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# **PERIODIC REVIEW REPORT**

**2250 FACTORY OUTLET BOULEVARD SITE  
(BCP SITE NO. C932127)**

**NIAGARA FALLS, NEW YORK**

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June 2010

0105-003-901

Prepared for:

**NF-3<sup>rd</sup> Associates, LLC**

Prepared By:



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2558 Hamburg Turnpike, Suite 300  
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# PERIODIC REVIEW REPORT

## 2250 Factory Outlet Blvd Site

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**2250 Factory Outlet Blvd Site**  
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## 1.0 INTRODUCTION

Benchmark Environmental Engineering and Science, PLLC (Benchmark) has prepared this Periodic Review Report (PRR), on behalf of NF-3<sup>rd</sup> Associates, LLC, to summarize the post-remedial status of New York State Department of Environmental Conservation (NYSDEC) Brownfield Cleanup Program (BCP) Site No. C932127.

This PRR has been prepared for the 2250 Factory Outlet Boulevard Site (Site or BCP Site) in accordance with NYSDEC draft DER-10 *Technical Guidance for Site Investigation and Remediation* (November 2009). The NYSDEC's auto-generated Institutional and Engineering Controls Certification Form has been completed for the Site (see Appendix A). This PRR and the associated inspection form have been completed for the May 16, 2009 to May 16, 2010 reporting period.

### 1.1 Background

The 2250 Factory Outlet Boulevard property (Niagara County Tax Map No. 145.20-1-1) is an approximate 5-acre parcel owned by NF-3<sup>rd</sup> Associates, LLC (see Figures 1 and 2). An approximate 1.81-acre portion of the greater 5-acre parcel is subject to the Brownfield Cleanup Agreement (BCA) with the NYSDEC. NF-3<sup>rd</sup> Associates, LLC redeveloped the larger parcel as a Niagara Frontier Transportation Authority (NFTA) bus terminal with associated offices and surface lot parking. The Site was investigated and subsequently deemed acceptable by the NYSDEC for admission into the BCP. Based on historic use of the Site, soil/fill was impacted by chromium at concentrations that required cleanup. Interim Remedial Measures (IRMs), including excavation followed by off-site disposal of the contaminated soil/fill was completed at the Site. The IRM served as the final remedy.

### 1.2 Compliance and Recommendations

At the time of the Site inspection, the Site was fully compliant with the Site Management Plan (SMP). No modification to the current SMP is recommended at this time.

## 2.0 SITE OVERVIEW

The property was first developed in the early 1970s by Grossman's Building Supply. Prior to that time, the Site was reportedly undeveloped. The approximately 39,000 square foot vacant concrete block building (slab-on-grade) formerly located on the western portion of the property was demolished in January 2007 (see Figure 2). The Site is bounded by Interstate 190 to the west, a car dealership to the north, Military Road to the northeast, Factory Outlet Boulevard to the southeast, and an automobile oil and lube facility to the south.

Environmental site investigations were conducted at the Site between 2004 and 2006 that revealed the presence of chromium-impacted soil/fill requiring remediation. In December 2006, a BCA was executed by NF-3<sup>rd</sup> Associates, LLC with the Department, and remedial efforts under the BCP began in December 2006 with the Remedial Investigation (RI).

Based on the findings of the RI, it was determined that interim remedial measures (IRMs) would be necessary to address chromium-impacted soil/fill. The IRMs were initiated in February 2007, and included the excavation and off-site disposal of approximately 1,569 tons of hazardous chromium-impacted soil/fill; and approximately 5,359 tons of non-hazardous chromium impacted soil/fill. After IRM excavation activities were completed, all excavation areas were backfill and graded to pre-existing conditions, prior to redevelopment. The IRM was successful in removing all known chromium-impacted soil/fill on-Site, and remedial activities were completed in June 2007. The RI/AAR/IRM report and SMP for the Site were approved by the Department in November 2007. The Certificate of Completion (COC) was issued for the Site on December 14, 2007.

### 3.0 SITE MANAGEMENT PLAN

A SMP was prepared for the Site, and approved by the Department in November 2007. The SMP includes an Operation, Monitoring and Maintenance Plan, a Soil/Fill Management Plan, and a copy of the Environmental Easements. A brief description of the components of the SMP is presented below.

#### 3.1 Annual Inspection and Certification Program

The Annual Inspection and Certification Program outlines the requirements for the Site, to certify and attest that the institutional controls and/or engineering controls employed at the Site are unchanged from the previous certification. The Annual Certification will primarily consist of an annual Site Inspection to complete the auto-generated NYSDEC Institutional and Engineering Controls (IC/EC) Certification Form. The site inspection will verify that the IC/ECs:

- Are in place and effective.
- That nothing has occurred that would impair the ability of the controls to protect the public health and environment.
- That nothing has occurred that would constitute a violation or failure to comply with any operation and maintenance plan for such controls.
- Access is available to the Site to evaluate continued maintenance of such controls.

A Site Inspection of the property was conducted by a Benchmark Qualified Environmental Professional (QEP) on June 23, 2010. At the time of the inspection, the property was being used as a NFTA bus terminal and associated offices, with surface parking, paved walkways and landscaped areas. No observable indication of intrusive activities was noted during the Site Inspection. However, it was noted that a concrete sidewalk had recently been poured along Factory Outlet Boulevard. The facility is utilizing municipal water supply, and no observable use of groundwater was noted during the Site inspection.

The completed Site Management Periodic Review Report Notice – Institutional and Engineering Controls Certification Form is included in Appendix A. A photolog of the site inspection is included in Appendix B.

### **3.2 Soil/Fill Management Plan**

A Soil/Fill Management Plan (SFMP) was included in the approved-SMP for the Site. The SFMP provides guidelines for the management of soil and fill material during any future intrusive activities.

No intrusive activities requiring management of on-Site soil or fill material; or the placement of backfill materials occurred during the monitoring period.

### **3.3 Institutional Control Requirements and Compliance**

As detailed in the Environmental Easements, several Institutional Controls (ICs) need to be maintained as a requirement of the BCAs for the Site.

#### ***3.3.1 Institutional Controls***

- Groundwater-Use Restriction – the use of groundwater for potable and non-potable purposes is prohibited; and
- Land-Use Restriction: The controlled property may be used for commercial and/or industrial use; and
- Implementation of the SMP including the Soil/Fill Management Plan, and Monitoring Plan.

## 4.0 CONCLUSIONS AND RECOMMENDATIONS

At the time of the Site inspection, the Site was in full compliance with the Site Management Plan.



## 5.0 DECLARATION/LIMITATION

Benchmark Environmental Engineering and Science, PLLC, personnel conducted the annual site inspection for Brownfield Cleanup Program Site No. C932127, Niagara Falls, New York, according to generally accepted practices. This report complied with the scope of work provided to NF-3<sup>rd</sup> Associates, LLC by Benchmark Environmental Engineering and Science, PLLC.

This report has been prepared for the exclusive use of NF-3<sup>rd</sup> Associates, LLC. The contents of this report are limited to information available at the time of the site inspection. The findings herein may be relied upon only at the discretion of NF-3<sup>rd</sup> Associates, LLC. Use of or reliance upon this report or its findings by any other person or entity is prohibited without written permission of Benchmark Environmental Engineering and Science, PLLC.

## FIGURES



**FIGURE 1**



2558 HAMBURG TURNPIKE  
SUITE 300  
BUFFALO, NY 14218  
(716) 856-0599

## SITE LOCATION AND VICINITY MAP

### PERIODIC REVIEW REPORT

2250 FACTORY OUTLET BOULEVARD SITE

NIAGARA FALLS, NEW YORK

PREPARED FOR

NF-3rd ASSOCIATES, LLC

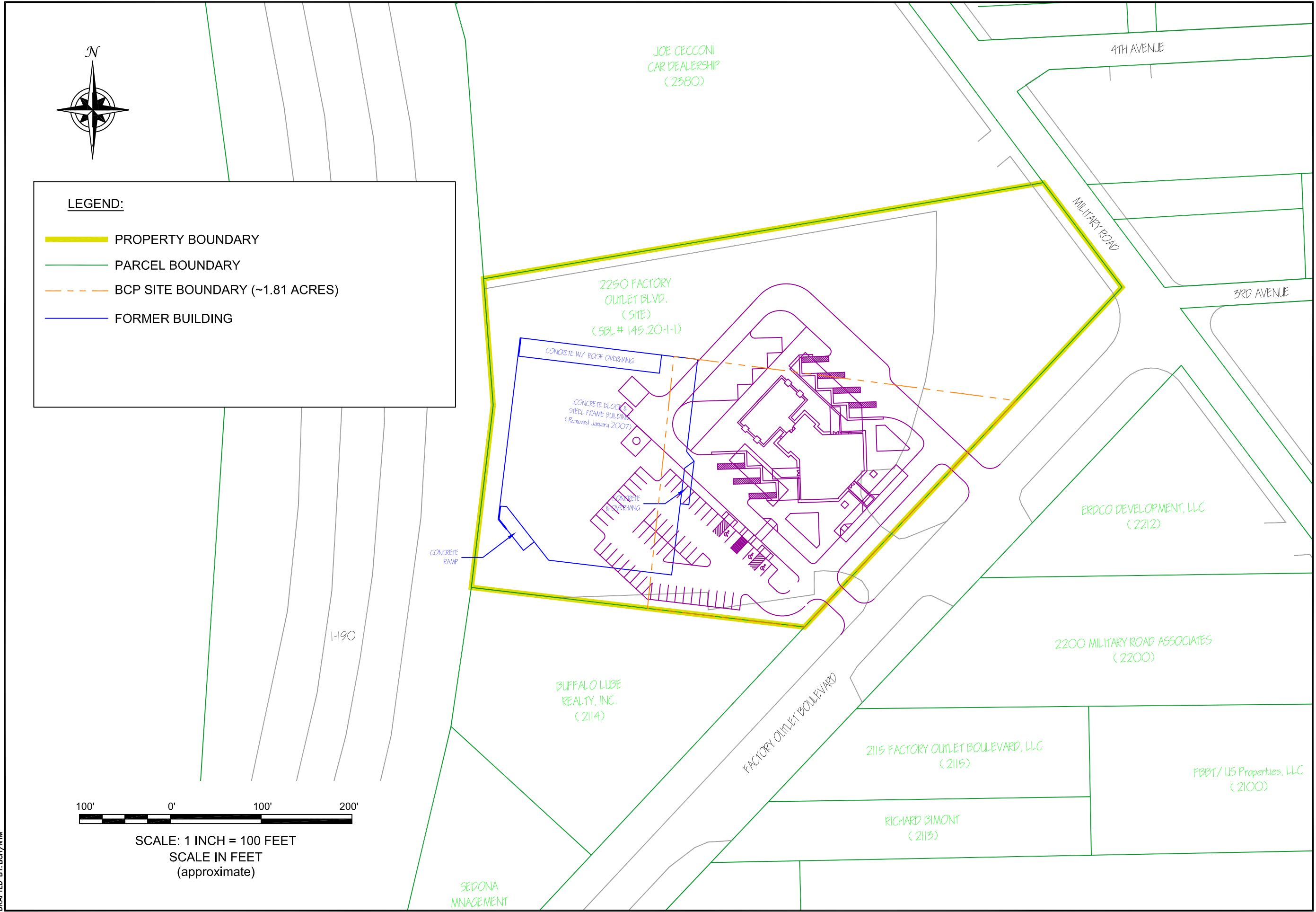
PROJECT NO.: 0105-003-901

DATE: JUNE 2010

DRAFTED BY: NTM



DATE: JUNE 2010  
DRAFTED BY: BCR/NTM



## APPENDIX A

### INSTITUTIONAL & ENGINEERING CONTROLS CERTIFICATION FORM



Enclosure 1  
**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**  
**Site Management Periodic Review Report Notice**  
**Institutional and Engineering Controls Certification Form**



Site Details		Box 1	
Site No.	C932127		
Site Name 2250 Factory Outlet Boulevard Site			
Site Address: 2250 Factory Outlet Boulevard		Zip Code: 14304	
City/Town: Niagara Falls			
County: Niagara			
Allowable Use(s) (if applicable, does not address local zoning): Commercial and Industrial			
Site Acreage: 1.8			
Owner: NF-3rd Associates, LLC			
570 Delaware Avenue, Buffalo, NY 14202			
Reporting Period: May 16, 2009 to May 16, 2010			

Verification of Site Details		Box 2	
		YES	NO
1. Is the information in Box 1 correct?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
If NO, are changes handwritten above or included on a separate sheet?		<input type="checkbox"/>	
2. Has some or all of the site property been sold, subdivided, merged, or undergone a tax map amendment during this Reporting Period?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
If YES, is documentation or evidence that documentation has been previously submitted included with this certification?		<input type="checkbox"/>	
3. Have any federal, state, and/or local permits (e.g., building, discharge) been issued for or at the property during this Reporting Period?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
If YES, is documentation (or evidence that documentation has been previously submitted) included with this certification?		<input type="checkbox"/>	
4. If use of the site is restricted, is the current use of the site consistent with those restrictions?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
If NO, is an explanation included with this certification?		<input type="checkbox"/>	
5. For non-significant-threat Brownfield Cleanup Program Sites subject to ECL 27-1415.7(c), has any new information revealed that assumptions made in the Qualitative Exposure Assessment regarding offsite contamination are no longer valid?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
If YES, is the new information or evidence that new information has been previously submitted included with this Certification?		<input type="checkbox"/>	
6. For non-significant-threat Brownfield Cleanup Program Sites subject to ECL 27-1415.7(c), are the assumptions in the Qualitative Exposure Assessment still valid (must be certified every five years)?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
If NO, are changes in the assessment included with this certification?		<input type="checkbox"/>	

**SITE NO. C932127**

**Box 3**

**Description of Institutional Controls**

Parcel

Institutional Control

S\_B\_L Image: 145.20-1-1

Ground Water Use Restriction  
Landuse Restriction  
Site Management Plan

**Box 4**

**Description of Engineering Controls**

None Required

Attach documentation if IC/ECs cannot be certified or why IC/ECs are no longer applicable.  
(See instructions)

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**Control Description for Site No. C932127**



**Control Description for Site No. C932127**

**Parcel: 145.20-1-1**

2. The following controls apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees, and any person using the Controlled Property:

A. The Controlled Property may be used for restricted commercial and/or industrial use as long as the following long term engineering controls are employed:

(I) Soils and fill materials encountered during any construction or development activity must be handled in accordance with provisions of the Site Management Plan. Prior notification and prior approval of NYSDEC is required in accordance with the Site Management Plan for this Controlled Property. Excavated soil must be managed, characterized, and properly disposed in accordance with NYSDEC regulations and directives.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated November 2007 ("SMP"). The SMP describes obligations that Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring and/or operating a treatment system on the Controlled Property, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The Department may change the SMP for the Controlled Property from time to time on the basis of requests or information submitted by Grantor, and modifications in applicable statutes, regulations, guidance, or site conditions. The Department reserves a unilateral right to modify the SMP. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Regional Remediation Engineer  
Region 9  
NYS Department of Environmental Conservation  
270 Michigan Avenue  
Buffalo, New York 14203

or

Site Control Section  
Division of Environmental Remediation  
NYS Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233

B. The Controlled Property may not be used for a higher level of use such as unrestricted or restricted residential use and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance dating to the Controlled property shall state in at least fifteen-point bold-faced type:

This property is subject to an environmental easement held by the New York State Department of Environmental Conservation pursuant of Title 36 to Article 71 of the Environmental Conservation Law.

D. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

E. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.



## Periodic Review Report (PRR) Certification Statements

1. I certify by checking "YES" below that:

a) the Periodic Review report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

b) to the best of my knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and the information presented is accurate and complete.

YES NO

☒ ☐

2. If this site has an IC/EC Plan (or equivalent as required in the Decision Document), for each Institutional or Engineering control listed in Boxes 3 and/or 4, I certify by checking "YES" below that all of the following statements are true:

(a) the Institutional Control and/or Engineering Control(s) employed at this site is unchanged since the date that the Control was put in-place, or was last approved by the Department;

(b) nothing has occurred that would impair the ability of such Control, to protect public health and the environment;

(c) access to the site will continue to be provided to the Department, to evaluate the remedy, including access to evaluate the continued maintenance of this Control;

(d) nothing has occurred that would constitute a violation or failure to comply with the Site Management Plan for this Control; and

(e) if a financial assurance mechanism is required by the oversight document for the site, the mechanism remains valid and sufficient for its intended purpose established in the document.

YES NO

☒ ☐

3. If this site has an Operation and Maintenance (O&M) Plan (or equivalent as required in the Decision Document);

I certify by checking "YES" below that the O&M Plan Requirements (or equivalent as required in the Decision Document) are being met.

YES NO

☒ ☐

4. If this site has a Monitoring Plan (or equivalent as required in the remedy selection document);

I certify by checking "YES" below that the requirements of the Monitoring Plan (or equivalent as required in the Decision Document) is being met.

YES NO

☒ ☐

IC CERTIFICATIONS  
SITE NO. C932127

Box 6

**SITE OWNER OR DESIGNATED REPRESENTATIVE SIGNATURE**

I certify that all information and statements in Boxes 2 and/or 3 are true. I understand that a false statement made herein is punishable as a Class "A" misdemeanor, pursuant to Section 210.45 of the Penal Law.

I Mike Depriest at 570 Delaware Ave Buffalo NY 14202  
print name print business address

am certifying as Owner (Owner or Remedial Party)

for the Site named in the Site Details Section of this form.

Mike Depriest  
Signature of Owner or Remedial Party Rendering Certification

7-1-10  
Date

IC/EC CERTIFICATIONS

Box 7

**QUALIFIED ENVIRONMENTAL PROFESSIONAL (QEP) SIGNATURE**

I certify that all information in Boxes 4 and 5 are true. I understand that a false statement made herein is punishable as a Class "A" misdemeanor, pursuant to Section 210.45 of the Penal Law.

I Michael Lesakowski at 2558 Hamburg Turnpike Buffalo NY 14216  
print name print business address

am certifying as a Qualified Environmental Professional for the \_\_\_\_\_

(Owner or Remedial Party) for the Site named in the Site Details Section of this form.

Michael Lesakowski  
Signature of Qualified Environmental Professional, for  
the Owner or Remedial Party, Rendering Certification

Stamp (if Required)

7/1/10  
Date

## APPENDIX B

### SITE PHOTLOG

## SITE PHOTOGRAPHS

Photo 1:



Photo 2:



Photo 3:



Photo 4:



Photo 1: Exterior site condition – Bus parking (looking west)

Photo 2: Site conditions – asphalt, concrete and grass (looking southwest)

Photo 3: Site conditions – northern portion of site (looking northwest)

Photo 4: Exterior site conditions (looking southwest adjacent to Factory Outlet Blvd.)

2250 Factory Outlet Boulevard  
Niagara Falls, New York  
June 23, 2010

 **BENCHMARK**  
ENVIRONMENTAL  
ENGINEERING &  
SCIENCE, PLLC

## SITE PHOTOGRAPHS

Photo 5:



Photo 6:



Photo 7:



Photo 8:



Photo 5: Exterior site conditions (looking west)

Photo 6: Exterior site conditions (looking northeast along Factory Outlet Blvd.)

Photo 7: Exterior site conditions (looking north)

Photo 8: Building interior

2250 Factory Outlet Boulevard  
Niagara Falls, New York  
June 23, 2010