

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Office of the Director
625 Broadway, 12th Floor, Albany, New York 12233-7011
P: (518) 402-9706 | F: (518) 402-9020
www.dec.ny.gov

Mr. Robert Wilson
American Tire, Inc.
397 Ludington Street
Cheektowaga, NY 14206

DEC 28 2018

Re: Certificate of Completion
1550 Harlem Road
Cheektowaga, Erie County
Site No.: C915321

Dear Mr. Wilson:

Congratulations on having satisfactorily completed the remedial program at the 1550 Harlem Road Site. Enclosed please find an original, signed Certificate of Completion (COC). The New York State Department of Environmental Conservation (Department) is pleased to inform you that the Final Engineering Report is hereby approved, allowing the COC to be issued for the above-referenced site.

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

- If you are the site owner, you must record a notice of the COC in the recording office for the county (or counties) where any portion of the site is located within 30 days of issuance of the COC; or if you are a prospective purchaser of the site, you must record a notice of the COC within 30 days of the date that you acquire the site. A copy of the recorded notice should be provided to the Department's project manager. If you are a non-owner, you must work with the owner to assure the notice of COC is recorded within the time frame specified. A standard notice form is attached to this letter. Please return the proof of recording to:

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

- Provide the notice of the COC to the Document Repositories within 10 days of issuance of the COC. The Department will develop a fact sheet announcing the issuance of the COC and describing the institutional and



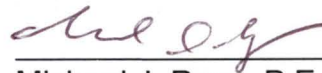
Department of
Environmental
Conservation

engineering controls (IC/ECs), if any, that are required at the site and distribute it to the County Listserv within 10 days;

- Implement the Department-approved Site Management Plan (SMP) which details the activities necessary to assure the performance, effectiveness, and protectiveness of the remedial program; and you must report the results of these activities to the Department in a Periodic Review Report (PRR) which also includes any required IC/EC Certifications. The site IC/ECs are identified on the attached Site Management Form. The first PRR including the certification of the IC/ECs is due to the Department in April 2020.

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

Sincerely,



Michael J. Ryan, P.E.

Director

Division of Environmental Remediation

ec w/ enclosure:

Ms. Christine Vooris, NYSDOH

Mr. Arunesh Ghosh, NYSDOH

Ms. Charlotte Bethany, NYSDOH

Mr. Robert Wilson, American Tire, Inc., rwilson483@yahoo.com

Ms. Michele Wittman, Wittman GeoSciences, michelewittmangeo@gmail.com

Mr. Robert Knoer, Esq., The Knoer Group, PLLC, rknoer@knoergroup.com

Mr. Matt Gokey, matthew.gokey@tax.ny.gov

Mr. Matt Culotti, matthew.culotti@tax.ny.gov

ec w/o enc.:

Mr. Michael Cruden, NYSDEC

Mr. Jaspal S. Walia, NYSDEC

Mr. Chad Staniszewski, NYSDEC

Ms. Jennifer Dougherty, Esq., NYSDEC

Ms. Kelly Lewandowski, NYSDEC

Ms. Dolores Tuohy, NYSDEC

NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)
CERTIFICATE OF COMPLETION

CERTIFICATE HOLDER(S):

Name

American Tire, Inc.

Address

397 Ludington Street, Cheektowaga, NY 14206

BROWNFIELD CLEANUP AGREEMENT:

Application Approval: 9/11/17 **Agreement Execution:** 10/5/17 **Agreement Index No.:** C915321-08-17

Application Approval Amendment: 12/28/18

Agreement Execution Amendment: 12/28/18

SITE INFORMATION:

Site No.: C915321 **Site Name:** 1550 Harlem Road

Site Owner: American Tire, Inc.

Street Address: 1550 Harlem Road

Municipality: Cheektowaga **County:** Erie **DEC Region:** 9

Site Size: 0.421 Acres

Tax Map Identification Number(s): 113.54-2-13, 113.54-2-4.1

Percentage of site located in an EnZone: 0 - 49 %

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

CERTIFICATE ISSUANCE

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

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

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

Allowable Uses under the BCP: Restricted-Residential, Commercial, and Industrial

Cleanup Track: Track 2: Restricted use with generic soil cleanup objectives

Tax Credit Provisions:

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 40 %.

Tangible Property Credit Component Rate is 10%. Comprised of 10% Base.

Dependent upon the project being developed in a manner consistent with the requirements of Section 21(a)(5)(B) of the New York State Tax Law, additional rate increases may be available if the site is developed as affordable housing (5%), if the Certificate Holder receives a separate Determination of Conformance with the Brownfield Opportunity Area (BOA) from the Secretary of State (5%), or if the site is used primarily for manufacturing activities (5%), not to exceed a maximum total Tangible Property Credit Rate of 24 %.

The Remedial Program includes use restrictions or reliance on the long term employment of institutional or engineering controls which are contained in the approved Site Management Plan and an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Erie County as BK/PG D11334/7479 and FILE: 2018188775.

LIABILITY LIMITATION

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

CERTIFICATE TRANSFERABILITY

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

CERTIFICATE MODIFICATION/REVOCATION

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

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

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

Basil Seggos
Commissioner
New York State Department of Environmental Conservation

By:  Date: 12/28/10
Michael J. Ryan, P.E., Director
Division of Environmental Remediation

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

1550 Harlem Road, Site ID No. C915321
1550 Harlem Road, Cheektowaga, NY 14206
Cheektowaga, Erie County, Tax Map Identification Number(s): 113.54-2-4.1 and 113.54-2-13

PLEASE TAKE NOTICE, the New York State Department of Environmental Conservation (Department) has issued a Certificate of Completion (Certificate) pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law (ECL) to American Tire, Inc. for a parcel approximately 0.421 acres located at 1550 Harlem Road in Cheektowaga, Erie County.

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

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

- ☐ Unrestricted Use, as set forth in 6 NYCRR 375-1.8(g)(1)i
- ☐ Residential Use, as set forth in 6 NYCRR 375-1.8(g)(2)i.
 - Restricted Residential Use, as set forth in 6 NYCRR 375-1.8(g)(2)ii.
 - Commercial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iii.
 - Industrial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iv.

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

PLEASE TAKE NOTICE, since the remedial program relies upon use restrictions or the long term employment of institutional or engineering controls; such institutional or engineering controls are contained in an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Erie County as File: 2018188775 and BK/PG D 11334/7479.

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

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

1550 Harlem Road, Site ID No. C915321
1550 Harlem Road, Cheektowaga, NY 14206

limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

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

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

PLEASE TAKE NOTICE, the Certificate may entitle the Certificate holder(s) to tax credits in accordance with Tax Law Sections 21, 22 and 23.

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

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

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

WHEREFORE, the undersigned has signed this Notice of Certificate

American Tire, Inc.

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

Please record and return to:
Mr. Robert Wilson
American Tire, Inc.
397 Ludington Street
Cheektowaga, NY 14206

Exhibit A

Site Description

SCHEDULE "A" PROPERTY DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND situate in the Village of Sloan, Town of Cheektowaga, County of Erie and State of New York, and being part of Lot Number 32, Township 11, Range 7 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at a point in the southwest corner of lands appropriated by the State of New York by Notice of Appropriation recorded in the Erie County Clerk's Office in Liber 9109 of Deeds at page 172 described as Map Number 81, Parcel Number 81;

Thence westerly at bearing of S 89°32'55" W, a distance of 72.56 feet to a point;

Thence northerly at bearing of N 00°20'10" W, a distance of 90.00 feet to a point;

Thence westerly at bearing of S 89°32'55" W, a distance of 108.56 feet to a point on the easterly line of Grattan Road;

Thence northerly along easterly line of Grattan Road at bearing of N 00°20'10" W, a distance of 30.00 feet to a point;

Thence easterly at bearing of N 89°32'55" E, a distance of 108.56 feet to a point;

Thence northerly at bearing of N 00°20'10" W, a distance of 90.00 feet to a point;

Thence easterly at bearing of N 89°32'55" E, a distance of 70.56 feet to the northwest corner of said appropriated lands, said point being on the westerly line of said Harlem Road;

Thence southerly along the westerly line of said Harlem Road at bearing of S 01°18'00" W, a distance of 87.00 feet to a point;

Thence continuing southerly along the westerly line of said Harlem Road at bearing of S 00°35'10" E, a distance of 123.00 feet to point or place of beginning.

Said parcel containing an area of 18,351 square feet (0.421 acre), more or less.

Exhibit B

Site Survey

[illegible]

COUNTY: **NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**



Site Management Form



ALLOWABLE USE: Restricted-Residential, Commercial and Industrial

SITE DESCRIPTION

SITE NO. C915321

SITE NAME 1550 Harlem Road

SITE ADDRESS: 1550 Harlem Road ZIP CODE: 14206

CITY/TOWN: Cheektowaga

SITE MANAGEMENT DESCRIPTION

SITE MANAGEMENT PLAN INCLUDES: YES NO

IC/EC Certification Plan



Monitoring Plan



Operation and Maintenance (O&M) Plan



Periodic Review Frequency: once a year

Periodic Review Report Submitted Date: 04/30/2019

Description of Institutional Control

American Tire, Inc.

397 Ludington Street

1550 Harlem Road

Environmental Easement

Block: 2

Lot: 4

Sublot: 1

Section: 113

Subsection: 54

S_B_L Image: 113.54-2-4.1

Ground Water Use Restriction

IC/EC Plan

Landuse Restriction

Soil Management Plan

Site Management Plan

American Tire, Inc.

397 Ludwig Street

0 Grattan Street

Environmental Easement

Block: 2

Lot: 13

Sublot:

Section: 113

Subsection: 54

S_B_L Image: 113.54-2-13

Ground Water Use Restriction

IC/EC Plan

Landuse Restriction

Soil Management Plan

Site Management Plan

Description of Engineering Control