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FACT SHEET

NYSDEC Certifies Cleanup at Buffalo Color Corp. Area C Site

Brownfield Cleanup Program

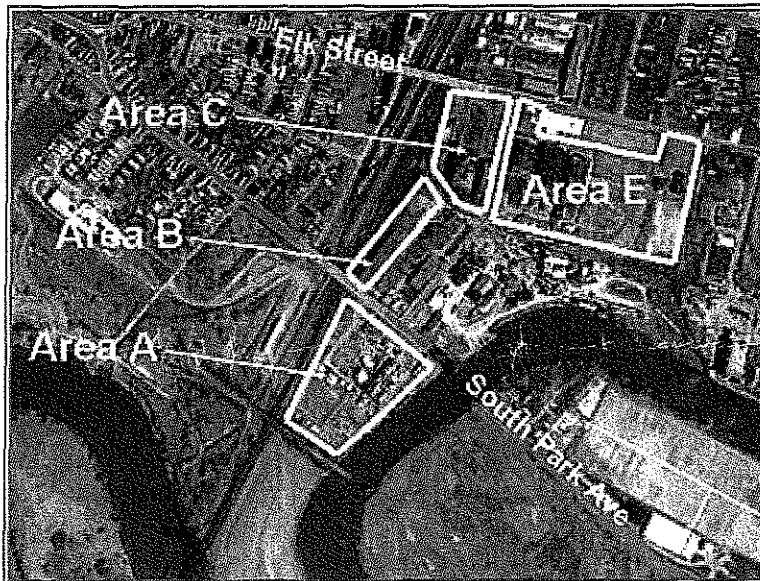
Site Number C915231

January 2011

Introduction

The New York State Department of Environmental Conservation (NYSDEC) is pleased to announce that remediation of the Buffalo Color Corp. (BCC) Area C Site in the City of Buffalo has been completed. Remediation refers to actions taken to eliminate, abate, or contain contamination that may be harmful to public health, welfare, or the environment. The remediation addressed elevated levels of soil and groundwater contaminants associated with past facility operations.

NYSDEC has issued a Certificate of Completion to the applicant regarding the site. A copy of the Notice of the Certification of Completion is available at the locations identified in this fact sheet.



Description of Completed Remedial Activities

The site remediation was accomplished by completing the following cleanup actions, which included:

- Preparing two existing structures for post-remediation reuse and redevelopment;
- Excavating soil impacted by specific contaminants, properly disposing the material, backfilling the excavation with clean fill, and adding an oxygen releasing bio-stimulant to the clean backfill to treat residual volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs) in adjoining soil and groundwater;
- Covering the site with an integrated cover system consisting of one foot of vegetated soil or gravel, and utilizing existing buildings and pavement for the balance of cover over the site; and
- Developing a site management plan with institutional and engineering controls that will be implemented during redevelopment and reuse of the site. An institutional control is a legal or administrative restriction placed on the use of the site when residual contamination left after the cleanup action makes the site suitable for some but not all uses. An engineering control is a physical barrier or method to manage contamination, such as a soil cover system.

The remedial measures successfully addressed contamination and will serve as the final remedy for the site.

What Controls Are in Place to Ensure the Effectiveness of the Cleanup?

The site owner will be required to adhere to Institutional and Engineering Controls as stipulated in the Site Management Plan (SMP). The plan specifies that:

- The site may be used for commercial and industrial purposes. Any residential use is prohibited;
- Vapor intrusion from residual VOCs in the soil and groundwater must be evaluated for new and existing structures and if warranted, active vapor intrusion mitigation systems must be installed, operated, maintained and monitored until testing shows that it is no longer needed;

- Procedures must be implemented according to an Excavation Work Plan to minimize human and ecological exposure if future work on the site requires the disturbance of the remaining impacted soil;
- Long-term groundwater monitoring is required to monitor the effectiveness of the remediation measures; and
- A site-wide inspection assuring that the Institutional and Engineering controls have not been altered and remain effective must be conducted in accordance with the SMP.

Next Steps

NYSDEC issued the Certificate of Completion based on review and approval of a Final Engineering Report submitted by the applicant. With the receipt of a Certificate of Completion the applicant:

- Has no liability for contamination at or coming from the site, subject to certain conditions; and,
- Is eligible for tax credits to offset cleanup and redevelopment costs.

A Certificate of Completion may be modified or revoked if, for example, the applicant commits fraud regarding its application or its certification that it has met cleanup levels.

Site Background

The site is located in an industrial area of the City of Buffalo and is bounded by the former industrial BCC Area B to the south, an active railroad corridor to the west, Elk Street to the north and Lee Street to the east. Over the last 100 years, the Site has been used for chemical dye-stuff manufacturing purposes. Remediation at the site addressed intermediate dye-stuff chemicals (VOCs and SVOCs), polycyclic aromatic hydrocarbons (PAHs), and metals contamination. The completion of remedial activities at the site means that the owner may proceed with commercial and industrial development of the site.

Who Should I Call If I Have Questions About the Site?

Public participation is important for the success of New York's remedial programs. We welcome questions and comments.

Environmental Questions:

Eugene W. Melnyk, PE
NYSDEC
270 Michigan Avenue
Buffalo, New York 14203
(716) 851-7220
ewmelnyk@gw.dec.state.ny.us

Health Questions:

Nathan Freeman
NYS Department of Health
547 River St., Rm. 300
Troy, NY 12180
(518) 402-7860
ntf01@health.state.ny.us

Project Questions:

John Yensan
South Buffalo Development, LLC
333 Ganson Street
Buffalo, NY 14203
(716) 856-3333 Ext. 302
jyensan@oscinc.com

Where Can I Find More Information about the Site?

To help the public stay informed, NYSDEC has established two locations at which you may view public documents. The locations include:

Dudley Branch Public Library
2010 South Park Avenue
Buffalo, NY 14220
Phone: (716) 858-8900

NYSDEC Region 9 Office
270 Michigan Avenue
Buffalo, NY 14203
(716) 851-7220 (Please call for appointment)

Electronic versions of project documents are also available at <http://www.dec.ny.gov/chemical/52854.html>.

Information about sites in the State's remedial programs will now be distributed electronically by email. If you would like to continue receiving information, please sign up at the Erie County email listserv at <http://lists.dec.state.ny.us/mailman/listinfo/eriecountycleanupnews>.

NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)
CERTIFICATE OF COMPLETION

CERTIFICATE HOLDER(S):

Name

SOUTH BUFFALO DEVELOPMENT LLC

Address

333 Ganson Street, Buffalo, NY 14203

BROWNFIELD CLEANUP AGREEMENT:

Application Approval: 4/1/09 **Agreement Execution:** 4/27/09 **Agreement Index No.:** B9-0784-08-06

Application Approval Amendment: none

Agreement Execution Amendment: none

SITE INFORMATION

Site No.: C915231 **Site Name:** Buffalo Color Corporation Site Area C

Site Owner: SOUTH BUFFALO DEVELOPMENT LLC

Street Address: 229 Elk Street

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

Site Size: 6.030 Acres

Tax Map Identification Number(s): 122.12-1-30, 122.12-1-35, 122.12-1-36

Percentage of site located in an EnZone: 100 %

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

CERTIFICATE ISSUANCE

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

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

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

Allowable Uses under the BCP: Commercial and Industrial

Cleanup Track: Track 4: Restricted use with site-specific soil cleanup objectives

Tax Credit Provisions for Entities Taxable Under Article 9, 9-A, 32, and 33:

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 25 %.

Tangible Property Credit Component Rate is 20 %.

Tax Credit Provisions for Entities Taxable Under Article 22 & S Corporations:

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 25 %.

Tangible Property Credit Component Rate is 18 %.

The Remedial Program includes use restrictions or reliance on the long term employment of institutional or engineering controls which are contained in the approved Site Management Plan and an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Erie County as 2010199446.

LIABILITY LIMITATION

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

CERTIFICATE TRANSFERABILITY

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

CERTIFICATE MODIFICATION/REVOCATION

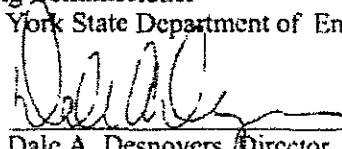
This Certificate of Completion may be modified or revoked by the Commissioner following notice and an opportunity for a hearing in accordance with ECL Section 27-1419 and 6NYCRR Part 375-1.9(c) upon a finding that:

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

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

Peter M. Iwanowicz
Acting Commissioner
New York State Department of Environmental Conservation

By:


Dale A. Desnoyers, Director
Division of Environmental Remediation

Date: DEC 28 2010

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

(Site Name) Buffalo Color Corporation Area C, (Site ID No.) C915231
(Site Address) 229 Elk Street, Buffalo New York

PLEASE TAKE NOTICE, the New York State Department of Environmental Conservation (Department) has issued a Certificate of Completion (Certificate) pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law (ECL) to South Buffalo Development LLC for a parcel approximately 6.03 acres located at 229 Elk Street in the City of Buffalo, Erie County.

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

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

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

[Include the following paragraph if there is a groundwater use restriction]

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

PLEASE TAKE NOTICE, since the remedial program relies upon use restrictions or the long term employment of institutional or engineering controls; such institutional or engineering controls are contained in an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Erie County as 2010199446.

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

PLEASE TAKE NOTICE, provided that the Environmental Easement, SMP and Certificate are complied with, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

PLEASE TAKE NOTICE, the Certificate may entitle the Certificate holder(s) to tax credits in

Buffalo Color Corporation Area C, Site # C915231, 229 Elk Street, City of Buffalo

accordance with Tax Law Sections 21, 22 and 23.

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

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

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

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

PLEASE TAKE NOTICE, a copy of the Certificate can be reviewed at the NYSDEC's Region 9 located at 270 Michigan Avenue, Buffalo, New York 14203-2915 by contacting the Regional Environmental Remediation Engineer.

WHEREFORE, the undersigned has signed this Notice of Certificate

(Applicant)

By: Jon M. Williams

By its Manager SBD Holdings I, Inc.

Title: Jon M. Williams, President SBD Holdings I, Inc.

Date: December 28, 2010

STATE OF NEW YORK) SS:
COUNTY OF ERIE)

On the 28th day of December, in the year 2010, before me, the undersigned, personally appeared Jon M. Williams, 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.

Nancy L. Mazur
Signature and Office of individual
taking acknowledgment

Please record and return to:
South Buffalo Development, LLC
333 Ganson Street
Buffalo, New York 14203

NANCY L. MAZUR
Notary Public, State of New York
Qualified in Erie County No. 1765930
My Commission Expires 12 30, 2013
12/03/09



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Site Management Form
12/23/2010



SITE DESCRIPTION

SITE NO. C915231

SITE NAME Buffalo Color Corporation Site Area C

SITE ADDRESS: 229 Elk Street ZIP CODE: 14210

CITY/TOWN: Buffalo

COUNTY: Erie

ALLOWABLE USE: Commercial and Industrial

SITE MANAGEMENT DESCRIPTION

SITE MANAGEMENT PLAN INCLUDES:	YES	NO
IC/EC Certification Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Monitoring Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Operation and Maintenance (O&M) Plan	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Periodic Review Frequency: once a year	<input type="checkbox"/>	<input checked="" type="checkbox"/>
First Periodic Review Date: 06/15/2012		

Description of Institutional Control

South Buffalo Development, LLC
Part of 5 Babcock Street

Environmental Easement

Block: 1

Lot: 30

Sublot:

Section: 122

Subsection: 12

S_B_L Image: 122 12-1-30

Building Use Restriction

Ground Water Use Restriction

IC/EC Plan

Landuse Restriction

Monitoring Plan

Site Management Plan

Soil Management Plan

Lot: 35

Sublot:

Section: 122

Subsection: 12

S_B_L Image: 122.12-1-35

Building Use Restriction

Ground Water Use Restriction

IC/EC Plan

Landuse Restriction

Monitoring Plan

Site Management Plan

Soil Management Plan

Lot: 36

Sublot:

Section: 122

Subsection: 16

S_B_L Image: 122.12-1-36

Building Use Restriction

Ground Water Use Restriction

IC/EC Plan

Landuse Restriction

Monitoring Plan

Site Management Plan

Soil Management Plan

Description of Engineering Control

South Buffalo Development, LLC

Part of 5 Babcock Street

Environmental Easement

Block: 1

Lot: 30

Sublot:

Section: 122

Subsection: 12

S_B_L Image: 122.12-1-30

Cover System

Lot: 35

Sublot:

Section: 122

Subsection: 12

S_B_L Image: 122.12-1-35

Cover System

Lot: 36

Sublot:

Section: 122

Subsection: 16

S_B_L Image: 122.12-1-36

Cover System

County: Erie

Site No: C 915231

BCA Index No. B9-0784-08-06

Certificate of Completion
Exhibit A

SCHEDULE "A" AND ENVIRONMENTAL EASEMENT DESCRIPTION

229 Elk Street, 145 Prenatt Street, 5 Babcock Street
City of Buffalo, Erie County, NY
Section 122.12 Block 1 Lot(s) 30, 35 & 36

Area C

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie, State of New York, being part of Lot Nos. 134 and 137, Township 10, Range 8 of the Buffalo Creek Reservation, bounded and described as follows:

BEGINNING at a point of intersection of the southerly line of Elk Street with the westerly line of Lee Street;

Thence southerly along the westerly line of Lee Street, S13°45'01"W a distance of 709.59 feet more or less to the northerly line of Prenatt Street, said point being the north east corner of Prenatt Street as closed on September 9, 1955 and recorded in Liber 5836 of deeds at page 182, parcel B;

Thence southerly, along the east line of Prenatt Street as closed, S42°59'37"W a distance of 27.15 to a point, which point is the northeast corner of lands conveyed to the Buffalo Creek Railroad Company by deed filed in the Erie County Clerks Office in Liber 6040 of deeds at page 437;

Thence westerly along the north line of lands conveyed to the Buffalo Creek Railroad Company N63°37'29"W a distance of 143.31 feet to a point of curvature;

Thence continuing along the north line of lands conveyed to the Buffalo Creek Railroad Company by deed in Liber 6040 of deeds at Page 437 and Liber 1364 of deeds at Page 538, along a curve to the right with a radius of 330.00 feet, a delta of 62°32'03", an Arc Length of 360.17 feet and a chord bearing of N32°20'25"W a chord distance of 342.56 feet to a point on the east line of lands conveyed to said Buffalo Creek Railroad Company by deed recorded in Liber 250 of Deeds at Page 319, and the west line of Lot 137;

Thence northerly along said east line of Buffalo Creek Railroad Company's land as conveyed by deed recorded in Liber 250 of Deeds at Page 319, and the west line of Lot 137 N13°36'03"E a distance of 309.89 feet to a point, which point is the south corner of lands conveyed to the Buffalo Creek Railroad Company by deed filed in the Erie County Clerk's Office in Liber 1364 of Deeds at page 538;

Thence northeasterly along the Buffalo Creek Railroad Company lands on a record deed bearing of N26° 34' 36"E, and measured bearing of N 26°41'16"E a distance of 158.99 feet to the southerly line of Elk Street;

Thence easterly along the southerly line of Elk Street, S76°10'39"E a distance of 365.11 feet more or less to the point or place of beginning, Containing 6.027 acres more or less.

