

New York State Department of Environmental Conservation

FACT SHEET

Brownfield Cleanup Program

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Buffalo Color Corp. Area E Site Number C915232 Buffalo, NY

January 2012

NYSDEC Certifies Cleanup Requirements Achieved at Brownfield Site

The New York State Department of Environmental Conservation (NYSDEC) has determined that the cleanup requirements to address contamination related to Buffalo Color Corporation Area E Site ("site") located at 85 Lee Street in Buffalo in Erie County under New York State's Brownfield Cleanup Program have been met. See map for site location. NYSDEC has issued a Certificate of Completion regarding the site. A copy of the Notice of the Certificate of Completion is available at the location(s) identified below under "Where to Find Information". The applicant is now eligible to redevelop the site.



Completion of Project

The site remediation was accomplished by completing the following Remedial Measures, which included:

- Demolishing existing structures. Building foundations were saved for post-remediation reuse and redevelopment;
- Excavating impacted soil containing site specific contaminants affecting groundwater quality to a

Brownfield Cleanup Program: New York's Brownfield Cleanup Program (BCP) encourages the voluntary cleanup of contaminated properties known as "brownfields" so that they can be reused and redeveloped. These uses include recreation, housing, business or other uses.

A **brownfield** is any real property that is difficult to reuse or redevelop because of the presence or potential presence of contamination.

For more information about the BCP, visit: <u>www.dec.ny.gov/chemical/8450.html</u> depth of approximately 12 feet;

- Properly disposing the impacted soil;
- Backfilling the excavation with crushed concrete demolition material, clean fill, and adding an oxygen releasing bio-stimulant to the backfill to treat residual volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs) consisting of dye manufacturing intermediate chemicals and other dye production chemicals in adjoining soil and groundwater;
- Rehabilitating existing storm sewers and manholes with a liner system to prevent infiltration of impacted groundwater into storm

sewers that discharge to the Buffalo River; and

• Placing an integrated cover system over the site to isolate contact with residuals.

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

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Institutional Controls/Engineering Controls

Institutional controls and engineering controls generally are designed to reduce or eliminate exposure to contaminants of concern. An *institutional control* is a non-physical restriction on use of the site, such as a deed restriction, when contamination left over 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 cap or vapor barrier.

The following institutional and/or engineering controls have been put in place on the site:

- 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 the integrated cover system.

Next Steps

NYSDEC issued the Certificate of Completion based on review and approval of a Final Engineering Report submitted by the applicant. The Final Engineering Report includes: 1) a description of the cleanup activities completed; 2) certification that cleanup requirements will be achieved for the site; 3) a description of any institutional/engineering controls to be used; and 4) a certification that a site management plan for any engineering controls used at the site has been approved by NYSDEC.

With its receipt of a Certificate of Completion, the applicant is eligible to redevelop the site. In addition, the applicant:

• has no liability to the State for contamination at or coming from the site, subject to certain conditions; and

• is eligible for tax credits to offset the costs of performing cleanup activities and for redevelopment of the site.

A Certificate of Completion may be modified or revoked if, for example, the applicant does not comply with the terms of its Brownfield Cleanup Agreement with NYSDEC, or if the applicant commits fraud regarding its application or its certification that it has met cleanup levels.

Background

NYSDEC previously accepted an application from the applicant to participate in the Brownfield Cleanup Program. The application proposes that the site will be used for commercial/industrial, purposes.

The BCP site is situated in the South Buffalo section of the City of Buffalo. It is located on the east side of Lee Street, south of Elk Street and north of South Park Avenue. This site is approximately 15.8 acres in size and was subdivided from the former 54 acre Buffalo Color Corporation (BCC) chemical and dye plant. The site has been used for the production of dyestuff, organic chemicals and intermediate chemicals since the 1940's and continued until 2003, when BCC operations ceased.

The site is currently inactive and is zoned for industrial use. Neighboring areas include residential and some commercial, and vacant industrial lands. The nearest residential areas are located approximately 200 feet north of the Site.

A Remedial Work Plan proposing a Track 4 commercial cleanup standard was approved in 2009. Design investigation activities and development of a detailed remediation plan continued into 2010. Site preparation and demolition/removal of decommissioned plant facilities and process equipment was completed in 2010.

The final remedial plan for soil and groundwater in Area E involved removal of source material impacting groundwater quality and placement of oxidizing materials to treat residual VOC groundwater contamination. Approximately 13,600 cubic yards of VOC contaminated soil were excavated from three areas that were impacting groundwater quality. The fill horizon below the groundwater level was seeded with an oxygen releasing biostimulant in the excavation backfill materials at one foot fill intervals to treat residual VOCs in groundwater.

Site remediation also included abandonment/plugging of unused process and storm sewers and rehabilitation of the existing storm sewer system that discharges directly to the Buffalo River. Placement of a site-wide integrated cover system and additional remediation construction activities were completed in 2011. The planned future reuse for this site is commercial and light industrial.

FOR MORE INFORMATION

Where to Find Information

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Project documents are available at the following location(s) to help the public stay informed. These documents include the Notice of the Certificate of Completion.

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

NYSDEC Region 9 Office 270 Michigan Avenue Buffalo, New York 14203 (716) 851-7220 (Please call for appointment M-F 8:30am to 4:45pm)

Who to Contact

Comments and questions are always welcome and should be directed as follows:

Project Related Questions

Eugene W. Melnyk, PE NYSDEC 270 Michigan Avenue Buffalo, New York 14203 716-851-7220 ewmelnyk@gw.dec.state.ny.us Site-Related Health Questions Nathan Freeman NYS Department of Health 547 River St., Rm. 300 Troy, NY 12180 (518) 402-7860 beei@health.state.ny.us

We encourage you to share this fact sheet with neighbors and tenants, and/or post this fact sheet in a prominent area of your building for others to see.

Receive Site Fact Sheets by Email

Have site information such as this fact sheet sent right to your email inbox. NYSDEC invites you to sign up with one or more contaminated sites county email listservs available at the following web page: <u>www.dec.ny.gov/chemical/61092.html</u>. It's *quick*, it's *free*, and it will help keep you *better informed*.



As a listserv member, you will periodically receive site-related information/announcements for all contaminated sites in the county(ies) you select.

You may continue also to receive paper copies of site information for a time after you sign up with a county listserv, until the transition to electronic distribution is complete.

Note: Please disregard if you already have signed up and received this fact sheet electronically.

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:

Execution: 4/27/09 Agreement Index No.: B9-0785-08-09

Application Approval Amendment: none Agreement Execution Amendment: none

SITE INFORMATION

Site No.: C915232 Site Name: Buffalo Color Corporation Area E Site Site Owner: SOUTH BUFFALO DEVELOPMENT, LLC Street Address: 100 Lcc Street (f/k/a 85 Lcc Street) et. al. Municipality: Buffalo County: Erie DEC Region: 9 Site Size: 15.800 Acres Tax Map Identification Number(s): 122.12-1-12.1, 122.12-1-30, 122.12-1-31, 122.12-1-9.11, 122.12-1-9.13

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 2011251418, Liber 11213, pg 7172.

LIABILITY LIMITATION

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

CERTIFICATE TRANSFERABILITY

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

CERTIFICATE MODIFICATION/REVOCATION

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

(1) either the Applicant or the Applicant's successors or assigns have failed to comply with the terms and conditions of the Brownfield Site Cleanup Agreement;

(2) the Applicant made a misrepresentation of a material fact tending to demonstrate that it was qualified as a Volunteer;

(3) either the Applicant or the Applicant's successors or assigns made a misrepresentation of a material fact tending to demonstrate that the cleanup levels identified in the Brownfield Site Cleanup Agreement were reached;

(4) there is good cause for such modification or revocation;

(5) either the Applicant or the Applicant's successors or assigns failed to manage the controls or monitoring in full compliance with the terms of the remedial program;

(6) the terms and conditions of the environmental easement have been intentionally violated or found to be not protective or enforceable.

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

Joseph J. Martens Commissioner New York State Department of Environmental Conservation

By:

Date: DEC 30 2011

Dale A. Desnoyers, Director Division of Environmental Remediation

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

Buffalo Color Corporation Area E, Site ID No. C915232 100 (f/k/a) Lee Street; 339 Elk Street; 427 Elk Street; 5 Babcock Street, 98 Maurice Street City of Buffalo, Erie County Tax Map Identification Number(s): 122.12-1-9.11; 122.12-1-9.13; 122.12-1-12.1; 122.12-1-30; 122.12-1-31

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 15.8 acres located at 85 Lee 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 6NYCRR 375-1.8(g)(2)i.
- □ Restricted Residential Use, as set forth in 6NYCRR 375-1.8(g)(2)ii.
- Commercial Use, as set forth in 6NYCRR 375-1.8(g)(2)iii.
- Industrial Use, as set forth in 6NYCRR 375-1.8(g)(2)iv.

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

PLEASE TAKE NOTICE, since the remedial program relies upon use restrictions or the long term employment of institutional or engineering controls; such institutional or engineering controls are contained in an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Eric County as 2011251418; Liber 11213, Page 7172.

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 271421.2 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 E, Site # C915232, 100 (f/k/a 85) Lee Street, 339 Elk St.; 427 Elk St.; 5 Babcock St.; 98 Maurice St., 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 transfeWILL bar the successors and assigns from the benefits of the Certificate.

PLEASE TAKE NOTICE, the Certificate may be modified or revoked by the Commissioneras 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



STATE OF NEW YORK) SS: COUNTY OF Erie)

On the <u>3rd</u> day of <u>January</u>, in the year 2013 before me, the undersigned, personally appeared <u>Jon M. Williams</u> 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. nei

Signature and Office of individual taking acknowledgment

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12/03/09

NANGY L. MAZUR Notary Public, State of Nov York Qualified in Line County No. 1765930 My Communication Landres 20, 2013 Please record and return to: South Buffalo Development, LLC 333 Ganson Street Buffalo, New York 14203 County: Eric

Site No: C 915232 BCA Index No: B9- 0785-08-09

Certificate of Completion Exhibit A

SCHEDULE "A" AND ENVIRONMENTAL EASEMENT AREA DESCRIPTION

339 Elk Street + 122.12-1-9,13
100 Lee Street + 122.12-1-9,11
427 Elk Street + 122.12-1-12,1
5 Babcock Street + 122.12-1-30
98 Maurice Street - 122.12-1-31
City of Buffalo, Eric County, NY

Area E

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Bulfalo, County of Eric, State of New York, being part of Lot Nos. 133, 193, 194195, 196 and 197 of the Bulfalo Creek Reservation, and more particularly bounded and described as follows:

BEGINNING at the intersection of the easterly line of Lee Street with the northerly line of former Prenatt Street;

Thence along the easterly line of Lee Street a record bearing of N.13° 38' 00"E and measured bearing of N.13°45'01"E a distance of 525.93 feet to the southerly line of lands conveyed to Elk-Lee LLC by deed filed in the Erie County Clerks Office in Liber 11106 of deeds at page 9020;

Thence parallel with the south line of Elk Street S.76°10'39"E east and along the southerly line of Elk-Lee LLC, a distance of 831.47 feet to the westerly line of the former Maurice Street;

Thence N.13°45'01"E along the former west line of Maurice Street and along the east line of Elk-Lee, LLC a distance of 197.00 to the south line of Elk Street;

Thence N.13°45'01"E along the south line of Elk Street a distance of 260.00 feet to the westerly line of Orlando Street;

Thence S.13°45'01"W along the westerly line of Orlando street a distance of 757.00 feet to a point on the North line of the former Prenatt Street;

Thence S.76°10'39"E along the former north line of Prenatt Street a distance of 300.00 feet to the west line of Babcock Street;

Thence S.13°45'01"W along the west line of Babcock street a distance of 33.00 feet to the north east corner of lands conveyed to The Buffalo Creek Railroad Company by deed filed in the Eric County Clerks Office in Liber 6040 of deeds at page 437;

Thence N.71°48'22"W along the north line of lands conveyed to The Buffalo Creek Railroad Company a distance of 170.56 feet to a point in the west line lot 197 distant 20 feet southerly, measured along the west line of Lot 197 from the north line of the former Prenatt Street;

Thence N.76°10'39"W parallel with the north line of the former Prenatt Street, along the north line of lands conveyed to The Buffalo Creek Railroad Company a distance of 660.00 feet to a point in the west line lot 97 distant 20 feet southerly, measured along the west line of Lot 196 from the north line of the former Prenatt Street;

Thence N.7510'16''W along the north line of lands conveyed to The Buffalo Creek Railroad Company a distance of 398.50 feet to a point in the west line lot 195 distant 13 feet southerly, measured along the west line of Lot 195 from the north line of the former Prenatt Street;

Thence N.71°53'01"W along the north line of lands conveyed to The Buffalo Creek

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Railroad Company a distance of 100.89 feet to a point in a line drawn parallel with and 25 feet southerly measured at right angles from the north line of the former Prenatt Street;

Thence N.63°37'29"W along the north line of lands conveyed to The Buffalo Creek Railroad Company a distance of 77.02 feet to a point in the west line of the street closing (Prenatt Street) as described in deed filed in the Erie County Clerks Office in Liber 5836 of deeds at page 182, parcel A;

Thence N.43°02'06" along the west line of the street closing (Prenatt Street) as described in deed filed in the Erie County Clerks Office in Liber 5836 of deeds at page 182, parcel A a distance of 26.10 feet to the point or place of beginning.

EXCEPTING

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Lot No. 133, according to a map and survey of a part of the Buffalo Creek Reservation adjoining the City of Buffalo, made by Lovejoy & Emslie, said lot being in Township 10, Range 8 of the Holland Land Company's Survey, more particularly described as follows:

Beginning at a point in the north line of Prenatt Street, said point being 30.47 feet, measured easterly from the point of intersection of the northerly line of Prenatt Street with the easterly line of Lee Street;

Thence northerly at right angles to the northerly line of Prenatt Street N.26°22'30"E a distance of 30 feet to a point;

Thence casterly in a strait line parallel with and distant 30 feet at right angles from the north line of Prenatt Street S.63°37'29"E a distance of 135 feet deed, 129.84 feet measure more or less to a point in the cast line of Lot 133;

Thence southerly along the east line of Lot 133 S.13°45'01"W a distance of 28.50 feet to a point in the north line of Prenatt Street;

Thence westerly along the north line of Prenatt Street N.76°10'39"W a distance of 10.02 feet to an angle point in the north line of Prenatt Street;

Thence continuing along the north line of Prenatt street N.63°37'29"W a distance of 126.29 feet more or less to the Point or Place of Beginning.

Portion of Arca E

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie, State of New York, being part of Lot No. 133 of the Buffalo Creek Reservation, and more particularly bounded and described as follows:

BEGINNING at the intersection of the easterly line of Lee Street with the Southerly line of Elk street;

Thence easterly along the south line of Elk Street on a record deed bearing of S76° 17' 40"E and a measured bearing of S76°10'39"E a distance of 85.00 feet to a point;

Thence southerly on a record deed bearing of S13° 38' 00"W and measured bearing of S13°45'01"W a distance of 53.00 feet to a point;

Thence westerly on a record deed bearing N76° 17' 40"W and measured bearing of N76°10'39"W a distance of 85.00 feet to a point on the east line of Lee Street;

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County: Erie

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Thence northerly along the cast line of Lee Street on a record bearing of

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N63° 44' 30"W and measured bearing of N13°45'01"E a distance of 53.00 feet to the Point or Place of Beginning, Containing 0.103 Acre more or less

SURVEY

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