

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Division of Environmental Remediation

625 Broadway, 11<sup>th</sup> Floor, Albany, NY 12233-720

P: (518)402-9543 | F: (518)402-9547

www.dec.ny.gov

3/19/2018

Ken Swanekamp  
Erie County - Environment & Planning  
275 Oak Street, No. 150  
Buffalo, NY 14203

Re: Property Owner Survey: Site Management Periodic Review  
Parcel: 65.13-2-1  
Site Name: Polymer Applications  
Site No.: 915044  
Site Address: 3445 River Road

Dear Property Owner:

This letter and attached survey have been mailed to you because you are the listed property owner (or their contact) on which a State Superfund site exists that is currently in the Site Management (SM) phase of remediation. This letter is meant to serve as an informative reminder to you and any tenants, occupants or users of the property that sites in active Site Management must undergo a periodic progress review to ensure that the selected remedy continues to be protective. This process and resulting report, referred to as the Periodic Review Report (PRR), documents the implementation of site specific SM requirements. Section 6.3(b) of DER-10 Technical Guidance for Site Investigation and Remediation (see "IV. Reference Documents" in the attached) provides guidance regarding the information that is included in a typical PRR. Additionally, the site referenced may be comprised of multiple tax parcels with different owners. This letter only pertains to the portion of the site that exists on property which is under your direct ownership. To assist the NYSDEC in its periodic review, please respond, sign and date the attached survey (Enclosure 1 "Institutional and Engineering Controls - Property Owner Survey") by June 01, 2018.

Site Management is defined in regulation at 6 NYCRR 375-1.2(at), and in Chapter 6 of DER-10 (see also "III. Helpful Definitions" in the attached). SM may be governed by multiple individual documents (e.g., an Operation, Maintenance, and Monitoring Plan; a Soil Management Plan; etc.) or under the umbrella of one comprehensive Site Management Plan.

A Site Management Plan (SMP) may contain one or all of the following elements, as applicable to the site: a plan to maintain institutional and/or engineering controls ("IC/EC Plan"); a plan for monitoring the performance and effectiveness of the selected remedy ("Monitoring Plan"); and/or a plan for the operation and maintenance of the selected remedy ("O&M Plan"). Additionally, the technical requirements for SM are stated in the decision document (e.g., Record of Decision) and, in some cases, the legal agreement directing the remediation of the site (e.g., order on consent, voluntary agreement, etc.).

When you respond to this survey, please include the enclosed form (Enclosure 1) which documents that, to the best of your knowledge, all Site Management requirements that pertain to the site on your property are being met. The Institutional Controls (ICs) and Engineering Controls (ECs) certification portion of the form should be completed, signed and returned to the NYSDEC. If you cannot verify that all SM requirements are being met, please provide adequate information in response so that actions may be taken to restore the level of protection intended. Instructions for completing the attached forms are included as Enclosure 2 "Survey Instructions."

The survey form should be submitted in either paper or electronic format. Any supporting documents or information (e.g., collected data, reports, copy of current deed) should be submitted in electronic format only. These documents and electronic submissions should be sent to:

Brian Sadowski, Project Manager.  
New York State Department of Environmental Conservation  
270 Michigan Ave  
Buffalo, NY 14203-2915

Phone number: 716-851-7220. E-mail: [brian.sadowski@dec.ny.gov](mailto:brian.sadowski@dec.ny.gov)

Finally, as the state and condition of your property may be influenced by tenants or others users, please share the information contained in this letter and survey so that all controls put in place will provide the greatest level of protection of public health and the environment.

Thank you for your cooperation and assistance.

Sincerely,

Brian Sadowski, Project Manager  
NYSDEC


Enclosures

cc: Brian Sadowski, Project Manager  
Mary Mcintosh, Section Chief  
Chad Stanszewski



Enclosure 1  
Institutional and Engineering Controls - Property Owner Survey



Site Details		Box 1	
Site No.	915044		
Site Name Polymer Applications			
Site Address: 3445 River Road		Zip Code: 14150	
City/Town: Tonawanda			
County: Erie			
Site Acreage: 6.7			
Reporting Period: May 29, 2013 to May 02, 2018			
		YES	NO
1. Is the information above correct?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
If NO, include handwritten above or on a separate sheet.			
2. Has some or all of the site property been sold, subdivided, merged, or undergone a tax map amendment during this Reporting Period?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Has there been any change of use at the site during this Reporting Period (see 6NYCRR 375-1.11(d))?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Have any federal, state, and/or local permits (e.g., building, discharge) been issued for or at the property during this Reporting Period?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
If you answered YES to questions 2, 3 or 4, Include documentation with this form.			
5. Is the site currently undergoing development?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Box 2	
		YES	NO
6. Is the current site use consistent with the use(s) listed below? Commercial and Industrial		<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Are all Institutional Controls (ICs) in place and functioning as designed?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
 _____ Signature of Property Owner		3/29/18 _____ Date	

**Description of Institutional Controls**

<u>Parcel</u>	<u>Owner</u>	<u>Institutional Control</u>
65.13-2-1	Buffalo & Erie Cty Indust Lnd Dvlp Corp	Ground Water Use Restriction Landuse Restriction Site Management Plan IC/EC Plan

A Site Management Plan (SMP) was approved in March 2012 to manage remaining contamination at the Site in perpetuity or until extinguishment of the Environmental Easement in accordance with ECL Article 71, Title 36.

An Environmental Easement (EE) has been recorded on the entire parcel. The EE was recorded in the Erie County Clerk's Office as file #2013291703 in Book 11258 at Page 2054. The EE provides an enforceable legal instrument to ensure compliance with the SMP.

The EE places the following restrictions on the entire property:

- The property may only be used for commercial/industrial purposes.
- The property may not be used for a higher level of use without additional remediation and amendment of the EE, as approved by the NYSDEC.
- All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP.
- The use of the groundwater underlying the property is prohibited without treatment rendering it safe for intended use.
- The potential for vapor intrusion must be evaluated for any buildings developed in the area, and any potential impacts that are identified must be monitored or mitigated.
- Vegetable gardens and farming on the property are prohibited.
- The site owner or remedial party will submit to NYSDEC a written statement that certifies, under penalty of perjury, that: (1) controls employed at the controlled property are unchanged from the previous certification or that any changes to the controls were approved by the NYSDEC; and, (2) nothing has occurred that impairs the ability of the controls to protect public health and environment or that constitute a violation or failure to comply with the SMP.

NYSDEC retains the right to access such controlled property at any time in order to evaluate the continued maintenance of any and all controls. This certification shall be submitted annually, or an alternate period of time that NYSDEC may allow and will be made by an expert that the NYSDEC finds acceptable.

EE is in place because there is still a site use restriction on the property. For this site use is limited to commercial/industrial uses only. Site management stays in effect to insure the property is not developed for a higher use such as residential. No long term sampling/monitoring is required. All onsite groundwater wells are scheduled for decommissioning. Site fencing is in place to protect from illegal dumping and vandals. A drainage swale was engineered on site to control surface water flow and prevent the potential for soil erosion.

**Description of Engineering Controls**

None Required

Not Applicable/No EC's

Box 5

**Periodic Review Report (PRR) Survey Statements**

For each Institutional or Engineering control listed in Boxes 3 and/or 4, by checking "YES" below I believe all of the following statements to be true:

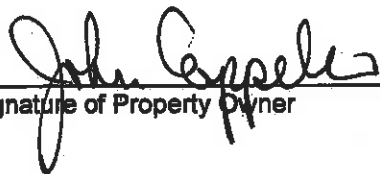
(a) the Institutional Control(s) and/or Engineering Control(s) employed at this site remain unchanged since the date that the Control was put in-place, or was last approved by the Department;

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

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

(d) if a Site Management Plan (SMP) exists, nothing has occurred that would constitute a violation or failure to comply with the SMP for this Control.

YES    NO  
   

  
Signature of Property Owner

3/22/18  
Date

## **Enclosure 2**

### **Survey Instructions**

#### **I. Verification of Site Details (Box 1 and Box 2):**

Answer the YES/NO questions in the Verification of Site Details Section. The Property Owner may include handwritten changes and/or other supporting documentation, as necessary.

#### **II. Certification of Institutional / Engineering Controls (Boxes 3, 4, and 5)**

Review the listed IC/ECs, confirming that all existing controls are listed, and that all existing controls are still applicable. If there is a control that is no longer applicable the Property Owner should petition the Department separately to request approval to remove the control.

In Box 5, complete the certification for all components, as applicable, by checking the corresponding YES/NO checkbox.

If you cannot respond "YES" for each Control listed in Box 3 & Box 4, sign and date the form in Box 5. Attach supporting documentation that explains why a "YES" response could not be rendered. Note that this survey form should be submitted even if an IC or EC cannot be certified at this time.

#### **III. Helpful Definitions**

"Change of use" means the erection of any structure on a site, the paving of a site for use as a roadway or parking lot, the creation of a park or other recreational facility on a site, any activity that is likely to disrupt or expose contamination or increase direct human or environmental exposure, or any other conduct that will or may tend to prevent or significantly interfere with a proposed, ongoing, or completed remedial program.

"Site management" means the activities undertaken as the last phase of the remedial program at a site which continue after a certificate of completion is issued. Site management is conducted in accordance with a site management plan, which identifies and implements the institutional and engineering controls required for a site, as well as any necessary monitoring and/or operation and maintenance of the remedy.

#### **IV. Reference Documents**

DER-10                    [http://www.dec.ny.gov/docs/remediation\\_hudson\\_pdf/der10.pdf](http://www.dec.ny.gov/docs/remediation_hudson_pdf/der10.pdf)  
Part 375-2.2(a)        <http://www.dec.ny.gov/regs/4373.html#15089>