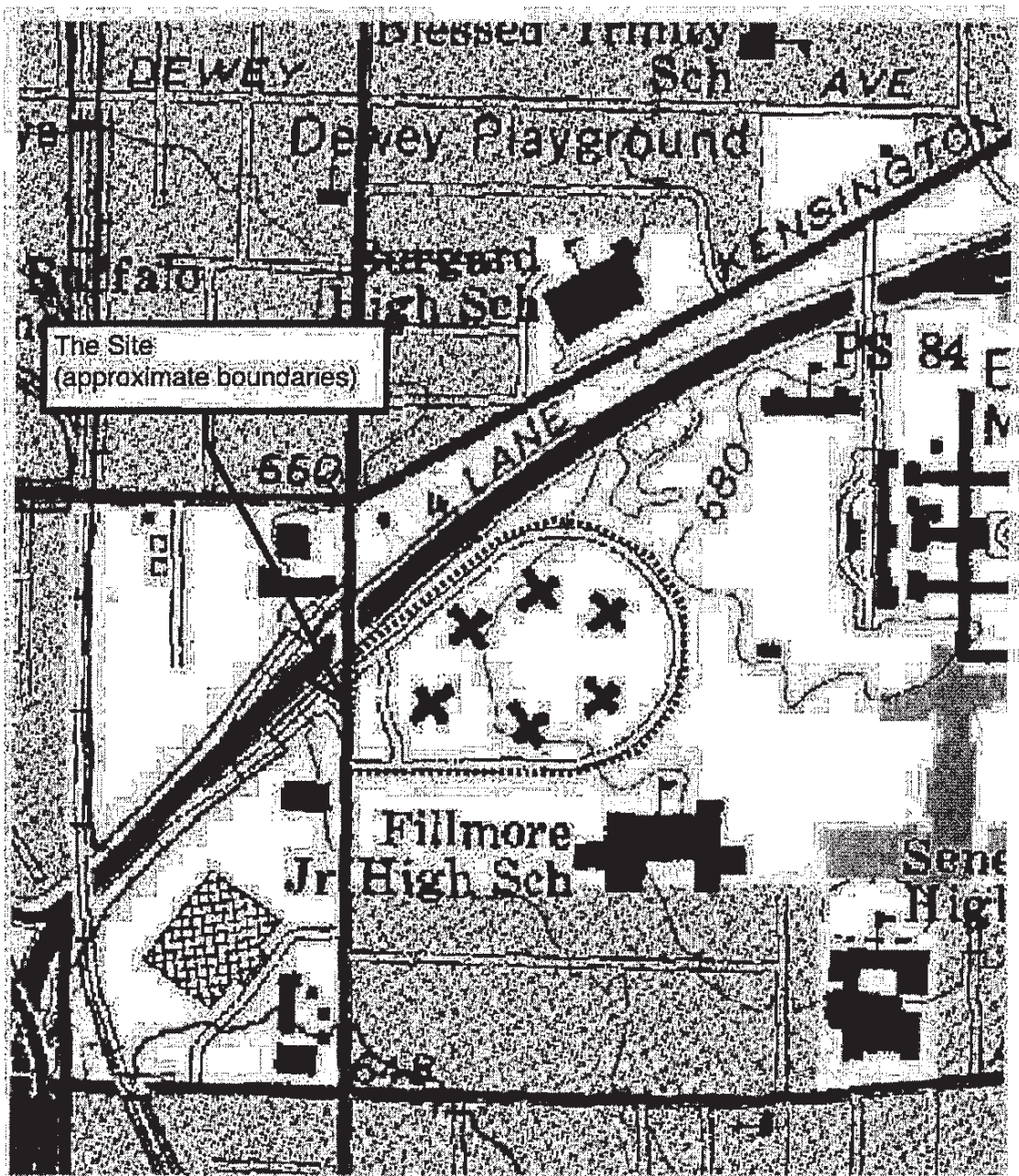


Item 1

Exhibit B

The Kensington Heights property is bordered on the north by the six lane Kensington Expressway (Route 33). To the south is a park which consists of baseball fields, basketball courts and football fields; the Lydia Wright School is located to the southeast of the property. To the east of the property are the Erie County Medical Center (ECMC) and Buffalo Public School 84. To the west the property is bordered by North Fillmore Avenue followed by a machine shop and an off-ramp to Route 33.

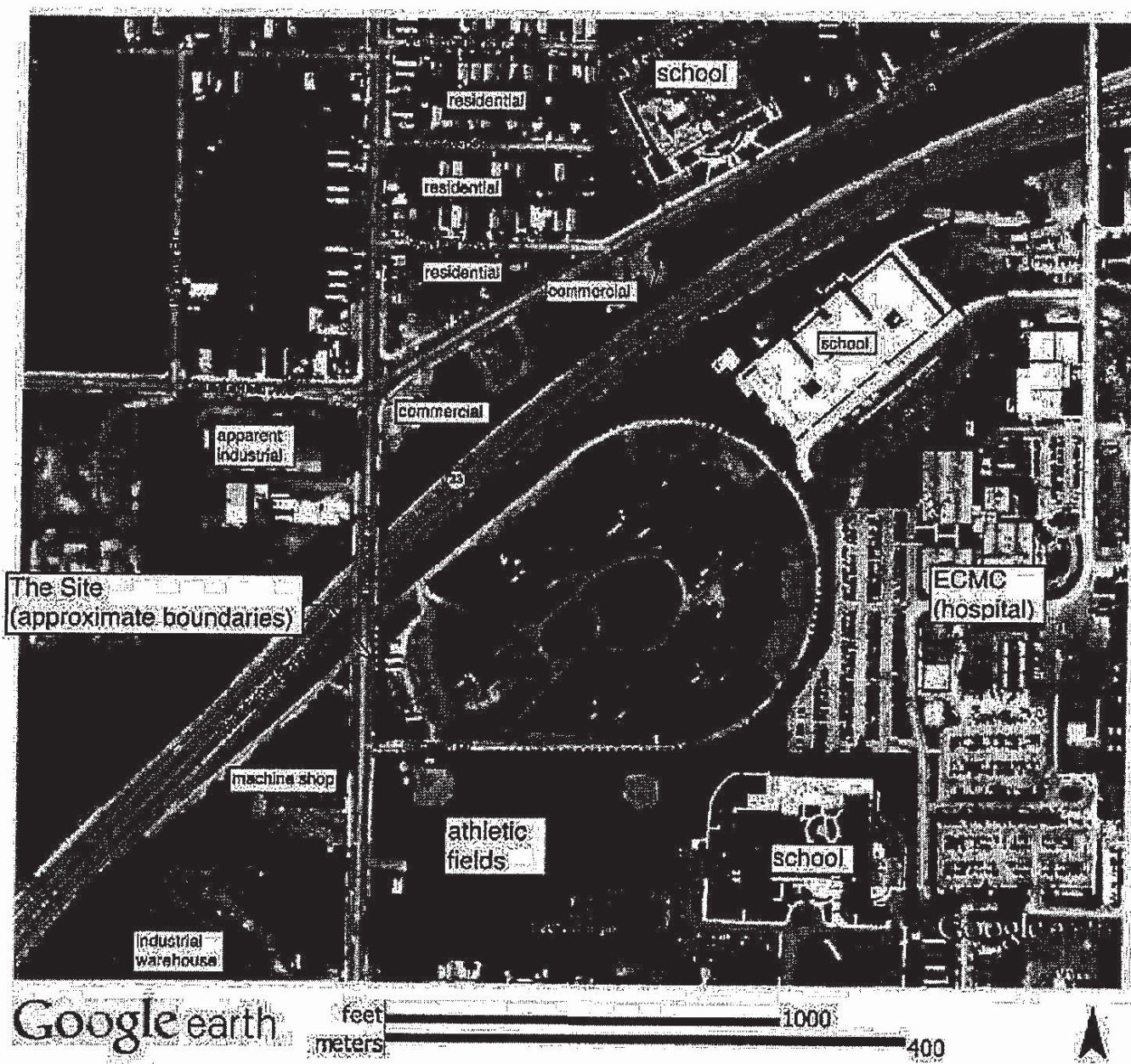
Supporting Documents (see attached maps)



Center: 42.9266°N 78.8371°W  
 Elevation at center: 676 feet (206 meters)  
 Quad: USGS Buffalo NE  
 Drg Name: o42078h7  
 Drg Source Scale: 1:24,000

Topo Map  
 12MS104.6  
 1827 Fillmore Avenue  
 Buffalo, New York





Exhibit

**LIST OF EASEMENTS/RIGHT OF WAYS**

Right of Way to Iroquois Gas Corporation by instrument recorded in Liber 5835 of Deeds at page 467 on September 19, 1955.

Easement to New York Telephone Company by instrument recorded in Liber 8651 of Deeds at page 341 on June 2, 1978.

Right of Way to Iroquois Gas Corporation by instrument recorded in Liber 5809 of Deeds at page 267 on August 11, 1955



**EXHIBIT C**  
**(Section IV)**  
**Requestor Eligibility**  
**Information**



## Enforcement & Compliance History Online (ECHO)

You are here: [EPA Home](#) [Compliance and Enforcement](#) [ECHO](#) [Search Data](#) [Search Results](#)

### Detailed Facility Report



For Public Release - Unrestricted Dissemination Report Generated on 11/26/2012  
US Environmental Protection Agency - Office of Enforcement and Compliance Assurance

Gray text in this report indicates information that is not required to be reported to EPA. These data, typically regarding non-major or smaller facilities, are often incomplete.

#### Facility Permits and Identifiers

Statute	System	Source ID	Facility Name	Street Address	City	State	Zip
	FRS	110044220786	BUFFALO MUNI HOUSING AUTH (KENSINGTON)	1827 NORTH FILMORE AVE	BUFFALO	NY	14214

#### Facility Characteristics

Statute	Source ID	Universe	Status	Area	Permit Expiration Date	Latitude/ Longitude	Indian Country?	SIC Codes	NAICS Codes
	110044220786					LRT: 42.926453, -78.837075	No		

If the CWA permit is past its expiration date, this normally means that the permitting authority has not yet issued a new permit. In these situations, the expired permit is normally administratively extended and kept in effect until the new permit is issued.

For the RCRA program, activities that contribute to an overall facility status of Active are displayed in parentheses using the acronym HPACS, where H indicates handler activities, P - permitting, A - corrective action, C - converter, and S - state-specific. More information is available in the Data Dictionary.

#### Compliance Monitoring History (05 years)

Statute	Source ID	System	Inspection Type	Lead Agency	Date	Finding
- No data records returned.						

Entries in *italics* are not considered inspections in official counts.

#### Three Year Compliance Status by Quarter

Violations shown in a given quarter do not necessarily span the entire 3 months. Information on the nature of alleged violations is available on the FAQ page, and information on the duration of non-compliance is available at the end of this report.

Statute:Source ID	QTR1	QTR2	QTR3	QTR4	QTR5	QTR6	QTR7	QTR8	QTR9	QTR10	QTR11	QTR12
- No data records returned.												

#### Notices of Violation or Informal Enforcement - AFS, PCS, ICIS-NPDES, RCRAInfo (05 year history)



Statute	Source ID	Type of Action	Lead Agency	Date
- No data records returned.				

**Formal Enforcement Actions - (05 year history)**

AFS, PCS, RCRAInfo, NCDB

[Data Summary]

Statute	Source ID	Type of Action	Lead Agency	Date	Penalty	Penalty Description
- No data records returned.						

In some cases, formal enforcement actions may be entered both at the initiation and final stages of the action. These may appear more than once above. Entries in *italics* are not "formal" actions under the PCS definitions but are either the initiation of an action or penalties assessed as a result of a previous action. This section includes US EPA and State formal enforcement actions under CAA, CWA and RCRA.

ICIS:

[Data Summary]

Primary Law/Section	Case Number	Case Type	Lead Agency	Case Name	Issued/Filed Date	Settlement Date	Federal Penalty	State/Local Penalty	SEP Cost	Comp Action Cost
CAA / §112B	02-2011-1021	Administrative - Formal	EPA	Buffalo Municipal Housing Authority	08/01/2011	09/01/2011				\$55,000

Federal enforcement actions and penalties shown in this section are from the Integrated Compliance Information System (ICIS-FE&C). These actions may duplicate records in the Formal Enforcement Actions section.

**TRI History of Reported Chemicals Released in Pounds per Year at Site:**

[Data Summary]

Year	Total Air Emissions	Surface Water Discharges	Underground Injections	Releases to Land	Total On-site Releases	Total Off-site Transfers	Total Releases and Transfers
- No data records returned.							

**TRI Total Releases and Transfers by Chemical and Year**

- No data records returned.
-----------------------------

**Demographic Profile of Surrounding Area (3 Miles)**

[Data Summary]

Radius of Area:	N/A	Land Area:	N/A	Households in area:	N/A
- No data records returned.					

**Notice About Duration of Violations** – The duration of violations shown on this report is an estimate of the actual duration of the violations that might be alleged or later determined in a legal proceeding. For example, the start date of the violation as shown in the ECHO database is normally when the government first became aware of the violation, not the first date that the violation occurred, and the facility may have corrected the violation before the end date shown. In some situations, violations may have been corrected by the facility, but EPA or the State has not verified the correction of these violations. In other situations, EPA does not remove the violation flag until an enforcement action has been resolved.



This report was generated by the Integrated Data for Enforcement Analysis (IDEA) system, which updates its information from program databases monthly. The data were last updated: FRS: 10/18/2012, ICIS: 10/19/2012.

Some regulated facilities have expressed an interest in explaining data shown in the Detailed Facility Reports in ECHO. Please check company web sites for such explanations.

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## Enforcement & Compliance History Online (ECHO)

You are here: [EPA Home](#) [Compliance and Enforcement](#) [ECHO](#) [Search Data](#) [Search Results](#)

### Enforcement Case Report



For Public Release - Unrestricted Dissemination. Report Generated on 11/26/12  
US Environmental Protection Agency - Office of Enforcement and Compliance Assurance



Case Number:	02-2011-1021	Result of Voluntary Disclosure?	No
Case Name:	Buffalo Municipal Housing Authority	Multi-media Case?	No
Case Type:	Administrative - Formal	Enforcement Type:	CAA 113A Admin Compliance Order (Non-Penalty)
Case Status:	Closed	Violations:	No Data
Regional Docket Number:	CAA-02-2011-1021		
Relief Sought:	No Data		
Enforcement Outcome:	Final Order No Penalty		

#### Penalties:

\*EPA settles the vast majority of its enforcement actions and almost all of these cases are settled without an admission of liability. The agreement to pay a penalty as part of a settlement does not necessarily reflect an admission of liability for environmental violations by the company.

Total Federal Penalty* Assessed or Agreed To (not necessarily an admission of liability)	Total State/Local Penalty Assessed	Total SEP Cost	Total Compliance Action Cost	Total Cost Recovery
			\$55,000	

#### Case Summary:

Improper asbestos and disposal at this location. Compliance order issued.

#### Laws and Sections:

Law	Sections	Programs
CAA	112B	National Emission Standards for Hazardous Air Pollutants (NESHAPs)

#### Citations:

Title	Part	Section
40 CFR	91	Subpart M

#### Program Links:

FRS Number	Program	Program ID
110044220786	ICIS	2600026166

#### Facilities:



FRS Number	Facility Name	Address	City Name	State	Zip	SIC Codes	NAIC Codes
110044220786	BUFFALO MUNI HOUSING AUTH (KENSINGTON)	1827 NORTH FILMORE AVE	BUFFALO	NY	14214		

**Defendants:**

Defendant Name	Named in Complaint	Named in Settlement
Buffalo Municipal Housing Authority	NA	Y

**Case Milestones:**

Event	Actual Date
Final Order Issued	09/01/2011
Enforcement Action Closed	09/01/2011

**Pollutants:**

Pollutant Name	Chemical Abstract Number
No Data Records Returned	

**Enforcement Conclusion**

Enforcement Conclusion Type: Administrative Compliance Orders  
 Enforcement Conclusion Name: Buffalo Municipal Housing Authority  
 Facilities in Settlement (FRS ID): 110044220786  
 Settlement Entered Date: 09/01/2011  
 Settlement Lodged Date:

**Enforcement Conclusion Dollar Amounts:**

Federal Penalty Assessed or Agreed To	State/Local Penalty Assessed	SEP Cost	Compliance Action Cost	Cost Recovery
			\$55,000	

**Pollutant Reductions:**

Pollutant	Annual Amount	Units	Media	SEP or Comp
Asbestos	50	BLDGUNT	SHB	C

**Improvements in Reporting:**

Pollutant	Average Annual Value	Units	Media
No Data Records Returned			

**Complying Actions:**

Complying Action Type	Text Description
Migrated Asbestos Inspections	NA
Migrated Auditing	NA
Migrated Monitoring	NA
Migrated Notification	NA
Migrated Work Practices	NA
Migrated Asbestos Abatement	NA
Migrated Data (Preventative)	NA

**Supplemental Environmental Projects:**

Categories	Description
No Data Records Returned	

[Click here](#) for a Detailed Facility Information.

This report was generated by the Integrated Data for Enforcement Analysis (IDEA) system, which updates its information from program databases monthly. The data were last updated: ICIS: 10/19/2012.

Version 12/03/08

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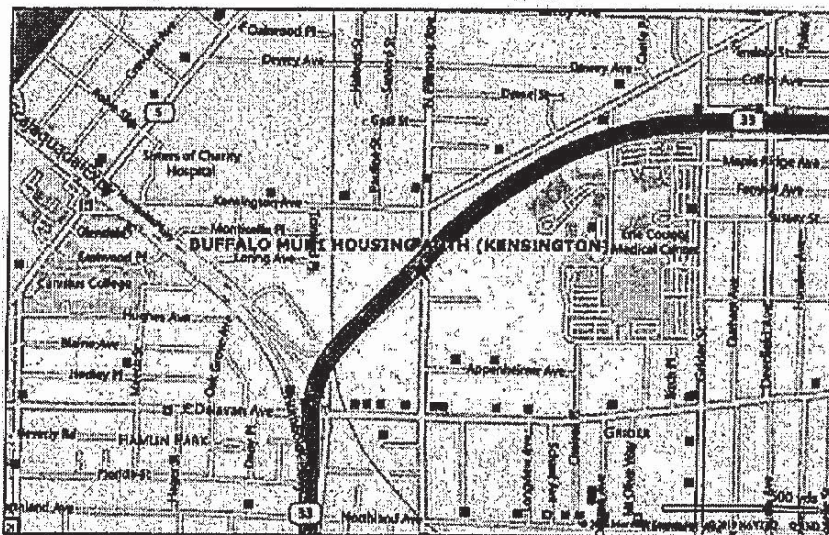
## Facility Registry System (FRS)

You are here: EPA Home | Envirofacts | FRS | Report

[http://oaspub.epa.gov/enviro/fii\\_query\\_dtl\\_disp\\_program\\_facility?p\\_registry\\_id=110044220786](http://oaspub.epa.gov/enviro/fii_query_dtl_disp_program_facility?p_registry_id=110044220786)  
 Last updated on Monday, November 26, 2012


## Facility Detail Report

## BUFFALO MUNI HOUSING AUTH (KENSINGTON)

 1627 NORTH FILMORE AVE  
 BUFFALO, NY 14214  
 EPA Registry ID: 110044220786


## Environmental Interests:

Information System	Information System ID	Environmental Interest Type	EPA Source	Last Updated Date	Supplemental Environmental Interests
INTEGRATED COMPLIANCE INFORMATION SYSTEM	2400026166	ENFORCEMENT/COMPLIANCE ACTIVITY	ICIS	09/26/2011	ICIS-02-2011-1021 FORMAL ENFORCEMENT ACTION
INTEGRATED COMPLIANCE INFORMATION SYSTEM	2400026166	FORMAL ENFORCEMENT ACTION	ICIS	09/21/2011	ICIS-02-2011-1021 FORMAL ENFORCEMENT ACTION

Additional EPA Reports: [Re/Environment](#) [Site Demonstrations](#) [Watershed Report](#)

## Standard Industrial Classification Codes (SIC)

No SIC Codes returned.

## National Industry Classification System Codes (NAICS)

No NAICS Codes returned.

## Facility Codes and Flags

EPA Region	02
DUNS Number	
Congressional District Number	26
Legislative District Number	
RUC Code/Watershed	04120104 / NIAGARA
US Mexico Border Indicator	NO
Federal Facility	
Tribal Land	NO

## Facility Mailing Addresses

No Facility Mailing Addresses returned.

## Contacts

No Contacts returned.

## Alternative Names

No Alternative Names returned.

## Organizations

No Organizations returned.

Query executed on: NOV-26-2012

**EXHIBIT D**  
**(Section V)**  
**Property Eligibility**  
**Information**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

Kensington  
Heights

To: Larry  
J.

In the Matter of:

Buffalo Municipal Housing Authority,  
Buffalo, New York

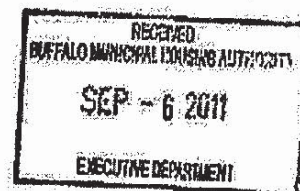
Respondent

**COMPLIANCE ORDER**

Index No. CAA-02-2011-1021

**PRELIMINARY STATEMENT**

The United States Environmental Protection Agency (EPA) Region 2 Director of the Division of Enforcement and Compliance Assistance (DECA) issues this COMPLIANCE ORDER, pursuant to Sections 113(a) and 114 of the Clean Air Act (CAA or the Act), 42 U.S.C. §§ 7413(a) and 7414, to Buffalo Municipal Housing Authority (Respondent) located in Buffalo, New York, for violations of Section 112 of the CAA and the National Emission Standard for Asbestos, 40 C.F.R. Part 61, Subpart M (Asbestos NESHAP), which was promulgated pursuant to Sections 112 and 114 of the Act. The authority to find a violation and issue this Compliance Order has been delegated to the Director of DECA from the Administrator through the Regional Administrator.



## STATUTORY AND REGULATORY BACKGROUND

### The Clean Air Act

1. Section 112 of the Act requires the Administrator to publish a list of hazardous air pollutants (HAPs), a list of categories and subcategories of major and area sources of listed HAPs, and to promulgate regulations establishing emission standards, referred to as National Emissions Standards for Hazardous Air Pollutants (NESHAPs) for each category or subcategory of major and area sources of HAP.
2. Section 112(b)(1) of the Act provides the initial list of HAPs and Section 112(b)(2) requires the Administrator to periodically review the list and, where appropriate, revise it.
3. Section 112(c) of the Act requires the Administrator to publish a list of categories or subcategories of major and area sources of listed HAPs.
4. Section 112(d) of the Act requires the Administrator to promulgate regulations establishing NESHAPs for each category or subcategory of major and area sources of HAPs. NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61.
5. Section 112(h) of the Act authorizes EPA to promulgate "design, equipment, work practice, or operational" standards, or combinations thereof, which are consistent with Section 112(d) or (f) of the Act, to the extent that it is not feasible to prescribe or enforce an emission standard for control of a HAP. Pursuant to Section 112(d)(2)(D) and (E) of the Act, design, equipment, work practice, or operational standards, or combinations thereof, promulgated under Section 112(h) of the Act, are treated as emission standards.



6. Section 112(i)(3)(A) prohibits the operation of a source in violation of any emissions standard, limitation or regulation issued pursuant to Section 112, and directs the Administrator to set a compliance deadline for existing sources that is no more than 3 years after the effective date of the standard.

7. Section 114 of the CAA authorizes the EPA Administrator to require testing, monitoring, record-keeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under Sections 112 of the Act.

8. Section 113(a)(3) of the CAA authorizes EPA to, among other actions, issue compliance orders to any person whenever, on the basis of any information available to EPA, EPA finds that such person has violated or is in violation of any requirement or prohibition of Title I of the Act, or any regulation promulgated pursuant to Sections 112 and 114 of the Act.

9. Section 302(e) of the CAA provides that whenever the term "person" is used in the Act, the term includes an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

The Asbestos NESHAP, 40 C.F.R. Part 61, Subpart M

10. The Asbestos NESHAP specifies a set of work practice standards, set forth at 40 C.F.R. §§ 61.145 and 61.150, which are applicable to the owners and operators of renovation or demolition activities in which the amount of RACM that is stripped, removed, dislodged, cut, drilled or similarly disturbed is at least 80 linear

meeters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components or at least 1 cubic meter (35 cubic feet) when the length or area could not be measured prior to the asbestos removal/demolition activity.

11. The term "owner or operator of a renovation or demolition activity" is defined by 40 C.F.R. § 61.141 to mean "any person who owns, leases, operates, controls or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls or supervises the demolition or renovation operation, or both."

12. The term "renovation" is defined by 40 C.F.R. § 61.141 to mean "altering of a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions."

13. The term "demolition" is defined by 40 C.F.R. § 61.141 to mean "the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility."

14. The term "facility" is defined by 40 C.F.R. § 61.141 to include, among other things, "any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units)."

15. The term "facility component" is defined by 40 C.F.R. § 61.141 to mean "any part of a facility including equipment."



16. The term "regulated asbestos-containing material" (RACM) is defined by 40 C.F.R. § 61.141 to include friable asbestos containing material.

17. The term "friable asbestos material" is defined by 40 C.F.R. § 61.141 to mean any material containing more than 1 percent asbestos that when dry can be crumbled, pulverized or reduced to powder by hand pressure.

18. 40 C.F.R. § 61.145(a) provides that the affected facility, or part of a facility, where a demolition or renovation is to take place must be thoroughly inspected for the presence of asbestos prior to the commencement of the demolition or renovation activity.

19. 40 C.F.R. § 61.145(b) provides that each owner or operator of a demolition or renovation activity to which this Section applies shall: (1) provide the Administrator with written notice of the intention to demolish or renovate; (2) update the notice as necessary; and (3) postmark or deliver the notice as follows: at least ten (10) working days before demolition or renovation activity begins.

20. 40 C.F.R. § 61.145(c)(1) provides that each owner or operator of a demolition or renovation activity must remove all RACM from the facility being renovated or demolished before any activity begins that may break up, dislodge, or disturb the material.

21. 40 C.F.R. § 61.145(c)(3) provides that when RACM is stripped from a facility component while it remains in place in the facility, the owner and/or operator must adequately wet the RACM during the stripping operation.

22. 40 C.F.R. § 61.145(c)(6)(i) provides that the owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP must adequately wet all RACM including the material that has been removed or stripped and ensure that it remains wet until collected and contained or treated in preparation for disposal.

23. 40 C.F.R. § 61.145(c)(8) provides that no RACM may be stripped, removed, or otherwise handled or disturbed at a facility regulated under the Asbestos NESHAP unless at least one on site representative, trained in the Asbestos NESHAP is present. In addition, this section provides that every two years the trained on-site individual shall receive refresher training.

24. 40 C.F.R. § 61.150(a)(1)(ii) provides that each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP must seal all RACM in leak-tight containers while wet.

#### **FINDINGS OF FACT**

25. Respondent Buffalo Municipal Housing Authority owns the Kensington Heights Towers located at 1827 North Fillmore Avenue, Buffalo, New York.

26. In September, October, and November 2009, Johnson Contracting of Western New York, a contractor for the owner, submitted various notifications to EPA of its intention to remove approximately 65,000 square feet of asbestos containing material from Kensington Heights Towers.

27. In March 2010, C.J. Drew Contracting Inc., a contractor for the owner, submitted a notification to EPA of its intention to remove approximately 10,000 square feet of asbestos containing material from Kensington Heights Towers.



28. On August 16, 2011, two EPA inspectors accompanied by an Inspector from the New York State Department of Labor (NYSDOL) conducted a compliance inspection at the Kensington Heights Towers. During the inspection, the inspectors observed small amounts of suspect friable asbestos containing material in building 5. The Inspector observed that these materials were friable and not adequately wet. These materials were located at the boiler room, first floor and main entrance to Building #5. The inspectors took nine samples of the suspect material. After the inspection, the nine samples were tested and eight of the nine samples were found to contain more than 1% asbestos (50%-67% chrysotile).

29. On August 16 and 17, 2011, two EPA inspectors, accompanied by two NYSDOL compliance officers, conducted a subsequent inspection of the area outside of building 5 and observed two open-topped roll-off containers filled with mixed size pieces of suspect vinyl asbestos containing floor tiles (identified as asbestos containing through BMHA's asbestos surveys of Kensington Towers), many of which were at least as small as ½ by ½ inch, that were not bagged or otherwise enclosed. The inspectors also observed that material of this type had spilled out of the roll-off containers onto the ground around the containers.

30. On August 17, 2011, an EPA inspector accompanied by an Inspector from the NYSDOL, observed a large amount of suspect RACM on the ground between buildings 1 and 6, and took, as a sample, an approximately 1 inch by 1 inch piece of this material. The EPA Inspector observed that the suspect RACM was friable and not adequately wet. After the inspection, the sample was tested and found to contain more than 1% asbestos (15% chrysotile).

### **CONCLUSIONS OF LAW**

Based on the Findings of Fact cited above, EPA finds that:

31. Respondent is an owner or operator of a demolition or renovation activity within the meaning of 40 C.F.R. § 61.141.

32. Respondent has violated 40 C.F.R. §§ 61.145(c)(6)(i) and 61.150(a)(1)(iii) of the Asbestos NESHAP.

33. Respondent's violations of the Asbestos NESHAPs are violations of Section 112 of the CAA.

### **ORDER**

Based on the Findings of Fact and Conclusions of Law above, pursuant to Sections 113(a)(4) and 114 of the Act, IT IS DETERMINED AND ORDERED that:

#### **I.**

The provisions of this Order shall apply to Respondent and its officers, agents, servants, employees, successors and to all persons, firms and corporations acting under, through or for Respondent.

#### **II.**

Respondent shall perform all renovation/demolition operations at the Kensington Heights Towers and any and all other facilities in which friable asbestos is present in compliance with all applicable provisions of the Asbestos NESHAP.



### III.

Respondent shall immediately adequately wet and cover with polyethylene sheeting the two roll-off containers and associated spillage, and shall ensure that the containers and associated spillage remain adequately wet and covered until the RACM is properly collected for disposal. Respondent shall notify EPA that it has wet and covered the roll-off containers and associated spillage within 24 hours of completion.

### IV.

Respondent shall immediately cover all windows and openings in buildings 1 through 6 at Kensington Heights Towers. Respondent shall notify EPA that it has covered all windows and openings in buildings 1 through 6 at Kensington Heights Towers within 24 hours of completion.

### V.

Upon the effective date of this Order (which is specified below in the section entitled "Effective Date and Opportunity for a Conference") Respondent shall submit a comprehensive asbestos abatement plan for the entire site for EPA's approval. This plan shall be prepared by an AHERA accredited project designer. The plan shall include identification and delineation of the extent of asbestos soil contamination outside of buildings 1 through 8, and shall also include plans for taking a soil lift of adequate depth of these areas. The plan shall also include plans for daily-perimeter air monitoring at the fence line during abatement. In addition, a site diagram with the expected sampling locations shall be submitted along with the abatement plan for EPA approval.

## VI.

The notifications required by Paragraphs III and IV above, as well as the asbestos abatement plan and site diagram required by Paragraph V above, shall be sent via overnight service to:

Mr. Ken Eng, Chief  
Air Compliance Branch  
Division of Enforcement and Compliance Assistance  
290 Broadway, 21<sup>st</sup> Floor  
New York, NY 10007

### BUSINESS CONFIDENTIALITY

Respondent may assert a business confidentiality claim covering part or all of the information this Order requires only to the extent and in the manner described in 40 C.F.R. § 2.203. EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B and 41 Fed. Reg. 36,902 (1976). If Respondent does not assert a confidentiality claim, EPA may make the information available to the public without further notice to Respondent.

### ENFORCEMENT

Section 113(a)(3) of the Act authorizes EPA to take any of the following actions in response to Respondent's violation of the Act:

- Issue an administrative penalty order, for penalties up to \$25,000 per day pursuant to Section 113(d) of the Act and adjust the maximum penalty provided by the Act up to \$27,500 per day for each violation that occurs from January 30, 1997 through March 14, 2004; \$32,500 per day for each violation that occurs on or after March 15, 2004, and \$37,500 per day for each violation that occurs after January 12, 2009, in accordance with the Debt



- Collection Improvement Act, 31 U.S.C. 3701 et seq. (DCIA), and 40 C.F.R. Part 19, promulgated pursuant to DCIA; and
- bring a civil action pursuant to Section 113(b) of the Act for injunctive relief and/or civil penalties and adjust these penalties for inflation in accordance with the DCIA and 40 C.F.R. Part 19.

Failure to comply with this Order may result in an administrative or civil action for appropriate relief as provided in Section 113 of the Act. EPA retains full authority to enforce the requirements of the Act and nothing in this Order shall be construed to limit that authority. Furthermore, the United States may seek fines and/or imprisonment of any party who knowingly violates the Act or an Order issued pursuant to Section 113 of the Act. Upon conviction, any facility owned by such party may be declared ineligible for federal contracts, grants, and loans. (42 U.S.C. § 7606, 40 C.F.R. Part 15, and Executive Order 11738).

#### **PENALTY ASSESSMENT CRITERIA**

Section 113 (e)(1) of the Act states that if a penalty is assessed pursuant to Section 113 or Section 304(a) of the Act, the Administrator or the court, as appropriate, shall, in determining the amount of a penalty to be assessed, take into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of non-compliance, the seriousness of the violation, and such other factors as justice may require.

Section 113(e)(2) of the Act allows the Administrator or the court, as appropriate, to assess a penalty for each day of the violation. For purposes of determining the number of the days of the violation, the days of violation shall be presumed to include

the day the violation began and every day thereafter until Respondent establishes that continuous compliance has been achieved. If Respondent can prove, by the preponderance of the evidence, that there were intervening days during which no violation occurred or that the violation was not continuous in nature, then the EPA will reduce the penalty accordingly.

#### **EFFECTIVE DATE and OPPORTUNITY FOR A CONFERENCE**

Pursuant to Section 113(a)(4) of the Act, Respondent may request a conference with EPA concerning the violation(s) alleged in this Order. This conference will enable Respondent to present evidence bearing on the finding of violations, on the nature of the violations, and on any efforts it may have taken or it proposes to take to achieve compliance. Respondent may arrange to have legal counsel.

Respondent's request for a conference, to be held no later than thirty (30) days from receipt of this Order, must be confirmed in writing within five (5) days of receipt of this Order. If the requested conference is held, the Order shall become effective ten (10) days after the conference is held.


If the Respondent does not request a meeting within five (5) days of receipt of this Order, the above Order shall become effective five (5) days from its receipt. The request for a conference, or other inquiries concerning this Order, should be made in writing to:

John F. Dolinar, Esq.  
U.S. Environmental Protection Agency-Region 2  
Office of Regional Counsel, Air Branch  
290 Broadway - 16th Floor  
New York, NY 10007-1868  
(212) 637-3204



Notwithstanding the effective date of this Order and opportunity for conference discussed above, the Respondent must comply with all applicable requirements of the Act and regulations promulgated pursuant to the Act.

Dated: 9/1, 2011

  
Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U.S. Environmental Protection Agency - Region 2

To: Modesto Candalaro  
Assistant Executive Director  
Buffalo Municipal Housing Authority  
Buffalo, NY

cc: Christopher Alonge, Associate Safety & Health Engineer  
New York State Department of Labor (Building 12-Room 154)  
State Office Building & Campus  
Albany, NY 12240-0100

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT ON September 2, 2011, I MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY CERTIFIED MAIL-RETURN RECEIPT REQUESTED, ARTICLE NUMBERS 7005-3110-0000-5833-5314 POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):

**Modesto Candalaria  
Assistant Executive Director  
Buffalo Municipal Housing Authority  
Buffalo, NY**

  
**Katherine Zuckerman**



# **EXHIBIT E**

## **(Section VI)**

### **Property Description**

**Tara M. Eich**

---

**From:** Bob Szustakowski [bobs@rjsenviro.com]  
**Sent:** Friday, November 23, 2012 11:54 AM  
**To:** Tara M. Eich (teich@kavinokycok.com)  
**Cc:** Chris Stohl; David Rodriguez'(drodriguez@bmha.ci.buffalo.ny.us); Modesto Candelario (mcandelario@bmha.ci.buffalo.ny.us)  
**Subject:** Kensington Hts Soil Removal Costs  
**Attachments:** Kensington Heights Soil Remediation- Solid Waste Landfill for 0.5 to 2.0 ....xlsx  
All,

As requested, we have compiled "engineering estimates" to implement a potential remedial option at the Kensington Hts. Property in Buffalo, NY. The estimated fees are attached but the following should be noted.

- It is assumed that the site will be in the NYSDEC Brownfield Cleanup Program (BCP).
- The top approximately six inches of asbestos-contaminated soil will be removed and shipped off-site by others; those costs are not included herein.
- The work will include removing another 1.5 feet of soil from the site. Post-excavation soil samples will be collected to document remaining site conditions and then a geomembrane will be placed over the Site. Clean soil will be brought in and placed in controlled lifts to bring the Site back to grade.
- As we have no specific plans for re-development, we assumed that the new structures will occupy a similar site area as the current structures.
- All work will require constant oversight by an environmental professional.
- To the extent possible, we used published RS Means values. However, due to number of landfills in WNY, we used local typical "low volume" landfill tipping fees (RS Means estimates were significantly higher). Additional anticipated landfill tipping fee reductions, due to the volume of soil, were not considered. As this is the largest line item, there may be significant cost savings available once the project is further along.
- The work should take approximately 30 to 45 field days to complete.

We trust that this serves your current needs. Let me know if you have any questions.

Bob Szustakowski  
President  
RJS Environmental  
Cell: 716-923-5377

11/26/2012

DEC 001945





Landfill Non Haz Waste Solid Bulk by ton (1.4Tn/cy)	RMeans 13278 1217 (From: \$72/ton down to \$38/ton realistic for WNY and large quantity)					\$38.00 ton	\$38.00	50,895.16	\$1,934,016.21
Geomembrane Liner									
20 mil Polymeric Liner. Very Low Density	RMeans 3308 0543	\$0.77	\$0.15			\$0.35 sf	\$1.27	745,897.00	\$947,289.19
Deliver Backfill, spread, Compact, Unclassified Fill, 6" lifts	RMeans 17 03 0423	\$1.03	\$2.34			\$6.35 CY	\$9.72	55,251.63	\$537,045.84
Fine Grade/Soil Prep	RMeans 18 05 0101	\$26.48	\$46.19			ACRE	\$72.67	17.12	\$1,244.36
Erosion Control									
Sub Total	RMeans 02266 0010	0.1332	0.10212			0.30636 LF	\$0.54	2787	\$1,509.66
Localization Factor	Means							1.02	\$3,934,953.88
									\$4,013,652.95
Inflation Factor from 2005	Engineering News Record Building Cost Index History (4)					5213.6/4329		1.204	\$4,832,438.16
Air Monitoring and Oversight Monitoring (5)	Stohl Environm Quote					day	675	20	\$13,507.15
Confirmatory Soil Sampling and Testing- STARS, TCL VOCs, STARS, TCL S VOCs TAL Metals	RJS Estimate					\$345.00 each	\$345.00	1061	\$366,053.43
Total without OH/Profit									\$5,211,998.74
Overhead (G&A and Field Overhead)	RJS Estimate							1.08	\$5,628,958.64
Profit	RJS Estimate							1.08	\$6,079,275.33





## **Section VI**

### **Project Description**

The purpose and scope is as follows:

Applicant intends to investigate Site conditions and the potential presence on the Site of regulated materials which must be addressed or removed before any redevelopment of the Site may occur. Applicant purposes to develop a Remedial Investigation Work Plan and implement such plan at the Site to address potential unknown contaminants and suspected contaminants. Applicant also proposes to demolish the remaining structures on Site and to prepare the Site for eventual redevelopment including clearing and grading of the Site after demolition and remediation. The end use of the Site is currently proposed to be some form of residential development, likely multi-story residences, which may be rental or may be owner-occupied, i.e. condominiums. At this time Applicant has not determined whether it will implement the ultimate Site development plan or see a partner or independent developer construct and develop the property after the Site is fully remediated and prepared.

Following this page is a proposed Project Schedule.



### Project Schedule:

The Project Schedule from submission BCP Application to receipt of the COC is estimated at:

1. May 31, 2013 – BCP application submitted
2. July 10, 2013 – Submission of Supplemental information requested by the Department with respect to the BCP application
3. August 15, 2013 – Department determines BCP application to be complete and 30 day comment period commences
4. September 15, 2013 – end of 30 day comment period
5. October 1, 2013 – execute Brownfield Cleanup Agreement
6. November 30, 2013 – submit Remedial Investigation Work Plan
7. December 30, 2013 – 30 day comment period on Work Plan ends
8. January 15, 2014 – Department advises Applicant of approval of Work Plan
9. February 15 – April 30, 2014 – Implement Remedial Investigation
10. May 30, 2014 – Submit Report of Remedial Investigation to Department
11. June 30, 2014 – Department issues significant Threat Determination and/or issues Investigation Report Fact Sheet with Threat Determination
12. July 30, 2014 – Department approves Investigation Report
13. September 1, 2014 – Applicant submits Remedial Action Work Plan and Alternative Analysis
14. October 1, 2014 – Department approves Remedial Action Work Plan and Alternative Analysis; develops Site Management Plan and begins negotiating Environmental Easement
15. October 1, 2014 – February 1, 2015 – Remedial activity completed
16. March 1, 2015 – Submit Final Engineering Report; Final Site Management Plan and Final Environmental Easement
17. May 1, 2015 – receive Certificate of Completion

**EXHIBIT F**  
**(Section VII)**  
**Property Environmental**  
**History**



**Kensington Heights**

1827 Fillmore

Buffalo, NY 14214

Inquiry Number: 3379159.1

August 01, 2012

**Certified Sanborn® Map Report**



440 Wheelers Farms Road  
Milford, CT 06461  
800.352.0050  
www.edrnet.com

## Certified Sanborn® Map Report

8/01/12

**Site Name:**

Kensington Heights  
1827 Fillmore  
Buffalo, NY 14214

**Client Name:**

MS Analytical  
4169 Allendale Parkway  
Blasdell, NY 14219



Environmental Data Resources, Inc.

EDR Inquiry #: 3379159.1

Contact: Kelly

The complete Sanborn Library collection has been searched by EDR, and fire insurance maps covering the target property location provided by RJS Environmental were identified for the years listed below. The certified Sanborn Library search results in this report can be authenticated by visiting [www.edrnet.com/sanborn](http://www.edrnet.com/sanborn) and entering the certification number. Only Environmental Data Resources Inc., (EDR) is authorized to grant rights for commercial reproduction of maps by Sanborn Library LLC, the copyright holder for the collection.

### Certified Sanborn Results:

**Site Name:** Kensington Heights  
**Address:** 1827 Fillmore  
**City, State, Zip:** Buffalo, NY 14214  
**Cross Street:**  
**P.O. #** NA  
**Project:** 12MS104.6  
**Certification #** 7D21-4551-A38B



Sanborn® Library Search results  
Certification # 7D21-4551-A38B

**Maps Provided:**

1986  
1950  
1939  
1917

The Sanborn Library includes more than 1.2 million Sanborn fire insurance maps, which track historical property usage in approximately 12,000 American cities and towns. Collections searched:

- ☒ Library of Congress
- ☒ University Publications of America
- ☒ EDR Private Collection

The Sanborn Library LLC Since 1866™

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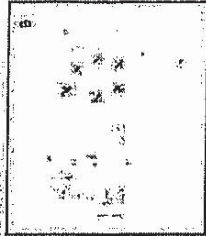


**Sanborn Sheet Thumbnails**

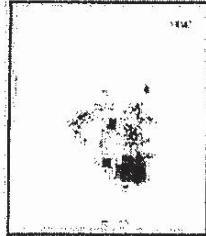
This Certified Sanborn Map Report is based upon the following Sanborn Fire Insurance map sheets.



**1986 Source Sheets**

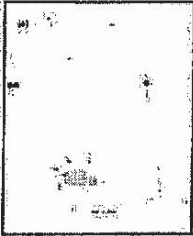


Volume 6, Sheet 653



Volume 6, Sheet 654

**1950 Source Sheets**



Volume 6, Sheet 653



Volume 6, Sheet 654

**1939 Source Sheets**



Volume 6, Sheet 653



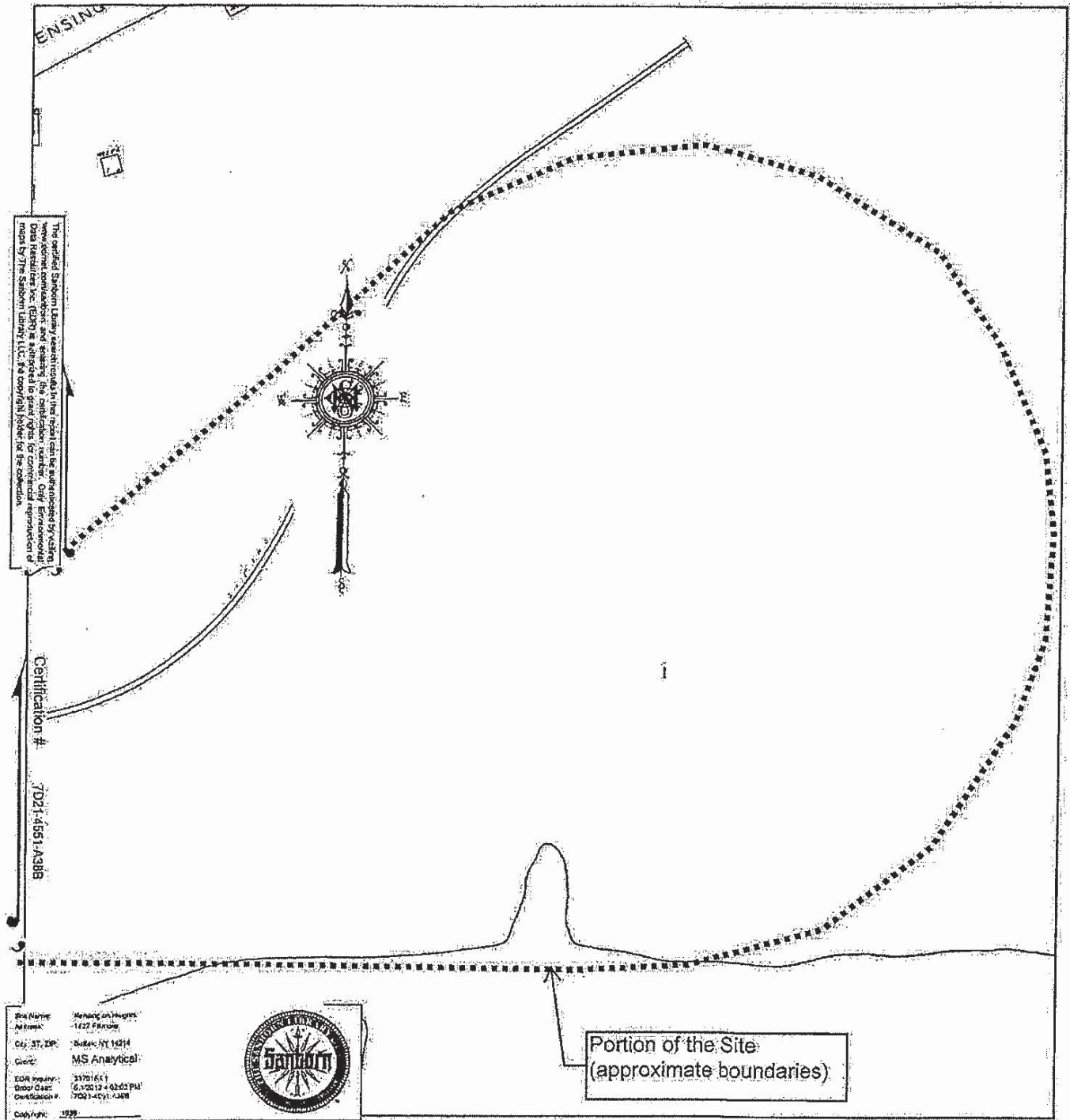
Volume 6, Sheet 654

**1917 Source Sheets**



Volume 6, Sheet 821

# 1939 Certified Sanborn Map



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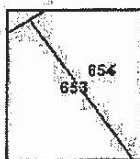
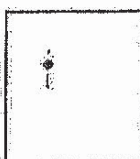
Certification # 7D21-4561-A388

File Name: 1422 Planning  
City: ST. LOUIS  
Client: MS Analytical  
EIR Number: 1370161  
Order Date: 6/20/12 + 02:02 PM  
Order Number: 7021-4561-A388  
Copyright: 1999



Portion of the Site (approximate boundaries)

This Certified Sanborn Map combines the following sheets. Outlined areas indicate map sheets within the collection.



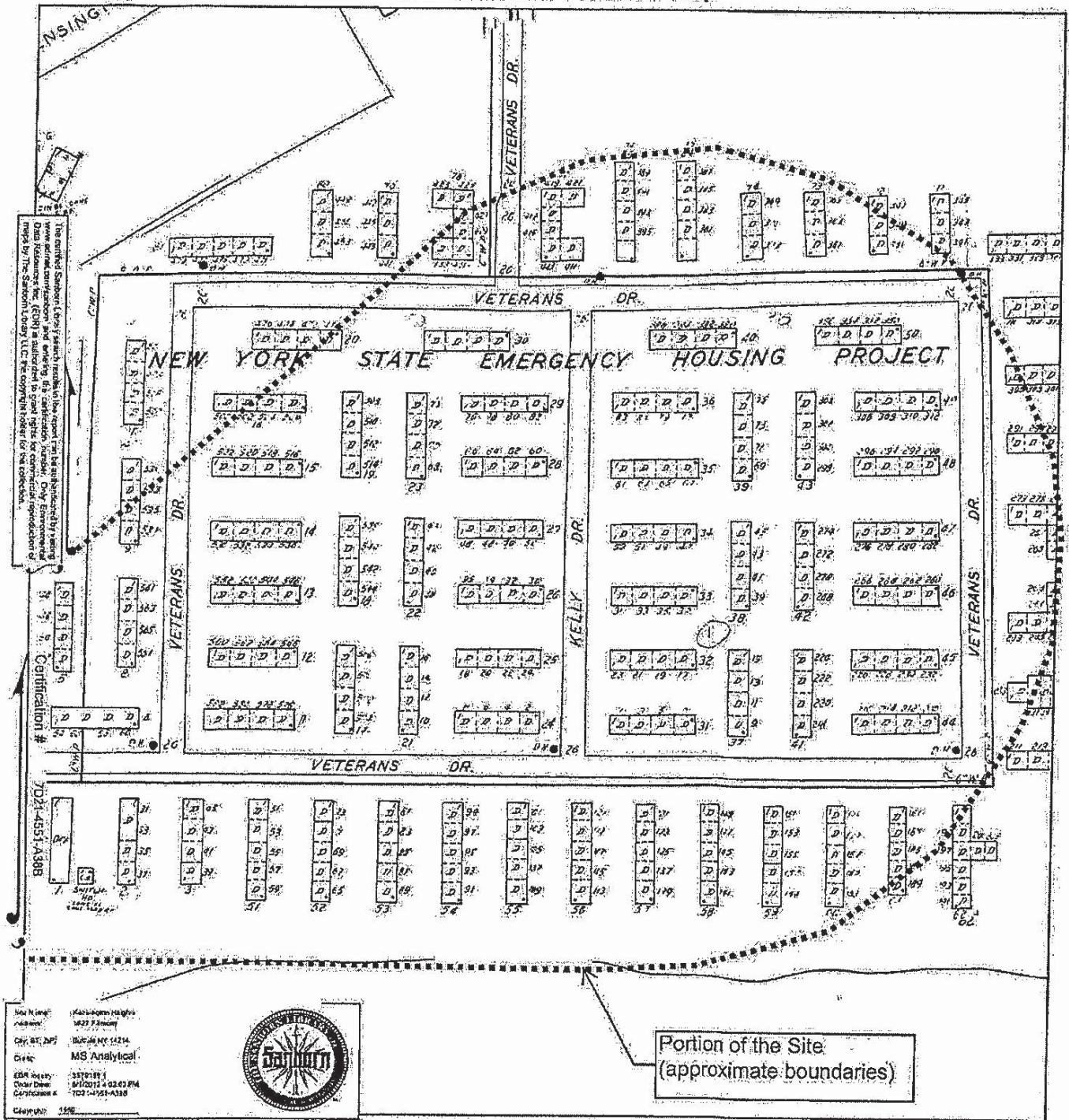
Volume 6, Sheet 653  
Volume 6, Sheet 654

0 Feet 150 300 600



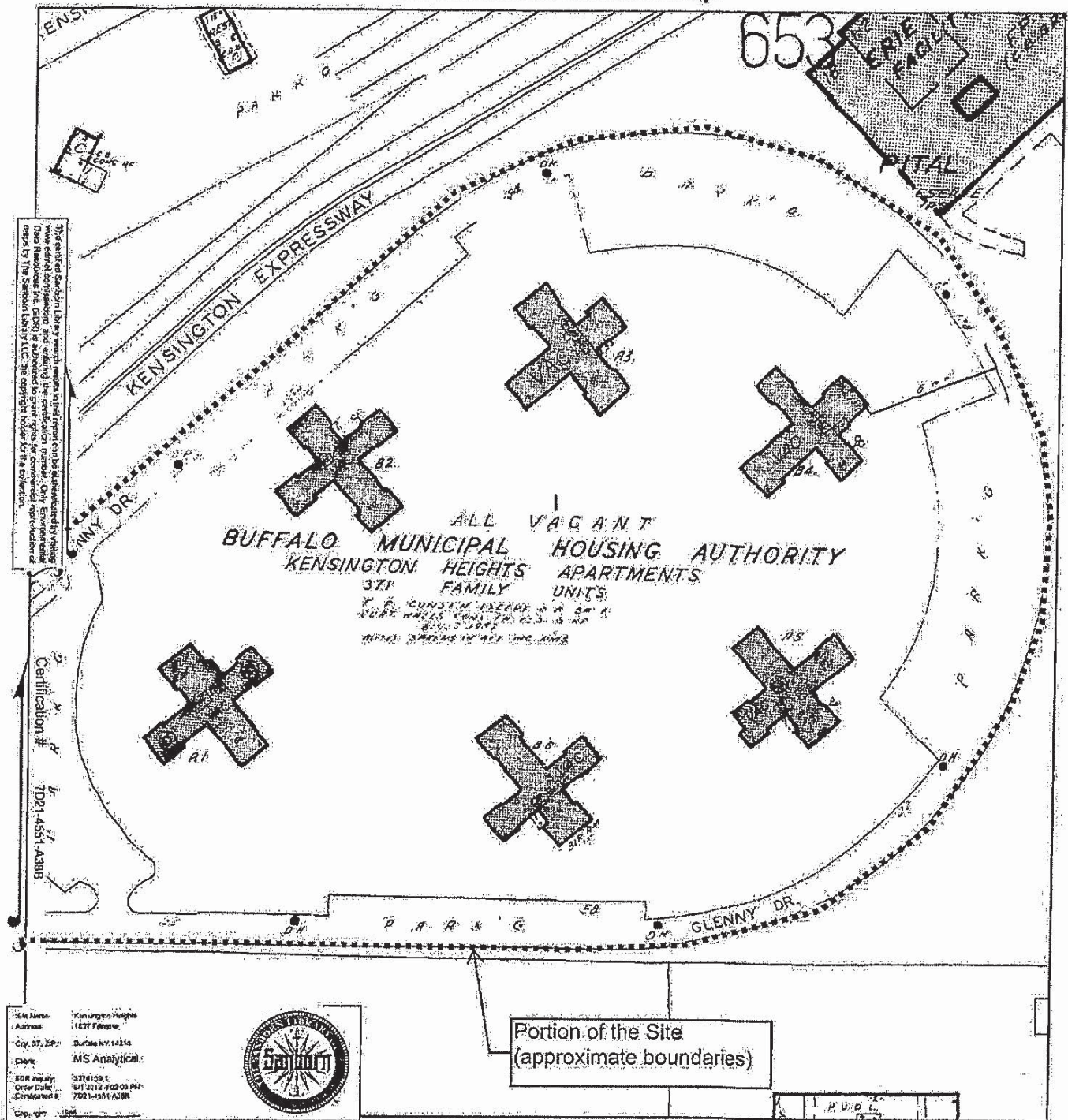


# 1950 Certified Sanborn Map

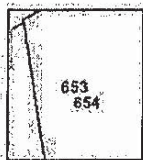
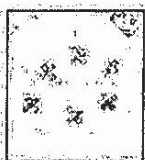




# 1986 Certified Sanborn Map



This Certified Sanborn Map combines the following sheets:  
 Outlined areas indicate map sheets within the collection.



Volume 6, Sheet 653  
 Volume 6, Sheet 654

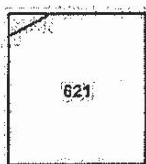


The map shows a large, irregularly shaped area enclosed by a dashed line, representing the approximate boundaries of the site. The area is labeled with various letters and numbers, including 'K', 'Q', 'U', 'R', 'R', 'Y', 'I', 'E', 'A', 'O', 'K', 'S'. The map includes a north arrow in the top left corner and a scale bar in the bottom left corner. A legend in the bottom right corner identifies the dashed line as 'Approximate boundaries' and the area within the dashed line as 'Portion of the Site (approximate boundaries)'. The map is titled 'Site Map' and includes a legend for 'Approximate boundaries' and 'Portion of the Site (approximate boundaries)'.

Approximate boundaries

Portion of the Site (approximate boundaries)

This Certified Sanborn Map combines the following sheets. Outlined areas indicate map sheets within the collection.



Volume 6, Sheet 621









Section VII

2. Sampling Data

The following is a list of contaminants and the highest concentrations detected within the soil on-site; no other media was tested.

VOCs (mg/kg)

1,2,4-Trimethylbenzene	0.003 J
2-Butanone	0.07
Acetone	0.15
Carbon Disulfide	0.01
Methylcyclohexane	0.0025 J
Naphthalene	0.044
p-Isopropyltoluene	0.0032 J
Toluene	0.0026 J

S-VOCs (mg/kg)

1,1-Biphenyl	2.3
2-Methylnaphthalene	9.4 J, D
2-Methylphenol	1.3 U, D
3+4-Methylphenols	1.2 U, D
Acenaphthene	8.7 J, D
Acenaphthylene	4.7
Anthracene	28 D
Benzo(a)anthracene	32 D
Benzo(a)pyrene	25 D
Benzo(b)fluoranthene	32 D
Benzo(g,h,i)perylene	12
Benzo(k)fluoranthene	12 J, D
Benzoic acid	4.6 U, D
Carbazole	13 J, D

Metals (mg/kg)

Aluminum	8490
Antimony	174
Arsenic	73
Barium	977
Beryllium	16
Cadmium	82.3
Calcium	87400
Chromium*	46.4 N
Cobalt	24.7
Copper	425 N
Iron	74700
Lead	21800 D
Magnesium	10700
Manganese	6770
Mercury	1.54 D
Nickel	56.4
Potassium	1430 N
Selenium	149
Silver	6.33
Sodium	4930 N
Thallium	158
Vanadium	47.7
Zinc	1610

PCBs	None
------	------

Chrysene	30 D
Dibenz(a,h)anthracene	4.4
Dibenzofuran	14
Dimethylphthalate	0.62 U,D
Fluoranthene	75 D
Fluorene	21 D
Hexachlorobenzene	0.94 U,D
Indeno(1,2,3-cd)pyrene	13
Naphthalene	25 D
Pentachlorophenol	1.6 U,D
Phenanthrene	100 D
Phenol	0.53 U,D
Pyrene	59 D

Pesticides	None
------------	------

Herbicides	None
------------	------

#### Qualifiers

- U - The compound was not detected above laboratory detection limits.
- N - Presumptive Evidence of a Compound
- I - Data indicates the presence of a compound that meets the identification criteria. The result is less than the quantitation limit but greater than MDL.  
The concentration given is an approximate value.
- D - The reported value is from a secondary analysis with a dilution factor. The original analysis exceeded the calibration range.



**EXHIBIT G**  
**(Section VII)**  
**List of Previous Property**  
**Owners and Operators**

Parcel Address	Owner	Former Operators	Address	Phone No.	Applicant's Relationship with Previous Owner	Applicant's Relationship with Previous Operator	Current/ Previous Operator
1827 Fillmore Avenue, Buffalo, NY	Nelson Eugene Whitney, as Executor of the Last Will and Testament of Alfred A. Berrick	Unknown	Unavailable	Unavailable	The Applicant has no relationship to the former owner	The Applicant has no relationship to the former operator	Unknown
1827 Fillmore Avenue, Buffalo, NY	City of Buffalo	Unknown	65 Niagara St. Buffalo, NY 14202	851-4200	The Applicant has no relationship to the former owner	The Applicant has no relationship to the former operator	Unknown
1827 Fillmore Avenue, Buffalo, NY	Buffalo Municipal Housing Authority	Buffalo Municipal Housing Authority	300 Perry Street Buffalo, NY	855-6711	The Applicant has no relationship to the former owner	The Applicant has no relationship to the former operator	During this owner's tenure the site was used for low income housing



# **EXHIBIT H**

## **(Section VIII)**

### **Contact List Information**

## **Site Contact List**

### **1. Federal Representative (U.S. House of Representatives)**

U.S. Representative Brian Higgins  
**Erie County Office**  
Larkin at Exchange  
726 Exchange Street  
Suite 601  
Buffalo, NY 14210  
Phone: 716-852-3501  
Fax: 716-852-3929

### **2. New York State Senator and Assemblyperson**

New York State Senator Timothy M. Kennedy  
2239 South Park Avenue  
Buffalo, New York 14220  
P: 716-826-2683  
F: 716-826-2793

New York State Assemblywoman Crystal D. Peoples-Stokes  
District Office  
792 E. Delavan Avenue  
Buffalo, NY 14215  
716-897-9714

### **3. Chief Executive Officer, Planning Board Chairperson and City Administrator of each County, City, Town and Village in which the Site is located:**

#### **a. City of Buffalo**

Office of the Mayor  
Mayor Bryon W. Brown  
201 City Hall  
Buffalo, New York 14202  
(716)852-3300

Office of City Administrator  
Janet Penska  
203 City Hall  
Buffalo, New York 14202  
(716)851-5922



Office of Planning Board  
James A. Morrell - Chairman  
201 City Hall  
Buffalo, New York 14202  
(716)852-3300

**b. Erie County**

Erie County Executive  
95 Franklin Street  
16<sup>th</sup> Floor  
Buffalo, New York 14202  
(716)858-8500

Erie County Clerk  
92 Franklin Street  
Buffalo, New York 14202  
(716)858-8865

Commissioner of Environment and Planning  
Kathy Konst  
Edward A. Rath County Office Building  
95 Franklin Street, 10th Floor  
Buffalo, New York 14202  
Phone: (716) 858-8390

**4. County and/or municipal agency directors of health, emergency services, economic development and planning departments.**

**a. Erie County**

Erie County Commissioner of Health  
Anthony J. Billittier IV, MD, FACEP  
Rath Building  
95 Franklin Street  
Buffalo, NY 14202  
Office: (716) 858-7690

Emergency Services Commissioner  
Gregory W. Skibitsky  
Rath Building  
95 Franklin Street  
Buffalo, NY 14202  
716-858-6365

Commissioner of Environment and Planning  
Kathy Konst  
Edward A. Rath County Office Building  
95 Franklin Street, 10th Floor  
Buffalo, New York 14202  
Phone: (716) 858-8390

Industrial Development Agency:  
Erie County Industrial Development Agency  
143 Genessee Street  
Buffalo, NY 14203  
(716) 856-6525

**b. City of Buffalo**

Buffalo Urban Renewal Agency  
Housing Office:  
920 City Hall, Buffalo, NY 14202  
Phone Number: 716-851-5035  
Fax Number: 716-854-0172

Real Estate Office:  
Department Head:  
John Hannon  
901 City Hall, Buffalo, NY 14202  
Phone Number: 716-851-5275  
Fax Number: 716-851-5590  
Email: [jhannon@city-buffalo.com](mailto:jhannon@city-buffalo.com)

Economic Development, Permit and Inspection  
Department Head: James W. Comerford  
Address: 324 City Hall, Buffalo, NY, 14202  
Phone Numbers: 716-851-4972  
Email: [jcomerford@city-buffalo.com](mailto:jcomerford@city-buffalo.com)

Emergency Management Services  
Department Head: Garnell W. Whitfield, Jr.  
Address: 195 Court Street, Buffalo, NY, 14202  
Phone Numbers: 716-851-5333  
Fax Number: 716-851-5341  
Email Address: [gwhitfield@bfny.org](mailto:gwhitfield@bfny.org)



Office of Strategic Planning  
Executive Director: Brendan R. Mehaffy  
Office Address: 901 City Hall  
Buffalo NY 14202  
Phone: (716) 851-5277

**5. Residents, Schools, Daycare Centers, Hospitals and Owners and Occupants of the Site and Adjacent to the Site:**

Buffalo Municipal Housing Agency  
300 Perry Street  
Buffalo, New York 14204

Erie County Medical Center  
462 Grider St  
Buffalo, NY 14215  
(716) 898-3000

Public School 301 Burgard Vocational High School  
Dr. Pamela C. Brown, Superintendent for Buffalo City Schools  
400 Kensington Ave  
Buffalo, NY 14214  
(716) 816-4450

City of Buffalo  
65 Niagara Street  
Buffalo, New York 14202  
(716) 851-4200

**6. Persons requesting to be placed on distribution list**

None identified to date.

**7. Water Supplier**

Buffalo Water Authority  
281 Exchange Street  
Buffalo, NY 14204

**8. Location of Document Repository**

Buffalo and Erie County Public Library  
1 Lafayette Square  
Buffalo, New York 14203

**9. News Media**

Buffalo News  
One News Plaza  
PO Box 100  
Buffalo, New York 14240  
(716) 849-4444

WJLL 1440 AM  
920 Union Road  
West Seneca, New York 14224  
(716) 674-9555

WGRZ-NBC (Channel 2)  
259 Delaware Avenue  
Buffalo, New York 14202  
(716) 849-2222

WTVB -CBS (Channel 4)  
2077 Elmwood Avenue  
Buffalo, New York 14202  
(716) 874-4410

WKBK - ABC (Channel 7)  
7 Broadcast Plaza  
Buffalo, New York 14202  
(716) 845-6100

WUTV-FOX (Channel 29)  
699 Hertel Avenue, Suite 100  
Buffalo, New York 14207



**Tara M. Eich**

---

**From:** April Tompkins [tompkinsa@buffalolib.org]  
**Sent:** Tuesday, June 18, 2013 10:53 AM  
**To:** teich@kavinokycook.com  
**Subject:** FW: Document Depsoitory Request  
**Attachments:** SKMBT\_55213061408150.pdf

Good morning Tara,

This is to inform you that permission has been granted in response to the attached letter received for the Brownfield Clean Project.

**"RE: Document Repository Permission Request" – "1827 Fillmore Avenue, Buffalo, New York"**

The Buffalo and Erie County Public Library will be the repository for the document noted in the attached letter. Upon receipt of the document(s), they will be made available for public review.

Documents for public inspection are sent or brought in person to the Central Library to the attention of Carol Batt, of whom I assist.

**Carol Ann Batt**  
**Deputy Director, Chief Operating Officer**  
**Buffalo & Erie County Public Library**  
**1 Lafayette Square**  
**Buffalo, NY 14203**

If you still need a formal letter or have any questions/concerns, please feel free to contact me at the above e-mail address or by phone at 716-858-7129.

Thank you,

Regards,  
April

---

**From:** Tara M. Eich [mailto:teich@kavinokycook.com]  
**Sent:** Friday, June 14, 2013 9:41 AM  
**To:** Carol Batt; April Tompkins  
**Subject:** Document Depsoitory Request

Attached please find a document depository request from Deborah J. Chadsey.

Thank you,  
Tara

**Tara M. Eich**  
**Paralegal**  
**Kavinoky Cook LLP**  
**726 Exchange Street**

7/10/2013

Suite 800  
Buffalo, New York 14210  
(Telephone) 716-845-6000 Ext. 235  
(Fax) 716-845-6474  
[teich@kavinokycook.com](mailto:teich@kavinokycook.com)

---

**From:** [bizhub@kavinokycook.com](mailto:bizhub@kavinokycook.com) [<mailto:bizhub@kavinokycook.com>]  
**Sent:** Friday, June 14, 2013 9:16 AM  
**To:** [teich@kavinokycook.com](mailto:teich@kavinokycook.com)  
**Subject:** Message from KMBT\_552

---

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7/10/2013

DEC 001971



# **EXHIBIT I**

## **(Section IX)**

### **Land Use Factors**

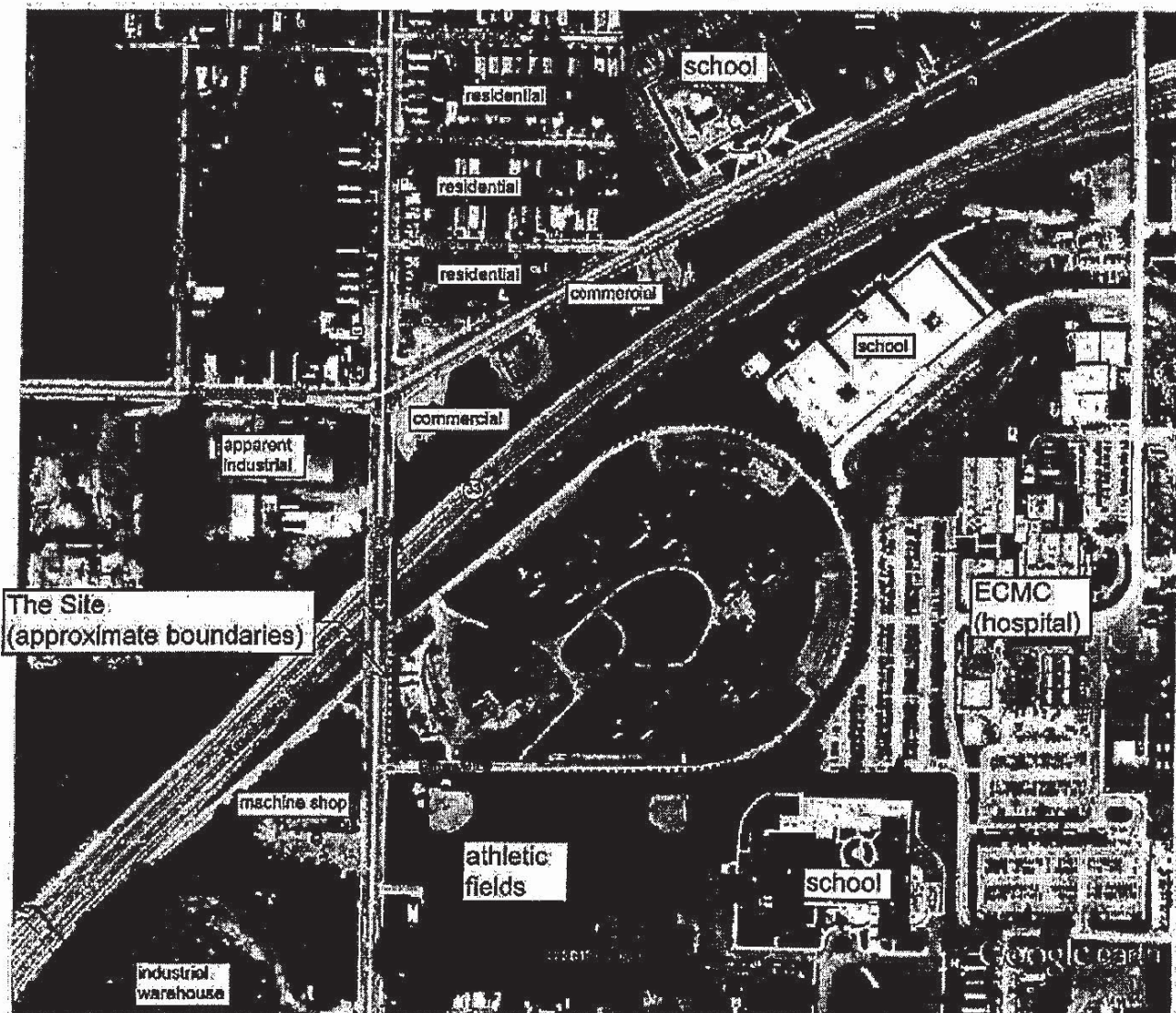
## **Section IX – Land Use Factors**

14. See Map attached hereto.

15. Groundwater was only encountered at select borings during the intrusive work. Specifically, groundwater was only evident at 5 of the 50 total soil borings completed at the Site. According to the NYSDEC website, the closest water well, designated as well number E3259, is located approximately 1.2 miles north of the Site. Additional information relative to this well is attached. Based on the location of the Site in an urban area, groundwater is likely impacted. Note that previous intrusive study completed on-site did not include water sampling or laboratory analysis. It is not anticipated that the Site would result in impacts to the potable water supply as the closest water well is located over one-mile from the Site.

16. The Site is located within the Lake Erie/Niagara River Drainage Basin located between approximately 680 (eastern portion of the Site) and 660 (western portion of the Site) feet above sea level (NGVD 29). Groundwater flow is anticipated to the west, consistent with site topography. The Site would currently be considered covered with soils considered Urban Land and not defined as hydric; the native soils are a lacustrine silt and clay. The underlying bedrock is the Onondaga and Bois Blanc Limestones.





Google earth

feet 1000  
meters 400





Click and Add Title Here



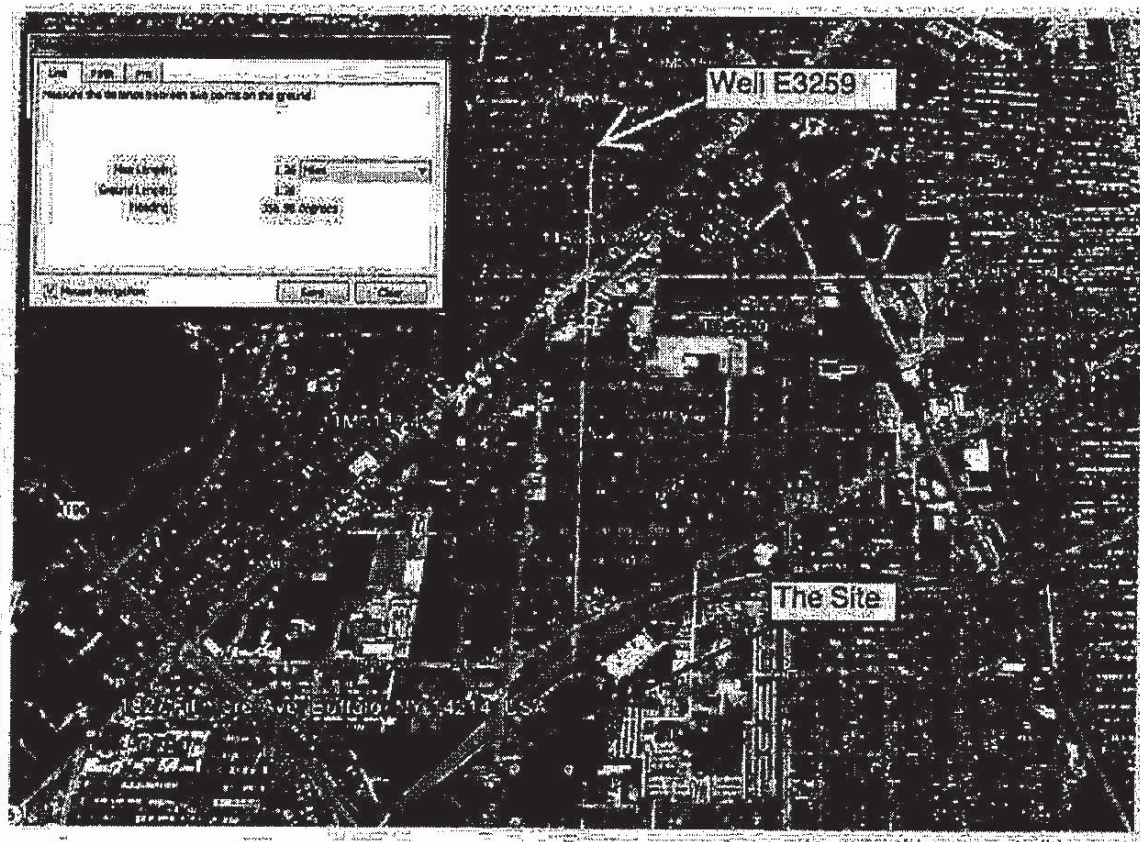




**NYS Water Well**  
**DEC Well Number: E3259**

	WOODBRIDGE AVE
	BUFFALO
	ERIE
	42° 56' 43.4" N
	78° 50' 17.3" W
	300
	20
	N/A
	60
	65
	N
	NYRD10084
*N/A* = Data Not Available	
*NE* = Bedrock Not Encountered	
Negative groundwater depth = Artesian Conditions	

Data Set Last Updated on 4/15/13





mnostrant



mnostrant

Email.BCP.C915279.2012-11-23.cost\_estimates.pdf

09/30/16 09:25 AM

Xerox® WorkCentre® 5845

**Tara M. Eich**

**From:** Bob Szustakowski [bobs@rjsenviro.com]  
**Sent:** Friday, November 23, 2012 11:54 AM  
**To:** Tara M. Eich (teich@kavinokycook.com)  
**Cc:** Chris Stohl; 'David Rodriguez'(drodriguez@bmha.ci.buffalo.ny.us); Modesto Candelario (mcandelario@bmha.ci.buffalo.ny.us)  
**Subject:** Kensington Hts Soil Removal Costs  
**Attachments:** Kensington Heights Soil Remediation- Solid Waste Landfill for 0 5 to 2 0 ....xlsx

All,

As requested, we have compiled "engineering estimates" to implement a potential remedial option at the Kensington Hts. Property in Buffalo, NY. The estimated fees are attached but the following should be noted.

- It is assumed that the site will be in the NYSDEC Brownfield Cleanup Program (BCP).
- The top approximately six inches of asbestos-contaminated soil will be removed and shipped off-site by others; those costs are not included herein.
- The work will include removing another 1.5 feet of soil from the site. Post-excavation soil samples will be collected to document remaining site conditions and then a geomembrane will be placed over the Site. Clean soil will be brought in and placed in controlled lifts to bring the Site back to grade.
- As we have no specific plans for re-development, we assumed that the new structures will occupy a similar site area as the current structures.
- All work will require constant oversight by an environmental professional.
- To the extent possible, we used published RS Means values. However, due to number of landfills in WNY, we used local typical "low volume" landfill tipping fees (RS Means estimates were significantly higher). Additional anticipated landfill tipping fee reductions, due to the volume of soil, were not considered. As this is the largest line item, there may be significant cost savings available once the project is further along.
- The work should take approximately 30 to 45 field days to complete.

We trust that this serves your current needs. Let me know if you have any questions.

Bob Szustakowski  
President  
RJS Environmental  
Cell: 716-923-5377

11/26/2012

DEC 001979



**From:** [Deborah J. Chadsey ESQ.](#)  
**To:** [Locey, David \(DEC\)](#)  
**Subject:** RE: Kensington Heights Towers, C915279  
**Date:** 09-23-2016 14:35:35  
**Attachments:** [LOI 2 BMHA August 2016.PDF](#)  
[LOI ECMC July 2016.PDF](#)

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Dear Mr. Locey,

I am attaching the LOI between BMHA and ECMC regarding ECMC's acquisition of the above noted Brownfield Site which our client just sent over to us. Can you advise what BMHA could do to keep the filed application pending, if anything, while this transaction is completed?

Thank you,  
Deborah Chadsey



**Deborah J. Chadsey, Partner**  
726 Exchange Street, Suite 800, Buffalo, New York 14210  
**Tel:** 716-845-6000 (Ext 218) **Fax:** 716-845-6474  
**E-mail** [dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com) **Web:** [www.kavinokycook.com](http://www.kavinokycook.com)

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**From:** Locey, David (DEC) [<mailto:david.locey@dec.ny.gov>]  
**Sent:** Thursday, September 15, 2016 12:33 PM  
**To:** Deborah J. Chadsey ESQ. <[dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com)>  
**Subject:** RE: Kensington Heights Towers, C915279 - further update

Deborah,

In a few days, the DEC will be sending the applicant an "opportunity to cure" letter, advising them that they will have thirty days to get the project back on track or the brownfield cleanup agreement will be terminated.

DEC 001980

**David P. Locey**

Environmental Engineer I, Division of Environmental Remediation  
**New York State Department of Environmental Conservation**  
270 Michigan Avenue, Buffalo, NY 14203-2915  
P: 716-851-7220 | F: 716-851-7226 | [david.locey@dec.ny.gov](mailto:david.locey@dec.ny.gov)

[www.dec.ny.gov](http://www.dec.ny.gov) |  | 

---

**From:** Deborah J. Chadsey [<mailto:dchadsey@kavinokycook.com>]  
**Sent:** 06-07-2016 13:22  
**To:** Locey, David (DEC) <[david.locey@dec.ny.gov](mailto:david.locey@dec.ny.gov)>  
**Subject:** RE: Kensington Heights Towers, C915279 - further update

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Thanks, I will let them know –

Deborah



**Deborah J. Chadsey, Partner**

726 Exchange Street, Suite 800, Buffalo, New York 14210  
**Tel:** 716-845-6000 (Ext 218) **Fax:** 716-845-6474  
**E-mail** [dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com) **Web:** [www.kavinokycook.com](http://www.kavinokycook.com)

---

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**From:** Locey, David (DEC) [<mailto:david.locey@dec.ny.gov>]  
**Sent:** Tuesday, June 07, 2016 1:18 PM  
**To:** Deborah J. Chadsey <[dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com)>  
**Subject:** RE: Kensington Heights Towers, C915279 - further update



The Department will need a better idea of what the additional time requirements might be. I need, by June 30 2016, a proposed project schedule for the Department's review. The schedule should lay out the anticipated milestone dates, beginning with the submittal of the investigation work plan through at least the submittal of the alternatives analysis report.

If a schedule can't be provided by the end of the month, the Department will have to issue a formal response, noting that the July 2015 brownfield cleanup agreement, required submittal of an investigation work plan within a month of the execution of that agreement. The volunteer would be given a final opportunity to submit the work plan or the agreement will be terminated. Of course, the volunteer or others would be free to re-apply to the program at a later date.

---

**From:** Deborah J. Chadsey [<mailto:dchadsey@kavinokycook.com>]  
**Sent:** 06-07-2016 10:00  
**To:** Locey, David (DEC) <[david.locey@dec.ny.gov](mailto:david.locey@dec.ny.gov)>  
**Subject:** RE: Kensington Heights Towers, C915279 - further update

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Dear Mr. Locey,

It appears that BMHA will be selling the property to another "public" entity as directed by the City of Buffalo but who and when is still under negotiations and the new owner will likely want to stay in the BCP. I appreciate this has been a very long time in getting resolved and ask that you continue to grant the applicant the time to work thru the process. Unlike a private sale, transfers among public entities have a layer of "political" issues that are complicating this transaction. If the Department cannot accommodate the additional time requirements please just let me know so I can advise the client and add this issue to list.

Thank you,  
Deborah Chadsey



**Deborah J. Chadsey, Partner**  
726 Exchange Street, Suite 800, Buffalo, New York 14210  
**Tel:** 716-845-6000 (Ext 218) **Fax:** 716-845-6474  
**E-mail** [dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com) **Web:** [www.kavinokycook.com](http://www.kavinokycook.com)

---

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DEC 001982

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**From:** Locey, David (DEC) [<mailto:david.locey@dec.ny.gov>]  
**Sent:** Monday, April 04, 2016 4:06 PM  
**To:** Deborah J. Chadsey <[dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com)>  
**Subject:** RE: Kensington Heights Towers, C915279

Thank you for the update.

I will check back with you at the end of April.

---

**From:** Deborah J. Chadsey [<mailto:dchadsey@kavinokycook.com>]  
**Sent:** 03-25-2016 13:24  
**To:** Locey, David (DEC)  
**Subject:** RE: Kensington Heights Towers, C915279

Dear Mr. Locey,

Our client is exploring transactions that would bring another party into the Kensington Heights Project. Obviously that party would need to apply to the program as a co-applicant or, depending on how a transaction is structure, take over the applicant. The Department has been very patient with our client since applying to the program and I ask that you continue to extend that courtesy for a short additional time.

Thank you,  
Deborah Chadsey



**Deborah J. Chadsey, Partner**  
726 Exchange Street, Suite 800, Buffalo, New York 14210  
**Tel:** 716-845-6000 (Ext 218) **Fax:** 716-845-6474  
**E-mail** [dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com) **Web:** [www.kavinokycook.com](http://www.kavinokycook.com)

---



**From:** Locey, David (DEC) [<mailto:david.locey@dec.ny.gov>]  
**Sent:** Tuesday, October 06, 2015 1:17 PM  
**To:** Deborah J. Chadsey <[dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com)>  
**Subject:** RE: Kensington Heights Towers, C915279

DEC Cost Recovery has confirmed, you will be copied on the next invoice – which will be due sometime in July 2016.

When do you expect a Remedial Investigation work plan will be submitted for DEC review?

---

**From:** Deborah J. Chadsey [<mailto:dchadsey@kavinokycook.com>]  
**Sent:** 10-02-2015 13:09  
**To:** Locey, David (DEC)  
**Subject:** RE: Kensington Heights Towers, C915279 - CP Plan

Thank you – that way I can make sure it doesn't get missed.  
I appreciate your assistance.

Deborah

---

**From:** Locey, David (DEC) [<mailto:david.locey@dec.ny.gov>]  
**Sent:** Friday, October 02, 2015 12:55 PM  
**To:** Deborah J. Chadsey <[dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com)>  
**Subject:** RE: Kensington Heights Towers, C915279 - CP Plan

Thank you.

I forwarded your request to be copied on future State invoices, to DEC Cost Recovery. No reply yet but I don't imagine it will be problem.

---

**From:** Deborah J. Chadsey [<mailto:dchadsey@kavinokycook.com>]  
**Sent:** 10-02-2015 12:50  
**To:** Locey, David (DEC); Davidson, Kristen (DEC)  
**Subject:** FW: Kensington Heights Towers, C915279 - CP Plan

We made the revisions you requested and the clean copy is attached. We will be forwarding the CPP to the document depository.

Thank you,  
Deborah Chadsey



**Deborah J. Chadsey, Partner**

726 Exchange Street, Suite 800, Buffalo, New York 14210

**Tel:** 716-845-6000 (Ext 218) **Fax:** 716-845-6474

**E-mail** [dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com) **Web:** [www.kavinokycook.com](http://www.kavinokycook.com)

---

**From:** Chifeng Jiang [<mailto:cjiang@kavinokycook.com>]

**Sent:** Friday, October 02, 2015 12:14 PM

**To:** 'Deborah J. Chadsey' <[dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com)>

**Subject:** RE: Kensington Heights Towers, C915279 - CP Plan

Deb,

Attached is the revised CPP plan with the changes requested by David Locey.

Chi

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**From:** Locey, David (DEC)  
**To:** "Deborah J. Chadsey ESQ."  
**Subject:** RE: Kensington Heights Towers, C915279  
**Date:** 09-24-2016 13:56:00  
**Attachments:** [Letter.bcp.C915279.2016-09-22.Opportunity to cure 2016.pdf](#)  
[60-Day Advance Notification of Site Change of Use.pdf](#)  
[BCA Amendment Application.pdf](#)

---

Ms. Chadsey,

The Opportunity to Cure letter (attached) was mailed but evidently not emailed. My apologies.

At this time, the DEC requires a realistic project schedule from the BCP applicant, to include the anticipated date of the property transfer. There is also a change of use form (attached) that should be completed and submitted to document the pending property transfer. An application to amend the BCA will also be required (also attached).

Please contact me if there are any questions.

**David P. Locey**

Environmental Engineer I, Division of Environmental Remediation  
**New York State Department of Environmental Conservation**  
270 Michigan Avenue, Buffalo, NY 14203-2915  
P: 716-851-7220 | F: 716-851-7226 | [david.locey@dec.ny.gov](mailto:david.locey@dec.ny.gov)

[www.dec.ny.gov](http://www.dec.ny.gov) |  | 

---

**From:** Deborah J. Chadsey ESQ. [<mailto:dchadsey@kavinokycook.com>]  
**Sent:** 09-23-2016 14:35  
**To:** Locey, David (DEC) <[david.locey@dec.ny.gov](mailto:david.locey@dec.ny.gov)>  
**Subject:** RE: Kensington Heights Towers, C915279

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Dear Mr. Locey,

I am attaching the LOI between BMHA and ECMC regarding ECMC's acquisition of the above noted Brownfield Site which our client just sent over to us. Can you advise what BMHA could do to keep the filed application pending, if anything, while this transaction is completed?

Thank you,  
Deborah Chadsey





**Deborah J. Chadsey, Partner**

726 Exchange Street, Suite 800, Buffalo, New York 14210

**Tel:** 716-845-6000 (Ext 218) **Fax:** 716-845-6474

**E-mail** [dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com) **Web:** [www.kavinokycook.com](http://www.kavinokycook.com)

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---

**From:** Locey, David (DEC) [<mailto:david.locey@dec.ny.gov>]

**Sent:** Thursday, September 15, 2016 12:33 PM

**To:** Deborah J. Chadsey ESQ. <[dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com)>

**Subject:** RE: Kensington Heights Towers, C915279 - further update

Deborah,

In a few days, the DEC will be sending the applicant an "opportunity to cure" letter, advising them that they will have thirty days to get the project back on track or the brownfield cleanup agreement will be terminated.

**David P. Locey**

Environmental Engineer I, Division of Environmental Remediation

**New York State Department of Environmental Conservation**

270 Michigan Avenue, Buffalo, NY 14203-2915

P: 716-851-7220 | F: 716-851-7226 | [david.locey@dec.ny.gov](mailto:david.locey@dec.ny.gov)

[www.dec.ny.gov](http://www.dec.ny.gov) |  | 

---

**From:** Deborah J. Chadsey [<mailto:dchadsey@kavinokycook.com>]

**Sent:** 06-07-2016 13:22

**To:** Locey, David (DEC) <[david.locey@dec.ny.gov](mailto:david.locey@dec.ny.gov)>

**Subject:** RE: Kensington Heights Towers, C915279 - further update

---

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Thanks, I will let them know –

Deborah



**Deborah J. Chadsey, Partner**

726 Exchange Street, Suite 800, Buffalo, New York 14210

**Tel:** 716-845-6000 (Ext 218) **Fax:** 716-845-6474

**E-mail** [dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com) **Web:** [www.kavinokycook.com](http://www.kavinokycook.com)

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---

**From:** Locey, David (DEC) [<mailto:david.locey@dec.ny.gov>]

**Sent:** Tuesday, June 07, 2016 1:18 PM

**To:** Deborah J. Chadsey <[dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com)>

**Subject:** RE: Kensington Heights Towers, C915279 - further update

The Department will need a better idea of what the additional time requirements might be. I need, by June 30 2016, a proposed project schedule for the Department's review. The schedule should lay out the anticipated milestone dates, beginning with the submittal of the investigation work plan through at least the submittal of the alternatives analysis report.

If a schedule can't be provided by the end of the month, the Department will have to issue a formal response, noting that the July 2015 brownfield cleanup agreement, required submittal of an investigation work plan within a month of the execution of that agreement. The volunteer would be given a final opportunity to submit the work plan or the agreement will be terminated. Of course, the volunteer or others would be free to re-apply to the program at a later date.

---

**From:** Deborah J. Chadsey [<mailto:dchadsey@kavinokycook.com>]

**Sent:** 06-07-2016 10:00

**To:** Locey, David (DEC) <[david.locey@dec.ny.gov](mailto:david.locey@dec.ny.gov)>

DEC 001989



**Subject:** RE: Kensington Heights Towers, C915279 - further update

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Dear Mr. Locey,

It appears that BMHA will be selling the property to another "public" entity as directed by the City of Buffalo but who and when is still under negotiations and the new owner will likely want to stay in the BCP. I appreciate this has been a very long time in getting resolved and ask that you continue to grant the applicant the time to work thru the process. Unlike a private sale, transfers among public entities have a layer of "political" issues that are complicating this transaction. If the Department cannot accommodate the additional time requirements please just let me know so I can advise the client and add this issue to list.

Thank you,  
Deborah Chadsey



**Deborah J. Chadsey, Partner**  
726 Exchange Street, Suite 800, Buffalo, New York 14210  
**Tel:** 716-845-6000 (Ext 218) **Fax:** 716-845-6474  
**E-mail** [dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com) **Web:** [www.kavinokycook.com](http://www.kavinokycook.com)

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---

**From:** Locey, David (DEC) [<mailto:david.locey@dec.ny.gov>]  
**Sent:** Monday, April 04, 2016 4:06 PM  
**To:** Deborah J. Chadsey <[dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com)>  
**Subject:** RE: Kensington Heights Towers, C915279

Thank you for the update.

I will check back with you at the end of April.

DEC 001990

---

**From:** Deborah J. Chadsey [<mailto:dchadsey@kavinokycook.com>]

**Sent:** 03-25-2016 13:24

**To:** Locey, David (DEC)

**Subject:** RE: Kensington Heights Towers, C915279

Dear Mr. Locey,

Our client is exploring transactions that would bring another party into the Kensington Heights Project. Obviously that party would need to apply to the program as a co-applicant or, depending on how a transaction is structure, take over the applicant. The Department has been very patient with our client since applying to the program and I ask that you continue to extend that courtesy for a short additional time.

Thank you,  
Deborah Chadsey



**Deborah J. Chadsey, Partner**

726 Exchange Street, Suite 800, Buffalo, New York 14210

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**E-mail** [dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com) **Web:** [www.kavinokycook.com](http://www.kavinokycook.com)

---

**From:** Locey, David (DEC) [<mailto:david.locey@dec.ny.gov>]

**Sent:** Tuesday, October 06, 2015 1:17 PM

**To:** Deborah J. Chadsey <[dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com)>

**Subject:** RE: Kensington Heights Towers, C915279

DEC Cost Recovery has confirmed, you will be copied on the next invoice – which will be due sometime in July 2016.

When do you expect a Remedial Investigation work plan will be submitted for DEC review?

---

**From:** Deborah J. Chadsey [<mailto:dchadsey@kavinokycook.com>]

**Sent:** 10-02-2015 13:09

**To:** Locey, David (DEC)

**Subject:** RE: Kensington Heights Towers, C915279 - CP Plan

Thank you – that way I can make sure it doesn't get missed.



I appreciate your assistance.

Deborah

---

**From:** Locey, David (DEC) [<mailto:david.locey@dec.ny.gov>]  
**Sent:** Friday, October 02, 2015 12:55 PM  
**To:** Deborah J. Chadsey <[dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com)>  
**Subject:** RE: Kensington Heights Towers, C915279 - CP Plan

Thank you.

I forwarded your request to be copied on future State invoices, to DEC Cost Recovery. No reply yet but I don't imagine it will be problem.

---

**From:** Deborah J. Chadsey [<mailto:dchadsey@kavinokycook.com>]  
**Sent:** 10-02-2015 12:50  
**To:** Locey, David (DEC); Davidson, Kristen (DEC)  
**Subject:** FW: Kensington Heights Towers, C915279 - CP Plan

We made the revisions you requested and the clean copy is attached. We will be forwarding the CPP to the document depository.

Thank you,  
Deborah Chadsey



**Deborah J. Chadsey, Partner**  
726 Exchange Street, Suite 800, Buffalo, New York 14210  
**Tel:** 716-845-6000 (Ext 218) **Fax:** 716-845-6474  
**E-mail** [dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com) **Web:** [www.kavinokycook.com](http://www.kavinokycook.com)

---

**From:** Chifeng Jiang [<mailto:cjiang@kavinokycook.com>]  
**Sent:** Friday, October 02, 2015 12:14 PM  
**To:** 'Deborah J. Chadsey' <[dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com)>  
**Subject:** RE: Kensington Heights Towers, C915279 - CP Plan

Deb,

Attached is the revised CPP plan with the changes requested by David Locey.

Chi

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**From:** Deborah J. Chadsey ESQ.  
**To:** Locey, David (DEC)  
**Subject:** RE: Kensington Heights Towers, C915279  
**Date:** 09-23-2016 14:35:35  
**Attachments:** LOI 2 BMHA August 2016.PDF  
LOI ECMC July 2016.PDF

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Dear Mr. Locey,

I am attaching the LOI between BMHA and ECMC regarding ECMC's acquisition of the above noted Brownfield Site which our client just sent over to us. Can you advise what BMHA could do to keep the filed application pending, if anything, while this transaction is completed?

Thank you,  
Deborah Chadsey



**Deborah J. Chadsey, Partner**  
726 Exchange Street, Suite 800, Buffalo, New York 14210  
**Tel:** 716-845-6000 (Ext 218) **Fax:** 716-845-6474  
**E-mail** [dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com) **Web:** [www.kavinokycook.com](http://www.kavinokycook.com)

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**From:** Locey, David (DEC) [<mailto:david.locey@dec.ny.gov>]  
**Sent:** Thursday, September 15, 2016 12:33 PM  
**To:** Deborah J. Chadsey ESQ. <[dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com)>  
**Subject:** RE: Kensington Heights Towers, C915279 - further update

Deborah,

In a few days, the DEC will be sending the applicant an "opportunity to cure" letter, advising them that they will have thirty days to get the project back on track or the brownfield cleanup agreement will be terminated.



**David P. Locey**

Environmental Engineer I, Division of Environmental Remediation  
**New York State Department of Environmental Conservation**  
270 Michigan Avenue, Buffalo, NY 14203-2915  
P: 716-851-7220 | F: 716-851-7226 | [david.locey@dec.ny.gov](mailto:david.locey@dec.ny.gov)

[www.dec.ny.gov](http://www.dec.ny.gov) |  | 

---

**From:** Deborah J. Chadsey [<mailto:dchadsey@kavinokycook.com>]  
**Sent:** 06-07-2016 13:22  
**To:** Locey, David (DEC) <[david.locey@dec.ny.gov](mailto:david.locey@dec.ny.gov)>  
**Subject:** RE: Kensington Heights Towers, C915279 - further update

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Deborah



**Deborah J. Chadsey, Partner**

726 Exchange Street, Suite 800, Buffalo, New York 14210  
**Tel:** 716-845-6000 (Ext 218) **Fax:** 716-845-6474  
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**Sent:** Tuesday, June 07, 2016 1:18 PM  
**To:** Deborah J. Chadsey <[dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com)>  
**Subject:** RE: Kensington Heights Towers, C915279 - further update

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**Sent:** 06-07-2016 10:00  
**To:** Locey, David (DEC) <[david.locey@dec.ny.gov](mailto:david.locey@dec.ny.gov)>  
**Subject:** RE: Kensington Heights Towers, C915279 - further update

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**Sent:** Monday, April 04, 2016 4:06 PM  
**To:** Deborah J. Chadsey <[dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com)>  
**Subject:** RE: Kensington Heights Towers, C915279

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I will check back with you at the end of April.

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**From:** Deborah J. Chadsey [<mailto:dchadsey@kavinokycook.com>]  
**Sent:** 03-25-2016 13:24  
**To:** Locey, David (DEC)  
**Subject:** RE: Kensington Heights Towers, C915279

Dear Mr. Locey,

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**From:** Locey, David (DEC) [<mailto:david.locey@dec.ny.gov>]  
**Sent:** Tuesday, October 06, 2015 1:17 PM  
**To:** Deborah J. Chadsey <[dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com)>  
**Subject:** RE: Kensington Heights Towers, C915279

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**From:** Deborah J. Chadsey [<mailto:dchadsey@kavinokycook.com>]  
**Sent:** 10-02-2015 13:09  
**To:** Locey, David (DEC)  
**Subject:** RE: Kensington Heights Towers, C915279 - CP Plan

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Deborah

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**From:** Locey, David (DEC) [<mailto:david.locey@dec.ny.gov>]  
**Sent:** Friday, October 02, 2015 12:55 PM  
**To:** Deborah J. Chadsey <[dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com)>  
**Subject:** RE: Kensington Heights Towers, C915279 - CP Plan

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I forwarded your request to be copied on future State invoices, to DEC Cost Recovery. No reply yet but I don't imagine it will be problem.

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**From:** Deborah J. Chadsey [<mailto:dchadsey@kavinokycook.com>]  
**Sent:** 10-02-2015 12:50  
**To:** Locey, David (DEC); Davidson, Kristen (DEC)  
**Subject:** FW: Kensington Heights Towers, C915279 - CP Plan

We made the revisions you requested and the clean copy is attached. We will be forwarding the CPP to the document depository.

Thank you,  
Deborah Chadsey





**Deborah J. Chadsey, Partner**

726 Exchange Street, Suite 800, Buffalo, New York 14210

**Tel:** 716-845-6000 (Ext 218) **Fax:** 716-845-6474

**E-mail** [dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com) **Web:** [www.kavinokycook.com](http://www.kavinokycook.com)

---

**From:** Chifeng Jiang [<mailto:cjiang@kavinokycook.com>]

**Sent:** Friday, October 02, 2015 12:14 PM

**To:** 'Deborah J. Chadsey' <[dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com)>

**Subject:** RE: Kensington Heights Towers, C915279 - CP Plan

Deb,

Attached is the revised CPP plan with the changes requested by David Locey.

Chi

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NYSDEC - REGION 9

JUN 4 - 2013

FOIL  
☒ REL ☐ UNREL

June 4, 2013

Via Hand Delivery

Marty Doster  
NYS Department of Environmental Conservation  
270 Michigan Ave.  
Region 9  
Buffalo, New York 14203 - 2999

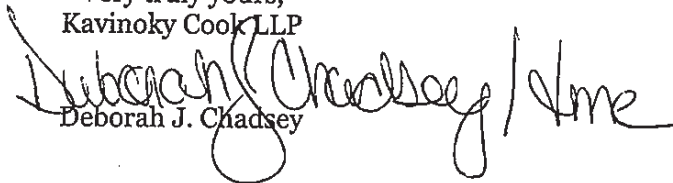
**RE Kensington Heights**

Dear Marty:  
Dear Marty:

Enclosed please find one (1) complete paper copy of our Brownfield Cleanup Program Application, and one (1) cd containing an electronic copy of the entire application.

If you have any questions please feel free to call me at 845-6000 or e-mail me at [dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com).

Very truly yours,  
Kavinoky Cook LLP

  
Deborah J. Chadsey

DJC/tme  
Enclosures

full spectrum business law

726 EXCHANGE STREET SUITE 800 BUFFALO, NY 14210  
TEL 716.845.6000 FAX 716.845.6474

DEC 002002

**New York State Department of Environmental Conservation**  
**Division of Environmental Remediation**  
**Bureau of Technical Support, 11<sup>th</sup> Floor**  
625 Broadway, Albany, NY 12233-7020  
**Phone: (518) 402-9543 • Fax: (518) 402-9547**  
**Website: [www.dec.ny.gov](http://www.dec.ny.gov)**



June 11, 2013

Kensington Heights Revitalization Corporation  
Ms. Dawn E. Sanders, President  
300 Perry Street  
Buffalo, NY 14204

RE: Brownfield Cleanup Application  
Kensington Heights Apartments  
BCP #C915279

Dear Ms. Sanders:

The New York State Department of Environmental Conservation (DEC) is in receipt of your application which was not dated, for participation in the Brownfield Cleanup Program pursuant to ECL § 27-1400 et seq. This letter is to advise you that your application has been determined to be incomplete. Upon review of your application, the following items were found to be missing/incomplete:

Section I. Requestor Information:

The required proof of access to the site by a non-owner was not submitted. Please submit this proof of site access.

Section II. Property Information:

The latitude and longitude for the site is not legible as submitted. Please provide the necessary information in a clear, easy to read format. Changes to page 2 require the original initials of each Requestor at the bottom of the page.

The tax map submitted (Exhibit A) is not a county tax map but rather a map created which identifies the street number of the proposed site parcel and the street numbers of adjacent properties, with some tax parcel information written on it. Please submit an actual county tax map which has identifier numbers (Section/Block/Lot), along with any figures or labels (roadways) which show not only the parcel boundaries but also the location. This map should be of sufficient size to easily and clearly identify not only the site parcel but also surrounding parcels.

The required USGS 7.5 minutes quad map was not submitted. Please provide this map.

Please elaborate on the Property Description Narrative (Exhibit B) to include a description of streets, large structures etc. that are near the proposed site (i.e.: to the north is Route 33, to the south is, etc.).

The answer to the List of Existing Easements is unacceptable. Please provide a list of the existing Easement(s) or state that none exist.



#### Section VI. Project Description:

Exhibit E is a statement of "engineering estimates" and does not provide the required information. Please provide a written description of the purpose (describe end purpose-multi-story rental, single family homes, etc. if it is known) and scope (investigation, demolition, cleanup, etc.) for the project will be.

The required Estimated Project Schedule was not submitted. This schedule should include tasks such as: accepted into the BCP, public comment periods for the application and for the draft Remedial Investigation Work Plan (RIWP), investigation and cleanup tasks, construction etc. It is to also include months and years for various tasks identified (i.e.: if you estimate that Site Control will deem your BCP Application complete on July 1, 2013, estimate succeeding tasks based on that date.

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

Exhibit F contains a Sampling Data Table but laboratory reports were not referenced or copies included. Please refer to the reports that this Data was obtained from and also provide copies of this report.

There were no previous property owner(s) identified in Exhibit G. Please confirm there were no previous owners of the property prior to Buffalo Municipal Housing Authority and that they have been the only (current or previous) owner of this property. Please also state what the relationship of each is to the requestor.

The only previous operator identified in Exhibit G is Buffalo Municipal Housing Authority. Please confirm there are no other previous operators of the property prior to Buffalo Municipal Housing Authority and that they have been the only previous operator of this property. Please also state what the relationship of each is to the requestor.

#### Section VIII. Site Contact List:

The Site Contact List (Exhibit H) does not include the administrator of any schools or day care facility located on or near the site, the adjacent property owners/occupants near the site, or the required copy of a letter (email is acceptable) acknowledging that the library agrees to act as the document repository for the site. Please revise your Site Contact List to include these additional items.

#### Section IX. Land Use Factors:

The answer submitted to Question 15 does not address the groundwater vulnerability. Please describe the potential vulnerability of groundwater contamination that might migrate from the site, including proximity to wellhead protection and groundwater recharge areas. Please elaborate on your answer to include the potential groundwater contamination as noted above.

#### Section X. Statement of Certification and Signature:

The requestor did not date the BCP application. Also, the last name of the requestor is not clearly printed. Please submit a corrected signature page.

Please provide the missing/incomplete information within ten (10) days in both paper copy and with a new cd of the completely revised application. Please submit all to the following address:

Barb Wolosen, Site Control Section  
New York State Department of Environmental Conservation  
Bureau of Technical Support  
625 Broadway, 11<sup>th</sup> Floor  
Albany, NY 12233-7020

Should this information not be received within thirty (30) days from the date of this letter, your application will be deemed withdrawn. In that case, you may resubmit the application without prejudice subject to the rules and requirements in place at the time of re-submittal. You will be notified when your application is considered complete. If you have any questions, please call this office at 518-402-9553.

Sincerely,

A handwritten signature in black ink that reads "Kelly A. Lewandowski". The signature is written in a cursive, flowing style.

Kelly A. Lewandowski, P.E.  
Chief  
Site Control Section

KAL/bw

cc: G. Melnyk , Project Manager  
M. Doster, RHWRE, Region 9  
M. Cruden Director, Remedial Bureau E  
P. Foster, Regional Attorney, Region 9  
Stohl Environmental, LLC  
D.J. Chadsey, Esq., Kavinoky Cook LLP  
K. Lewandowski  
B. Wolosen



**New York State Department of Environmental Conservation**  
**Division of Environmental Remediation**  
**Bureau of Technical Support, 11<sup>th</sup> Floor**  
625 Broadway, Albany, NY 12233-7020  
**Phone: (518) 402-9543 • Fax: (518) 402-9547**  
**Website: [www.dec.ny.gov](http://www.dec.ny.gov)**



July 19, 2013

Kensington Heights Revitalization Corp.  
Ms. Dawn Sanders-Garrett  
300 Perry Street  
Buffalo, NY 14204

**RE: Brownfield Cleanup Application**  
Kensington Heights Apartments  
Site No. C915279

Dear Ms. Sanders-Garrett:

The New York State Department of Environmental Conservation (Department) has received your application for participation in the Brownfield Cleanup Program (BCP) pursuant to Environmental Conservation Law (ECL) §27-1400 et seq. We are pleased to advise you that your application has been determined to be complete based upon the Department's initial non-substantive review of your application package. The record with respect to your submittal pursuant to ECL 27-1407.1 is complete. If you propose additional material to supplement this application, the Department may consider it at its sole discretion. If the Department allows you to supplement your application with additional written material that clarifies current information or provides new information, you will be required to publish another public notice of the availability of the complete application (only very minor information may be accepted without the need for publishing a new public notice). The Department will then adjust the time frame specified under ECL 27-1407.6 for notifying you that your request for participation in the BCP is either accepted or rejected.

Pursuant to ECL§27-1407(5), a 30-day public comment period is to begin after the Department's determination that an application is complete. The Department will publish a notice of the receipt of your application seeking public comment in the "Environmental Notice Bulletin." In accordance with the ECL and Department regulations (see 6 NYCRR 375-3.4(b)), you must notify, in writing, all parties on the site contact list<sup>1</sup> of the availability of the complete application for public review and comment.

---

<sup>1</sup> The site contact list includes (see subdivision 375-1.2(as)) all interested "persons, government agencies, groups or organizations, including, but not limited to, the chief executive officer and zoning board of each county, city, town and village in which such site is located, the public water supplier which serves the area in which such site is located, any site residents, adjacent property owners, any person who has requested to be placed on the site contact list, and the administrator of any school or day care facility located on the site for the purposes of posting and/or dissemination at the facility. Provided, however, that where the site or adjacent real property contains multiple dwelling units, the remedial party may propose an alternative method, consistent with the citizen participation goals set forth in section 375-1.10, for providing such notice in lieu of mailing to each individual."

In order to facilitate the notifications, the Department has prepared the enclosed document for your use as a Public Notice along with instructions and the location of the document repository. You are responsible for placing a copy of the application (including any attachments) and copies of all other related documents such as any site assessments, investigation reports, and/or remedial work plans in the repository before the start of the public comment period. The language in the enclosed Public Notice must be used without alteration in the newspaper notice that you have published in accordance with §§375-3.2(f) and 375-3.10.

The enclosed public notice must be provided to a local newspaper servicing the area including the site for publication no later than July 31, 2013. By July 30, 2013, the other notifications specified above must be distributed and documents placed in the repository. To the extent that the mailings and publications are not completed in accordance with these time frames, the Department will extend the comment period for a period sufficient to comply with the required public notice requirements running from the latest of these mailings and publications.

Within five days of the mailings you must submit to the Department a "certificate of mailing" using the enclosed form. Additionally, you must submit a proof of publication provided by the newspaper within three days of your receipt of such document. Please submit these documents to the Department's Project Manager:

Gene Melnyk  
NYS Dept of Environmental Conservation  
Region 9 Office  
270 Michigan Avenue  
Buffalo, NY 14203-2999  
716-851-7220  
ewmelnyk@gw.dec.state.ny.us

The Department will use all best efforts to notify you if the application is accepted or rejected within five days after the close of the public comment period. We look forward to working cooperatively to address the environmental conditions at the brownfield site and return this property to productive use.

Sincerely,



Kelly A. Lewandowski, P.E.  
Chief  
Site Control Section

Enclosures

ec w/enc.: G. Melnyk, Project Manager  
M. Doster, RHWRE, Region 9  
M. Cruden, Director, Remedial Bureau E  
B. Conlon, NYSDEC – OGC, Materials Management and Remediation Bureau  
K. Anders, NYSDOH  
D. Chadsey, Esq., Kavinoky Cook LLP  
T. Eich, Kavinoky Cook LLP  
Stohl Environmental, LLC  
B. Wolosen, Site Control Section



**Brownfield Cleanup Program  
Public Notice Instructions to Requestor<sup>1</sup>**

**1. Newspaper Notice**

- a) The Requestor must publish the language in the enclosed public notice, without modification, in a local newspaper of general circulation that services the area that includes the site not later than the date specified in the Division of Environmental Remediation's (DER) cover letter. The notice must be located prominently in the community bulletin section or comparable local section of the newspaper (not as a legal notice). The Requestor must publish the notice in English and in any other language spoken by a significant number of people within the site community.
- b) The Requestor must submit a proof of publication of the newspaper notice to DER by the date specified in the DER cover letter.

**2. Requestor's Instructions to Newspapers Regarding Printing the Public Notice**

- a) The enclosed public notice announces the receipt of a complete Brownfield Cleanup Program application package by the New York State Department of Environmental Conservation. Pursuant to ECL Section 27-1407(5), the public notice must be located prominently in the community bulletin section or similar local section of the newspaper (not as a legal notice). The public notice must be published by the date specified. Please provide a proof of publication as soon as possible.

**3) Site Contact List**

- a) The Requestor must mail the enclosed public notice, without modification, to the parties on the site contact list included with the application. The mailing must be performed by the date specified in the DER cover letter. No other materials can be mailed with this notice.
- b) The Requestor must complete the certificate of mailing and submit it to DER by the date specified in the DER cover letter (see enclosed certificate of mailing form).

**4) Requestor's Instructions to Parties on the Site Contact List Receiving the Public Notice**

- a) The enclosed public notice announces the receipt of a complete Brownfield Cleanup Program application package by the New York State Department of Environmental Conservation. Pursuant to ECL Section 27-1407(5), a public notice announcing the receipt of an application must be sent to parties on the site contact list. Please read the enclosed public notice and review the application package in the site document repository for further information regarding the application and how to submit comments.

**5. Document Repository**

- a) The Requestor must put the application package (application and all attachments) in the site document repository specified in the application prior to the start of the public comment period.

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<sup>1</sup> A requestor (§375-3.2(i)) is a person who has submitted an application to participate in the BCP whose eligibility has not yet been determined by the Department of Environmental Conservation.

### **Public Notice**

The New York State Department of Environmental Conservation (DEC) has received a Brownfield Cleanup Program (BCP) application from Kensington Heights Revitalization Corporation for a site known as the Kensington Heights Apartments, site ID #C915279. This site is located in the City of Buffalo, within the County of Erie, and is located at 1827 Fillmore Avenue 14204. Comments regarding this application must be submitted no later than August 30, 2013. Information regarding the site, the application, and how to submit comments can be found at <http://www.dec.ny.gov/chemical/60058.html> or send comments to Gene Melnyk, NYS Dept of Environmental Conservation, Region 9 Office, 270 Michigan Avenue, Buffalo, NY 14203-2999, 716-851-7220, [ewmelnyk@gw.dec.state.ny.us](mailto:ewmelnyk@gw.dec.state.ny.us).

To have information such as this notice sent right to your email, sign up with county email listservs available at [www.dec.ny.gov/chemical/61092.html](http://www.dec.ny.gov/chemical/61092.html).



**CERTIFICATION OF MAILING**

Kensington Heights Apartments  
C915279

I certify that I mailed on \_\_\_\_\_ a copy of the attached  
\_\_\_\_\_ by first class mail upon the person(s) on the attached mailing list, by  
depositing a true copy thereof, securely enclosed in a postpaid wrapper, in the Post Office box at  
\_\_\_\_\_ in the City of  
\_\_\_\_\_, New York, which box is under the exclusive care and custody  
of the United States Post Office.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



July 30, 2013

Gene Melnyk  
NYDEC – Region 9  
270 Michigan Avenue  
Buffalo, New York

Re: Brownfield Cleanup Application  
Kensington Heights Apartmrnts  
Site No. C915279

Dear Mr. Melnyk:

Enclosed herewith please find the certificate of mailing, contact list and copy of the Public Notice for your file.

If you have any questions, please call me at 845-6000.

Very truly yours,  
Kavinoky Cook LLP

Tara M. Eich  
Paralegal

DJC/tme  
Enclosure

CERTIFICATION OF MAILING

SITE NAME: Kensington Heights Apartments

SITE NO: C915279

I hereby certify that I mailed on July 26, 2013 a copy of the Public Notice by first class mail upon the person(s) on the attached mailing list by depositing a true copy thereof, securely enclosed in a postpaid wrapper, in the Post Office box at 726 Exchange Street, Buffalo, New York 14210 in the City of Buffalo, New York, which box is under the exclusive care and custody of the United States Post Office.

Dated: July 29, 2013



Tara M. Eich



## **Site Contact List**

### **1. Federal Representative (U.S. House of Representatives)**

U.S. Representative Brian Higgins  
**Erie County Office**  
Larkin at Exchange  
726 Exchange Street  
Suite 601  
Buffalo, NY 14210  
Phone: 716-852-3501  
Fax: 716-852-3929

### **2. New York State Senator and Assemblyperson**

New York State Senator Timothy M. Kennedy  
2239 South Park Avenue  
Buffalo, New York 14220  
P: 716-826-2683  
F: 716-826-2793

New York State Assemblywoman Crystal D. Peoples-Stokes  
District Office  
792 E. Delavan Avenue  
Buffalo, NY 14215  
716-897-9714

### **3. Chief Executive Officer, Planning Board Chairperson and City Administrator of each County, City, Town and Village in which the Site is located:**

#### **a. City of Buffalo**

Office of the Mayor  
Mayor Bryon W. Brown  
201 City Hall  
Buffalo, New York 14202  
(716)852-3300

Office of City Administrator  
Janet Penska  
203 City Hall  
Buffalo, New York 14202  
(716)851-5922

Office of Planning Board  
James A. Morrell - Chairman  
201 City Hall  
Buffalo, New York 14202  
(716)852-3300

**b. Erie County**

Erie County Executive  
95 Franklin Street  
16<sup>th</sup> Floor  
Buffalo, New York 14202  
(716)858-8500

Erie County Clerk  
92 Franklin Street  
Buffalo, New York 14202  
(716)858-8865

Commissioner of Environment and Planning  
Kathy Konst  
Edward A. Rath County Office Building  
95 Franklin Street, 10th Floor  
Buffalo, New York 14202  
Phone: (716) 858-8390

**4. County and/or municipal agency directors of health, emergency services, economic development and planning departments.**

**a. Erie County**

Erie County Commissioner of Health  
Anthony J. Billittier IV, MD, FACEP  
Rath Building  
95 Franklin Street  
Buffalo, NY 14202  
Office: (716) 858-7690

Emergency Services Commissioner  
Gregory W. Skibitsky  
Rath Building  
95 Franklin Street  
Buffalo, NY 14202  
716-858-6365

Commissioner of Environment and Planning  
Kathy Konst  
Edward A. Rath County Office Building  
95 Franklin Street, 10th Floor  
Buffalo, New York 14202  
Phone: (716) 858-8390

Industrial Development Agency:  
Erie County Industrial Development Agency  
143 Genessee Street  
Buffalo, NY 14203  
(716) 856-6525

**b. City of Buffalo**

Buffalo Urban Renewal Agency  
Housing Office:  
920 City Hall, Buffalo, NY 14202  
Phone Number: 716-851-5035  
Fax Number: 716-854-0172

Real Estate Office:  
Department Head:  
John Hannon  
901 City Hall, Buffalo, NY 14202  
Phone Number: 716-851-5275  
Fax Number: 716-851-5590  
Email: [jhannon@city-buffalo.com](mailto:jhannon@city-buffalo.com)

Economic Development, Permit and Inspection  
Department Head: James W. Comerford  
Address: 324 City Hall, Buffalo, NY, 14202  
Phone Numbers: 716-851-4972  
Email: [jcomerford@city-buffalo.com](mailto:jcomerford@city-buffalo.com)

Emergency Management Services  
Department Head: Garnell W. Whitfield, Jr.  
Address: 195 Court Street, Buffalo, NY, 14202  
Phone Numbers: 716-851-5333  
Fax Number: 716-851-5341  
Email Address: [gwhitfield@bfny.org](mailto:gwhitfield@bfny.org)



Office of Strategic Planning  
Executive Director: Brendan R. Mehaffy  
Office Address: 901 City Hall  
Buffalo NY 14202  
Phone: (716) 851-5277

**5. Residents, Schools, Daycare Centers, Hospitals and Owners and Occupants of the Site and Adjacent to the Site:**

Buffalo Municipal Housing Agency  
300 Perry Street  
Buffalo, New York 14204

Erie County Medical Center  
462 Grider St  
Buffalo, NY 14215  
(716) 898-3000

Public School 301 Burgard Vocational High School  
Dr. Pamela C. Brown, Superintendent for Buffalo City Schools  
400 Kensington Ave  
Buffalo, NY 14214  
(716) 816-4450

City of Buffalo  
65 Niagara Street  
Buffalo, New York 14202  
(716) 851-4200

**6. Persons requesting to be placed on distribution list**

None identified to date.

**7. Water Supplier**

Buffalo Water Authority  
281 Exchange Street  
Buffalo, NY 14204

**8. Location of Document Repository**

Buffalo and Erie County Public Library  
1 Lafayette Square  
Buffalo, New York 14203

**9. News Media**

Buffalo News  
One News Plaza  
PO Box 100  
Buffalo, New York 14240  
(716) 849-4444

WJL 1440 AM  
920 Union Road  
West Seneca, New York 14224  
(716) 674-9555

WGRZ-NBC (Channel 2)  
259 Delaware Avenue  
Buffalo, New York 14202  
(716) 849-2222

WIVB –CBS (Channel 4)  
2077 Elmwood Avenue  
Buffalo, New York 14207  
(716) 874-4410

WKBK – ABC (Channel 7)  
7 Broadcast Plaza  
Buffalo, New York 14202  
(716) 845-6100

WUTV-FOX (Channel 29)  
699 Hertel Avenue, Suite 100  
Buffalo, New York 14207

New York State Department of Environmental Conservation  
Division of Environmental Remediation, 12<sup>th</sup> Floor  
625 Broadway, Albany, New York 12233-7011  
Phone: (518) 402-9708 Fax: (518) 402-9020  
Website: [www.dec.ny.gov](http://www.dec.ny.gov)



AUG 14 2013

*Certified Mail, Return Receipt Requested*

Kensington Heights Revitalization Corporation  
Dawn E. Sanders-Garrett  
300 Perry Street  
Buffalo, New York 14204

Re: Kensington Heights Apartments  
Tax Map ID No.: 90.13-1-11  
Property County: Erie  
Site No.: C915279

Dear Ms. Sanders-Garrett:

Your application for the above-referenced Brownfield Cleanup Program ("BCP") project has been reviewed by the New York State Department of Environmental Conservation ("DEC"). DEC has determined, based upon the application and the representations and certifications contained therein, that the proposed site is not a Brownfield site as defined in Article 27, Title 14 of the Environmental Conservation Law ("ECL") and so, pursuant to ECL Section 27-1407.8, DEC must deny your request.

This determination is based upon the fact that the parcel is subject to the United States Environmental Protection Agency Compliance Order, Index No. CAA-02-2011-1021, for asbestos abatement. The statutory definition of a Brownfield site, as found in ECL §27-1405(2)(e), states that a Brownfield site shall not include real property "subject to any other on-going state or federal environmental enforcement action related to the contamination which is at or emanating from the site subject to the present application."

Based upon this factor, DEC has determined that the property is not a Brownfield site as defined in the Environmental Conservation Law and your application to participate in the BCP must be denied. This determination constitutes DEC's final agency action on your application.

Please note that once the property is no longer subject to the federal enforcement action you may reapply to the program, and the application will be reviewed based on the information available at that time.

If you have any questions regarding the legal aspects of the review, please contact Andrew Guglielmi, Esq. at 518-402-8556.

Sincerely,

Michael J. Ryan, P.E., Assistant Director  
Division of Environmental Remediation



ec: Stohl Environmental, LLC (bobs@risenviro.com)  
Deborah J. Chadsey, Esq. (dchadsey@kavinokycook.com)  
Michael Cruden, DEC  
Benjamin Conlon, DEC  
Andrew Guglielmi, DEC  
Kelly Lewandowski, DEC  
Martin Doster, DEC  
David Locey, DEC  
Karen Draves, DEC

December 18, 2014

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

RE: Kensington Heights Revitalization Corporation  
1827 North Fillmore Avenue, Buffalo, New York

Dear Sirs:

On May 31, 2013 we submitted the application of the Kensington Heights Revitalization Corporation for the above referenced property seeking admission to the New York State Brownfield Cleanup Program pursuant to the Environmental Conservation Law ("ECL") Article 27, Title 14. That application was denied based on a pending Environmental Protection Agency ("EPA") Consent Order relating to an asbestos abatement project at 1827 North Fillmore Avenue, Buffalo, New York (the "Site"). While the constituents of concern to be addressed in the Brownfield Program did not include any asbestos, the Department nonetheless determined while the Consent Order was being implemented our client could not be admitted into the Brownfield Program.

On October 31, 2014, our client completed all work required under the EPA Consent Order. I submit with this letter a copy of the EPA Compliance Summary Report, prepared by Stohl Environmental Consultants, dated October 31, 2014 and entitled "*EPA Compliance Summary Report for Asbestos Abatement located at Kensington Heights Complex, 1827 N. Fillmore Avenue, Buffalo, New York*" (the "Compliance Report"). The Compliance Report identifies the six compliance orders issued by the EPA requiring the Buffalo Municipal Housing Authority ("BMHA") to investigate and remove asbestos at the Site and confirms that all work required by the six orders has now been completed.

Therefore, we herewith resubmit a revised and updated application from the Kensington Heights Revitalization Corporation for admission to the New York State Brownfield Cleanup Program, pursuant to ECL Article 27, Title 4. Kensington Heights Revitalization Corporation is the contract vendee for the Site. BMHA is the current owner of the property.

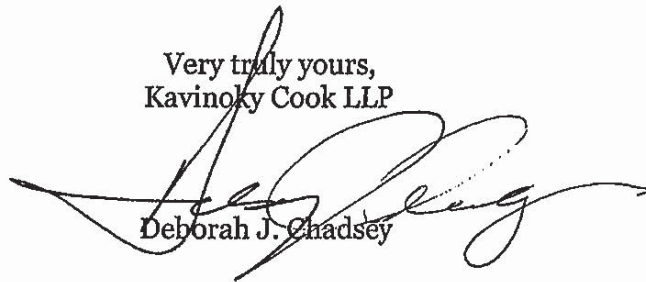


Chief Site Control Section  
NYSDEC, Division of Environmental Remediation  
December 18, 2014  
Page 2

Should you have any questions or need additional information please contact the undersigned at the phone number below or by email at [dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com).

Thank you.

Very truly yours,  
Kavinoky Cook LLP



Deborah J. Chadsey

DJC/tme  
Enclosures

Cc: Dawn E. Sanders-Garrett, Buffalo Municipal Housing Authority  
Laurence K. Rubin, Esq.



April 30, 2015

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

RE: Kensington Heights Revitalization Corporation  
Site No. C915279

Dear Mrs. Lewandowski:

On May 31, 2013 this office submitted an application from the Kensington Heights Revitalization Corporation for the above referenced property seeking admission to the New York State Brownfield Cleanup Program pursuant to the Environmental Conservation Law, Article 27, Title 14. That application was denied based on the applicant's ongoing participation in an asbestos abatement project.

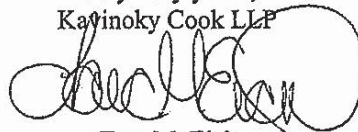
On December 18, 2014 our client resubmitted its application for admission to the New York State Brownfield Cleanup Program. After the submittal we followed up several times to check on the status of the review, assuming the delay was due to confirmation of our client's completion of all work under the EPA Consent Order for the asbestos abatement project. In addition, representatives of Mayor Byron Brown's office and Congressman Brian Higgins' office contacted the Department regarding confirmation of the completion of the asbestos abatement project.

During our telephone conversation today I was informed that the Department does not have the December 18, 2014 submittal on record. Therefore we submit herewith a complete duplicate original application package.

Given the recent renewal of the Brownfield Cleanup Program and the pending deadlines for grandfathered projects we have significant concerns about the timing of the processing of this submittal. Anything you can do to expedite review of this submittal would be greatly appreciated.

If you have any questions please call me at 716-845-6000.

Very truly yours,  
Kavinoky Cook LLP



Tara M. Eich  
Paralegal

Enclosures

RECEIVED

MAY 03 2015

BUR. OF TECH. SUPPORT

## NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Bureau of Technical Support  
625 Broadway, 11th Floor, Albany, NY 12233-7020  
P: (518) 402-9543 | F: (518) 402-9547  
[www.dec.ny.gov](http://www.dec.ny.gov)

May 4, 2015

Kensington Heights Revitalization Corporation  
Attn: Ms. Dawn E. Sanders-Garrett  
300 Perry Street  
Buffalo, NY 14204

**RE: Brownfield Cleanup Application**  
Kensington Heights Towers  
Site No. C915279

Dear Ms. Sanders-Garrett:

The New York State Department of Environmental Conservation (DEC) has received your application for participation in the Brownfield Cleanup Program (BCP) pursuant to Environmental Conservation Law (ECL) §27-1400 et seq. We are pleased to advise you that your application has been determined to be complete based upon DEC's initial non-substantive review of your application package. The record with respect to your submittal pursuant to ECL 27-1407.1 is complete. If you propose additional material to supplement this application, DEC may consider it at its sole discretion. If DEC allows you to supplement your application with additional written material that clarifies current information or provides new information, you will be required to publish another public notice of the availability of the complete application (only very minor information may be accepted without the need for publishing a new public notice). DEC will then adjust the time frame specified under ECL 27-1407.6 for notifying you that your request for participation in the BCP is either accepted or rejected.

Pursuant to ECL§27-1407(5), a 30-day public comment period is to begin after DEC's determination that an application is complete. DEC will publish a notice of the receipt of your application seeking public comment in the "Environmental Notice Bulletin." In accordance with the ECL and DEC regulations (see 6 NYCRR 375-3.4(b)), you must notify, in writing, all parties on the site contact list<sup>1</sup> of the availability of the complete application for public review and comment.

In order to facilitate the notifications, DEC has prepared the enclosed document for your use as a Public Notice along with instructions and the location of the document repository. You are responsible for placing a copy of the application (including any attachments) and copies of all other related documents such as any site assessments, investigation reports, and/or remedial work plans in the repository before the start of the public comment period. The language in the

<sup>1</sup> The site contact list includes (see subdivision 375-1.2(as)) all interested "persons, government agencies, groups or organizations, including, but not limited to, the chief executive officer and zoning board of each county, city, town and village in which such site is located, the public water supplier which serves the area in which such site is located, any site residents, adjacent property owners, any person who has requested to be placed on the site contact list, and the administrator of any school or day care facility located on the site for the purposes of posting and/or dissemination at the facility. Provided, however, that where the site or adjacent real property contains multiple dwelling units, the remedial party may propose an alternative method, consistent with the citizen participation goals set forth in section 375-1.10, for providing such notice in lieu of mailing to each individual."





enclosed Public Notice must be used without alteration in the newspaper notice that you have published in accordance with §§375-3.2(f) and 375-3.10.

The enclosed public notice must be provided to a local newspaper servicing the area including the site for publication no later than May 13, 2015. By May 12, 2015 the other notifications specified above must be distributed and documents placed in the repository. To the extent that the mailings and publications are not completed in accordance with these time frames, DEC will extend the comment period for a period sufficient to comply with the required public notice requirements running from the latest of these mailings and publications.

Within five days of the mailings you must submit to DEC a "certificate of mailing" using the enclosed form. Additionally, you must submit a proof of publication provided by the newspaper within three days of your receipt of such document. Please submit these documents to DEC's Project Manager:

David Locey  
NYS Department of Environmental Conservation  
Division of Environmental Remediation  
270 Michigan Avenue  
Buffalo, NY 14203  
david.locey@dec.ny.gov

DEC will use all best efforts to notify you if the application is accepted or rejected within five days after the close of the public comment period. We look forward to working cooperatively to address the environmental conditions at the brownfield site and return this property to productive use.

Sincerely,



Kelly A. Lewandowski, P.E.  
Chief, Site Control Section

Enclosures

ec w/enc.: D. Locey, Project Manager  
M. Cruden, Director, Remedial Bureau E  
M. Doster, RHWRE, Region 9  
A. Guglielmi, NYSDEC – OGC, Remediation Bureau  
P. Foster, Project Attorney  
M. Brady, Regional Attorney, Region 9  
K. Anders, NYSDOH  
C. Bethoney, NYSDOH Regional Chief  
B. Anderson, Site Control Section  
K. Lewandowski  
Dawn E. Sanders-Garrett, Requestor's Representative, (dsanders@bmhahousing.com)  
Deborah J. Chadsey, Esq., Requestor's Representative (dchadsey@kavinokycook.com)  
Stohl Environmental, LLC, Requestor's Consultant ([bobs@rjsenviro.com](mailto:bobs@rjsenviro.com))  
Tara Eich, Kavinoky Cook LLP ([teich@kavinokycook.com](mailto:teich@kavinokycook.com))



**Brownfield Cleanup Program  
Public Notice Instructions to Requestor<sup>2</sup>**

**1. Newspaper Notice**

- a) The Requestor must publish the language in the enclosed public notice, without modification, in a local newspaper of general circulation that services the area that includes the site not later than the date specified in the Division of Environmental Remediation's (DER) cover letter. The notice must be located prominently in the community bulletin section or comparable local section of the newspaper (not as a legal notice). The Requestor must publish the notice in English and in any other language spoken by a significant number of people within the site community.
- b) The Requestor must submit a proof of publication of the newspaper notice to DER by the date specified in the DER cover letter.

**2. Requestor's Instructions to Newspapers Regarding Printing the Public Notice**

- a) The enclosed public notice announces the receipt of a complete Brownfield Cleanup Program application package by the New York State Department of Environmental Conservation. Pursuant to ECL Section 27-1407(5), the public notice must be located prominently in the community bulletin section or similar local section of the newspaper (not as a legal notice). The public notice must be published by the date specified. Please provide a proof of publication as soon as possible.

**3) Site Contact List**

- a) The Requestor must mail the enclosed public notice, without modification, to the parties on the site contact list included with the application. The mailing must be performed by the date specified in the DER cover letter. No other materials can be mailed with this notice with the exception of the instructions provided in 4) a) below.
- b) The Requestor must complete the certificate of mailing and submit it to DER by the date specified in the DER cover letter (see enclosed certificate of mailing form).

**4) Requestor's Instructions to Parties on the Site Contact List Receiving the Public Notice**

- a) The enclosed public notice announces the receipt of a complete Brownfield Cleanup Program application package by the New York State Department of Environmental Conservation. Pursuant to ECL Section 27-1407(5), a public notice announcing the receipt of an application must be sent to parties on the site contact list. Please read the enclosed public notice and review the application package in the site document repository for further information regarding the application and how to submit comments.

**5. Document Repository**

- a) The Requestor must put the application package (application and all attachments) in the site document repository specified in the application prior to the start of the public comment period.

---

<sup>2</sup> A requestor (§375-3.2(i)) is a person who has submitted an application to participate in the BCP whose eligibility has not yet been determined by DEC.

### **Public Notice**

The New York State Department of Environmental Conservation (DEC) has received a Brownfield Cleanup Program (BCP) application from Kensington Heights Revitalization Corporation for a site known as the Kensington Heights Towers, ID #C915279. This site is located in the City of Buffalo, within the County of Erie, and is located at 1827 Fillmore Avenue. Comments regarding this application must be submitted no later than June 12, 2015. Information regarding the site, the application, and how to submit comments can be found at <http://www.dec.ny.gov/chemical/60058.html> or send comments to David Locey, Project Manager, NYSDEC-DER, 270 Michigan Ave, Buffalo, NY 14203; david.locey@dec.ny.gov; or call 716-851-7220.

To have information such as this notice sent right to your email, sign up with county email listservs available at [www.dec.ny.gov/chemical/61092.html](http://www.dec.ny.gov/chemical/61092.html).

**CERTIFICATION OF MAILING**

**Site Name:** Kensington Heights Towers  
**Site No.:** C915279

I certify that I mailed on \_\_\_\_\_ a copy of the attached public notice by first class mail upon the person(s) on the attached mailing list, by depositing a true copy thereof, securely enclosed in a postpaid wrapper, in the Post Office box at \_\_\_\_\_ in the City of \_\_\_\_\_, New York, which box is under the exclusive care and custody of the United States Post Office.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



  
kavinoky cook  
LLP

May 8, 2015

David Locey  
NYDEC – Region 9  
270 Michigan Avenue  
Buffalo, New York

REC-1

1 15 2015  
NYS DEC  
REGION 9


Re: Brownfield Cleanup Application  
Kensington Heights Apartments  
Site No. C915279

Dear Mr. Locey:

Enclosed herewith please find the certificate of mailing, contact list and copy of the Public Notice for your file.

If you have any questions, please call me at 845-6000.

Very truly yours,  
Kavinoky Cook LLP



Tara M. Eich  
Paralegal

DJC/tme  
Enclosure

DEC 002028

CERTIFICATION OF MAILING

RECEIVED

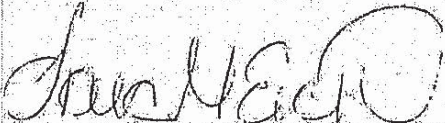
MAY 8 2015

NYS DEC  
REGION 9

SITE NAME: Kensington Heights Apartments  
SITE NO: C915279

I hereby certify that I mailed on May 8, 2015 a copy of the Public Notice by first class mail upon the person(s) on the attached mailing list by depositing a true copy thereof, securely enclosed in a postpaid wrapper, in the Post Office box at 726 Exchange Street, Buffalo, New York 14210 in the City of Buffalo, New York, which box is under the exclusive case and custody of the United States Post Office.

Dated: May 8, 2015

  
Tara M. Eich

## **Site Contact List**

### **1. Federal Representative (U.S. House of Representatives)**

U.S. Representative Brian Higgins  
**Erie County Office**  
Larkin at Exchange  
726 Exchange Street  
Suite 601  
Buffalo, NY 14210  
Phone: 716-852-3501  
Fax: 716-852-3929

### **2. New York State Senator and Assemblyperson**

New York State Senator Timothy M. Kennedy  
2239 South Park Avenue  
Buffalo, New York 14220  
P: 716-826-2683  
F: 716-826-2793

New York State Assemblywoman Crystal D. Peoples-Stokes  
District Office  
792 E. Delavan Avenue  
Buffalo, NY 14215  
716-897-9714

### **3. Chief Executive Officer, Planning Board Chairperson and City Administrator of each County, City, Town and Village in which the Site is located:**

#### **a. City of Buffalo**

Office of the Mayor  
Mayor Bryon W. Brown  
201 City Hall  
Buffalo, New York 14202  
(716)852-3300

Office of City Administrator  
Janet Penska  
203 City Hall  
Buffalo, New York 14202  
(716)851-5922



Office of Planning Board  
James A. Morrell - Chairman  
201 City Hall  
Buffalo, New York 14202  
(716)852-3300

**b. Erie County**

Erie County Executive  
95 Franklin Street  
16<sup>th</sup> Floor  
Buffalo, New York 14202  
(716)858-8500

Erie County Clerk  
92 Franklin Street  
Buffalo, New York 14202  
(716)858-8865

Commissioner of Environment and Planning  
Kathy Konst  
Edward A. Rath County Office Building  
95 Franklin Street, 10th Floor  
Buffalo, New York 14202  
Phone: (716) 858-8390

**4. County and/or municipal agency directors of health, emergency services, economic development and planning departments.**

**a. Erie County**

Erie County Commissioner of Health  
Anthony J. Billittier IV, MD, FACEP  
Rath Building  
95 Franklin Street  
Buffalo, NY 14202  
Office: (716) 858-7690

Emergency Services Commissioner  
Gregory W. Skibitsky  
Rath Building  
95 Franklin Street  
Buffalo, NY 14202  
716-858-6365

Commissioner of Environment and Planning  
Kathy Konst  
Edward A. Rath County Office Building  
95 Franklin Street, 10th Floor  
Buffalo, New York 14202  
Phone: (716) 858-8390

Industrial Development Agency:  
Erie County Industrial Development Agency  
143 Genessee Street  
Buffalo, NY 14203  
(716) 856-6525

**b. City of Buffalo**

Buffalo Urban Renewal Agency  
Housing Office:  
920 City Hall, Buffalo, NY 14202  
Phone Number: 716-851-5035  
Fax Number: 716-854-0172

Real Estate Office:  
Department Head:  
John Hannon  
901 City Hall, Buffalo, NY 14202  
Phone Number: 716-851-5275  
Fax Number: 716-851-5590  
Email: [jhannon@city-buffalo.com](mailto:jhannon@city-buffalo.com)

Economic Development, Permit and Inspection  
Department Head: James W. Comerford  
Address: 324 City Hall, Buffalo, NY, 14202  
Phone Numbers: 716-851-4972  
Email: [jcomerford@city-buffalo.com](mailto:jcomerford@city-buffalo.com)

Emergency Management Services  
Department Head: Garnell W. Whitfield, Jr.  
Address: 195 Court Street, Buffalo, NY, 14202  
Phone Numbers: 716-851-5333  
Fax Number: 716-851-5341  
Email Address: [gwhitfield@bfny.org](mailto:gwhitfield@bfny.org)

Office of Strategic Planning  
Executive Director: Brendan R. Mehaffy  
Office Address: 901 City Hall  
Buffalo NY 14202  
Phone: (716) 851-5277

**5. Residents, Schools, Daycare Centers, Hospitals and Owners and Occupants of the Site and Adjacent to the Site:**

Buffalo Municipal Housing Agency  
300 Perry Street  
Buffalo, New York 14204

Erie County Medical Center  
462 Grider St  
Buffalo, NY 14215  
(716) 898-3000

Public School 301 Burgard Vocational High School  
Dr. Pamela C. Brown, Superintendent for Buffalo City Schools  
400 Kensington Ave  
Buffalo, NY 14214  
(716) 816-4450

City of Buffalo  
65 Niagara Street  
Buffalo, New York 14202  
(716) 851-4200

**6. Persons requesting to be placed on distribution list**

None identified to date.

**7. Water Supplier**

Buffalo Water Authority  
281 Exchange Street  
Buffalo, NY 14204

**8. Location of Document Repository**

Buffalo and Erie County Public Library  
1 Lafayette Square  
Buffalo, New York 14203



**9. News Media**

Buffalo News  
One News Plaza  
PO Box 100  
Buffalo, New York 14240  
(716) 849-4444

WJJL 1440 AM  
920 Union Road  
West Seneca, New York 14224  
(716) 674-9555

WGRZ-NBC (Channel 2)  
259 Delaware Avenue  
Buffalo, New York 14202  
(716) 849-2222

WIVB –CBS (Channel 4)  
2077 Elmwood Avenue  
Buffalo, New York 14207  
(716) 874-4410

WKBK – ABC (Channel 7)  
7 Broadcast Plaza  
Buffalo, New York 14202  
(716) 845-6100

WUTV-FOX (Channel 29)  
699 Hertel Avenue, Suite 100  
Buffalo, New York 14207

### **Public Notice**

The New York State Department of Environmental Conservation (DEC) has received a Brownfield Cleanup Program (BCP) application from Kensington Heights Revitalization Corporation for a site known as the Kensington Heights Towers, ID #C915279. This site is located in the City of Buffalo, within the County of Erie, and is located at 1827 Fillmore Avenue. Comments regarding this application must be submitted no later than June 12, 2015. Information regarding the site, the application, and how to submit comments can be found at <http://www.dec.ny.gov/chemical/60058.html> or send comments to David Locey, Project Manager, NYSDEC-DER, 270 Michigan Ave, Buffalo, NY 14203; david.locey@dec.ny.gov; or call 716-851-7220.

To have information such as this notice sent right to your email, sign up with county email listservs available at [www.dec.ny.gov/chemical/61092.html](http://www.dec.ny.gov/chemical/61092.html).



RECEIVED

May 28, 2015

JUN 01 2015

NY DEC  
#14019

David Locey  
NYDEC – Region 9  
270 Michigan Avenue  
Buffalo, New York

Re: Brownfield Cleanup Application  
Kensington Heights Apartments  
Site No. C915279

Dear Mr. Locey:

Enclosed herewith please find the Affidavit of Publication from The Buffalo News for your records.

If you have any questions, please call me at 845-6000.

Very truly yours,  
Kavinoky Cook LLP

A handwritten signature in black ink, appearing to read "Tara M. Eich", is written over the typed name.

Tara M. Eich  
Paralegal

DJC/tme  
Enclosure



# THE BUFFALO NEWS

## -Affidavit-

Marcy Lombardo of the City of Buffalo, New York, being duly sworn, deposes and says that he/she is Principal Clerk of THE BUFFALO NEWS INC., Publisher of THE BUFFALO NEWS, a newspaper published in said city, that the notice of which the annexed printed slip taken from said newspaper is a copy, was inserted and published therein 1 times, the first insertion being on 05/11/2015 and the last insertion being on 05/11/2015

Marcy Lombardo

Dates Ad Ran:

Buffalo News (P1) 05/11/15

Sworn to before me this 11<sup>th</sup> day of, May 2015

Lori A. Moskal  
Notary Public, Erie County, New York

LORI A. MOSKAL  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 11/24/19

Ad ID: 1136156

DEC 002037

June 18, 2015

*Sent via Regular Mail and E-mail: [Jennifer.Dougherty@dec.ny.gov](mailto:Jennifer.Dougherty@dec.ny.gov)*

Jennifer Dougherty, Esq.  
Assistant Regional Attorney, Office of General Counsel  
New York State Department of Environmental Conservation  
Region 9  
270 Michigan Avenue  
Buffalo, NY 14203

Re: Application of Kensington Heights Revitalization Corporation  
1827 North Fillmore Avenue, Buffalo, NY

Dear Ms. Dougherty:

I submit this letter in response to our telephone conversation last night wherein you asked me to clarify two points on our client's application to the New York State Brownfield Program.

In the application form at Section IV, question 1, we checked that there were pending enforcement actions against the Applicant. To clarify there are no pending enforcement actions against Kensington Heights Revitalization Corporation.

We marked "yes" on the application form because at the time the Environmental Protection Agency (EPA) Consent Order regarding asbestos abatement had been completed but a final release from the EPA had not been obtained. To be clear, there are no pending enforcement actions against the Applicant, and as you are aware the EPA has provided a final release letter to the Buffalo Municipal Housing Authority (BMHA) with respect to the referenced Consent Order.

In Appendix G (referencing Section VII) we have included a chart identifying previous owners and operators. The chart indicates that BMHA is a previous property owner and states, "the Applicant has no relationship to the former owner/operator." This is a scrivener's error, and I suspect that those sections were simply blocked copied from the previous line. I apologize that I missed it in my

Jennifer Dougherty, Esq.  
Assistant Regional Attorney, Office of General Counsel  
June 18, 2015  
Page 2



proofing. The Applicant is a wholly owned subsidiary, formed for the purpose of undertaking this project, of the BMHA.

I believe this clarifies the two points we discussed and hopefully we will be able to be admitted to the Brownfield program before the July deadline.

If you have any further question or need anything, please feel free to call me. Our telephone system is now operating and you are welcome to call my cell at any time (716 907-8439).

Very truly yours,

KAVINOKY COOK LLP



Deborah J. Chadsey

DJC/sma



**New York State Department of Environmental Conservation**

**Division of Environmental Remediation, 12<sup>th</sup> Floor**

625 Broadway, Albany, New York 12233-7011

Phone: (518) 402-9706 Fax: (518) 402-9020

Website: [www.dec.ny.gov](http://www.dec.ny.gov)



JUN 25 2015

*Certified Mail, Return Receipt Requested*

Kensington Heights Revitalization Corporation

Dawn E. Sanders-Garrett

300 Perry Street

Buffalo, NY 14204

**Re: Kensington Heights Towers**

Tax Map ID No.: 90.13-1-11

Property County: Erie

Site No.: C915279

Dear Applicant:

Your application for the above-referenced Brownfield Cleanup Program ("BCP") project has been reviewed by the New York State Department of Environmental Conservation ("Department"). I am pleased to inform you that your request is accepted. The acceptance is based upon your participation as follows:

Kensington Heights Revitalization Corporation is a Participant as defined in ECL 27-1405(1)(a).

Based upon the facts and information in the application, information contained in the Department's records, and a timely return of the signed Brownfield Cleanup Agreements (BCAs), the Department is prepared to execute a BCA for the above-described property. Enclosed are three original proposed BCAs. Please have an authorized representative sign all three originals where indicated and return them to my attention at 625 Broadway, Albany, New York, along with proof that the party executing the BCA is authorized to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. The BCA shall not be effective until it is fully executed by the parties. A reassessment of eligibility may result in a denial of the application if there are any changes to material facts and information before the BCA is fully executed. Please note, if the BCA is not signed and returned to the Department within 60 days, the Department will consider the Application withdrawn and the offer to enter the BCP will be deemed rescinded.

The Department looks forward to working with you on this project. The Department's project manager will assist you in completing your project. You can arrange a meeting to discuss the program's requirements and work plan. The work plan will determine the scope of work to be conducted and completed. You may contact the Department's project team as set forth in Paragraph IV of the attached draft BCA to discuss the next steps.

Sincerely,

  
Robert W. Schick, P.E., Director  
Division of Environmental Remediation

DEC 002040

Enclosures:

Department's Copies:

cc: Michael J. Ryan, P.E.  
Michael Cruden  
Chad Staniszewski  
Lou Oliva  
Kelly Lewandowski  
Andrew Guglielmi  
David Locey  
Jennifer Dougherty

Applicant's Copies:

cc: Dawn E. Sanders-Garrett ([dsanders@bmhahousing.com](mailto:dsanders@bmhahousing.com))  
Deborah J. Chadsey ([dchadsey@kavinokycook.com](mailto:dchadsey@kavinokycook.com))  
Stohl Environmental, LLC ([bobs@rjsenviro.com](mailto:bobs@rjsenviro.com))



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
BROWNFIELD CLEANUP PROGRAM  
ECL §27-1401 *et seq.*

In the Matter of a Remedial Program for

**BROWNFIELD SITE  
CLEANUP AGREEMENT**  
Index No.: C915279-06-15

**Kensington Heights Towers**

DEC Site No.: C915279

Located at: 1827 Fillmore Avenue  
Erie County  
Buffalo, NY 14204

Hereinafter referred to as "Site"

by:

Kensington Heights Revitalization Corporation  
300 Perry Street, Buffalo, NY 14204

Hereinafter referred to as "Applicant"

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

**WHEREAS**, the Applicant submitted an application received by the Department on May 4, 2015; and

**WHEREAS**, the Department has determined that the Site and Applicant are eligible to participate in the BCP;

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

**I. Applicant Status**

The Applicant, Kensington Heights Revitalization Corporation, is participating in the BCP as a Participant as defined in ECL 27-1405(1)(a).

**II. Real Property**

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 17.140 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 90.13-1-11  
Street Number: 1827 Fillmore Avenue, Buffalo  
Owner: Buffalo Municipal Housing Authority



### III. Payment of State Costs

Invoices shall be sent to Applicant at the following address:

Kensington Heights Revitalization Corporation  
Attn: Dawn E. Sanders-Garrett  
300 Perry Street  
Buffalo, NY 14204  
[dsanders@bmhahousing.com](mailto:dsanders@bmhahousing.com)

In addition to the requirement to pay future state costs as set forth in Appendix "A", within forty-five (45) Days after the effective date of this Agreement, Applicant shall pay to the Department the sum set forth on Exhibit "B", which shall represent reimbursement for past State Costs incurred prior to the effective date of this Agreement. Applicant acknowledges that all past State Costs are not itemized on the cost summary and that additional charges may be billed at a later date for State Costs incurred prior to the effective date of this Agreement.

### IV. Communications

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

I. Communication from Applicant shall be sent to:

David Locey  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
270 Michigan Ave  
Buffalo, NY 14203-2915  
[david.locey@dec.ny.gov](mailto:david.locey@dec.ny.gov)

Note: one hard copy (unbound) of work plans and reports is required, as well as one electronic copy.

Krista Anders (electronic copy only)  
New York State Department of Health  
Bureau of Environmental Exposure Investigation  
Empire State Plaza  
Corning Tower Room 1787  
Albany, NY 12237  
[krista.anders@health.ny.gov](mailto:krista.anders@health.ny.gov)

Jennifer Dougherty, Esq. (correspondence only)  
New York State Department of Environmental Conservation  
Office of General Counsel  
270 Michigan Ave  
Buffalo, NY 14203-2915  
[jennifer.dougherty@dec.ny.gov](mailto:jennifer.dougherty@dec.ny.gov)

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

Kensington Heights Revitalization Corporation  
Attn: Dawn E. Sanders-Garrett  
300 Perry Street  
Buffalo, NY 14204  
[dsanders@bmhahousing.com](mailto:dsanders@bmhahousing.com)

B. The Department and Applicant reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Applicant provide more than one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph III.

V. Miscellaneous

A. Applicant acknowledges that it has read, understands, and agrees to abide by all the terms set forth in Appendix A ~ "Standard Clauses for All New York State Brownfield Site Cleanup Agreements" which is attached to and hereby made a part of this Agreement as if set forth fully herein.

B. In the event of a conflict between the terms of this BCA (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this BCA shall control.

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

DATED:

JOSEPH J. MARTENS  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

Robert W. Schick, P.E., Director  
Division of Environmental Remediation

CONSENT BY APPLICANT

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

Kensington Heights Revitalization Corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

STATE OF NEW YORK )

) ss:

COUNTY OF )

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





## EXHIBIT B

### PAST COSTS

#### NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Bureau of Program Management  
625 Broadway, 12th Floor, Albany, NY 12233-7012  
P: (518) 402-9764 F: (518) 402-9722  
www.dec.ny.gov

Transmitted via E-Mail  
M E M O R A N D U M

**TO:** Jennifer Dougherty, Office of General Counsel, Region 9  
**FROM:** Laura Zeppetelli, Director, Bureau of Program Management, DER  
**SUBJECT:** Past Costs Associated with Pending Brownfield Cleanup Agreement - Kensington Heights, Site #: C915279  
**DATE:** JUN 22 2015

The purpose of this cost summary is to provide the past costs figure to the Office of General Counsel for insertion into the pending Brownfield Cleanup Program (BCP) Agreement. That is, whenever an applicant is a participant, they are required to pay past costs within 45 days of the effective date of the agreement.

This cost recovery summary provides available costs incurred by the New York State Department of Environmental Conservation (DEC) to date. There may be additional future costs associated with this site that are not included in this summary.

The total unreimbursed costs incurred by DEC through March 25, 2015, in association with the Kensington Heights Towers are \$2,101.87. This amount includes emergency response costs incurred at the site by a hazardous material spill, if any. If the site involves a petroleum spill, any costs incurred by the Oil Spill Fund would be recovered separately by the Office of the Attorney General and are not included in this summary. Costs incurred by the New York State Department of Health are not included since they are not readily available. Please note that there are no open contracts for this site at this time for which we have outstanding obligations [language will need to be changed to reflect amount if outstanding obligations exist].

Please contact Deb Evans at (518) 402-9717, if you have any questions on this summary.

Attachments:



ec: A. Guglielmi  
R. Schick/A. Daniels  
D. Locey -- Region 9  
C. Staniszewski -- Region 9



**EXHIBIT I**

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
DIVISION OF ENVIRONMENTAL REMEDIATION  
BUREAU OF PROGRAM MANAGEMENT**

**COST SUMMARY**

**SITE NAME:** Kensington Heights Apartments  
**SITE NO.:** C915279  
**TIME FRAME:** DEC LTD - 3/25/2015

<b>COST CATEGORY</b>	<b>AMOUNTS</b>	<b>EXHIBIT NO.</b>
<b>DIRECT PERSONAL SERVICES</b>	<b>\$1,043.34</b>	
<b>FRINGE</b>	<b>\$578.85</b>	
<b>INDIRECT</b>	<b>\$479.68</b>	
<b>PERSONAL SERVICES SUBTOTAL</b>	<b>\$2,101.87</b>	<b>II</b>
<b>CONTRACTUAL</b>	<b>\$0.00</b>	
<b>TRAVEL</b>	<b>\$0.00</b>	
<b>OTHER NPS</b>	<b>\$0.00</b>	
<b>NON-PERSONAL SERVICES SUBTOTAL</b>	<b>\$0.00</b>	
<b>DEC TOTAL</b>	<b>\$2,101.87</b>	
<b>DOH TOTAL</b>	<b>\$0.00</b>	
<b>MINUS PREVIOUSLY REIMBURSED AMOUNT (IF APPLICABLE)</b>	<b>N/A</b>	
<b>DEC &amp; DOH TOTAL</b>	<b>\$2,101.87</b>	
<b>COST CAP (IF APPLICABLE)</b>	<b>N/A</b>	
<b>GRAND TOTAL</b>	<b>\$2,101.87</b>	

**LATSnet** leave & accrual tracking systemLATS BY CM  
HRnet

## Cost Query - Ad Hoc

Criteria: Timecard Begin Date 3/24/2015 And Timecard End Date 3/25/2015 And Task Code 69374

Leave Charges: Included

Cost Indicator: Direct

Rate Type: Non-Federal

Download Excel Report

Print

Jump To Employee: <input type="text" value="All"/>														
Pay Period	Pay Period Dates	Cost Code	Cost Center	Volume	Budget Year	Employee	Title Description	Work Location Code	Work Location Description	Billable Hourly Rate	State Prmgs	State Indirect	Hours	Cost
Total 69374 - CR15279 KENNESHTON HEIGHTS APARTMENTS														
2015/3	02/16/2015 - 02/23/2015	69374	15	2015	LACY, David	ENVIRON. ENGINEER 1	634100	03 - Buffalo Regional HQ		46.32	\$1.79	\$1.30	7.00	\$12.64
2015/3	02/16/2015 - 02/23/2015	69374	15	2015	LACY, David	ENVIRON. ENGINEER 1	634400	03 - Buffalo Regional HQ		46.32	\$14.52	\$24.34	26.00	\$377.48
2015/3	02/16/2015 - 02/23/2015	69374	15	2015	LACY, David	ENVIRON. ENGINEER 1	634400	03 - Buffalo Regional HQ		46.32	\$1.79	\$1.30	6.00	\$11.30
Report Totals											\$76.63	\$26.94	39.00	\$411.42
Grand Total														\$423.84

Server: co-nt-lats4  
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 LATS Version: 6.5.5.12



## APPENDIX A

### STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

The parties to the Brownfield Site Cleanup Agreement (hereinafter "the BCA" or "the Agreement" or "this Agreement") agree to be bound by the following clauses which are hereby made a part of the BCA. The word "Applicant" herein refers to any party to the Agreement, other than the New York State Department of Environmental Conservation (hereinafter "Department").

#### I. Citizen Participation Plan

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

#### II. Development, Performance, and Reporting of Work Plans

##### A. Work Plan Requirements

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

1. "Remedial Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination within the boundaries of the Site and, if the Applicant is a "Participant", the extent of contamination emanating from such Site. If the Applicant is a "Volunteer" it shall perform a qualitative exposure assessment of the contamination emanating from the site in accordance with ECL § 27-1415(2)(b) and Department guidance;

2. "Remedial Work Plan" if the Work Plan provides for the development and implementation of a Remedial Program for contamination within the boundaries of the Site and, if the Applicant is a "Participant", the contamination that has emanated from such Site;

3. "IRM Work Plan" if the Work Plan provides for an interim remedial measure; or

4. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering

controls as well as any necessary monitoring and/or operation and maintenance of the remedy.

5. "Supplemental" if additional work plans other than those set forth in II.A.1-4 are required to be prepared and implemented.

##### B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted no later than thirty (30) days after the effective date of this Agreement. Thereafter, the Applicant shall submit such other and additional work plans as determined in a schedule to be approved by the Department.

2. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities to be conducted in accordance with current guidance, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. The Department shall use best efforts in accordance with 6 NYCRR § 375-3.6(b) to approve, modify, or reject a proposed Work Plan within forty-five (45) days from its receipt or within fifteen (15) days from the close of the comment period, if applicable, whichever is later.

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

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

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

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

##### C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Report for an Investigation Work Plan prepared in accordance with ECL § 27-1411(1) and 6



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

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

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

#### D. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicant in writing of its approval or disapproval of each submittal other than a Work Plan in accordance with 6 NYCRR § 375-1.6. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

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

#### E. Department's Determination of Need for Remediation

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

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

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

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL § 27-1415(3) and 6 NYCRR § 375-1.8(f). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL § 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to this Agreement. If the Department determines following the close of the public comment period that modifications to the proposed Remedial Work Plan are needed, Applicant agrees to negotiate appropriate modifications to such Work Plan. If Applicant elects not to develop a Work Plan under this Subparagraph then this Agreement shall terminate in accordance with Paragraph XII. If the Applicant elects to develop a Work Plan, then it will be reviewed in accordance with Paragraph II.D. above.

#### F. Institutional/Engineering Control Certification

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

#### III. Enforcement

Except as provided in Paragraph V, this Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty except as provided in Paragraph V, or be subject to any proceeding or action if it cannot comply with any



requirement of this Agreement as a result of a Force Majeure Event as described at 6 NYCRR § 375-1.5(b)(4) provided Applicant complies with the requirements set forth therein.

#### IV. Entry upon Site

A. Applicant hereby agrees to provide access to the Site and to all relevant information regarding activities at the Site in accordance with the provisions of ECL § 27-1431. Applicant agrees to provide the Department upon request with proof of access if it is not the owner of the site.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Agreement. The Department will generally conduct such inspections during business hours, but retains the right to inspect at any time.

C. Failure to provide access as provided for under this Paragraph may result in termination of this Agreement pursuant to Paragraph XII.

#### V. Payment of State Costs

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

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

C. Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

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

D. The Department shall provide written notification to the Applicant of any change in the foregoing addresses.

E. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR §§ 375-1.5(b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph V.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance with ECL § 27-1423 and ECL § 71-4003.

#### VI. Liability Limitation

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

#### VII. Reservation of Rights

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

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

#### VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the



course of any activities conducted pursuant to this Agreement. In the event that the Applicant is a Participant, this provision shall also include the Trustee of the State's Natural Resources. The Department shall provide Applicant with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

#### IX. Change of Use

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

#### X. Environmental Easement

A. Within thirty (30) days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within sixty (60) days after the Department's determination pursuant to Subparagraph II.E.2 that additional remediation is not needed based upon use restrictions, Applicant shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36 and 6 NYCRR § 375-1.8(h)(2). Applicant shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) days after the Department's approval of such instrument. Applicant shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within thirty (30) days of such recording (or such longer period of time as may be required to obtain a certified copy provided Applicant advises the Department of the status of its efforts to obtain same within such thirty (30) day period), which shall be deemed to be incorporated into this Agreement.

B. Applicant or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can certify that the Site is protective of public health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or Qualified Environmental Professional as defined at 6 NYCRR § 375-1.2(ak) approved by the Department. The Department will not unreasonably withhold its consent.

#### XI. Progress Reports

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

#### XII. Termination of Agreement

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

#### XIII. Dispute Resolution

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

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to this Agreement.

C. Notwithstanding any other rights otherwise authorized in law or equity, any disputes pursuant to this Agreement shall be limited to Departmental decisions on remedial activities. In no event shall such dispute authorize a challenge to the applicable statute or regulation.

#### XIV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, VII.B, and VIII, shall be null and void ab initio fifteen (15) days after the Department's



notification of such inaccuracy or incompleteness or fifteen (15) days after issuance of a final decision resolving a dispute pursuant to Paragraph XIII, whichever is later, unless Applicant submits information within that fifteen (15) day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void ab initio, and the Department shall reserve all rights that it may have under law.

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

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

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

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

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

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this

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

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

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

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

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

2. If Applicant is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Agreement are joint and several and the insolvency or failure of any general partner to implement any obligations under this Agreement shall not affect the obligations of the remaining partner(s) under this Agreement.

3. Notwithstanding the foregoing Subparagraphs XIV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those



Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

A. Any change to parties pursuant to this Agreement, including successors and assigns through acquisition of title, is subject to approval by the Department, after submittal of an application acceptable to the Department.

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

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

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

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

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

M. In accordance with 6 NYCRR § 375-1.6(a)(4), the Department shall be notified at least 7 days in advance of, and be allowed to attend, any field activities to be conducted under a Department approved work plan, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting, provided, however that the Department may be excluded from portions of meetings where privileged matters are discussed.

N. In accordance with 6 NYCRR § 375-1.11(a), all work plans, reports, including all attachments and appendices, and certifications, submitted by a remedial party shall be submitted in print, as well as in an electronic format acceptable to the Department.

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



**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Office of the General Counsel

625 Broadway, 14th Floor, Albany, New York 12233-1500

P: (518) 402-9185 / F: (518) 402-9018

www.dec.ny.gov

**OCT -1 2015**

**Certified Mail**

**Return Receipt Requested**

**DAWN E. SANDERS-GARRETT  
KENSINGTON HEIGHTS REVITALIZATION CORPORATION  
300 PERRY STREET  
BUFFALO, NY 14204**

**Re: TERMINATION NOTICE**

Site Name: KENSINGTON HEIGHTS TOWER  
Site No: C915279  
Remedial Party: KENSINGTON HEIGHTS REVITALIZATION CORPORATION

Legal Agreement: C915279-06-15  
Effective Date: July 13, 2015  
Amount Due: \$ 2,101.87  
Date Due: 30 Days

**Dear DAWN E. SANDERS-GARRETT:**

This matter has been forwarded to me to enforce the Department's rights, as the Department has not received payment within the time frame specified in the above-referenced Legal Agreement. Please note that this Legal Agreement may be a Consent Order (CO), a Voluntary Cleanup Agreement (VCA), or a Brownfield Cleanup Agreement (BCA).

Pursuant to the provisions of the Legal Agreement, including any provisions provided in any subsequent letters of agreement that were executed pertaining to the Legal Agreement (e.g., payment plan letter agreement), the remedial party is required to reimburse the Department in connection with remedial activities at the above-referenced site. If a payment plan letter agreement had been executed, the payment plan is hereby terminated, and the full amount, plus applicable interest, is due.

Please be advised that if the outstanding amount is not received within thirty (30) days of receipt of this letter, the Department will refer the matter to the Attorney General's Office for recovery of all overdue costs.



**Department of  
Environmental  
Conservation**

DEC 002057



If the Legal Agreement is a CO or VCA, failure to pay will result in the violation of the Legal Agreement and the Department may rescind any release and/or covenant not to sue which may have been issued for this Site.

If the Legal Agreement is a BCA which has not been previously terminated, and the remedial party fails to pay within thirty (30) days of receipt of this letter, the BCA may be deemed terminated on the 31st day after the receipt of this letter or, if applicable, the Certificate of Completion may be deemed revoked on the 31st day, for failure to substantially comply with the BCA's terms and conditions, and any release and/or covenant not to sue which may have been issued for this Site may also be deemed rescinded.

If the Legal Agreement is a BCA and has been terminated for failure to comply with the terms of the BCA, please be advised that although the Agreement has been terminated, the Applicant's obligation to pay costs through the termination date survives and is enforceable.

The Department reserves all rights pursuant to the Legal Agreement and/or applicable state and federal law regarding the recovery of principal, interest, applicable penalties, and collection fees for all past due amounts.

Accordingly, a check in the amount of \$2,101.87 must be remitted within thirty (30) days from receipt of this letter. I appreciate your prompt attention to this matter. If you have any questions or concerns regarding this demand, please contact Maria Mastroianni at (518) 402-9510.

Sincerely,



Andrew Guglielmi  
Associate Attorney and Section Chief  
Remediation Bureau  
Office of General Counsel

Enclosure

cc: DEBORAH J. CHADSEY, ESQ.  
KAVINOKY COOK LLP  
726 EXCHANGE STREET  
SUITE 800  
BUFFALO, NY 14210

ec: w/enclosures  
J. Dougherty  
C. Staniszewski  
D. Locey  
A. Guglielmi  
M. Mastroianni  
E. Melnyk





NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DUPLICATE

Division of Environmental Remediation, Bureau of Program Management  
625 Broadway, 12th Floor, Albany, NY 12233-7012  
P: (518) 402-9764 | F: (518) 402-9722  
www.dec.ny.gov

Transmitted via E-Mail  
**MEMORANDUM**

**TO:** Jennifer Dougherty, Office of General Counsel, Region 9  
**FROM:** Laura Zeppetelli, Director, Bureau of Program Management, DER  
**SUBJECT:** Past Costs Associated with Pending Brownfield Cleanup Agreement - Kensington Heights, Site #: C915279  
**DATE:** JUN 22 2015

The purpose of this cost summary is to provide the past costs figure to the Office of General Counsel for insertion into the pending Brownfield Cleanup Program (BCP) Agreement. That is, whenever an applicant is a participant, they are required to pay past costs within 45 days of the effective date of the agreement.

This cost recovery summary provides available costs incurred by the New York State Department of Environmental Conservation (DEC) to date. There may be additional future costs associated with this site that are not included in this summary.

The total unreimbursed costs incurred by DEC through March 25, 2015, in association with the Kensington Heights Towers are \$2,101.87. This amount includes emergency response costs incurred at the site by a hazardous material spill, if any. If the site involves a petroleum spill, any costs incurred by the Oil Spill Fund would be recovered separately by the Office of the Attorney General and are not included in this summary. Costs incurred by the New York State Department of Health are not included since they are not readily available. Please note that there are no open contracts for this site at this time for which we have outstanding obligations [language will need to be changed to reflect amount if outstanding obligations exist].

Please contact Deb Evans at (518) 402-9717, if you have any questions on this summary.

Attachments:





ec:

A. Guglielmi

R. Schick/A. Daniels

D. Locey - Region 9

C. Staniszewski - Region 9

**EXHIBIT I****NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
DIVISION OF ENVIRONMENTAL REMEDIATION  
BUREAU OF PROGRAM MANAGEMENT****COST SUMMARY**

**SITE NAME:** Kensington Heights Apartments  
**SITE NO.:** C915279  
**TIME FRAME:** DEC LTD - 3/25/2015

<b>COST CATEGORY</b>	<b>AMOUNTS</b>	<b>EXHIBIT NO.</b>
<b>DIRECT PERSONAL SERVICES</b>	<b>\$1,043.34</b>	
<b>FRINGE</b>	<b>\$578.85</b>	
<b>INDIRECT</b>	<b>\$479.68</b>	
<b>PERSONAL SERVICES SUBTOTAL</b>	<b>\$2,101.87</b>	<b>II</b>
<b>CONTRACTUAL</b>	<b>\$0.00</b>	
<b>TRAVEL</b>	<b>\$0.00</b>	
<b>OTHER NPS</b>	<b>\$0.00</b>	
<b>NON-PERSONAL SERVICES SUBTOTAL</b>	<b>\$0.00</b>	
<b>DEC TOTAL</b>	<b>\$2,101.87</b>	
<b>DOH TOTAL</b>	<b>\$0.00</b>	
<b>MINUS PREVIOUSLY REIMBURSED AMOUNT (IF APPLICABLE)</b>	<b>N/A</b>	
<b>DEC &amp; DOH TOTAL</b>	<b>\$2,101.87</b>	
<b>COST CAP (IF APPLICABLE)</b>	<b>N/A</b>	
<b>GRAND TOTAL</b>	<b>\$2,101.87</b>	





# LATSnet

leave & accrual tracking system

PART OF CMA  
HRnet

## Cost Query - Ad Hoc

Criteria: Timecard Begin Date 3/24/2005 And Timecard End Date 3/25/2015 And Task Code 68374

Leave Charges: Included

Cost Indicator: Direct

Rate Type: Non-Federal

[Download Excel Report](#)

[Print](#)

Jump To Employee:

Pay Period	Pay Period Dates	Check Date	Cost Center	Variable	Budget Year	Employee	Title Description	Work Location Code	Work Location Description	Base Hourly Rate	State Fringe	State Indirect	Hours	Cost
Task: 68374 - C918278 KENSINGTON HEIGHTS APARTMENTS														
2013/0	07/18/2013 - 07/31/2013	08/14/2013	430394	LB	2012	Locey, David	ENVIRONL ENGINEER I	634406	R9 - Buffalo - Regional HQ	46.22	31.25	42.50	2.00	97.44
2013/10	08/01/2013 - 08/14/2013	08/28/2013	430394	LB	2012	Locey, David	ENVIRONL ENGINEER I	634406	R9 - Buffalo - Regional HQ	46.37	31.52	42.63	19.00	927.40
2013/12	08/29/2013 - 09/11/2013	09/25/2013	430394	LB	2012	Locey, David	ENVIRONL ENGINEER I	634406	R9 - Buffalo - Regional HQ	46.99	13.04	10.80	0.50	23.58
Report Totals:										578.92		479.68	22.50	1,043.34

Close \$ 2,101.87

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 LATS Version: 8.5.5.12





# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Region 9  
270 Michigan Avenue, Buffalo, NY 14203-2915  
P: (716) 851-7220 | F: (716) 851-7226  
www.dec.ny.gov

September 22, 2016

**Certified Mail**  
**Return Receipt Requested**

Dawn E. Sanders-Garrett  
Kensington Heights Revitalization Corporation  
300 Perry Street  
Buffalo, New York 14204

Deborah J. Chadsey, Esq.  
Kavinoky Cook, LLP  
726 Exchange Street, Suite 800  
Buffalo, New York 14203-2887

Dear Mmes. Sanders-Garret and Chadsey:

Brownfield Cleanup Program  
Kensington Heights Towers  
Site No.: C915279  
Buffalo, Erie County

As you know, Kensington Heights Revitalization Corporation (Applicant) and the New York State Department of Environmental Conservation (the Department) executed a Brownfield Cleanup Agreement (Index # C915279-06-15), (the Agreement), relative to the Kensington Heights Towers Site (the Site) on July 13, 2015.

A remedial investigation work plan was to have been submitted within thirty (30) days of the effective date of the Agreement, i.e. on or before August 12, 2015. That work plan has yet to be submitted.

The Department considers the progress of the Remedial Program for the site, or the lack thereof, to be unsatisfactory, and the delay to be in violation of the requirements of the Agreement. This letter serves to put you on notice of the Department's objection to the pace and progress of the Remedial Program at the Site and to provide an opportunity for you to remain in the Brownfield Cleanup Program, provided you submit a revised project schedule, within 30 days of the date of receipt of this letter, which is acceptable to the Department.

If the Applicant does not respond within the time frame above the Department will terminate the Agreement, in accordance with Paragraph XII of the Agreement. However, be advised that certain obligations of the Volunteer survive the termination of the Agreement. 6NYCRR 375-3.5(d) expressly states that the termination of the Agreement will not affect the



Department of  
Environmental  
Conservation

DEC 002067

September 22, 2016  
Page 2

provisions contained in Paragraphs V, VII.B and VIII of the Agreement. Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held pursuant to any applicable state and/or federal law or the Agreement or a release for any party from any obligations held under those same laws and the Agreement.

If you have any questions, please call me at (716) 851-7220.

Sincerely,

A handwritten signature in black ink, appearing to read "Chad Staniszewski", with a stylized flourish at the end.

Chad Staniszewski, P.E.  
Regional Remediation Engineer  
Division of Environmental Remediation

CS/tm

ec: Jennifer Dougherty, Esq. – NYSDEC Region 9  
Robert Schick – NYSDEC Albany  
Michael Ryan – NYSDEC Albany  
Michael Cruden – NYSDEC Albany  
Charlotte Bethoney – NYSDOH  
David Locey – NYSDEC Region 9



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Please contact Deb Evans at (518) 402-9717, if you have any questions on this summary.

Attachments





ec: A. Guglielmi  
R. Schick/A. Daniels  
D. Locey - Region 9  
C. Staniszewski - Region 9

EXHIBIT I

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
DIVISION OF ENVIRONMENTAL REMEDIATION  
BUREAU OF PROGRAM MANAGEMENT

COST SUMMARY

SITE NAME: Kensington Heights Apartments  
SITE NO.: C915279  
TIME FRAME: DEC LTD - 3/25/2015

COST CATEGORY	AMOUNTS	EXHIBIT NO.
DIRECT PERSONAL SERVICES	\$1,043.34	
FRINGE	\$578.85	
INDIRECT	\$479.68	
PERSONAL SERVICES SUBTOTAL	\$2,101.87	II
CONTRACTUAL	\$0.00	
TRAVEL	\$0.00	
OTHER NPS	\$0.00	
NON-PERSONAL SERVICES SUBTOTAL	\$0.00	
DEC TOTAL	\$2,101.87	
DOH TOTAL	\$0.00	
MINUS PREVIOUSLY REIMBURSED AMOUNT (IF APPLICABLE)	N/A	
DEC & DOH TOTAL	\$2,101.87	
COST CAP (IF APPLICABLE)	N/A	
GRAND TOTAL	\$2,101.87	





**LATSnet**

leave &amp; accrual tracking system

PART OF CMA  
**HRnet****Cost Query - Ad Hoc**

Criteria: Timecard Begin Date 3/24/2005 And Timecard End Date 3/25/2015 And Task Code 68374

Leave Charges: Included

Cost Indicator: Direct

Rate Type: Non-Federal

[Download Excel Report](#)[Print](#)

Jump To Employee:

Pay Period	Pay Period Dates	Check Date	Cost Center	Variable	Budget Year	Employee	Title Description	Work Location Code	Work Location Description	Billable Hourly Rate	State Fringe	State Indirect	Hours	Cost
Task: 68374 - C915279 KENSINGTON HEIGHTS APARTMENTS														
2013/9	07/18/2013 - 07/31/2013	08/14/2013	430394	L6	2012	Locay, David	ENVIRNL ENGINEER 1	634406	R9 - Buffalo Regional HQ	46.22	51.29	42.50	2.00	92.44
2013/10	08/01/2013 - 08/14/2013	08/28/2013	430394	L6	2012	Locay, David	ENVIRNL ENGINEER 1	634406	R9 - Buffalo Regional HQ	46.37	514.52	426.38	20.00	927.40
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Report Total:											576.85	1479.68	22.50	1,043.34

\$ 2,101.87

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NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
REGION 9  
BUFFALO, NY

**BROWNFIELD CLEANUP PROGRAM**

**CITIZEN PARTICIPATION PLAN FOR  
KENSINGTON HEIGHTS TOWERS BROWNFIELD PROGRAM**

1827 Fillmore Avenue,  
City of Buffalo  
County of Erie, New York

July 2015

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## **CITIZEN PARTICIPATION PLAN FOR KENSINGTON HEIGHTS TOWERS BROWNFIELD PROGRAM**

Applicant: Buffalo Municipal Housing Authority  
Site Name: Kensington Heights Towers  
Site Address: 1827 Fillmore Avenue, Buffalo, NY 14204  
Site County: County of Erie  
Site Number: C915279

### **1. WHAT IS NEW YORK'S BROWNFIELD CLEANUP PROGRAM?**

New York's Brownfield Cleanup Program (BCP) works with private developers to encourage the voluntary cleanup of contaminated properties known as "brownfields" so that they can be reused and developed. These uses include recreation, housing, and business.

A brownfield is any real property that is difficult to reuse or redevelop because of the presence or potential presence of contamination. A brownfield typically is a former industrial or commercial property where operations may have resulted in environmental contamination. A brownfield can pose environmental, legal, and financial burdens on a community. If a brownfield is not addressed, it can reduce property values in the area and affect economic development of nearby properties.

The BCP is administered by the New York State Department of Environmental Conservation (NYSDEC) which oversees Applicants that conduct brownfield site investigation and cleanup activities. An Applicant is a person who has requested to participate in the BCP and has been accepted by NYSDEC. The BCP contains investigation and cleanup requirements, ensuring that cleanups protect public health and the environment. When NYSDEC certifies that these requirements have been met, the property can be reused or redeveloped for the intended use.

For more information about the BCP, go online at: <http://www.dec.ny.gov/chemical/8450.html>.

### **2. CITIZEN PARTICIPATION ACTIVITIES:**

Why NYSDEC Involves the Public and Why It Is Important.

NYSDEC involves the public to improve the process of investigating and cleaning up contaminated sites, and to enable citizens to participate more fully in decisions that affect their health, environment, and

social well being. NYSDEC provides opportunities for citizen involvement and encourages early two-way communication with citizens before decision makers form or adopt final positions.

- Involving citizens affected and interest in site investigation and cleanup programs is important for many reasons. These include:
- Promoting the development of timely, effective site investigation and cleanup programs that protect public health and the environment;
- Improving public access to, and understanding of, issues and information related to a particular site and that site's investigation and cleanup process;
- Providing citizens with early and continuing opportunities to participate in NYSDEC's site investigation and cleanup process;
- Ensuring that NYSDEC makes site investigation and cleanup decisions that benefit from input that reflects the interests and perspectives found within the affected community;
- Encouraging dialogue to promote the exchange of information among the affected/interested public, State agencies, and other interested parties that strengthens trust among the parties, increases understanding of site and community issues and concerns, and improves decision making.

This Citizen Participation (CP) Plan provides information about how NYSDEC will inform and involve the public during the investigation and cleanup of the site identified above. The public information and involvement program will be carried out with assistance, as appropriate, from the Applicant.

#### *Project Contacts*

Appendix A identifies NYSDEC project contact(s) to whom the public should address questions or request information about the site's investigation and cleanup program. The public's suggestions about this CP Plan and the CP program for the site are always welcome. Interested people are encouraged to share their ideas and suggestions with the project contacts at any time.



### *Locations of Reports and Information*

The locations of the reports and information related to the site's investigation and cleanup program also are identified in Appendix A. These locations provide convenient access to important project documents for public review and comment. Some documents may be placed on the NYSDEC web site. If this occurs, NYSDEC will inform the public in fact sheets distributed about the site and by other means, as appropriate.

### *Site Contact List*

Appendix B contains the site contact list. This list has been developed to keep the community informed about, and involved in, the site's investigation and cleanup process. The site contact list will be used periodically to distribute fact sheets that provide updates about the status of the project. These will include notifications of upcoming activities at the site (such as fieldwork), as well as availability of project documents and announcements about public comment periods.

The site contact list includes, at a minimum:

- chief executive officer and planning board chairperson of each county, city, town and village in which the site is located;
- residents, owners, and occupants of the site and properties adjacent to the site;
- the public water supplier which services the area in which the site is located;
- any person who has requested to be placed on the site contact list;
- the administrator of any school or day care facility located on or near the site for purposes of posting and/or dissemination of information at the facility;
- location(s) of reports and information.

The site contact list will be reviewed periodically and updated as appropriate. Individuals and organizations will be added to the site contact list upon request. Such requests should be submitted to the NYSDEC project contact(s) identified in Appendix A. Other additions to the site contact list may be made at the discretion of the NYSDEC project manager, in consultation with other NYSDEC staff as appropriate.



### *CP Activities*

The table at the end of this section identifies the CP activities, at a minimum, that have been and will be conducted during the site's investigation and cleanup program. The flowchart in Appendix D shows how these CP activities integrate with the site investigation and cleanup process. The public is informed about these CP activities through fact sheets and notices distributed at significant points during the program. Elements of the investigation and cleanup process that match up with the CP activities are explained briefly in Section 5.

- **Notices and fact sheets** help the interested and affected public to understand contamination issues related to a site, and the nature and progress of efforts to investigate and clean up a site.
- **Public forums, comment periods and contact with project managers** provide opportunities for the public to contribute information, opinions and perspectives that have potential to influence decisions about a site's investigation and cleanup.

The public is encouraged to contact project staff at any time during the site's investigation and cleanup process with questions, comments, or requests for information.

This CP Plan may be revised due to changes in major issues of public concern identified in Section 3 or in the nature and scope of investigation and cleanup activities. Modifications may include additions to the site contact list and changes in planned citizen participation activities.

### *Technical Assistance Grant*

NYSDEC must determine if the site poses a significant threat to public health or the environment. This determination generally is made using information developed during the investigation of the site, as described in Section 5.

If the site is determined to be a significant threat, a qualifying community group may apply for a Technical Assistance Grant (TAG). The purpose of a TAG is to provide funds to the qualifying group to obtain independent technical assistance. This assistance helps the TAG recipient to interpret and

understand existing environmental information about the nature and extent of contamination related to the site and the development/implementation of a remedy.

An eligible community group must certify that its membership represents the interests of the community affected by the site, and that its members' health, economic well-being or enjoyment of the environment may be affected by a release or threatened release of contamination at the site.

For more information about TAGs, go online at <http://www.dec.ny.gov/regulations/2590.html>

Note: The table identifying the citizen participation activities related to the site's investigation and cleanup program follows on the next page:

[intentionally left blank]



Citizen Participation Requirements (Activities)	Timing of CP Activity(ies)
<p align="center"><b>Application Process:</b></p> <ul style="list-style-type: none"> <li>• Prepare site contact list.</li> <li>• Establish document repositories</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Publish notice in Environmental Notice Bulletin (ENB) announcing receipt of application and 30-day public comment period.</li> <li>• Publish above ENB content in local newspaper</li> <li>• Mail above ENB content to site contact list.</li> <li>• Conduct 30-day public comment period.</li> </ul>	
<p align="center"><b>After Execution of Brownfield Site Cleanup Agreement:</b></p> <ul style="list-style-type: none"> <li>• Prepare Citizen Participation (CP) Plan</li> </ul>	
<p align="center"><b>Before NYSDEC Approves Remedial Investigation (RI) Work Plan:</b></p> <ul style="list-style-type: none"> <li>• Distribute fact sheet to site contact list about proposed RI activities and announcing 30-day public comment period about draft RI Work Plan.</li> <li>• Conduct 30-day public comment period.</li> </ul>	
<p align="center"><b>After Applicant Completes Remedial Investigation:</b></p> <ul style="list-style-type: none"> <li>• Distribute fact sheet to site contact list that describes RI results.</li> </ul>	
<p align="center"><b>Before NYSDEC Approves Remedial Work Plan (RWP):</b></p> <ul style="list-style-type: none"> <li>• Distribute fact sheet to site contact list about proposed RWP and announcing 45-day public comment period.</li> <li>• Public meeting by NYSDEC about proposed RWP (if requested by affected community or at discretion of NYSDEC project manager).</li> <li>• Conduct 45-day public comment period.</li> </ul>	
<p align="center"><b>Before Applicant Starts Cleanup Action:</b></p> <ul style="list-style-type: none"> <li>• Distribute fact sheet to site contact list that describes upcoming cleanup action.</li> </ul>	
<p align="center"><b>After Applicant Completes Cleanup Action:</b></p> <ul style="list-style-type: none"> <li>• Distribute fact sheet to site contact list that announces that cleanup action has been completed and that summarizes the Final Engineering Report.</li> <li>• Distribute fact sheet to site contact list announcing issuance of Certificate of Completion (COC).</li> </ul>	



### 3. MAJOR ISSUES OF PUBLIC CONCERN

This section of the CP Plan identifies major issues of public concern that relate to the site. Additional major issues of public concern may be identified during the course of the site's investigation and cleanup process.

The Project Site was subject to a consent order with the Environmental Protection Agency for the abatement of asbestos as the result of illegal activity by contractors hired to do work at the property and historic illegal disposal of building materials by outside contractors and vandalism. (A copy of the Compliance Order and Closure Letter is attached to this CPP as Appendix E.) Many of the parties responsible for such activity were the subject of a federal Department of Justice prosecution. Under the Consent Order BMHA agreed to remove asbestos from the buildings. No penalty was assessed against BMHA with respect to the asbestos violations. The asbestos removal project was completed on October 31, 2014.

On December 18, 2014, KHRC, applied for admission to the New York State Brownfield Program. The Project site was accepted into the Brownfield Program in June, 2015.

In September 2015, BMHA issued a Request for Services to several environmental consulting firms to solicit bids for the design of a proposed limited remedial investigation plan. The purpose of the plan is to design a first-phase baseline remedial investigation of the Project site to determine the extent and type of soil contamination and to assess whether there have been any adverse impacts to groundwater at the Project site. On the basis of the information obtained from the Remedial Investigation, DEC/DOH will determine if the site poses a significant threat.

After the remedial investigation plan is selected, BMHA will bid out the implementation of the plan through its public bidding process. The successful bidder will then implement the remedial investigation plan.

Upon completion of the limited remedial investigation BMHA expects to (1) have sufficient information to complete a preliminary screening of re-use options based on cost, viability, time to complete, community needs and BMHA's mission, and (2) be in a position to have prepared a phase II remedial investigation which will provide a more in-depth investigation of the Project site taking into consideration the "short-list" of potential re-use options.

After completion of the second phase of remedial investigation, BMHA's environmental consultant will prepare the Remedial Investigation and Alternatives Analysis Report. At that time, KHRD will develop and distribute a fact sheet that describes the plan goals, the actions to be taken under the plan and the schedule for implementation. KHRD will also update this Citizens Participation Plan.

#### **4. SITE INFORMATION**

Appendix C contains a map identifying the location of the site.

The Kensington Heights Apartments (the "Apartments") were built in 1958. The apartments were formerly a state housing development. The site consisted of six (6), seven (7) story buildings, brick apartment buildings on sixteen (16) acres of land in the City of Buffalo. There were approximately 67 apartment units per building.

The Project site is bordered on the north by the Kensington Expressway (Route 33); to the south by a public park; to the southeast by the Lydia Wright School; to the east by the Erie County Medical Center and Buffalo Public School 84; and to the west by North Fillmore Avenue and the off-ramp to Route 33. A copy of the City of Buffalo Tax Map for the Project site is attached to this CPP as Appendix A.

The Apartments were closed as public housing in the 1980s and have been vacant since that time.

##### *Site Description*

Street Address: 1827 Fillmore Avenue, City of Buffalo, County Erie, New York.

Setting: Urban

Site Size: 17.14 Acres

Adjacent Properties: The adjacent properties are zoned is a combination of residential and commercial use.

##### *History of Site Use, Investigation and Cleanup*

This site was occupied by six, seven story brick apartment buildings on 16 acres. All but one of the buildings has been demolished. The apartment complex includes parking space, common areas and greenspace. The site is currently vacant. The site was once a quarry that was backfilled. The apartment



buildings were built in 1958 as a federal/state development and were known as The Kensington Heights Apartments. The site was subject to an ongoing federal enforcement action related to asbestos contamination under an EPA Compliance Order. The asbestos abatement project has been completed. Currently the Applicant plans to bid out the implementation of the remedial investigation plan through a public bidding process.

## **5. INVESTIGATION AND CLEANUP PROCESS**

### *Application*

The Applicant has applied for and been accepted into New York's Brownfield Cleanup Program as a Participant. This means that the Applicant was the owner of the site at the time of the disposal or discharge of contaminants or was otherwise liable for the disposal or discharge of the contaminants. The Participant must fully characterize the nature and extent of contamination onsite, as well as the nature and extent of contamination that has migrated from the site. The Participant also must conduct a "qualitative exposure assessment," a process that characterizes the actual or potential exposure of people, fish and wildlife to contaminants on the site and to contamination that has migrated from the site.

The Applicant in its Application proposes that the site will be used for restricted purposes.

To achieve this goal the Applicant will conduct investigation activities at the site with oversight provided by the NYSDEC. The Brownfield Cleanup Agreement executed by NYSDEC and the Applicant sets forth the responsibilities of each party in conducting these activities at the site.

### *Investigation*

The Applicant will conduct an investigation of the site officially called a "remedial investigation" (RI). This investigation will be performed with NYSDEC oversight. The Applicant must develop a remedial investigation workplan, which is subject to public comment.

The site investigation has several goals:

- 1) define the nature and extent of contamination in soil, surface water, groundwater and any other parts of the environment that may be affected;
- 2) identify the source(s) of the contamination;



- 3) assess the impact of the contamination on public health and the environment; and
- 4) provide information to support the development of a proposed remedy to address the contamination or the determination that cleanup is not necessary.

When the investigation is complete, the Applicant will prepare and submit a report that summarizes the results. This report also will recommend whether cleanup action is needed to address site-related contamination. The investigation report is subject to review and approval by NYSDEC.

NYSDEC will use the information in the investigation report to determine if the site poses a significant threat to public health or the environment. If the site is a significant threat, it must be cleaned up using a remedy selected by NYSDEC from an analysis of alternatives prepared by the Applicant and approved by NYSDEC. If the site does not pose a significant threat, the Applicant may select the remedy from the approved analysis of alternatives.

#### *Remedy Selection:*

When the investigation of the site has been determined to be complete, the project likely would proceed in one of two directions:

1. The Applicant may recommend in its investigation report that no action is necessary at the site. In this case, NYSDEC would make the investigation report available for public comment for 45 days. NYSDEC then would complete its review, make any necessary revisions, and, if appropriate, approve the investigation report. NYSDEC would then issue a Certificate of Completion (described below) to the Applicant.

or

2. The Applicant may recommend in its investigation report that action needs to be taken to address site contamination. After NYSDEC approves the investigation report, the Applicant may then develop a cleanup plan, officially called a Remedial Work Plan. The Remedial Work Plan describes the Applicant's proposed remedy for addressing contamination related to the site.

When the Applicant submits a proposed Remedial Work Plan for approval, NYSDEC would announce the availability of the proposed plan for public review during a 45-day public comment period.

### *Cleanup Action*

NYSDEC will consider public comments, and revise the draft cleanup plan if necessary, before approving the proposed remedy. The New York State Department of Health (NYSDOH) must concur with the proposed remedy. After approval, the proposed remedy becomes the selected remedy. The Applicant may then design and perform the cleanup action to address the site contamination. NYSDEC and NYSDOH oversee the activities. When the Applicant completes cleanup activities, it will prepare a final engineering report that certifies that cleanup requirements have been achieved or will be achieved within a specific time frame. NYSDEC will review the report to be certain that the cleanup is protective of public health and the environment for the intended use of the site.

### *Certificate of Completion*

When NYSDEC is satisfied that cleanup requirements have been achieved or will be achieved for the site, it will approve the final engineering report. NYSDEC then will issue a Certificate of Completion (COC) to the Applicant. The COC states that cleanup goals have been achieved, and relieves the Applicant from future liability for site-related contamination, subject to certain conditions. The Applicant would be eligible to redevelop the site after it receives a COC.

### *Site Management*

Site management is the last phase of the site cleanup program. This phase begins when the COC is issued. Site management may be conducted by the Applicant under NYSDEC oversight, if contamination will remain in place. Site management incorporates any institutional and engineering controls required to ensure that the remedy implemented for the site remains protective of public health and the environment. All significant activities are detailed in a Site Management Plan.

An institutional control is a non-physical restriction on use of the site, such as a deed restriction that would prevent or restrict certain uses of the property. An institutional control may be used when the cleanup action leaves some contamination that makes the site suitable for some, but not all uses. An engineering control is a physical barrier or method to manage contamination. Examples include: caps, covers, barriers, fences, and treatment of water supplies.

Site management also may include the operation and maintenance of a component of the remedy, such as a system that is pumping and treating groundwater. Site management continues until NYSDEC determines that it is no longer needed.



## **Appendix A**

### **Project Contacts and Location of Reports and Information**

#### **9.0 PROJECT CONTACTS**

For information about the site's investigation and cleanup program, the public may contact any of the following project staff:

##### **New York State Department of Environmental Conservation (NYSDEC)**

Mr. David P. Locey	Ms. Kristen Davidson
Project Manager	Citizen Participation Specialist
NYSDEC	NYSDEC
270 Michigan Avenue	270 Michigan Avenue
Buffalo, NY 14203	Buffalo, NY 14203
(716) 851-7220	(716) 851-7220
<a href="mailto:David.Locey@dec.ny.gov">David.Locey@dec.ny.gov</a>	<a href="mailto:Kristen.davidson@dec.ny.gov">Kristen.davidson@dec.ny.gov</a>

##### **New York State Department of Health, (NYSDOH)**

Harolyn L. Hood  
Public Health Specialist  
NYS Department of Health  
Bureau of Environmental Exposure Investigation  
Empire State Plaza  
Coming Tower, Room 1787  
Albany, NY 12237  
(518) 402-7860  
[Harolyn.hood@health.ny.gov](mailto:Harolyn.hood@health.ny.gov)

#### **LOCATION OF REPORTS AND INFORMATION**

The facilities identified below are being used to provide the public with convenient access to important project documents:

The Document Depository for this Project has been established at the Buffalo and Erie County Public Library, Central Library, located at 1 Lafayette Square, Buffalo, New York 14203. The documents are cataloged under the title "1827 Fillmore Avenue, Buffalo, New York." The contact person for the Document Depository at the Buffalo Public Library is:

Buffalo and Erie County Public Library

1 Lafayette Square

Buffalo, NY 14203

(716)858-8900

Monday – Friday 8:30 a.m. – 3:00 p.m.

Saturday 8:30 a.m. – 2:00 p.m.

NYSDEC Region 9 Office

270 Michigan Avenue

Buffalo, NY 14203

(716)851-7220

(Please call for an appointment)

Ms. Batt's assistant is April Tompkins and may be reached by telephone at 716-858-7129.

These locations provide the public with convenient access to important project information. Typical information housed at these locations includes legal documents, work plans, reports, data gathered and developed during the remedial design process, fact sheets and public meeting announcements.

**Appendix B**  
**Site Contact List**



## **Appendix B - Site Contact List**

### **1. Federal Representative (U.S. House of Representatives)**

U.S. Representative Brian Higgins  
**Erie County Office**  
Larkin at Exchange  
726 Exchange Street  
Suite 601  
Buffalo, NY 14210  
Phone: 716-852-3501  
Fax: 716-852-3929

### **2. New York State Senator and Assemblyperson**

New York State Senator Timothy M. Kennedy  
2239 South Park Avenue  
Buffalo, New York 14220  
P: 716-826-2683  
F: 716-826-2793

New York State Assemblywoman Crystal D. Peoples-Stokes  
District Office  
792 E. Delavan Avenue  
Buffalo, NY 14215  
716-897-9714

### **3. Chief Executive Officer, Planning Board Chairperson and City Administrator of each County, City, Town and Village in which the Site is located:**

#### **a. City of Buffalo**

Office of the Mayor  
Mayor Bryon W. Brown  
201 City Hall  
Buffalo, New York 14202  
(716)852-3300

Office of City Administrator  
Janet Penska  
203 City Hall  
Buffalo, New York 14202  
(716)851-5922

Office of Planning Board  
James A. Morrell - Chairman  
201 City Hall  
Buffalo, New York 14202  
(716)852-3300

**b. Erie County**

Erie County Executive  
Honorable Mark C. Poloncarz  
95 Franklin Street  
16<sup>th</sup> Floor  
Buffalo, New York 14202  
(716)858-8500

Erie County Clerk  
Christopher L. Jacobs  
92 Franklin Street  
Buffalo, New York 14202  
(716)858-8865

Commissioner of Environment and Planning  
Commissioner Maria Whyte  
Edward A. Rath County Office Building  
95 Franklin Street, 10th Floor  
Buffalo, New York 14202  
Phone: (716) 858-8390

**4. County and/or municipal agency directors of health, emergency services, economic development and planning departments.**

**a. Erie County**

Erie County Commissioner of Health  
Commissioner Gale R. Burstein  
Rath Building  
95 Franklin Street  
Buffalo, NY 14202  
Office: (716) 858-7690

Emergency Services Commissioner  
Daniel J. Neaverth, Jr.  
Rath Building  
95 Franklin Street  
Buffalo, NY 14202

716-858-6365

Commissioner of Environment and Planning  
Commissioner Maria Whyte  
Edward A. Rath County Office Building  
95 Franklin Street, 10th Floor  
Buffalo, New York 14202  
Phone: (716) 858-8390

Industrial Development Agency:  
Alfred Culliton  
Erie County Industrial Development Agency  
143 Genessee Street  
Buffalo, NY 14203  
(716) 856-6525

Erie County Legislature, 1st  
Legislator Timothy R. Hogues  
427 William Street  
Buffalo, New York 14204

**b. City of Buffalo**

Buffalo Urban Renewal Agency  
Housing Office:  
920 City Hall, Buffalo, NY 14202  
Phone Number: 716-851-5035  
Fax Number: 716-854-0172

Real Estate Office:  
Department Head:  
John Hannon  
901 City Hall, Buffalo, NY 14202  
Phone Number: 716-851-5275  
Fax Number: 716-851-5590  
Email: [jhannon@city-buffalo.com](mailto:jhannon@city-buffalo.com)

Economic Development, Permit and Inspection  
Department Head: James W. Comerford  
Address: 324 City Hall, Buffalo, NY, 14202  
Phone Numbers: 716-851-4972  
Email: [jcomerford@city-buffalo.com](mailto:jcomerford@city-buffalo.com)

Emergency Management Services  
Department Head: Garnell W. Whitfield, Jr.  
Address: 195 Court Street, Buffalo, NY, 14202



Phone Numbers: 716-851-5333  
Fax Number: 716-851-5341  
Email Address: [gwhitfield@bfny.org](mailto:gwhitfield@bfny.org)

Office of Strategic Planning  
Executive Director: Brendan R. Mehaffy  
Office Address: 901 City Hall  
Buffalo NY 14202  
Phone: (716) 851-5277

**5. Residents, Schools, Daycare Centers, Hospitals and Owners and Occupants of the Site and Adjacent to the Site:**

Buffalo Municipal Housing Agency  
300 Perry Street  
Buffalo, New York 14204

Erie County Medical Center  
462 Grider St  
Buffalo, NY 14215  
(716) 898-3000

Public School 301 Burgard Vocational High School  
Dr. Pamela C. Brown, Superintendent for Buffalo City Schools  
400 Kensington Ave  
Buffalo, NY 14214  
(716) 816-4450

City of Buffalo  
65 Niagara Street  
Buffalo, New York 14202  
(716) 851-4200

Public School 89 DR. Lydia T. Wright, School of Excellence  
Dr. Tonya Chavers, Principal  
106 Appenheimer Street  
Buffalo, New York 14214

Public School 84 Health Care Center for Children at ECMC  
Jennifer Kapsiak, Principal  
462 Grider Street  
Buffalo, New York 14215

**6. Persons requesting to be placed on distribution list**

None identified to date.

**7. Water Supplier**

Buffalo Water Authority  
281 Exchange Street

Buffalo, NY 14204

Erie County Water Authority  
295 Main Street  
Buffalo, New York 14203

**8. Location of Document Repository**

Buffalo and Erie County Public Library  
1 Lafayette Square  
Buffalo, New York 14203



**9. News Media**

Buffalo News  
One News Plaza  
PO Box 100  
Buffalo, New York 14240  
(716) 849-4444

WNED, Environmental News Desk  
Michael Desmond  
P.O. Box 1263, Horizon plaza  
Buffalo, New York 14240

WBFO 88.7/WOLN 91.3  
Mark Scott, News Director  
3435 Main St.  
Buffalo, New York 14214

Business First  
James Fink  
465 Main Street  
Buffalo, New York 14203-1793

Environmental News Desk  
WBEN Radio 930 & WMJQ  
500 Corporate Parkway  
Buffalo, New York 14226

WJL 1440 AM  
920 Union Road  
West Seneca, New York 14224  
(716) 674-9555

WGRZ-NBC (Channel 2)  
Maria Sisti  
259 Delaware Avenue  
Buffalo, New York 14202  
(716) 849-2222

WIVB -CBS (Channel 4)  
Lisa Fullone  
2077 Elmwood Avenue  
Buffalo, New York 14207  
(716) 874-4410

WKBK - ABC (Channel 7)

Melanie Pritchard  
7 Broadcast Plaza  
Buffalo, New York 14202  
(716) 845-6100

WUTV-FOX (Channel 29)  
699 Hertel Avenue, Suite 100  
Buffalo, New York 14207

**10. Others:**

Citizens Campaign – Environment  
Brian Smith  
733 Delaware Road, Box 140  
Buffalo, New York 14223

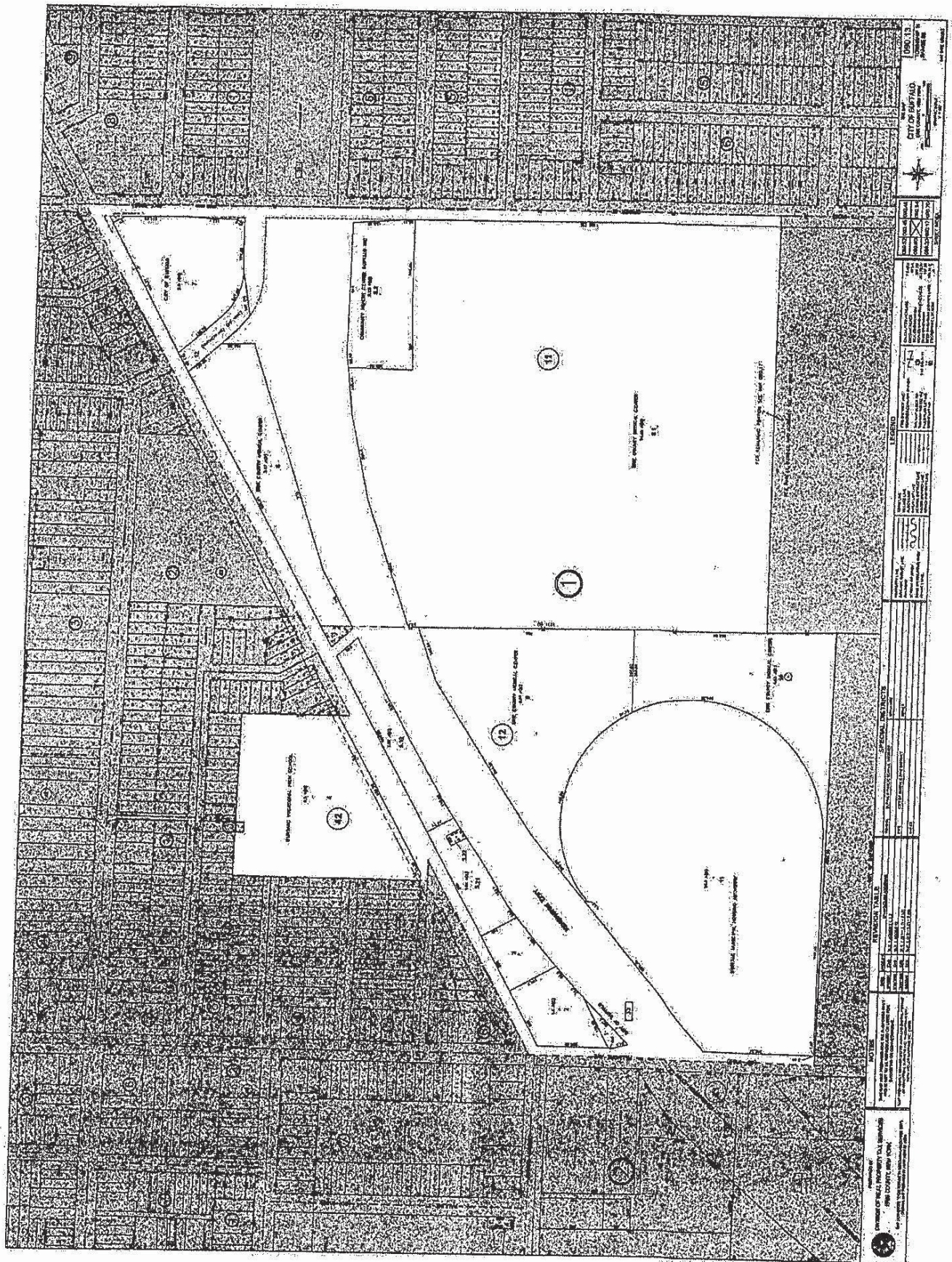
Buffalo Niagara RiverKeeper  
1250 Niagara Street  
Buffalo, New York 14213

Citizen's Env. Coalition  
WNY Director  
33 Central Ave. 3<sup>rd</sup> Floor  
Albany, New York 12210

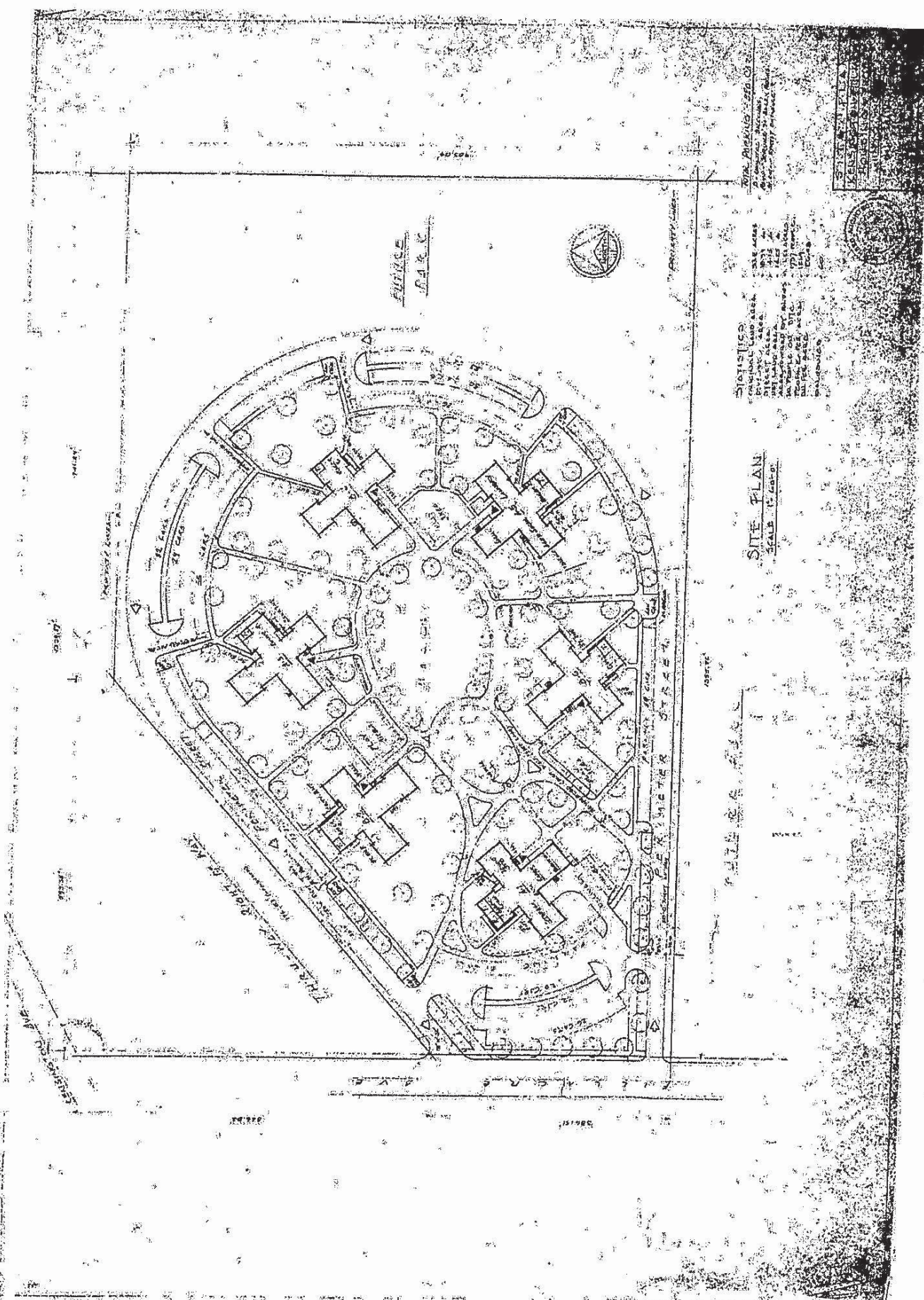
League of Woman Voters  
1227 Delaware Avenue  
Buffalo, New York 14209

**Appendix C**  
**Site Location Map**









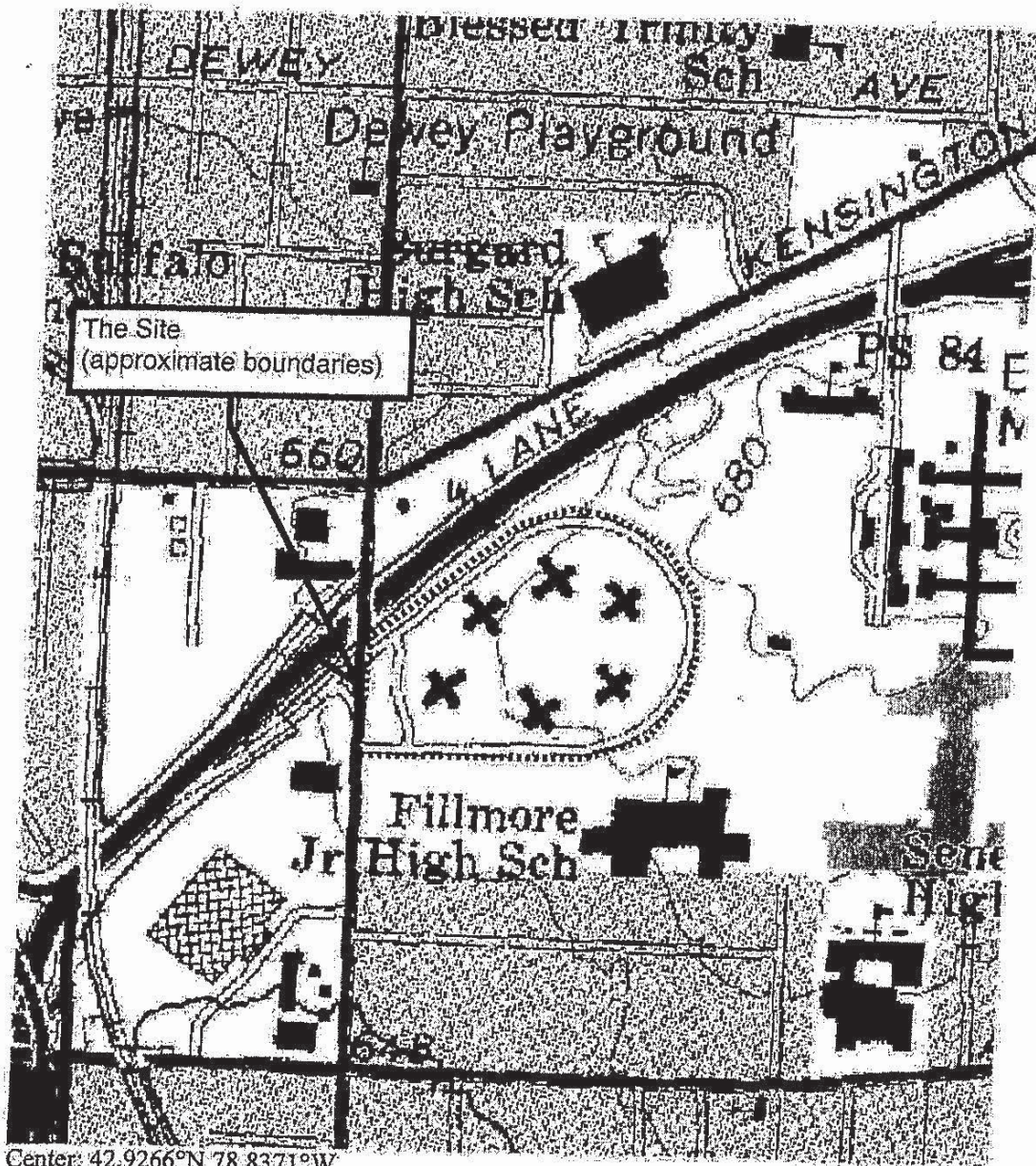
**STATISTICS**

ORIGINAL LOT AREA: 1.316 ACRES  
 TOTAL LOT AREA: 1.316 ACRES  
 TOTAL BUILDING AREA: 1.115 ACRES  
 TOTAL IMPROVEMENTS BY AREA: 1.115 ACRES  
 TOTAL IMPROVEMENTS BY LOT: 1.115 ACRES  
 TOTAL IMPROVEMENTS BY BLOCK: 1.115 ACRES  
 TOTAL IMPROVEMENTS BY TRACT: 1.115 ACRES  
 TOTAL IMPROVEMENTS BY DISTRICT: 1.115 ACRES  
 TOTAL IMPROVEMENTS BY COUNTY: 1.115 ACRES  
 TOTAL IMPROVEMENTS BY STATE: 1.115 ACRES  
 TOTAL IMPROVEMENTS BY NATION: 1.115 ACRES

**SITE PLAN**  
 SCALE: 1" = 60'-0"

STATE OF TEXAS  
 COUNTY OF DALLAS  
 CITY OF DALLAS  
 DISTRICT OF DALLAS  
 TRACT OF DALLAS  
 BLOCK OF DALLAS  
 LOT OF DALLAS





Center: 42.9266°N 78.8371°W

Elevation at center: 676 feet (206 meters)

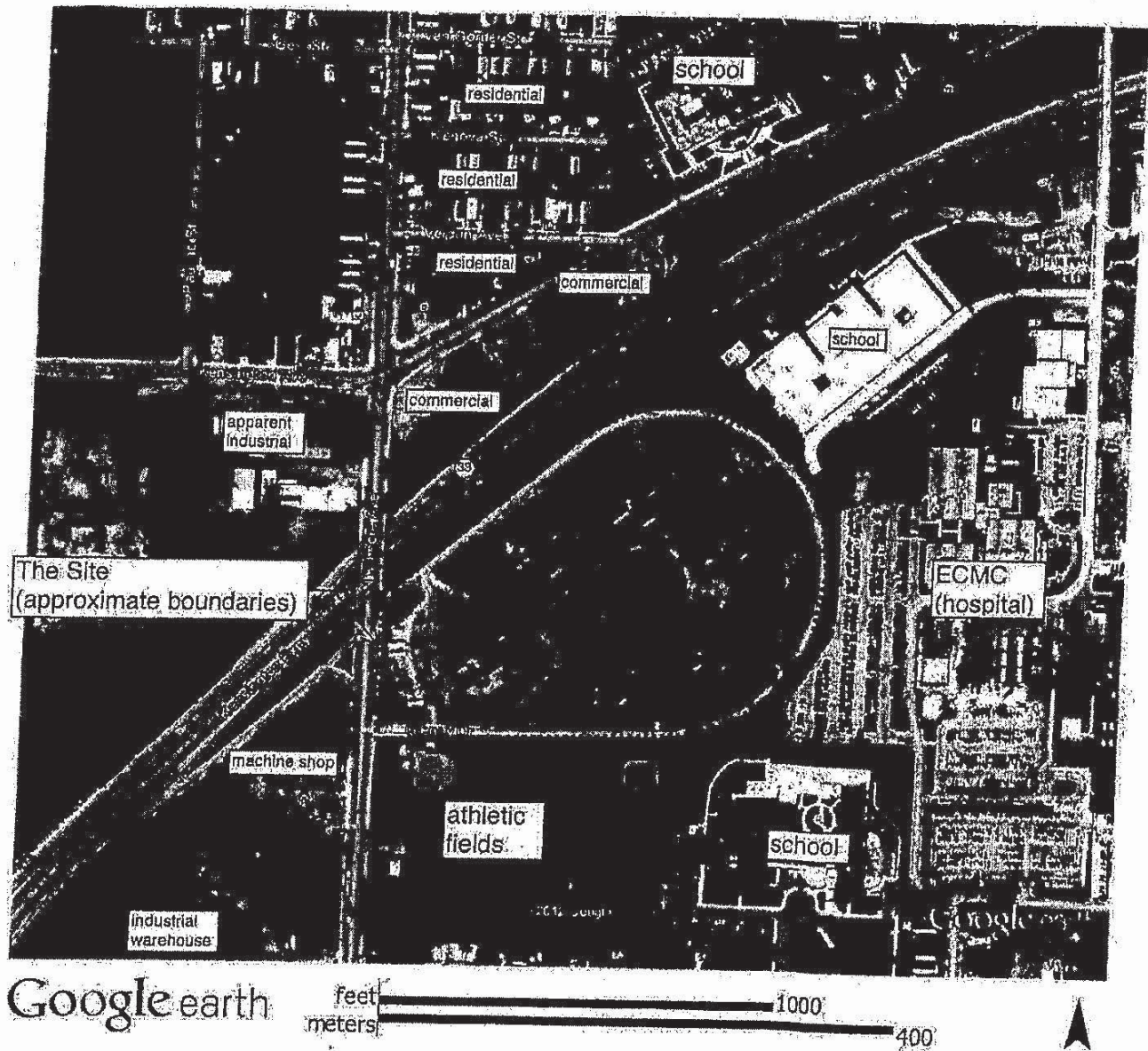
Quad: USGS Buffalo NE

Drg Name: o42078h7

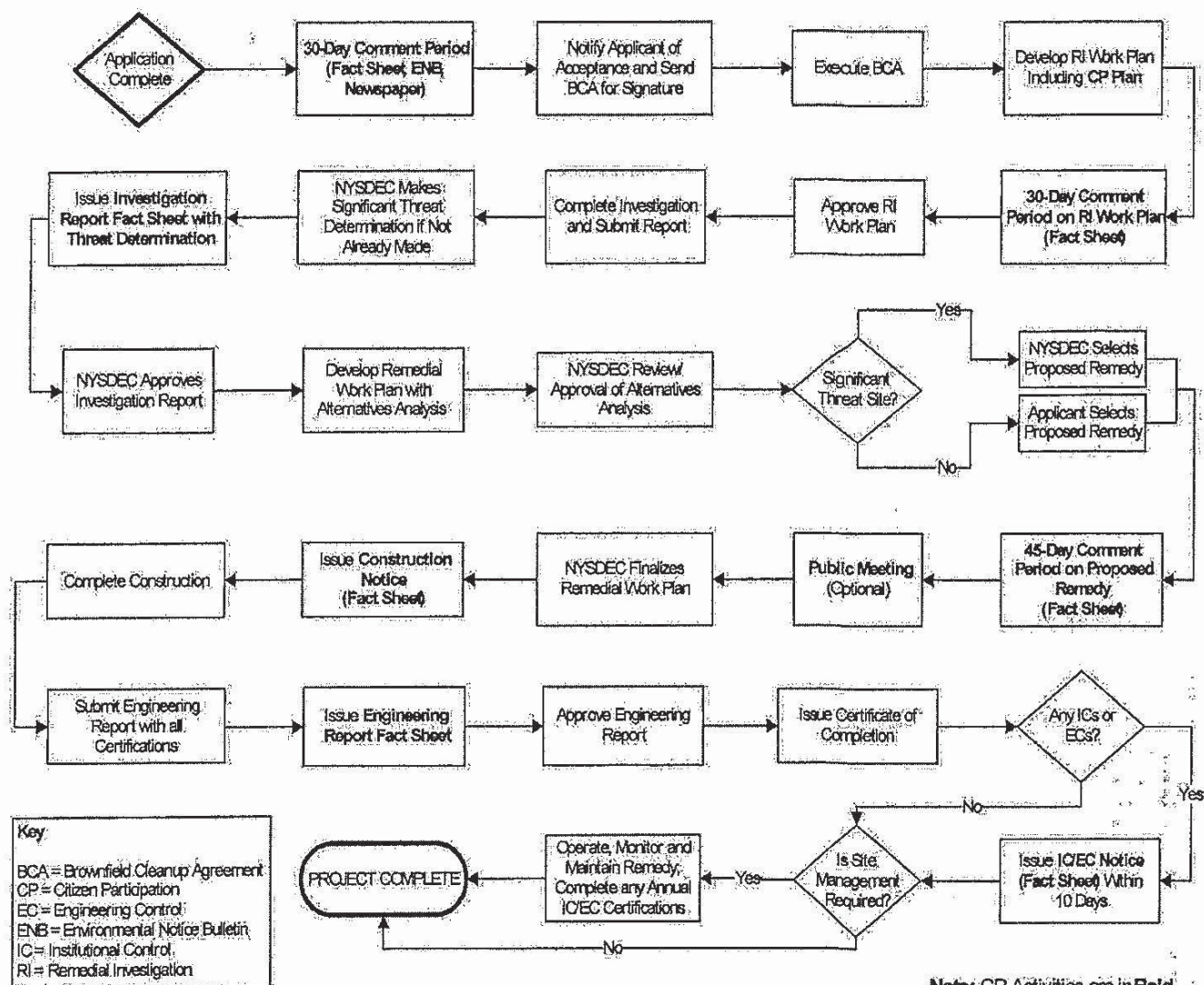
Drg Source Scale: 1:24,000

Topo Map  
12MS104.6  
1827 Fillmore Avenue  
Buffalo, New York.





## Appendix D—Brownfield Cleanup Program Process



**Appendix E**  
**Compliance Order and Closure Letter**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

Kensington  
Heights  
To: Larry  
J.

In the Matter of:

Buffalo Municipal Housing Authority,  
Buffalo, New York

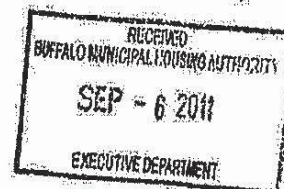
Respondent

**COMPLIANCE ORDER**

Index No. CAA-02-2011-1021

**PRELIMINARY STATEMENT**

The United States Environmental Protection Agency (EPA) Region 2 Director of the Division of Enforcement and Compliance Assistance (DECA) issues this COMPLIANCE ORDER, pursuant to Sections 113(a) and 114 of the Clean Air Act (CAA or the Act), 42 U.S.C. §§ 7413(a) and 7414, to Buffalo Municipal Housing Authority (Respondent) located in Buffalo, New York, for violations of Section 112 of the CAA and the National Emission Standard for Asbestos, 40 C.F.R. Part 61, Subpart M (Asbestos NESHAP), which was promulgated pursuant to Sections 112 and 114 of the Act. The authority to find a violation and issue this Compliance Order has been delegated to the Director of DECA from the Administrator through the Regional Administrator.



## STATUTORY AND REGULATORY BACKGROUND

### The Clean Air Act

1. Section 112 of the Act requires the Administrator to publish a list of hazardous air pollutants (HAPs), a list of categories and subcategories of major and area sources of listed HAPs, and to promulgate regulations establishing emission standards, referred to as National Emissions Standards for Hazardous Air Pollutants (NESHAPs) for each category or subcategory of major and area sources of HAP.
2. Section 112(b)(1) of the Act provides the initial list of HAPs and Section 112(b)(2) requires the Administrator to periodically review the list and, where appropriate, revise it.
3. Section 112(c) of the Act requires the Administrator to publish a list of categories or subcategories of major and area sources of listed HAPs.
4. Section 112(d) of the Act requires the Administrator to promulgate regulations establishing NESHAPs for each category or subcategory of major and area sources of HAPs. NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61.
5. Section 112(h) of the Act authorizes EPA to promulgate "design, equipment, work practice, or operational" standards, or combinations thereof, which are consistent with Section 112(d) or (f) of the Act, to the extent that it is not feasible to prescribe or enforce an emission standard for control of a HAP. Pursuant to Section 112(d)(2)(D) and (E) of the Act, design, equipment, work practice, or operational standards, or combinations thereof, promulgated under Section 112(h) of the Act, are treated as emission standards.



6. Section 112(l)(3)(A) prohibits the operation of a source in violation of any emissions standard, limitation or regulation issued pursuant to Section 112, and directs the Administrator to set a compliance deadline for existing sources that is no more than 3 years after the effective date of the standard.

7. Section 114 of the CAA authorizes the EPA Administrator to require testing, monitoring, record-keeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under Sections 112 of the Act.

8. Section 113(a)(3) of the CAA authorizes EPA to, among other actions, issue compliance orders to any person whenever, on the basis of any information available to EPA, EPA finds that such person has violated or is in violation of any requirement or prohibition of Title I of the Act, or any regulation promulgated pursuant to Sections 112 and 114 of the Act.

9. Section 302(e) of the CAA provides that whenever the term "person" is used in the Act, the term includes an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

The Asbestos NESHAP, 40 C.F.R. Part 61, Subpart M

10. The Asbestos NESHAP specifies a set of work practice standards, set forth at 40 C.F.R. §§ 61.145 and 61.150, which are applicable to the owners and operators of renovation or demolition activities in which the amount of RACM that is stripped, removed, dislodged, cut, drilled or similarly disturbed is at least 80 linear



meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components or at least 1 cubic meter (35 cubic feet) when the length or area could not be measured prior to the asbestos removal/demolition activity.

11. The term "owner or operator of a renovation or demolition activity" is defined by 40 C.F.R. § 61.141 to mean "any person who owns, leases, operates, controls or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls or supervises the demolition or renovation operation, or both."

12. The term "renovation" is defined by 40 C.F.R. § 61.141 to mean "altering of a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions."

13. The term "demolition" is defined by 40 C.F.R. § 61.141 to mean "the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility."

14. The term "facility" is defined by 40 C.F.R. § 61.141 to include, among other things, "any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units)."

15. The term "facility component" is defined by 40 C.F.R. § 61.141 to mean "any part of a facility including equipment."

16. The term "regulated asbestos-containing material" (RACM) is defined by 40 C.F.R. § 61.141 to include friable asbestos containing material.

17. The term "friable asbestos material" is defined by 40 C.F.R. § 61.141 to mean any material containing more than 1 percent asbestos that when dry can be crumbled, pulverized or reduced to powder by hand pressure.

18. 40 C.F.R. § 61.145(a) provides that the affected facility, or part of a facility, where a demolition or renovation is to take place must be thoroughly inspected for the presence of asbestos prior to the commencement of the demolition or renovation activity.

19. 40 C.F.R. § 61.145(b) provides that each owner or operator of a demolition or renovation activity to which this Section applies shall: (1) provide the Administrator with written notice of the intention to demolish or renovate; (2) update the notice as necessary; and (3) postmark or deliver the notice as follows: at least ten (10) working days before demolition or renovation activity begins.

20. 40 C.F.R. § 61.145(c)(1) provides that each owner or operator of a demolition or renovation activity must remove all RACM from the facility being renovated or demolished before any activity begins that may break up, dislodge, or disturb the material.

21. 40 C.F.R. § 61.145(c)(3) provides that when RACM is stripped from a facility component while it remains in place in the facility, the owner and/or operator must adequately wet the RACM during the stripping operation.



22. 40 C.F.R. § 61.145(c)(6)(i) provides that the owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP must adequately wet all RACM including the material that has been removed or stripped and ensure that it remains wet until collected and contained or treated in preparation for disposal.

23. 40 C.F.R. § 61.145(c)(8) provides that no RACM may be stripped, removed, or otherwise handled or disturbed at a facility regulated under the Asbestos NESHAP unless at least one on-site representative, trained in the Asbestos NESHAP is present. In addition, this section provides that every two years the trained on-site individual shall receive refresher training.

24. 40 C.F.R. § 61.150(a)(1)(iii) provides that each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP must seal all RACM in leak-tight containers while wet.

#### FINDINGS OF FACT

25. Respondent Buffalo Municipal Housing Authority owns the Kensington Heights Towers located at 1827 North Fillmore Avenue, Buffalo, New York.

26. In September, October, and November 2009, Johnson Contracting of Western New York, a contractor for the owner, submitted various notifications to EPA of its intention to remove approximately 65,000 square feet of asbestos containing material from Kensington Heights Towers.

27. In March 2010, CJ Drew Contracting Inc., a contractor for the owner, submitted a notification to EPA of its intention to remove approximately 10,000 square feet of asbestos containing material from Kensington Heights Towers.



28. On August 16, 2011, two EPA Inspectors accompanied by an Inspector from the New York State Department of Labor (NYSDOL) conducted a compliance inspection at the Kensington Heights Towers. During the inspection, the inspectors observed small amounts of suspect friable asbestos containing material in building 5. The inspector observed that these materials were friable and not adequately wet. These materials were located at the boiler room, first floor and main entrance to Building #5. The inspectors took nine samples of the suspect material. After the inspection, the nine samples were tested and eight of the nine samples were found to contain more than 1% asbestos (50%-67% chrysotile).

29. On August 16 and 17, 2011, two EPA Inspectors, accompanied by two NYSDOL compliance officers, conducted a subsequent inspection of the area outside of building 5 and observed two open-topped roll-off containers filled with mixed size pieces of suspect vinyl asbestos containing floor tiles (identified as asbestos containing through BMHA's asbestos surveys of Kensington Towers), many of which were at least as small as 1/2 by 1/2 inch, that were not bagged or otherwise enclosed. The inspectors also observed that material of this type had spilled out of the roll-off containers onto the ground around the containers.

30. On August 17, 2011, an EPA Inspector accompanied by an Inspector from the NYSDOL, observed a large amount of suspect RACM on the ground between buildings 1 and 6, and took, as a sample, an approximately 1 inch by 1 inch piece of this material. The EPA Inspector observed that the suspect RACM was friable and not adequately wet. After the inspection, the sample was tested and found to contain more than 1% asbestos (15% chrysotile).

### CONCLUSIONS OF LAW

Based on the Findings of Fact cited above, EPA finds that:

31. Respondent is an owner or operator of a demolition or renovation activity within the meaning of 40 C.F.R. § 61.141.
32. Respondent has violated 40 C.F.R. §§ 61.145(c)(6)(I) and 61.150(a)(1)(III) of the Asbestos NESHAP.
33. Respondent's violations of the Asbestos NESHAPs are violations of Section 112 of the CAA.

### ORDER

Based on the Findings of Fact and Conclusions of Law above, pursuant to Sections 113(a)(4) and 114 of the Act, IT IS DETERMINED AND ORDERED that:

I.

The provisions of this Order shall apply to Respondent and its officers, agents, servants, employees, successors and to all persons, firms and corporations acting under, through or for Respondent.

II.

Respondent shall perform all renovation/demolition operations at the Kensington Heights Towers and any and all other facilities in which friable asbestos is present in compliance with all applicable provisions of the Asbestos NESHAP.



III.

Respondent shall immediately adequately wet and cover with polyethylene sheeting the two roll-off containers and associated spillage, and shall ensure that the containers and associated spillage remain adequately wet and covered until the RACM is properly collected for disposal. Respondent shall notify EPA that it has wet and covered the roll-off containers and associated spillage within 24 hours of completion.

IV.

Respondent shall immediately cover all windows and openings in buildings 1 through 6 at Kensington Heights Towers. Respondent shall notify EPA that it has covered all windows and openings in buildings 1 through 6 at Kensington Heights Towers within 24 hours of completion.

V.

Upon the effective date of this Order (which is specified below in the section entitled "Effective Date and Opportunity for a Conference") Respondent shall submit a comprehensive asbestos abatement plan for the entire site for EPA's approval. This plan shall be prepared by an AHERA accredited project designer. The plan shall include identification and delineation of the extent of asbestos soil contamination outside of buildings 1 through 6, and shall also include plans for taking a soil lift of adequate depth of these areas. The plan shall also include plans for daily perimeter air monitoring at the fence line during abatement. In addition, a site diagram with the expected sampling locations shall be submitted along with the abatement plan for EPA approval.



VI.

The notifications required by Paragraphs III and IV above, as well as the asbestos abatement plan and site diagram required by Paragraph V above, shall be sent via overnight service to:

Mr. Ken Eng, Chief  
Air Compliance Branch  
Division of Enforcement and Compliance Assistance  
290 Broadway, 21<sup>st</sup> Floor  
New York, NY 10007

**BUSINESS CONFIDENTIALITY**

Respondent may assert a business confidentiality claim covering part or all of the information this Order requires only to the extent and in the manner described in 40 C.F.R. § 2.203. EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B and 41 Fed. Reg. 36,902 (1976). If Respondent does not assert a confidentiality claim, EPA may make the information available to the public without further notice to Respondent.

**ENFORCEMENT**

Section 113(a)(3) of the Act authorizes EPA to take any of the following actions in response to Respondent's violation of the Act:

- \* Issue an administrative penalty order, for penalties up to \$25,000 per day pursuant to Section 113(d) of the Act and adjust the maximum penalty provided by the Act up to \$27,500 per day for each violation that occurs from January 30, 1997 through March 14, 2004, \$32,500 per day for each violation that occurs on or after March 15, 2004, and \$37,500 per day for each violation that occurs after January 12, 2009, in accordance with the Debt

- Collection Improvement Act, 31 U.S.C. 3701 *et seq.* (DCIA), and 40 C.F.R. Part 19, promulgated pursuant to DCIA; and
- bring a civil action pursuant to Section 113(b) of the Act for injunctive relief and/or civil penalties and adjust these penalties for inflation in accordance with the DCIA and 40 C.F.R. Part 19.

Failure to comply with this Order may result in an administrative or civil action for appropriate relief as provided in Section 113 of the Act. EPA retains full authority to enforce the requirements of the Act and nothing in this Order shall be construed to limit that authority. Furthermore, the United States may seek fines and/or imprisonment of any party who knowingly violates the Act or an Order issued pursuant to Section 113 of the Act. Upon conviction, any facility owned by such party may be declared ineligible for federal contracts, grants, and loans. (42 U.S.C. § 7606, 40 C.F.R. Part 15, and Executive Order 11738).

#### **PENALTY ASSESSMENT CRITERIA**

Section 113 (e)(1) of the Act states that if a penalty is assessed pursuant to Section 113 or Section 304(a) of the Act, the Administrator or the court, as appropriate, shall, in determining the amount of a penalty to be assessed, take into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of non-compliance, the seriousness of the violation, and such other factors as justice may require.

Section 113(e)(2) of the Act allows the Administrator or the court, as appropriate, to assess a penalty for each day of the violation. For purposes of determining the number of the days of the violation, the days of violation shall be presumed to include:



the day the violation began and every day thereafter until Respondent establishes that continuous compliance has been achieved. If Respondent can prove, by the preponderance of the evidence, that there were intervening days during which no violation occurred or that the violation was not continuous in nature, then the EPA will reduce the penalty accordingly.

#### **EFFECTIVE DATE and OPPORTUNITY FOR A CONFERENCE**

Pursuant to Section 113(a)(4) of the Act, Respondent may request a conference with EPA concerning the violation(s) alleged in this Order. This conference will enable Respondent to present evidence bearing on the finding of violations, on the nature of the violations, and on any efforts it may have taken or it proposes to take to achieve compliance. Respondent may arrange to have legal counsel.

Respondent's request for a conference, to be held no later than thirty (30) days from receipt of this Order, must be confirmed in writing within five (5) days of receipt of this Order. If the requested conference is held, the Order shall become effective ten (10) days after the conference is held.


If the Respondent does not request a meeting within five (5) days of receipt of this Order, the above Order shall become effective five (5) days from its receipt. The request for a conference, or other inquiries concerning this Order, should be made in writing to:

John F. Dolinar, Esq.  
U.S. Environmental Protection Agency-Region 2  
Office of Regional Counsel, Air Branch  
290 Broadway - 16th Floor  
New York, NY 10007-1866  
(212) 637-3204



Notwithstanding the effective date of this Order and opportunity for conference discussed above, the Respondent must comply with all applicable requirements of the Act and regulations promulgated pursuant to the Act.

Dated: 9/1, 2011

  
Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U.S. Environmental Protection Agency — Region 2

To: Modesto Candalario  
Assistant Executive Director  
Buffalo Municipal Housing Authority  
Buffalo, NY

cc: Christopher Alonge, Associate Safety & Health Engineer  
New York State Department of Labor (Building 12-Room 154)  
State Office Building & Campus  
Albany, NY 12240-0100

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON September 2, 2011, I MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY CERTIFIED MAIL-RETURN RECEIPT REQUESTED, ARTICLE NUMBERS 7005-3110-0000-5933-5314 POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):

Modesto Candalarlo  
Assistant Executive Director  
Buffalo Municipal Housing Authority  
Buffalo, NY

  
Katherine Zuckerman

**EPA Compliance Summary Report**

**for**

**Asbestos Abatement**

**Located At**

**Kensington Heights Complex  
1827 N. Fillmore Avenue  
Buffalo, NY**

**Prepared by**



**ENVIRONMENTAL CONSULTANTS - A MEMBER OF THE STOHL GROUP OF COMPANIES**

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**October 31, 2014**



