

January 5, 2022

Ms. Megan Kuczka
Environmental Program Specialist 1
NYSDEC Region 9
Div. of Environmental Remediation
270 Michigan Avenue
Buffalo, New York 14203

Re: Institutional & Engineering Controls Certification
Six Vacant Lots on Ridge Road (ERP Site No. E915188)
113-135 Ridge Road, Lackawanna, New York 14218

Benchmark Environmental Engineering & Science, PLLC has prepared this Institutional & Engineering Controls Certification for the reporting period of November 2, 2020 through November 2, 2021 for the above referenced Site. This is the 3rd annual certification period for the Site which received a Certificate of Completion (COC) on August 1st, 2018.

No Site activities were completed during this reporting period which involved the disturbance of the Site cover system (Engineering Control). Site activities related to soil/fill disturbance and/or the installation of the cover system were completed prior to this reporting period and documented in the Excavation and Disposal Completion and Final Engineering Report dated June 1, 2018 prepared by Terracon Consultants – NY, Inc.

The Site was sold by Lexco, Inc. to ExchangeRight Net Leased Portfolio 45 DST in April 2021. The Notice of Transfer of Certificate of Completion was submitted to NYSDEC in April 2021.

Please contact us if you have any questions or require additional information.

Sincerely,
Benchmark Environmental Engineering & Science, PLLC

A handwritten signature in blue ink, reading 'Chris Boron'.

Christopher Boron, P.G.
Sr. Project Manager

Attachments

cc: D. Locey (NYSDEC – Region 9)
R. Taylor (ExchangeRight)

Strong Advocates, Effective Solutions, Integrated Implementation

www.benchmarkees.com

2558 Hamburg Turnpike, Suite 300 | Buffalo, NY 14218
phone: (716) 856-0599 | fax: (716) 856-0583



Enclosure 2
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. **E915188**

Site Name **Six Vacant Lots on Ridge Road**

Site Address: 113-135 Ridge Road Zip Code: 14218

City/Town: Lackawanna

County: Erie

Site Acreage: 0.770

Reporting Period: November 02, 2020 to November 02, 2021

YES NO

1. Is the information above correct?



If NO, include handwritten above or on a separate sheet.

2. Has some or all of the site property been sold, subdivided, merged, or undergone a tax map amendment during this Reporting Period?



3. Has there been any change of use at the site during this Reporting Period (see 6NYCRR 375-1.11(d))?



4. Have any federal, state, and/or local permits (e.g., building, discharge) been issued for or at the property during this Reporting Period?



If you answered YES to questions 2 thru 4, include documentation or evidence that documentation has been previously submitted with this certification form.

See Attached Documents

5. Is the site currently undergoing development?



Box 2

YES NO

6. Is the current site use consistent with the use(s) listed below?
Commercial and Industrial



7. Are all ICs in place and functioning as designed?



IF THE ANSWER TO EITHER QUESTION 6 OR 7 IS NO, sign and date below and DO NOT COMPLETE THE REST OF THIS FORM. Otherwise continue.

A Corrective Measures Work Plan must be submitted along with this form to address these issues.

Signature of Owner, Remedial Party or Designated Representative

Date

Description of Institutional ControlsParcel

141.43-1-6.1

Owner

Roger Taylor

Institutional Control

Ground Water Use Restriction
 Soil Management Plan
 Landuse Restriction

IC/EC Plan
 Site Management Plan

↑
 ExchangeRight Net-Leased
 Portfolio 45 DST

Institutional Controls:

- 1) Easement -
 - "May be used for Commercial use only..."
- 2) Operation, Monitoring and Maintenance Plan (Appendix H of the Site Investigation/Remedial Alternatives Report (May 2006), revised 3/20/2017.
 - Soil Cover System of (minimum) one foot clean soil.
 - Groundwater Use prohibition
- 3) Soil/ Fill Management Protocols (Appendix G of the Site Investigation/Remedial Alternatives Report (May 2006)+ Addendum (April 11, 2008).

Description of Engineering ControlsParcel

141.43-1-6.1

Engineering Control

Cover System

A site-wide cover system is in place. A one-foot layer of clean soil, vegetation and landscaping mulch covers all areas of the site not covered by pavement or building foundations. The clean, imported soil met the requirements for commercial site use (ref Appendix 5 of DER-10). Pavement and the building slab were constructed consistent with industry standards and comprise a cover more than 6 inches thick.

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 Engineering Control 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. For each Engineering control listed in Box 4, I certify by checking "YES" below that all of the following statements are true:

(a) The 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



**IF THE ANSWER TO QUESTION 2 IS NO, sign and date below and
DO NOT COMPLETE THE REST OF THIS FORM. Otherwise continue.**

A Corrective Measures Work Plan must be submitted along with this form to address these issues.

Signature of Owner, Remedial Party or Designated Representative

Date

IC CERTIFICATIONS
SITE NO. E915188

Box 6

SITE OWNER OR DESIGNATED REPRESENTATIVE SIGNATURE

I certify that all information and statements in Boxes 1,2, and 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 Roger Taylor at 1055 E. Colorado Blvd, Suite 310 Pasadena, CA 91106,
print name print business address

am certifying as Owner's Representative (Owner or Remedial Party)

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

Roger Taylor
Signature of Owner, Remedial Party, or Designated Representative Date
Rendering Certification

EC CERTIFICATIONS

Box 7

Qualified Environmental Professional 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 Christopher Boron at 2558 Hamburg Turnpike, Suite 300,
Buffalo, NY 14218,
print name print business address

am certifying as a Qualified Environmental Professional for the Owner
(Owner or Remedial Party)

 1/5/22
Signature of Qualified Environmental Professional, for Stamp Date
the Owner or Remedial Party, Rendering Certification (Required for PE)



Basil Seggos
Commissioner

February 16, 2021

Lucia Moura
Lexco, Inc.
1681 Ocean Blvd.
Rye, NH 03870

Re: Transfer of Ownership
Six Vacant Lots on Ridge Road,
E915188

Dear Lucia Moura:

This letter acknowledges receipt of your February 16, 2021 60-Day Advance Notification of Change of Use for the above referenced site, wherein the type of change was indicated as a proposed change in ownership and the transfer of Certificate of Completion (CoC). This acknowledgement is not intended to imply approval or concurrence with the proposed change of use.

Please ensure that post-transfer notification is submitted within 30 days of the transfer, as required under 6 NYCRR Part 375-1.11(d)(3)(ii) and 375-1.9(f)(1)(ii). These notifications must include the name of the new owner, new owner's contact information, contact representative, contact information for such representative, and proof of filing of the Notice of Transfer of CoC.

Failure to comply with the regulatory requirements of transfer notices may prevent successors and assigns from receiving any rights benefits, or protections as provided by statute or regulation.

If you have any questions or need additional information, you may contact me at the address given above.

Sincerely,

Megan Kuczka
Environmental Program Specialist 1

ec: Andrea Caprio – NYSDEC

Jay Simens – Goldberg, Weprin, Finkel & Goldstein, LLP

Roger Taylor – ExchangeRight Net-Leased Portfolio 45 DST,
a Delaware Statutory Trust

Chris Boron – Benchmark & Turnkey

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION



60-Day Advance Notification of Site Change of Use, Transfer of
Certificate of Completion, and/or Ownership
Required by 6NYCRR Part 375-1.11(d) and 375-1.9(f)

To be submitted at least 60 days prior to change of use to:

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

I. Site Name: SIX VACANT LOTS ON RIDGE RD, DEC Site ID No. E915188
LAKAWANA

II. Contact Information of Person Submitting Notification:

Name: LUCIA M. MOURA - PRESIDENT, LEXCO, INC.
Address1: 1681 OCEAN BLVD
Address2: RYE, NH 03870
Phone: 603-334-4779 E-mail: lumalex@aol.com

III. Type of Change and Date: Indicate the Type of Change(s) (check all that apply):

- ☒ Change in Ownership or Change in Remedial Party(ies)
☒ Transfer of Certificate of Completion (CoC)
☐ Other (e.g., any physical alteration or other change of use)

Proposed Date of Change (mm/dd/yyyy): 4/10/21

IV. Description: Describe proposed change(s) indicated above and attach maps, drawings, and/or parcel information.

CHANGE OF OWNERSHIP

If "Other," the description must explain and advise the Department how such change may or may not affect the site's proposed, ongoing, or completed remedial program (attach additional sheets if needed).

- V. **Certification Statement:** Where the change of use results in a change in ownership or in responsibility for the proposed, ongoing, or completed remedial program for the site, the following certification must be completed (by owner or designated representative; see §375-1.11(d)(3)(i)):

I hereby certify that the prospective purchaser and/or remedial party has been provided a copy of any order, agreement, Site Management Plan, or State Assistance Contract regarding the Site's remedial program as well as a copy of all approved remedial work plans and reports.

Name:

(Signature)

JAN 22, 2021

(Date)

LUCIA M. MOURA
PRESIDENT (Print Name) LEXCO, INC

Address1: 1681 OCEAN BLVD

Address2: RYE, NH 03870

Phone: 603.334.4779 E-mail: lumalex@aol.com

- VI. **Contact Information for New Owner, Remedial Party, or CoC Holder:** If the site will be sold or there will be a new remedial party, identify the prospective owner(s) or party(ies) along with contact information. If the site is subject to an Environmental Easement, Deed Restriction, or Site Management Plan requiring periodic certification of institutional controls/engineering controls (IC/ECs), indicate who will be the certifying party (attach additional sheets if needed).

☒ Prospective Owner ☐ Prospective Remedial Party ☐ Prospective Owner Representative

Name: Exchangeright Net-Leased Portfolio 45 DST, a

Address1: Delaware statutory trust

Address2: 1055 E. Colorado Blvd., Suite 310, Pasadena, CA 91106

Phone: (855) 317-4448 E-mail: properties@exchangeright.com

Certifying Party Name: Roger Taylor

Address1: 1055 E. Colorado Blvd., Suite 310, Pasadena, CA 91106

Address2:

Phone: (855) 317-4448 E-mail: properties@exchangeright.com

VII. Agreement to Notify DEC after Transfer: If Section VI applies, and all or part of the site will be sold, a letter to notify the DEC of the completion of the transfer must be provided. If the current owner is also the holder of the CoC for the site, the CoC should be transferred to the new owner using DEC's form found at <http://www.dec.ny.gov/chemical/54736.html>. This form has its own filing requirements (see 6NYCRR Part 375-1.9(f)).

Signing below indicates that these notices will be provided to the DEC within the specified time frames. If the sale of the site also includes the transfer of a CoC, the DEC agrees to accept the notice given in VII.3 below in satisfaction of the notice required by VII.1 below (which normally must be submitted within 15 days of the sale of the site).

Within 30 days of the sale of the site, I agree to submit to the DEC:

1. the name and contact information for the new owner(s) (see §375-1.11(d)(3)(ii));
2. the name and contact information for any owner representative; and
3. a notice of transfer using the DEC's form found at <http://www.dec.ny.gov/chemical/54736.html> (see §375-1.9(f)).

Name:

(Signature)

JAN 22, 2021

(Date)

LUCIA M. MOURA
PRESIDENT (Print Name) LEX CO, INC

Address1: 1681 OCEAN BLVD

Address2: RYE, NH 03870

Phone: 603.334.4779 E-mail: lumalex@aol.com

(Address)

PLEASE TAKE FURTHER NOTICE, that If there is an environmental easement for this site, that ExchangeRight Net-Leased Portfolio 45 DST recognize(s) and agree(s) to implement the Department-approved Site Management Plan, and any amendments thereto, and to fully comply with all restrictions and affirmative obligations contained therein as well as in the Environmental Easement for the Site.

WHEREFORE, the undersigned have signed this Notice of Transfer of Certificate of Completion as of this 8th day of April, 2021.

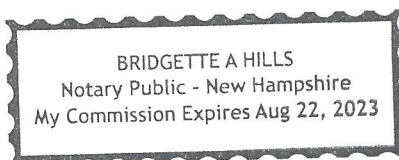
Lexco, Inc.
(Certificate Holder(s))

By: [Signature]
(Authorized Signator) PRESIDENT

Sworn to before me this

8th day of April, 2021

[Signature]
(Notary Signature)



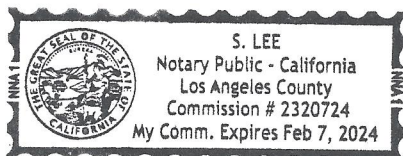
ExchangeRight Net-Leased Portfolio 45 DST
(New Property Owner(s))

By: [Signature]
(Authorized Signator)

Sworn to before me this

10th day of April, 2021

[Signature]
(Notary Signature)



Schedule A

Legal Description

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Lackawanna, County of Erie and State of New York, being part of Lot 35, Township 10, Range 8 of the Buffalo Creek Reservation and further distinguished as Subdivision Lots Numbers 6 through 11 in Block "C" as shown on a map filed in the Erie County Clerk's Office under Cover Number 680, bounded and described as follows:

BEGINNING at the intersection of the southerly line of Ridge Road (66 feet wide) and the westerly line of Wasson Avenue (60 feet wide), said point of beginning being the northeast corner of Subdivision Lot 11 as shown on said Map Cover 680 in Block "C";

THENCE South $08^{\circ} 17' 51''$ West, along the westerly line of Wasson Avenue, and along the easterly line of Subdivision Lot 11, a distance of 140.00 feet to the southeast corner of Subdivision Lot 11;

THENCE North $81^{\circ} 46' 25''$ West, along the southerly line of Subdivision Lot 11 and along the southerly lines of Subdivision Lots 10, 9, 8, 7 and 6, a distance of 240.00 feet to the southwest corner of Subdivision Lot 6;

THENCE North $08^{\circ} 17' 51''$ East, along the westerly line of Subdivision Lot 6, a distance of 140.00 feet to the northwest corner of Subdivision Lot 6, said corner being on the southerly line of Ridge Road;

THENCE South $81^{\circ} 46' 25''$ East, along the southerly line of Ridge Road and the northerly lines of Subdivision Lots 6 through 11, a distance of 240.00 feet to the point of beginning.

ATTACHMENT A

ENVIRONMENTAL INSPECTION FORM

6 Lots Site, Lackawanna, New York

Property Name: Family Dollar
6 Lots Site Lackawanna, NY Inspection Date: 12/7/21
Property Address: 113-135 Ridge Road
City: Lackawanna State: NY Zip Code: 14218
Property ID: (Tax Assessment Map)
Section: 141.43 Block: 1 Lot(s): 6.1
Total Acreage: 0.77

Weather (during inspection): Temperature: 30° Conditions: Overcast

SIGNATURE: Chris Baron

The findings of this inspection were discussed with appropriate personnel, corrective actions were identified and implementation was mutually agreed upon:

Inspector: Christopher Baron Date: 12/7/21
Next Scheduled Inspection Date: TBD in 2022

COVER & VEGETATION

1. Final cover in acceptable condition?

Is there evidence of sloughing, erosion, ponding or settlement?

Is there evidence of unintended traffic; rutting?

Is there evidence of distressed vegetation/turf?

<u>X</u>	<u>X</u>
<u> </u>	<u>X</u>
<u> </u>	<u>X</u>
<u> </u>	<u>X</u>
Yes	No

2. Final cover sufficiently covers soil/fill material?

Are there cracks visible in the soil or pavement?

Is there evidence of erosion in the storm water channels or swales?

Is there damage to the synthetic erosion control fabric in the channels or swales?

<u>X</u>	<u>X</u>
<u> </u>	<u>X</u>
<u> </u>	<u>X</u>
<u> </u>	<u>X</u>

ACTIVITY ON SITE

3. Any activity on site that mechanically disturbed soil cover?

<u> </u>	<u>X</u>
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ADDITIONAL FACILITY INFORMATION

Development on or near the site? (Specify size and type):

A gas station is being constructed east of the Site at the corner of Ridge Rd and Wasson Ave. The property is about 0.5 acres in size.

COMMENTS

Item #

Cover system appears to be in good condition

ATTACHMENTS

1. Site Sketch Not Applicable
2. Photographs Attached
3. Laboratory Report (s) Not Applicable

SITE PHOTOGRAPHS

Photo 1:



Photo 2:



Photo 3:



Photo 4:



Photo 1: Asphalt portion of cover system southwest of the building, looking northeast.

Photo 2: Landscaped portion of cover system north side of building, looking east.

Photo 3: Soil cover system and building on east side of Site, looking south.

Photo 4: Asphalt and concrete cover system south side of building, looking west.

SITE PHOTOGRAPHS

Photo 5:



Photo 6:



Photo 7:



Photo 8:

Photo 5: Asphalt and concrete cover system in southwestern portion of the Site, looking west.

Photo 6: Top of berm on western side of Site, looking north.

Photo 7: Gas station under construction east of Site across Wasson Avenue, looking east.