MICHAEL P. KEARNS, ERIE COUNTY CLERK
REF:

DATE:9/16/2026
TIME:2:14:03 PM
RECEIPT: 26162559

PEOPLE OF THE STATE OF NEW YORK
ACCOUNT #: 277

ITEM - 01 AMD
RECD: 9/16/2026 2:14:13 PM
FILE: 2026173989 BK/PG D 11466/3395
PEOPLE OF THE STATE OF NEW YORK (THE)
CITY OF BUFFALO
Subtotal 0.00

TOTAL DUE	$0.00
PAID TOTAL	$0.00

REC BY: Lynn L
COUNTY RECORDER

AMENDMENT TO ENVIRONMENTAL EASEMENT

This Amendment to Environmental Easement is made as of this 11th day of September 2026, by and between The People of the State of New York, acting through their Commissioner of the Department of Environmental Conservation ("NYSDEC" or the "Department"; also known as the "Grantee"), with its headquarters located at 625 Broadway, Albany, New York 12233, and the City of Buffalo, having an office at 65 Niagara Square, 920 City Hall, City of Buffalo, Erie County, New York 14202-3313 ("Grantor").

RECITALS

1. Grantor is the owner of real property located at the address of 1318 Niagara Street in the City of Buffalo, County of Erie and State of New York, known and designated on the tax map of the County Clerk of Erie County as tax map parcel numbers: Section 88.81, Block 1, Lot 10.1, being the same as that property conveyed to Grantor by deed dated November 16, 2004 and recorded in the Erie County Clerk's Office in Liber of Deeds 11086, page 2188.

2. The Department and Grantor entered into that certain Environmental Easement (the "Environmental Easement") dated as of June 4, 2015 and recorded in the Erie County Clerk's Office on June 24, 2015 in Liber of Deeds 11281, Page 3241. Capitalized terms used herein without definition have the meanings ascribed to them in the Environmental Easement. The real property subject to the Environmental Easement is defined therein and herein as the "Controlled Property."

3. Pursuant to the Environmental Easement, Grantor granted to the Department rights and interests that run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of the Controlled Property at a level that has been determined to be safe for certain uses while ensuring the performance of certain maintenance, monitoring and/or operation requirements, and to ensure the restriction of future uses of the land that are inconsistent with the aforesaid stated purpose.

4. The Environmental Easement contains use restrictions that apply to the Controlled Property. This Amendment to Environmental Easement is made and recorded in order to modify the use restrictions applicable to the Controlled Property, because the Department has determined that, in addition to the uses currently allowed under the Environmental Easement, the Controlled Property may also be used as a park for recreation and green space.

5. Pursuant to Section 8 of the Environmental Easement, Grantor and Grantee agree the Department is using this Amendment to Environmental Easement to amend the Environmental Easement in the manner prescribed by Article 9 of the Real Property Law.

FILED
SEP 16 2026
ERIE COUNTY
CLERK'S OFFICE

AMENDMENT TO ENVIRONMENTAL EASEMENT

A. The above recitals are hereby incorporated into this Amendment to Environmental Easement.

B. The Department and Grantor agree that the following paragraph is added to the Environmental Easement as the penultimate WHEREAS clause, which is to state the following: "Grantor and Grantee hereby agree that the United States, through the United States Environmental Protection Agency ("EPA"), shall be, on behalf of the public, a third-party beneficiary of the benefits, rights and obligations conveyed to Grantee in this instrument, provided that Grantor and Grantee further agree that nothing in this instrument is intended or shall be construed to create any obligations or responsibilities on the part of EPA;

C. The Department and Grantor agree that the following paragraph is to be added to the Environmental Easement as the final WHEREAS clause, which is to state the following: "Grantor and Grantee hereby agree that EPA issued on August 21, 2025 an 'Approval for Risk-Based Cleanup and Disposal of Polychlorinated Biphenyl [PCB] Remediation Waste' (the "Approval") that requires, *inter alia*, Grantor and/or Grantee to ensure the Controlled Property is zoned for and used only as a park providing green space for recreation, to develop and implement a groundwater monitoring plan, to develop and implement a Site Management Plan ("SMP"), to meet periodic and annual reporting requirements and to submit to EPA a Remedial Action Report;

D. The Department and Grantor agree that paragraph 2 of the Environmental Easement ("Institutional and Engineering Controls") is to have its first sentence amended to read as follows: "The controls and requirements listed in the Department-approved and EPA-approved SMP, including any and all Department-approved and EPA-approved amendments to the SMP, are incorporated into and made part of this Environmental Easement."

E. The Department and Grantor agree that paragraph 2.A(1) of the Environmental Easement is hereby amended so that it reads as follows:

(1) The Controlled Property shall be limited to the following uses:

As long as PCB remediation waste above one ppm is present in and at the Controlled Property, the Controlled Property may be used only as a park for recreation and green space, as noted in the Approval, unless otherwise approved in writing by EPA and the Department. Use of the Controlled Property as a park for recreation and green space as described in the preceding sentence is allowed, but the Controlled Property shall not otherwise be used for Residential, Restricted Residential, Commercial, or Industrial purposes as defined in 6 NYCRR 375-l.8(g)(2)(i), -(ii), -(iii) and -(iv), unless otherwise approved in writing by EPA and the Department. The above-stated institutional and engineering controls may not be discontinued

without an amendment to or extinguishment of this Environmental Easement.

The Department and Grantor further agree that paragraph 2.A(10) of the Environmental Easement is hereby amended so that it reads as follows: "Access to the Controlled Property must be provide to agents, employees or other representatives of the State of New York and/or of the EPA with reasonable prior notice to the property owner to ensure compliance with the restrictions identified by this Environmental Easement."

The Department and Grantor further agree that paragraph 2.B of the Environmental Easement is hereby amended so that it reads as follows:

> The Controlled Property shall not be used for Residential, Restricted Residential, Commercial or, Industrial purposes as defined in 6NYCRR 375-1.8(g)(2)(i), -(ii), -(iii) and -(iv), except that the Controlled Property may be used as a park for recreation and green space, as noted in the Approval, as long as PCB remediation waste above one ppm is present in and at the Controlled Property, unless otherwise approved in writing by EPA, and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

The purpose of these amendments to paragraphs 2.A(1) and 2.B of the Environmental Easement is to add the use of the Controlled Property as a park for recreation and green space as an allowed use category for the Controlled Property.

The Department and Grantor further agree that paragraph 2.D of the Environmental Easement is hereby amended to read as follows: "Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department and the EPA approve for the Controlled Property and all Department-approved and EPA-approved amendments to that SMP. Grantor must also comply with Section 11 of the Approval ("Sale or Lease of the Site") in connection with any sale or lease of the Controlled Property."

The Department and Grantor further agree that in paragraph 2.E, the 15-point bold-faced type is hereby amended to include the following as its last sentence (also in 15-point bold-faced type): "THE ENVIRONMENTAL EASEMENT SHALL BE ENFORCEABLE BY THE PEOPLE OF THE STATE OF NEW YORK AND BY THE UNITED STATES OF AMERICA AS THIRD-PARTY BENEFICARY."

The Department and Grantor further agree that the concluding paragraph in 2.E of the Environmental Easement should be a separate paragraph to read as follows: "Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor agrees to provide Grantee and the EPA with a certified true copy of said instrument and, if it has been recorded in public lands records, its recording reference."

The Department and Grantor further agree that paragraph 2.G of the Environmental Easement is hereby amended to read as follows: "Grantor covenants and agrees it shall, at such time as NYSDEC and/or the EPA may require, submit to NYSDEC and EPA a written statement by an expert NYSDEC and the EPA find acceptable, such expert certifying under penalty of perjury, in such form and manner as the Department and the EPA may require, that:"

The Department and Grantor further agree that paragraph 2.G(2)(ii) of the Environmental Easement is hereby amended to read as follows: "are unchanged from the previous certification, or that any identified changes to the controls employed were approved by NYSDEC and the EPA, and that all controls are in the Department-approved and EPA-approved format; and"

F. The Department and Grantor agree that the following paragraph is added to the Environmental Easement as new paragraph 2.H:

> The following information is provided to fulfill the requirements of 40 CFR § 761.61(a)(8)(i) and of that certain Approval, dated August 21, 2025, issued by the United States Environmental Protection Agency:
>
> (a) The Controlled Property is located at 1318 Niagara Street, City of Buffalo, and information about the location of engineering controls on the Controlled Property is set forth in the SMP;
> (b) A description of the extent of contamination at and around the Controlled Property is set forth in the SMP;
> (c) A description of the work performed under the Approval is set forth in the SMP;
> (d) A description of the soil cover and any other engineering controls that must be maintained in perpetuity is set forth in the SMP;
> (e) A description of the inspection, maintenance, and reporting requirements is set forth in the SMP;
> (f) The Controlled Property shall not be used for any purpose other than as a park for recreation and green space, unless otherwise approved in writing by the Region 2 office of the United States Environmental Protection Agency;
> (g) A copy of the Approval (not including any attachments or documents incorporated by reference therein) is attached hereto as Attachment 1.

The Department and Grantor further agree that a true, accurate and complete copy of the Approval attached hereto as Attachment 1 is hereby attached to and incorporated into the Environmental Easement as Attachment 1.

G. All terms, other than those as amended herein, of the Environmental Easement shall remain in full force and effect.

H. This Amendment to Environmental Easement inures to and binds the parties hereto and their respective successors and assigns.

I. This Amendment to Environmental Easement shall be governed by and interpreted in accordance with the laws of the State of New York.

J. The Department and Grantor further agree that paragraph 6 of the Environmental Easement ("Notice") is hereby amended to include the following addressee, to whom copies of all correspondence are to be sent: Chief of the Corrective Action Section of the Land and Redevelopment Programs Branch of the United States Environmental Protection Agency, Region 2, located at 290 Broadway, 25th floor, New York, New York 10007-1866. The Department and Grantor shall transmit all such correspondence via e-mail to the following address (park.andy@epa.gov) unless EPA provides written notice of another e-mail address.

K. The Department and Grantor further agree that paragraph 8 of the Environmental Easement ("Amendment") is amended to include the following sentence as the concluding sentence of such paragraph: "Notice of any such amendment shall be provided to EPA, as provided in paragraph 6, above."

L. The Department and Grantor further agree that paragraph 9 of the Environmental Easement ("Extinguishment") is amended to include the following sentence as the concluding sentence of such paragraph: "Notice of any such extinguishment shall be provided to the EPA as provided in paragraph 6, above."

M. The Department and Grantor further agree that paragraph 9 of the Environmental Easement ("Extinguishment") is amended to include the following sub-paragraph, to be captioned as "A.": "Grantor covenants and agrees that should the Environmental Easement be extinguished in accordance with the requirements of ECL Article 71, Title 36, Grantor shall ensure that a deed restriction be recorded in accordance with State law and remain in place as long as PCB remediation waste above one ppm remains in and at the Controlled Property. Such deed restriction must provide notice, at a minimum, of the following: (a) the location of the Controlled Property and engineering controls; (b) a description of the extent of contamination found at the Controlled Property and/or off the Controlled Property; (c) a description of the work performed under the Approval; (d) a description of the soil cover and any other engineering controls that must be maintained in perpetuity; (e) a description of the inspection, maintenance, and reporting requirements associated with the final approved SMP; (f) the restrictions on use included in Section 12 of the Approval; and (g) a copy of the Approval (not including any attachments thereto or documents incorporated therein by reference), appended as an attachment to said deed restriction."

N. The Department and Grantor further agree that following paragraph 10 of the Environmental Easement ("Joint Obligation"), said easement is amended to include a new paragraph that reads, "Consistency with the SMP. To the extent there is any conflict or inconsistency between the terms of this Environmental Easement and the SMP with regard to matters specifically addressed by the SMP, the terms of the SMP will control."

O. The Department and Grantor further agree that following the above paragraph to be added ("Consistency with the SMP"), the Environmental Easement is amended to include a new

paragraph that reads, "Federal Authority: Nothing in this document is intended or is to limit or otherwise affect the EPA's authority to enter and/or access the Controlled Property, nor is anything herein intended or is to be construed as a waiver of any authority or sanction the EPA possesses pursuant to this Approval or applicable federal law."

P. Department and Grantor further agree that following the above paragraph to be added ("Federal Authority"), the Environmental Easement is amended to include a new paragraph that reads, "State Authority: Nothing herein is intended or is to be construed as a waiver of any authority the State of New York may have pursuant to the Environmental Conservation Law, applicable regulations and/or other relevant and applicable provisions of statutory or common law."

IN WITNESS WHEREOF, Grantor has caused this Amendment to Environmental Easement to be signed in its name.

APPROVED AS TO FORM ONLY

Corporation Counsel

City of Buffalo:

By: Sean M Ryan By Rosa Alina Ryan 8/24/26

Print Name: Mayor Sean Ryan

Title: Mayor, City of Buffalo Date: 8/26/26

Grantor's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 26 day of August, in the year 20 26, before me, the undersigned, personally appeared Mayor Sean Ryan, 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.

Thomas E. Baines
Notary Public - State of New York

THOMAS E. BAINES
STATE OF NEW YORK
NOTARY PUBLIC
Qualified in Erie County
02BA6425311
MY COMMISSION EXPIRES

4/15/2030

THIS AMENDMENT TO ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

By: Andrew Guglielmi
Andrew O. Guglielmi, Director
Division of Environmental Remediation

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the 11 day of September in the year 2026 before me, the undersigned, personally appeared Andrew O. Guglielmi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public - State of New York

Cheryl A. Salem
Notary Public State of New York
Registration No. 01SA0002177
Qualified in Albany County
My Commission Expires March 3, 2027

Attachment 1

Approval for Risk-Based Cleanup and Disposal of
Polychlorinated Biphenyl Remediation Waste

REGION 2

NEW YORK, N.Y. 10007

August 21, 2025

In the Matter of	:	
	:	Approval for Risk-Based Cleanup and
Property at 1318 Niagara Street	:	Disposal of Polychlorinated Biphenyl
Erie County, City of Buffalo,	:	Remediation Waste
New York	:	

This Approval for Risk-Based Cleanup and Disposal of Polychlorinated Biphenyl Remediation Waste ("Approval") is being issued to both the New York State Department of Environmental Conservation ("NYSDEC") and the City of Buffalo, New York ("Buffalo") by the United States Environmental Protection Agency ("EPA"), Region 2 ("EPA Region 2") in response to a request submitted pursuant to 40 C.F.R. § 761.61(c) for the risk-based cleanup and disposal of "polychlorinated biphenyl ('PCB') remediation waste," as that term is defined by 40 C.F.R. § 761.3). The request was submitted to EPA Region 2 by NYSDEC, with the knowledge and consent of Buffalo, in February 2024, and subsequently revised and re-submitted in May 2024, and August 2024. The request, as revised, addresses the remediation of PCB-contaminated soil and groundwater at and in the property owned by Buffalo and located at 1318 Niagara Street, Buffalo, New York 14213 ("Site").

In determining whether to approve NYSDEC's request, EPA Region 2 reviewed: **(1)** the final Risk Based PCB Remediation Proposal, dated August 2024, prepared by Ramboll Americas Engineering Solutions, Inc. for NYSDEC; and **(2)** the e-mail from Michael Cruden of NYSDEC, dated November 8, 2024, providing the certification made in accordance with 40 C.F.R. § 761.61(a)(3)(i)(e) and executed on May 13, 2024 by duly authorized representatives of NYSDEC and Buffalo (collectively, the "Application").

EPA Region 2 reviewed the Application to determine whether the remedial actions proposed therein would be protective of human health and the environment, and technically feasible and appropriate. EPA Region 2 also reviewed the Application to ensure that safeguards, including long-term maintenance and monitoring commitments associated with the remediation of the Site, will be in place. Based on the information provided in the Application, which is incorporated in its entirety by reference into this document with the same force and effect as if set forth herein, EPA Region 2 has determined that implementation of the remedial actions as described in the Application and this Approval to address the presence of residual PCBs (*i.e.* PCB remediation waste) in and at the Site will not present an unreasonable risk of injury to health or the environment.

EPA Region 2 therefore hereby issues this Approval to NYSDEC and Buffalo for the risk-based cleanup and disposal of PCB remediation waste in and at the Site, subject to the terms and conditions specified

herein. This Approval is issued under the authority granted to EPA Region 2 by Subchapter I of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 - 2629, as amended, and in accordance with the federal regulations for PCB promulgated pursuant thereto and set forth in 40 C.F.R. Part 761. In EPA Region 2, the authority to issue approvals under 40 C.F.R. § 761.61(c)(2) has been duly delegated to the Director of the Land, Chemicals & Redevelopment Division ("LCRD").

1. Effective Date

This Approval becomes effective on the date when the Director of LCRD, EPA Region 2, receives the written notification from both NYSDEC and Buffalo, signed by an authorized representative of each, of their respective acceptance of, and intention to comply with, the terms and conditions of this Approval. If such notifications are received on two separate dates, the effective date of this Approval will be the later of the two dates. EPA Region 2 may withdraw this Approval if it does not receive written notifications from both parties within 45 calendar days (henceforth, all references to "days" are intended to mean "calendar days") of the date that EPA Region 2 electronically transmits the Approval to the representatives of NYSDEC and Buffalo identified in Section 16, below.

2. Description of the Site and the Extent of PCB Contamination

Buffalo owns the 0.77-acre Site which was used as a brewery from 1909 to 1987. From 1987 to 2004, the Site was utilized by private owners for unknown purposes. In 2004, the City of Buffalo acquired ownership of the property of the Site through tax foreclosure. The Site is currently a vacant lot zoned for commercial use.

Demolition of the Site's buildings began in 2006. A previously used furnace was discovered in the northwest corner of the Site in January 2007. The furnace contained sludge containing PCBs at a concentration of 23,700 parts per million ("ppm"). The furnace and sludge were subsequently removed and disposed. Residual oil was removed from the USTs, and the USTs were excavated in February 2007. Underground piping associated with the USTs was removed sometime prior to 2009. A Preliminary Site Assessment was conducted in 2009 to assess the conditions of the Site following the initial demolition and removal activities described above. Site Investigation was completed in 2011 to further delineate the nature and extent of impacted soil and groundwater at the Site. Two Interim Remedial Measures ("IRMs") were subsequently implemented: the first IRM, in 2010, disposed of highly contaminated PCB wastes including the former USTs and contents, the 55 gallon drums and contents, and PCB-contaminated soil from the UST and furnace pit excavations; the second IRM, based on the findings of prior remedial investigations, was completed in 2013, and this IRM included limited excavations of soil contaminated with PCBs greater than 10 ppm in five discrete areas. NYSDEC also issued a Record of Decision ("ROD") in 2014 identifying PCBs as the primary contaminants at the Site. The remedy selected in the March 2014 ROD included removal of the top six inches to four feet of soil across the site followed by placement of a demarcation fabric and establishment of a soil cover; this cleanup action removed PCBs above one ppm in the top two feet of soil at the Site and was completed in 2019.[1]

[1] PCB contamination remains on-site at concentrations less than one ppm to 1,300 ppm, with PCBs above one ppm remaining below the demarcation fabric. PCBs above 100 ppm remain in localized areas on the west and south sides of the Site, and further removal of soil was deemed technically impracticable because of the presence of an adjacent building

NYSDEC collected groundwater samples from five on-site wells (MW-1, MW-2, MW-3, MW-4, and MW-5) in 2011, 2017, 2018, 2021, 2022 and 2023. The samples, with and without being filtered for removal of soil particles, were analyzed for PCB concentration levels. PCBs were detected up to 59,300 micrograms/liter ("ug/l") in the groundwater samples collected from MW-3. In addition, dense non-aqueous phase liquid ("DNAPL") has been encountered in well MW-3. The DNAPL layer identified in MW-3 is thin which limits options for removal, and stable; no noticeable change has been observed since it was originally observed in 2018. As part of the monitoring program in the Site Management Plan[2] (SMP), it will be monitored annually. Should a significant change in the DNAPL occur, measures will be taken to remove the material.

To evaluate groundwater quality further downgradient, additional groundwater samples were collected from three other on-site wells (MW-6, MW-7 and MW-8) at the western edge of the property and two off-site wells (MW-9 and MW-10) in 2022 and 2023. These samples were also analyzed with and without being filtered. The data collected from MW-6, MW-7, MW-8 and MW-10 show no detection of PCBs in the unfiltered or filtered samples. PCBs up to 6.5 ug/l and 0.59 ug/l were detected in the unfiltered and filtered samples collected from off-site well, MW-9, respectively; as this well is situated on the far (western) side of the railroad tracks and interstate highway away from the Site and downgradient of clean wells, this PCB contamination is unlikely to originate at the Site and may be localized in origin.[3]

3. Work Performed/To be Performed

NYSDEC has performed the remediation activities and has no further investigations currently planned. Should additional investigations be needed, NYSDEC shall perform additional investigation activities at the Site, as described in the Application and in accordance with the terms and conditions set forth in this Approval. NYSDEC and/or Buffalo shall also conduct the work required in accordance with the applicable provisions of the PCB regulations, 40 C.F.R. Part 761, including but not limited to the provisions regarding on-site storage and marking of PCB remediation waste, and decontamination of equipment if utilized in remediation. NYSDEC and/or Buffalo shall also be responsible for all reports required regarding the remediation work performed and the development, submission, and implementation of plans as further set out in Sections 4, 6 and 7 of this Approval.

NYSDEC and/or Buffalo shall have responsibility for the work requirements pertaining to the performance of and reporting on inspections, DNAPL monitoring, and long-term maintenance and monitoring, any required zoning changes, and the filing of and reporting on an environmental easement amendment as set out in Sections 4, 6, 7, and 10 of this Approval.

Remedial work and investigative activities are described in detail in the Application, and include, but are not limited to the following components as set forth in the Application:

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foundation along the southern edge of the Site. For locations and specific concentration levels, see Figure 3 on page 29 (of the PDF version) of the Application.

[2] See Section 6, below

[3] Additional more localized investigation might yield additional information. See Section 3[5], below.

(1) Engineering Controls

Soil Cover: NYSDEC has installed a cover system comprising a minimum of two feet of clean fill across the Site. In some areas, less than two feet of material was removed and replaced where soil was characterized as containing less than one ppm PCBs within the top two feet. A demarcation layer (fabric) is present beneath the soil cover to visually identify both the fill and the potentially-impacted soil underneath. (See Figure 8 of the Interim Site Management Plan (Appendix D to the Application).)

(2) Institutional Controls

a. NYSDEC and/or Buffalo shall record an amendment to the existing environmental easement in effect at the Site in accordance with Section 10 of this Approval recorded with the County Clerk's Office in Erie County, New York.

b. NYSDEC and/or Buffalo shall ensure that the Site is zoned for and used only as a park providing green space for recreation.

(3) Groundwater Monitoring

NYSDEC and/or Buffalo shall develop and implement a groundwater monitoring plan to assess potential impacts of PCBs in on-site and off-site groundwater in accordance with Section 7 of this Approval.

(4) Site Management Plan (SMP)

NYSDEC and/or Buffalo shall develop and implement a SMP in accordance with Section 6 of this Approval. This Plan must ensure the effective isolation and containment of the PCBs remaining in and at the Site.

(5) Areas Currently Not Accessible for Investigation and/or Cleanup:

Access to the adjacent CSX railroad, Interstate 190, and New York State Thruway Authority property has been limited or unavailable. If access to any of these properties becomes available, NYSDEC and/or Buffalo shall perform additional investigation on these properties and, if additional work is deemed necessary, NYSDEC and/or Buffalo shall submit a supplemental PCB cleanup plan(s) to EPA for review and approval before implementation.

(6) Prevent Migration and Unacceptable Exposure

NYSDEC and/or Buffalo shall conduct any remedial supplemental measures deemed necessary to prevent the migration of, or unacceptable exposure to, PCB contamination existing at or otherwise originating from the Site.

NYSDEC and/or Buffalo shall submit to EPA for review and approval any proposed revision(s) or modification(s) to the Work as described in Section 3 [1-5] of this Approval prior to implementation of

any such proposed revisions or modifications, in accordance with Section 13 of this Approval. If EPA Region 2 disapproves of any such proposed revision(s) or modification(s) of the aforementioned Work, EPA Region 2's determination as to which revision(s) or modification(s) must be made shall be final and binding upon NYSDEC and/or Buffalo.

If NYSDEC and/or Buffalo hires or otherwise employs any contractor, sub-contractor, independent agent or other third party to perform, on its behalf or at its behest, any work required or otherwise authorized by this Section, then such hiring entity shall direct, and be responsible to ensure, that such contractor, sub-contractor, independent agent or other third party perform any such work in accordance with the terms and conditions of this Approval and in accordance with all applicable provisions of 40 C.F.R. Part 761.

Nothing herein is intended or is to be construed to preclude additional work measures from being implemented, provided that any such measure(s) be not inconsistent with nor violate any express provision in this Approval or any applicable PCB regulatory provision of 40 C.F.R. Part 761. EPA may require NYSDEC and/or Buffalo to carry out additional investigation or mitigation measures should it find that the plan being implemented is not protective and that PCB contamination at the Site poses an unreasonable risk of injury to health or the environment.

4. Periodic and Annual Reporting Requirements

The following reports shall be made:

Work Schedule. Planned work has been completed for this site as presented in the risk-based cleanup and disposal plan. If future work is contemplated or required, NYSDEC and/or Buffalo shall submit to EPA Region 2 a detailed schedule for performance of the work identified in Section 3. The schedule may be periodically updated as agreed to in writing between EPA and NYSDEC and/or Buffalo.

Work Status Report. NYSDEC and/or Buffalo shall provide EPA Region 2 with a written report every three months of the status of the remedial actions performed in accordance with Sections 3[1-4] of this Approval and any other actions, if deemed necessary, under Sections 3[5-6] of this Approval.

Groundwater Monitoring Reports. NYSDEC and/or Buffalo shall submit groundwater monitoring reports in accordance with the groundwater monitoring plan approved in accordance with Section 7, below.

Remedial Action Report. Within 60 days of the completion of the work specified in Sections 3[1-4] or of any supplemental work specified in Sections 3[5-6] of this Approval, NYSDEC and/or Buffalo shall submit to EPA Region 2 for review and approval a Remedial Action Report ("RAR") in accordance with the provisions of Section 5, below.

Annual Report. Beginning the first July following the completion of the work identified in Sections 3[1-4] and continuing every July thereafter, NYSDEC and/or Buffalo shall submit to EPA Region 2, no later than July 31, an annual written report (the "Annual Report") covering the previous annual reporting period (July 1 through June 30). The Annual Report must include information collected pursuant to Sections 3, 6, and 7 of this Approval.

Environmental Easement Amendment. Within seven (7) days of recording the environmental easement amendment as set forth in Section 3[2], above, and as further described in Section 10, below, NYSDEC and/or Buffalo shall submit to EPA Region 2 proof that such environmental easement amendment has been recorded in accordance with the provisions of Section 10.

Additional reports or submissions may be required pursuant to Sections 8, 11, and 13, below.

5. Remedial Action Report

Within 60 days of the completion of the work specified in Section 3 [1-4] of this Approval, NYSDEC and/or Buffalo shall submit to EPA Region 2 a Remedial Action Report ("RAR") for review and approval that must include the following:

1) a detailed description of the specific activities performed to address the PCB contamination present in and at the Site;

2) a tabular summary (with supporting laboratory documentation) of the results of all sampling conducted in connection with the remedial work;

3) documentation of off-site disposal of any PCB remediation waste that was removed from the Site;

4) "as-built" figures depicting conditions at the Site, including the soil cover as required by Section 3[1], after the remedial work has been completed; and

5) a certification signed by a professional engineer licensed by the State of New York, on behalf of NYSDEC and/or Buffalo, verifying that all engineering components directed by this Approval have been completed in accordance with this Approval.

Within 60 days of the completion of any other remedial action identified and "deemed necessary" under, and within the meaning of, Sections 3[5-6] of this Approval, NYSDEC and/or Buffalo shall submit a supplemental RAR to EPA, Region 2, and such supplemental RAR must include the information specified in sub-paragraphs 1-5 of this section.

6. Site Management Plan, and Related Obligations

NYSDEC and/or Buffalo shall submit a draft SMP for the Site to EPA Region 2 for review and approval at least 60 days prior to the anticipated date for completion of the work specified in Section 3. The draft SMP must include the following components:

1) a detailed schedule for inspections and maintenance of the soil cover, including inspection and maintenance record templates;

2) preventive and corrective maintenance procedures;

3) a detailed protocol for annual monitoring the DNAPL layer in MW-3, including tracking and reporting templates;

4) any other monitoring activities; and

5) any supplemental or other additional measures required for the implementation of additional remedial actions pursuant to Sections 3[5-6] of this Approval.

If EPA Region 2 disapproves of the draft SMP and directs that revisions or modifications be made thereto, EPA Region 2's determination shall be final and binding upon NYSDEC and/or Buffalo.

Within 30 days of EPA Region 2's approval of the draft SMP and completion of work specified in Section 3, NYSDEC and/or Buffalo shall commence implementation of the approved SMP. NYSDEC and/or Buffalo shall prepare written reports of all inspections performed and maintenance activities completed, and it shall submit to EPA Region 2 each year a copy of all such soil cover inspection and maintenance reports, as well as any other information pertaining to maintenance of the soil cover. Such reports must be included in the Annual Reports (as required under Section 4, above).

If NYSDEC and/or Buffalo identifies a breach in the soil cover at any time, the party that identifies such breach shall notify EPA Region 2 in writing within seven days of discovery and copy the other. Such notification must include any anticipated corrective measures and a schedule for implementation.

If upon measurement, NYSDEC and/or Buffalo identifies significant changes to the DNAPL, then NYSDEC and/or Buffalo shall notify EPA within 15 days of the finding. NYSDEC and/or Buffalo shall then submit a supplemental PCB cleanup plan to EPA for review and approval within 60 days of the finding. Upon EPA's approval, the supplemental PCB cleanup plan will be implemented according to the schedule within.

7. Groundwater Monitoring

Within 60 days of this effective date of this Approval, NYSDEC and/or Buffalo shall provide EPA Region 2 with a groundwater monitoring plan for the Site, for review and approval. The plan will include, at a minimum but not limited to, the number and locations of groundwater monitoring wells to be utilized to access the current levels and potential impacts of PCBs in groundwater under the Site, frequency of sampling and reporting, and criteria utilized to determine whether groundwater monitoring needs to continue or cease and if further remediation is required. Upon EPA Region 2 approval, NYSDEC and/or Buffalo shall begin to implement the approved groundwater monitoring plan and provide EPA Region 2 with a report according to the schedule in the approved plan.

If EPA Region 2 disapproves of the groundwater monitoring plan NYSDEC and/or Buffalo has submitted, and directs that revisions or modifications be made thereto, EPA Region 2's determination shall be final and binding upon NYSDEC and/or Buffalo.

8. Financial Assurance

NYSDEC and/or Buffalo shall be responsible for the work to be performed at the Site including approximately 30 years of operation and maintenance as set forth in the Application. In light of this,

neither NYSDEC nor Buffalo needs to make a showing of financial assurance unless required under Section 11 of this Approval.

In the event that Buffalo seeks to sell or lease the Site (in its entirety or any portion thereof) then Buffalo shall ensure that any such contract of sale or leasing include the following provisions: (a) such prospective buyer or lessee shall demonstrate to EPA Region 2 that it has in place financial assurance sufficient for the costs of operation and maintenance, provided such financial assurance mechanism is listed among the financial assurance mechanisms set forth in 40 C.F.R. § 761.65(g) [referencing provisions of Subpart H of 40 C.F.R. Part 264]); (b) no later than March 1st of each year following the transfer of ownership or the leasing arrangement becoming effective (whichever the case may be), such buyer or lessee shall submit an annual certification to EPA Region 2 that the selected financial assurance mechanism(s) covered the prior calendar year and that the buyer/lessee has and will maintain such coverage for the current year; and (c) beginning five years from the transfer of ownership or the leasing arrangement becoming effective (whichever the case may be) and repeating every five years thereafter, the buyer or lessee shall demonstrate to EPA Region 2 that the financial assurance mechanism(s) is/are sufficient to cover any reasonably contemplated costs of all future obligations related to PCB contamination in or at the Site.

Notwithstanding the above, if Buffalo sells or leases the Site (in its entirety or any portion thereof) but the new owner or lessee is not able or is no longer able to demonstrate it has successfully secured the aforementioned financial assurance as required by this Section, NYSDEC and/or Buffalo shall remain liable for funding all obligations required by this Approval as if such sale or leasing arrangement had not taken place.

9. Records

As long as PCB remediation waste above one ppm remains in or at the Site, NYSDEC and/or Buffalo shall maintain the following records at 625 Broadway, Albany, NY 12233-4500 (whether in hard copy or stored in electronic format) and shall make them available to EPA Region 2 upon request:

1) the final construction drawings and any other construction-related documents pertaining to the soil cover for the Site;

2) all records and information related to characterization, analysis, sampling, shipping and disposal of PCB-contaminated material at or from the Site; and

3) all records and information related to long-term monitoring including monitoring of the Site soil cover.

NYSDEC and Buffalo shall confirm and certify their awareness that these records are maintained at NYSDEC's central office location at 625 Broadway, Albany, NY 12233-4500. Such certification shall be provided to EPA with the notification of acceptance pursuant to Section 1, above. In the event that the three conditions listed below in Section 11 of this Approval are met and the Approval is reissued to and accepted by a new owner or lessee, NYSDEC will, unless otherwise approved by EPA, transfer to the new owner or lessee custody of the documents required to be preserved pursuant to 40 C.F.R. Part 761, and to the extent not inconsistent with applicable TSCA statutory or regulatory requirements,

NYSDEC and Buffalo will then be released from any further record-keeping obligations under this Approval.

10. Environmental Easement Amendment

Within 60 days of the completion of the work specified in Sections 3[1-4] and of supplemental work specified in Section 3[5-6] of this Approval, NYSDEC and/or Buffalo shall:

1) Prepare and record an amendment to the existing environmental easement in effect at the Site with the County Clerk's Office, Erie County, New York in accordance with 40 C.F.R. § 761.61(a)(8)(i) and applicable New York law. The amended environmental easement must, at a minimum, include: **(a)** the location of the Site and engineering controls; **(b)** a description of the extent of contamination found at the Site and/or off-Site; **(c)** a description of the work performed under this Approval; **(d)** a description of the soil cover and any other engineering controls that must be maintained in perpetuity; **(e)** a description of the inspection, maintenance, and reporting requirements associated with the final approved SMP; **(f)** the restrictions on use included in Section 12 of this Approval; and **(g)** a copy of this Approval (not including any attachments hereto or documents incorporated by reference herein), appended as an attachment.

2) Submit to EPA Region 2 a certification signed by an authorized representative of NYSDEC and/or Buffalo indicating that NYSDEC and/or Buffalo has recorded the amendment to the existing environmental easement in effect at the Site as required by 40 C.F.R. § 761.61(a)(8)(i) and as further required by and specified in subparagraph 1 of this Section.

11. Sale or Lease of the Site

Buffalo shall not sell or lease any portion of the Site (or the Site in its entirety) unless it notifies EPA Region 2 and NYSDEC, in writing, no less than 60 days prior to entering into a contract for such sale or lease. This notification must include the name, address and telephone number of the proposed new owner(s) or lessee(s).

In the event that Buffalo attempts to sell or lease any portion of the Site (or the Site in its entirety), Buffalo and/or NYSDEC continues to be bound by, and is required to comply with, all the terms and conditions of this Approval, and be responsible to ensure the timely and satisfactory completion of all work required thereunder, unless and until the following three conditions have occurred:

1) the new owner or lessee requests, in writing, that EPA Region 2 reissue this Approval to the new owner or lessee such that all responsibility to comply with the terms and conditions of this Approval is transferred to the new owner or lessee, and the new owner or lessee indicates how it intends to comply with the financial assurance and other requirements of this Approval;

2) EPA Region 2 reissues this Approval to the new owner or lessee, transferring all responsibility to comply with the terms and conditions of this Approval to the new owner or lessee; and

3) The new owner or lessee provides written notification to EPA Region 2 of its acceptance of and intention to comply with the terms and conditions of the revised Approval.

Buffalo shall include in any contract for the sale or lease of the Site (in its entirety or any portion thereof) a provision that: **(a)** NYSDEC and Buffalo have continued access to the Site to perform its obligations under the Approval until all three of the aforementioned above conditions (in sub-paragraphs 1 through 3) have been met, and **(b)** EPA Region 2 has continuing and ongoing access to the Site for inspection and/or monitoring activity(ies). Furthermore, any sale or lease agreement must state that the owner or lessee's use of the property will be subject to the terms and conditions of the recorded environmental easement, as amended.

EPA Region 2 may withdraw the reissued Approval if it does not receive written notification from the new owner or lessee of its acceptance of, and intention to comply with, the terms and conditions of the reissued Approval within 45 days of the effective date of the reissued Approval. If, pursuant to the provisions of this paragraph, EPA Region 2 has withdrawn the reissued Approval, this Approval, as originally issued to NYSDEC and Buffalo, will remain in force and effect. In such case, where the originally issued Approval remains in force and effect, NYSDEC and/or Buffalo shall provide EPA Region 2, in writing, documentation attesting that NYSDEC and/or Buffalo will be afforded access to the Site, as necessary, for any purpose provided under this Approval or under applicable law.

In the event that the three conditions set forth in this Section (in sub-paragraphs 1 through 3, above) have been complied with, and the Approval is reissued to, and accepted by, the new owner(s) or lessee(s), NYSDEC shall then transfer custody of the documents required to be preserved pursuant to 40 C.F.R. Part 761, to the new owner(s) or lessee(s), and, to the extent not inconsistent with applicable TSCA statutory or regulatory requirements, NYSDEC and Buffalo will then be released from any further future obligations as required by this Approval except as set out in Section 8 (Financial Assurance), above.

12. Restrictions on Use

To ensure that any future use of the Site does not pose an unreasonable risk of injury to health or the environment, as long as PCB remediation waste above one ppm is present in and at the Site, NYSDEC and/or Buffalo shall not allow use of the Site, or any portion of it, for purposes other than as a park for recreation and green space, as noted in the Application, unless otherwise approved in writing in advance by EPA Region 2.

Any site redevelopment to create the new park must maintain the existing site cover. NYSDEC and/or Buffalo may add additional features, including, but not limited to, paved surfaces, sidewalks or soil to the existing topography, but may not excavate the cover to create, enhance, or maintain the park. Any fill material brought to the site must meet the requirements for the identified site use as set forth in the Application. A site redevelopment plan must be submitted to EPA for review and approval before implementation.

13. Modifications and Changes in Use

Any proposed modification(s) to any of the terms or conditions of this Approval, whether expressly stated herein or incorporated by reference (including, but not limited to, proposed modification(s) to the work described in Section 3 and/or to plans or reports that have been previously submitted to, and

approved by EPA Region 2 pursuant to this Approval), must receive prior written approval from the Director of LCRD, EPA Region 2. NYSDEC and/or Buffalo (whichever entity is seeking the modification) shall notify EPA Region 2 and the other entity in writing of any such proposed modification(s) at least sixty (60) days prior to the anticipated date for implementation of any such modification(s) unless EPA agrees in writing to an alternative time frame. No action to implement any such proposed modification(s) shall be taken unless and until EPA Region 2 has approved the modification(s) in writing. EPA Region 2 may request from the entity seeking the modification additional information or clarification in order to determine whether or not the modification(s) should be approved.

If a proposed modification(s) involves a change in the use of the Site that has the potential to affect the soil cover or to result in other unacceptable changes (*e.g.*, is inconsistent with the goal and objectives of this Approval or might prevent attaining them), EPA Region 2 retains the discretion not to approve the proposed modification(s). If EPA Region 2 determines that the change in use of the Site may pose an unreasonable risk to health or the environment, or if EPA Region 2 does not receive the information from NYSDEC and/or Buffalo that EPA Region 2 has requested in accordance with the prior paragraph, then EPA Region 2 retains the discretion to revoke, suspend and/or modify this Approval or take other action as appropriate pursuant to 40 C.F.R. Part 761. NYSDEC and/or Buffalo shall prepare and record with the Erie County Clerk's office any amendment to the environmental easement and/or this Approval resulting from any modification(s) within 60 days of any such change.

14. EPA Region 2 Authority for Entry and Inspection

By accepting the terms of this Approval, NYSDEC and/or Buffalo consent to EPA Region 2's authorized representative(s), including its contractors, entering the Site at reasonable times for any purpose authorized by Section 11 of TSCA, 15 U.S.C. § 2610, including but not limited to the following purposes:

1) to inspect the Site to assess compliance with this Approval and/or the federal PCB regulations;

2) to inspect records related to this Approval and/or federal PCB regulations (such consent will apply to other locations where records might be maintained); and

3) to collect samples to assess compliance with this Approval and/or the federal PCB regulations. NYSDEC and/or Buffalo will be given the opportunity to split samples collected by EPA Region 2 representatives, provided this does not compromise EPA Region 2's sampling activities or the samples which EPA Region 2 collects.

15. Confidential Business Information

Written information supplied to EPA is presumptively available to the public under the Freedom of Information Act, 5 U.S.C. § 552, and the regulations at 40 C.F.R. Part 2. As provided in Section 14(c) of TSCA, 15 U.S.C. § 2613(c), NYSDEC and/or Buffalo may claim information provided to EPA Region 2 pursuant to this Approval (or pursuant to EPA Region 2 request pursuant to this Approval) to be Confidential Business Information ("CBI"), and such claim must comply with the substantive criteria in 40 C.F.R. § 2.208. Information designated as CBI will be disclosed by EPA Region 2 only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2.

Factors that EPA considers in a determining whether a CBI claim is valid are set out in TSCA § 14(c), 15 U.S.C. § 2613(c), and at 40 C.F.R. § 2.204(e)(4). These factors include but are not limited to the following:

1) Whether measures have been taken to protect the confidentiality of the information, and it intends to continue to take such measures;

2) Whether the information is not, and has not been, reasonably obtainable by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on showing of special need in a judicial or quasi-judicial proceeding);

3) Whether the information is not, and has not been, publicly available elsewhere; and

4) Whether disclosure of the information would cause substantial harm to the competitive position of the individual or entity making the claim.

The information requested under this Approval concerns the proper handling of PCB remediation waste and is not expected to involve CBI. However, if NYSDEC and/or Buffalo claims information required to be submitted to EPA to be CBI, then the party(ies) making the claim shall clearly identify the information claimed to be CBI as such on the documents submitted and shall substantiate the claims at the time of submission. Submissions should be made electronically via EPA's Central Data Exchange (CDX). Instructions for electronic submission of TSCA CBI can be found at https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/electronic-reporting-requirements-certain-information. Additional information on TSCA CBI, including certification and substantiation templates, can be found at https://www.epa.gov/tsca-cbi .

16. Addresses for Correspondence and Required Submissions

1) EPA Addresses:

All non-CBI correspondence and other documents to be submitted to EPA Region 2 in accordance with this Approval shall be sent via e-mail to:

Andrew Park
Chief, Corrective Action Section
Land and Redevelopment Programs Branch
United States Environmental Protection Agency, Region 2
290 Broadway-25th Floor
New York, New York 10007-1866
park.andy@epa.gov

2) All correspondence and other documents to be submitted to NYSDEC shall be sent to the following representative:

Elyse DuBois, Project Manager
Division of Environmental Remediation
Remedial Bureau E, Section A
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-5060
Elyse.DuBois@dec.ny.gov

3) All correspondence and other documents to be submitted to Buffalo shall be sent to the following representative:

Jason Paananen
Director Of Environmental Affairs
City of Buffalo, Office of Strategic Planning
901 City Hall, 65 Niagara Square
Buffalo, NY 14202-3376
jpaananen@ch.ci.buffalo.ny.us

4) EPA Region 2, NYSDEC, and Buffalo each may designate additional or different addressees for submissions of correspondence and other documentation upon written notice to each other.

17. Failure to Comply with the Terms and Conditions of this Approval; Material Misrepresentations

Any failure to comply with the terms and conditions of this Approval constitutes a violation of this Approval, which EPA Region 2 is issuing under the authority of 40 C.F.R. § 761.61(c). Any such violation is made unlawful by Section 15(1) of TSCA, 15 U.S.C. § 2614(1), and, EPA Region 2 may, in its discretion: **(a)** seek to commence a proceeding pursuant to Section 17 of TSCA, 15 U.S.C. § 2616, to compel compliance with the terms and conditions of this Approval, **(b)** revoke, suspend or modify this Approval and then, EPA may concomitantly therewith seek to commence a proceeding pursuant to Section 17 of TSCA, 15 U.S.C. § 2616, to compel compliance with the PCB remediation waste cleanup and disposal provisions of 40 C.F.R. § 761.61(a) or 40 C.F.R. § 761.61(b), or as otherwise applicable 40 C.F.R. § 761.50, or **(c)** prosecute a proceeding to obtain any other appropriate legal or equitable sanction and relief as authorized under or pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) or other law.

This Approval, issued pursuant to 40 C.F.R. § 761.61(c), is based upon NYSDEC having provided in its Application to EPA Region 2 a complete and truthful disclosure of all material facts related to the Site. The misrepresentation, concealment or omission of any material fact in the Application or in any document associated with or supporting this Approval may result in EPA Region 2 revoking, suspending and/or modifying this Approval.

18. Retention of Authority

Nothing in this Approval is intended or is to be construed as prejudicing, waiving or negating any authority or sanction or relief available to EPA (or the United States on behalf of EPA) including those under Sections 16 and 17 of TSCA, 15 U.S.C. §§ 2615 and 2616, or any duly promulgated regulation codified at 40 C.F.R. Part 761, to prosecute an enforcement proceeding for any relief or sanction, legal, equitable or criminal, as authorized under any such applicable provision(s) of TSCA or other law with regard to or concerning the presence in and at the Site of PCB remediation waste, and nothing herein is intended or is to be construed as barring or precluding any proceeding.

19. Conclusion

Based on the information included in the Application, EPA Region 2 finds that the PCB remediation waste cleanup and disposal authorized by this Approval and the prospective use of the Site as set forth in the Application and this Approval do not present an unreasonable risk to health or the environment. Acceptable concentrations of PCB remediation waste remaining at the Site are based on a site-specific risk determination pursuant to TSCA, and this determination is not applicable to any other site or location within this Site.

Notwithstanding any other provision of this Approval, this Approval may be reviewed, revoked, suspended and/or modified at any time before or after acceptance thereof by NYSDEC and Buffalo if EPA Region 2 determines that implementation of this Approval may present an unreasonable risk of injury to health or the environment.

The acceptance of this Approval by NYSDEC and by Buffalo constitutes each entity's agreement to comply with the following:

1) all terms and conditions of this Approval; and

2) all applicable provisions of federal, state and local law pertaining to the PCB remediation waste present in, at, or beneath the Site. This Approval only specifies the applicable requirements under TSCA and does not cite to or make any determination regarding the requirements that may be applicable under other federal law, or under state or local law.

NYSDEC and Buffalo shall be jointly and severally responsible to ensure compliance with all provisions and terms of this Approval.

Iglesias, Ariel

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Date: 2025.08.21 13:21:59 -04'00'

Ariel Iglesias, Director
Land, Chemicals and Redevelopment Division
United States Environmental Protection Agency, Region 2

August 21, 2025
Date