

# Brownfield Cleanup Program Application

300 Ohio Street Site  
Buffalo, New York

July 2011

0136-037-100

Prepared for:

4216 Group, LLC



Prepared by:

TurnKey Environmental Restoration, LLC



2558 Hamburg Turnpike, Buffalo, New York | phone: (716) 856-0635 | fax: (716) 856-0583



NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION



**BROWNFIELD CLEANUP PROGRAM (BCP)**

ECL ARTICLE 27 / TITLE 14

DEPARTMENT USE ONLY  
BCP SITE #:

07/2010

**Section I. Requestor Information**

NAME **4216 Group, LLC**

ADDRESS **295 Main Street, Suite 210**

CITY/TOWN **Buffalo, New York**

ZIP CODE **14203**

PHONE **716-854-0060**

FAX **716-852-2829**

E-MAIL

Is the requestor authorized to conduct business in New York State (NYS)?

☒ Yes

☐ No

-If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the [NYS Department of State's Corporation & Business Entity Database](#). A print-out of entity information from the database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

NAME OF REQUESTOR'S REPRESENTATIVE **Mr. William Paladino**

ADDRESS **295 Main Street, Suite 210**

CITY/TOWN **Buffalo, New York**

ZIP CODE **14203**

PHONE **716-854-0060**

FAX **716-852-2829**

E-MAIL **bpaladino@ellicottdevelopment.com**

NAME OF REQUESTOR'S CONSULTANT **Mr. Michael Lesakowski**

ADDRESS **2558 Hamburg Turnpike, Suite 300**

CITY/TOWN **Buffalo, New York**

ZIP CODE **14218**

PHONE **716-856-0635**

FAX **716-856-0583**

E-MAIL **mlesakowski@benchmarkturnkey.com**

NAME OF REQUESTOR'S ATTORNEY **Mr. Craig Slater, Esq. (Harter, Secrest and Emery)**

ADDRESS **Twelve Fountain Plaza, Suite 400**

CITY/TOWN **Buffalo, New York**

ZIP CODE **14202**

PHONE **716-845-4233**

FAX **716-853-1617**

E-MAIL **cslater@hselaw.com**

THE REQUESTOR MUST CERTIFY THAT HE/SHE IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL 27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

☐ **PARTICIPANT**

A requestor who either 1) was the owner of the site at the time of the disposal of hazardous waste or discharge of petroleum or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

☒ **VOLUNTEER**

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, the requestor certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; and iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

Requestor Relationship to Property (check one):

☐ Previous Owner

☐ Current Owner

☒ Potential /Future Purchaser

☐ Other \_\_\_\_\_

If requestor is not the site owner, requestor will have access to the property throughout the BCP project. ☒ Yes ☐ No (see Exhibit B)

-Proof of site access must be submitted for non-owners

## Section II. Property Information

Check here if this application is to request significant changes to property set forth in an existing BCA: ☐

Existing BCP site number: \_\_\_\_\_

PROPERTY NAME **300 Ohio Street Site**

ADDRESS/LOCATION **300 Ohio Street**

CITY/TOWN **Buffalo**

ZIP CODE **14204**

MUNICIPALITY(IF MORE THAN ONE, LIST ALL):

**City of Buffalo**

COUNTY **Erie**

SITE SIZE (ACRES) **5.0**

LATITUDE (degrees/minutes/seconds) **N42 ° 52 ' 14 "**

LONGITUDE (degrees/minutes/seconds) **W78 ° 52 ' 12 "**

HORIZONTAL COLLECTION METHOD: ☐ SURVEY ☐ GPS ☒ MAP

HORIZONTAL REFERENCE DATUM: **NAD 83**

COMPLETE TAX MAP INFORMATION FOR ALL TAX PARCELS INCLUDED WITHIN THE PROPERTY BOUNDARIES. ATTACH REQUIRED MAPS PER THE APPLICATION INSTRUCTIONS.

Parcel Address

Parcel No.

Section No.

Block No.

Lot No.

Acreage

see Attachment 01 for parcel information

1. Do the property boundaries correspond to tax map metes and bounds?

☒ Yes ☐ No

If no, please attach a metes and bounds description of the property.

2. Is the required property map attached to the application? (application will not be processed without map)

☒ Yes ☐ No

3. Is the property part of a designated En-zone pursuant to Tax Law § 21(b)(6)?

☒ Yes ☐ No

For more information please see Empire State Development's [website](#).

If yes, identify area (name) 001302 (A and B Eligibility)

Percentage of property in En-zone (check one): ☐ 0-49% ☐ 50-99% ☒ 100%

4. Is this application one of multiple applications for a large development project, where the development project spans more than 25 acres (see additional criteria in BCP application instructions)? If yes, identify name of properties in related BCP applications: \_\_\_\_\_

☐ Yes ☒ No

5. Property Description Narrative:

See Attachment 01

6. List of Existing Easements (type here or attach information)

Easement Holder

Description

NA

7. List of Permits issued by the NYSDEC or USEPA Relating to the Proposed Site (type here or attach information)

Type

Issuing Agency

Description

PBS

NYSDEC

PBS No. 9-383511

SPILLS

NYSDEC

Multiple spills on-Site (see Attachment 05)

If any changes to Section II are required prior to application approval, a new page, initialed by each requestor, must be submitted.

Initials of each Requestor: \_\_\_\_\_

### Section III. Current Property Owner/Operator Information

OWNER'S NAME (see Attachment 06 for parcel ownership information)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

OPERATOR'S NAME (see Attachment 07 for parcel operator information)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

### Section IV. Requestor Eligibility Information (Please refer to ECL § 27-1407)

If answering "yes" to any of the following questions, please provide an explanation as an attachment.

1. Are any enforcement actions pending against the requestor regarding this site? ☐ Yes ☒ No
2. Is the requestor subject to an existing order relating to contamination at the site? ☐ Yes ☒ No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site?(see Attachment 1) ☐ Yes ☒ No
4. Has the requestor been determined to have violated any provision of ECL Article 27? ☐ Yes ☒ No
5. Has the requestor previously been denied entry to the BCP? ☐ Yes ☒ No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving contaminants? ☐ Yes ☒ No
7. Has the requestor been convicted of a criminal offense that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration? ☐ Yes ☒ No
8. Has the requestor knowingly falsified or concealed material facts or knowingly submitted or made use of a false statement in a matter before the Department? ☐ Yes ☒ No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.8(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application? ☐ Yes ☒ No

### Section V. Property Eligibility Information (Please refer to ECL § 27-1405)

1. Is the property, or was any portion of the property, listed on the National Priorities List? ☐ Yes ☒ No  
If yes, please provide relevant information as an attachment.
2. Is the property, or was any portion of the property, listed on the NYS Registry of Inactive Hazardous Waste Disposal Sites? ☐ Yes ☒ No  
If yes, please provide: Site # \_\_\_\_\_ Class # \_\_\_\_\_
3. Is the property subject to a permit under ECL Article 27, Title 9, other than an Interim Status facility? ☐ Yes ☒ No  
If yes, please provide: Permit type: \_\_\_\_\_ EPA ID Number: \_\_\_\_\_  
Date permit issued: \_\_\_\_\_ Permit expiration date: \_\_\_\_\_
4. Is the property subject to a cleanup order under navigation law Article 12 or ECL Article 17 Title 10? ☐ Yes ☒ No  
If yes, please provide: Order # \_\_\_\_\_
5. Is the property subject to a state or federal enforcement action related to hazardous waste or petroleum? ☐ Yes ☒ No  
If yes, please provide explanation as an attachment.

### Section VI. Project Description

What stage is the project starting at? ☒ Investigation ☐ Remediation

Please attach a description of the project which includes the following components:

- Purpose and scope of the project
- Estimated project schedule

(See Attachment 3)

## Section VII. Property's Environmental History

To the extent that existing information/studies/reports are available to the requestor, please attach the following:

### 1. Environmental Reports

A Phase I environmental site assessment report prepared in accordance with ASTM E 1527 (American Society for Testing and Materials: Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process), and all environmental reports related to contaminants on or emanating from the site.

If a final investigation report is included, indicate whether it meets the requirements of ECL Article 27-1415(2): ☐ Yes ☐ No

### 2. SAMPLING DATA: INDICATE KNOWN CONTAMINANTS AND THE MEDIA WHICH ARE KNOWN TO HAVE BEEN AFFECTED. LABORATORY REPORTS SHOULD BE REFERENCED AND COPIES INCLUDED.

Contaminant Category	Soil	Groundwater	Surface Water	Sediment	Soil Gas
Petroleum	x				
Chlorinated Solvents					
Other VOCs					
SVOCs	x				
Metals					
Pesticides					
PCBs					
Other*					

\*Please describe: \_\_\_\_\_

### 3. SUSPECTED CONTAMINANTS: INDICATE SUSPECTED CONTAMINANTS AND THE MEDIA WHICH MAY HAVE BEEN AFFECTED. PROVIDE BASIS FOR ANSWER AS AN ATTACHMENT.

Contaminant Category	Soil	Groundwater	Surface Water	Sediment	Soil Gas
Petroleum	X	X			
Chlorinated Solvents					
Other VOCs	X	X			
SVOCs	X	X			
Metals					
Pesticides					
PCBs					
Other*					

\*Please describe: \_\_\_\_\_

### 4. INDICATE KNOWN OR SUSPECTED SOURCES OF CONTAMINANTS (CHECK ALL THAT APPLY). PROVIDE BASIS FOR ANSWER AS AN ATTACHMENT.

- |   |  |  |  |
|---|--|--|--|
| <input checked="" type="checkbox"/> Above Ground Pipeline or Tank | <input type="checkbox"/> Lagoons or Ponds            | <input checked="" type="checkbox"/> Underground Pipeline or Tank | <input checked="" type="checkbox"/> Surface Spill or Discharge |
| <input type="checkbox"/> Routine Industrial Operations            | <input type="checkbox"/> Dumping or Burial of Wastes | <input type="checkbox"/> Septic tank/lateral field               | <input type="checkbox"/> Adjacent Property                     |
| <input checked="" type="checkbox"/> Drums or Storage Containers   | <input type="checkbox"/> Seepage Pit or Dry Well     | <input type="checkbox"/> Foundry Sand                            | <input type="checkbox"/> Electroplating                        |
| <input type="checkbox"/> Coal Gas Manufacture                     | <input type="checkbox"/> Industrial Accident         | <input type="checkbox"/> Unknown                                 |  |

Other: \_\_\_\_\_

### 5. INDICATE PAST LAND USES (CHECK ALL THAT APPLY):

- |   |   |   |                                      |   |                                     |
|---|---|---|--------------------------------------|---|-------------------------------------|
| <input type="checkbox"/> Coal Gas Manufacturing | <input checked="" type="checkbox"/> Manufacturing   | <input type="checkbox"/> Agricultural Co-op | <input type="checkbox"/> Dry Cleaner | <input type="checkbox"/> Salvage Yard   | <input type="checkbox"/> Bulk Plant |
| <input type="checkbox"/> Pipeline               | <input checked="" type="checkbox"/> Service Station | <input type="checkbox"/> Landfill           | <input type="checkbox"/> Tannery     | <input type="checkbox"/> Electroplating | <input type="checkbox"/> Unknown    |

Other: Former fuel filling and distribution operation; former truck and automobile repair operation

### 6. PROVIDE A LIST OF PREVIOUS PROPERTY OWNERS AND OPERATORS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBERS AS AN ATTACHMENT. DESCRIBE REQUESTOR'S RELATIONSHIP, IF ANY, TO EACH PREVIOUS OWNER AND OPERATOR. IF NO RELATIONSHIP, PUT "NONE".

## Section VIII. Contact List Information

Please attach, at a minimum, the names and addresses of the following:

1. The chief executive officer and planning board chairperson of each county, city, town and village in which the property is located.
2. Residents, owners, and occupants of the property and properties adjacent to the property.
3. Local news media from which the community typically obtains information.
4. The public water supplier which services the area in which the property is located.
5. Any person who has requested to be placed on the contact list.
6. The administrator of any school or day care facility located on or near the property.
7. The location of a document repository for the project (e.g., local library). In addition, attach a copy of a letter sent to the repository acknowledging that it agrees to act as the document repository for the property.

## Section IX. Land Use Factors (Please refer to ECL § 27-1415(3))

1. Current Use: ☐ Residential ☒ Commercial ☐ Industrial ☒ Vacant ☐ Recreational (check all that apply)  
Provide summary of business operations as an attachment.

2. Intended Use Post Remediation: ☐ Unrestricted ☐ Residential ☒ Commercial ☐ Industrial (check all that apply)  
Provide specifics as an attachment.

- |  |   |
|--|---|
| 3. Do current historical and/or recent development patterns support the proposed use? (See #14 below re: discussion of area land uses)   | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 4. Is the proposed use consistent with applicable zoning laws/maps?  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 5. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, designated Brownfield Opportunity Area plans, other adopted land use plans? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 6. Are there any Environmental Justice Concerns? (See §27-1415(3)(p)).   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 7. Are there any federal or state land use designations relating to this site?   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 8. Do the population growth patterns and projections support the proposed use?   | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 9. Is the property accessible to existing infrastructure?  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 10. Are there important cultural resources, including federal or state historic or heritage sites or Native American religious sites within ½ mile?  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 11. Are there important federal, state or local natural resources, including waterways, wildlife refuges, wetlands, or critical habitats of endangered or threatened species within ½ mile?                | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 12. Are there floodplains within ½ mile?   | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 13. Are there any institutional controls currently applicable to the property?   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 14. Describe the proximity to real property currently used for residential use, and to urban, commercial, industrial, agricultural, and recreational areas in an attachment.                               |   |
| 15. Describe the potential vulnerability of groundwater to contamination that might migrate from the property, including proximity to wellhead protection and groundwater recharge areas in an attachment. |   |
| 16. Describe the geography and geology of the site in an attachment.   |   |

## Section X. Statement of Certification and Signatures

(By requestor who is an individual)

If this application is approved, I acknowledge and agree to the general terms and conditions set forth in DER-32 *Brownfield Cleanup Program Applications and Agreements* and to execute a Brownfield Cleanup Agreement (BCA) within 60 days of the date of DEC's approval letter. I also agree that in the event of a conflict between the general terms and conditions of participation set forth in DER-32 and the terms contained in a site-specific BCA, the terms in the BCA shall control. I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

(By an requestor other than an individual)

I hereby affirm that I am M. Hagg (title) of 4216 Group, LLC (entity); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction. If this application is approved, I acknowledge and agree to the general terms and conditions set forth in DER-32 *Brownfield Cleanup Program Applications and Agreements* and to execute a Brownfield Cleanup Agreement (BCA) within 60 days of the date of DEC's approval letter. I also agree that in the event of a conflict between the general terms and conditions of participation set forth in DER-32 and the terms contained in a site-specific BCA, the terms in the BCA shall control. I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

Date: 7/10/11 Signature: [Signature] Print Name: William A. Paladino

### SUBMITTAL INFORMATION:

Three (3) complete copies are required.

- Two (2) copies, one paper copy with original signatures and one electronic copy in Portable Document Format (PDF) on a CD, must be sent to:

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

- One (1) paper copy must be sent to the DEC regional contact in the regional office covering the county in which the site is located. Please check our [website](#) for the address of our regional offices.

### FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE: \_\_\_\_\_ LEAD OFFICE: \_\_\_\_\_

# EXHIBIT A

## NYS DEPARTMENT OF STATE CORPORATION & BUSINESS ENTITY DATABASE



# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through June 17, 2011.

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Selected Entity Name: 4216 GROUP, LLC

Selected Entity Status Information

**Current Entity Name:** 4216 GROUP, LLC

**Initial DOS Filing Date:** MAY 18, 2011

**County:** ERIE

**Jurisdiction:** NEW YORK

**Entity Type:** DOMESTIC LIMITED LIABILITY COMPANY

**Current Entity Status:** ACTIVE

Selected Entity Address Information

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**

4216 GROUP, LLC  
295 MAIN STREET, SUITE 210  
BUFFALO, NEW YORK, 14203

**Registered Agent**

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate.](#)

### \*Stock Information

# of Shares	Type of Stock	\$ Value per Share
-------------	---------------	--------------------

No Information Available

\*Stock information is applicable to domestic business corporations.

### Name History

Filing Date	Name Type	Entity Name
MAY 18, 2011	Actual	4216 GROUP, LLC

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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## EXHIBIT B

### PROOF OF SITE ACCESS



Richard A. Moore, Partner  
rmoore@magavern.com

Founded 1826

July 6, 2011

Mr. Anthony Lopes, Environmental Engineer  
New York State Division of Environmental Conservation  
270 Michigan Avenue  
Buffalo, NY 14203

Re: 300 Ohio Street, Buffalo, New York

Dear Mr. Lopes:

Our firm represents Petroleum Sales and Service, Inc. (PS&S). Please be advised that the PS&S property located at 300 Ohio Street is currently under a contract of sale to Ellicott Development or a related entity. Pursuant to the contract, Ellicott Development and its agents have full right of access to the property.

I hope this letter is satisfactory for your purposes. If you have any questions whatsoever, please do not hesitate to call me.

Very truly yours,

MAGAVERN MAGAVERN GRIMM LLP

Richard A. Moore

RAM/amt  
\\00095.0283\276213.doc

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## LIST OF APPLICATION ATTACHMENTS

*NYSDEC Brownfield Cleanup Program Application  
300 Ohio Street Site  
Buffalo, New York*

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Attachment No.	Description
1	Site Description, BCP Eligibility Statement, Location Map and Site Plan
2	Tax Map, Survey, Metes and Bounds Description
3	Project Description and Schedule
4	Redevelopment Plan
5	Previous Environmental Investigations
6	Listing of Current and Previous Site Owners
7	Listing of Current and Previous Site Operators
8	Brownfield Site Contact List
9	Document Repository Confirmation Letter
10	Environmental Factors and Historic Land Use Considerations
11	Nearby Land Use Map
12	Groundwater Vulnerability Assessment
13	Description of Site Geography/Geology
14	Electronic Copy of BCP Application and Attachments

# ATTACHMENT 01

**SITE DESCRIPTION & BCP ELIGIBILITY STATEMENT**

**FIGURE 1-1 LOCATION MAP**

**FIGURE 1-2 SITE PLAN**

**SITE PHOTOLOG**

## Attachment 01

### Site Description and BCP Eligibility Statement 300 Ohio Street Site Brownfield Cleanup Program Application

#### **A. SITE DESCRIPTION**

The subject property (hereinafter, the “Project Site” or the “Site”) subject to the BCP application is comprised of 11 adjoining parcels totaling approximately 5.0-acres, located in a historically industrial area of the City of Buffalo, Erie County, New York (see Figures 1-1 and 1-2). A land use map for the Site and surrounding area is included in Attachment 11.

The parcels included in this application are described as:

Parcel Address	SBL No.	Acreage	Current Parcel Owner
300 Ohio Street	122.10-2-14	2.36	Petroleum Sales and Service, Inc 300 Ohio Street Buffalo, NY 14204
326 Ohio Street	122.10-2-13	0.1	Petroleum Sales and Service, Inc 300 Ohio Street Buffalo, NY 14204
328 Ohio Street	122.10-2-12	0.1	Petroleum Sales and Service, Inc 300 Ohio Street Buffalo, NY 14204
340 Ohio Street	122.10-2-11	0.42	Petroleum Sales and Service, Inc 300 Ohio Street Buffalo, NY 14204
354 Ohio Street	122.10-2-10	0.5	Petroleum Sales and Service, Inc 300 Ohio Street Buffalo, NY 14204
11 Chicago Street	122.10-2-15	0.26	Petroleum Sales and Service, Inc 300 Ohio Street Buffalo, NY 14204
71 Chicago Street	122.10-2-17	0.07	4216 Group, LLC 295 Main St., Suite 210 Buffalo, NY 14203
73 Chicago Street	122.10-2-18	0.06	4216 Group, LLC 295 Main St., Suite 210 Buffalo, NY 14203

## Attachment 01

### Site Description and BCP Eligibility Statement 300 Ohio Street Site Brownfield Cleanup Program Application

75 Chicago Street	122.10-2-16.2	0.05	4216 Group, LLC 295 Main St., Suite 210 Buffalo, NY 14203
49 Mackinaw Street	122.10-2-19	0.23	Petroleum Sales and Service, Inc 300 Ohio Street Buffalo, NY 14204
53 Mackinaw Street	122.10-2-20	0.8	Petroleum Sales and Service, Inc 300 Ohio Street Buffalo, NY 14204

The Site is bound by Ohio Street and Chicago Street to the west and southwest; Mackinaw Street to the north; and the City of Buffalo – Conway Park to the east (see Figures 1-1 and 1-2). Residential development is located less than 0.2-miles to the east and southeast, and less than 0.4-miles to the north.

The majority of the Site was historically utilized as an automobile filling station and fuel distribution operation since at least 1925. According to the NYSDEC Petroleum Bulk Storage Database (PBS No. 9-383511) and the City of Buffalo municipal records, the Site has contained at least 15 underground storage tanks (USTs), and one (1) aboveground storage tank (AST). Several notes within the municipal records indicate UST replacements due to leaking tanks. The PBS record indicates that two 20,000-gallon No. 2 fuel oil USTs were closed in-place on-Site. Additional hazardous/regulated materials and/or wastes associated with automobile repair activities were likely used, stored and/or generated on-Site, including gasoline, diesel, No. 2 fuel oil, kerosene, propane, motor oil, and waste oils (see Attachment 5).

A 2010 Limited Phase II Site Assessment (dated May 2010) and subsequent Supplemental Phase II Site Assessment (dated September 2010), were completed on the former Petroleum Sales and Services, Inc parcels (i.e., 300-354 Ohio Street and southern sections of 11 Chicago Street and 53 Mackinaw Street parcels). The investigations revealed evidence of significant



## Attachment 01

### Site Description and BCP Eligibility Statement

#### 300 Ohio Street Site

#### Brownfield Cleanup Program Application

subsurface contamination related to the former operation of a petroleum filling station and fuel distribution operation. Elevated levels of volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs), some exceeding NYSDEC Part 375 Industrial SCOs were detected. The significant petroleum-impacts that have been detected on-Site are complicating redevelopment and will require extensive remedial efforts.

The northern portion of the Site addressed on Chicago and Mackinaw Street, included the former E&B Machinery and Central Manufacturing operations. These entities formerly operated a machine shop, trucking terminal and coffin and cooperage manufacturing operations. Historic sanborn maps indicate that the factory property included a machine shop and on-Site gasoline tank(s), trucking terminal and truck repair operations. Currently, multiple debris piles, and a large soil/fill/debris pile is located along the western boundary of the 300 Ohio Street parcel, immediately adjacent to the Conway Park property to the east.

As clearly evidenced by the contamination identified in the historical records and the previous subsurface investigations, significant environmental concerns are associated with the Project Site that require remediation. The confirmed environmental contamination of the Site complicates use and future redevelopment/reuse of the Project Site.

#### **B. ELIGIBILITY FOR ACCEPTANCE INTO THE BROWNFIELD CLEANUP PROGRAM**

The Site meets the definition of a “Brownfield site” as set forth in New York State Environmental Conservation Law (the “ECL”). The ECL Section 27-1405(2) defines a “Brownfield site” as “any real property, the development or reuse of which may be complicated by the presence or potential presence of a contaminant”. The regulations in 6NYCRR 375-3.3(a)(1) reiterate that a brownfield site has two elements and adds a “reasonable basis” test to each:

- (1) A brownfield site has two elements:

## Attachment 01

### Site Description and BCP Eligibility Statement 300 Ohio Street Site Brownfield Cleanup Program Application

(i) There must be confirmed contamination on the property or a reasonable basis to believe that contamination is likely to be present on the property (the “Contamination Element”); and,

(ii) There must be a reasonable basis to believe that the contamination or potential presence of contamination may be complicating the development, use or re-use of the property (the “Complication Element”)

Moreover, the New York State Department of Environmental Conservation BCP Eligibility Guidance dated March 2005 which is incorporated into the Brownfield Cleanup Program Guide establishes several factors that the Department considers in evaluating whether the Contamination Element and the Complication Element exist.

#### **The Contamination Element**

The Department considers the following factors with respect to the Contamination Element, to the extent they are relevant to the proposed Site:

- (A) The nature and extent of known or suspected contamination;
- (B) Whether contaminants are present at levels that exceed standards, criteria or guidance;
- (C) Whether contamination on the proposed site is historic fill material or exceeds background levels;
- (D) Whether there are or were industrial or commercial operations at the proposed site which may have resulted in environmental contamination; and/or,
- (E) Whether the proposed site has previously been subject to closure, a removal action, an interim or final remedial action, corrective action or any other cleanup activities performed by or under the oversight of the State or Federal government.

The Contamination Element of the BCP Eligibility Test has clearly been met in this application because:

## Attachment 01

### Site Description and BCP Eligibility Statement

#### 300 Ohio Street Site

#### Brownfield Cleanup Program Application

- A. The previous investigations have established that on-site soils have been impacted by contaminants which will require remediation. See Attachment 5.
- B. Contaminated soils, evidenced by analytical sample results, petroleum-like odors and elevated PID readings, are present on-Site. The elevated VOCs also pose the threat of moving between environmental media and into any structure that might be built on the Project Site. See Attachment 5.
- C. Contamination on the proposed site is not a result of imported historic fill material. Rather, it is associated with the known historic use of the site as an automobile filing, repair and fuel distribution operation for more than 80 years; which included on-Site USTs, ASTs, and automobile related oils, waste oils and greases.
- D. The proposed Site has not previously been subject to closure, a removal action, an interim or final remedial action performed by or under the oversight of the State or Federal government.

#### **The Complication Element**

The Department considers the following factors with respect to the Complication Element; to the extent they are relevant to the proposed Site:

- (A) Whether the proposed site is idled, abandoned or underutilized;
- (B) Whether the proposed site is unattractive for redevelopment or reuse due to the presence or reasonable perception of contamination;
- (C) Whether properties in the immediate vicinity of the proposed site show indicators of economic distress such as high commercial vacancy rates or depressed property values; and/or,
- (D) Whether the estimated cost of any necessary remedial program is likely to be significant in comparison to the anticipated value of the proposed site as redeveloped or reused.

## Attachment 01

### Site Description and BCP Eligibility Statement 300 Ohio Street Site Brownfield Cleanup Program Application

The Complication Element of the BCP Eligibility Test has clearly been met in this application because the proposed Site is unattractive for redevelopment or reuse due to the presence of contamination. This factor is clearly established by the following:

- (A) The Site is currently vacant and underutilized.
- (B) The Site is currently listed on the NYSDEC Spills database (see Attachment 05), which requires remediation, thereby increasing the future costs of redevelopment; and considerably complicates potential funding sources for redevelopment efforts due to the presence of contamination.
- (C) The estimated cost of a proposed remedial program with regard to the Site is significant in comparison to the value of the Site (i.e., estimated at approximately 35% of the value of the Site if it were not environmentally impaired).

#### **The Requestor as a Volunteer**

A BCP applicant may be either a “Participant” or a “Volunteer.”

A “Participant” is an applicant who either (i) was the owner of the site at the time of the disposal or discharge of contaminants; or (ii) is otherwise responsible according to applicable principles of statutory or common law liability, unless such person’s liability arises solely as a result of such person’s ownership or operation of or involvement with the site subsequent to the disposal or discharge. NY ECL 27-1405(1)(a). This definition is repeated verbatim at 6 NYCRR 375-3.2(b)(1) and is paraphrased in the Brownfield Cleanup Program Guide at Section 2.4(1)(A).

A “Volunteer” is an applicant other than a participant, including a person whose liability arises solely as a result of such person’s ownership or operation of or involvement with the site subsequent to the disposal or discharge of contaminants provided that such person exercises appropriate care with respect to the contamination. NY ECL 27-1405(1)(b). This definition is repeated verbatim at 6 NYCRR 375-3.2(b)(2) and is paraphrased in the Brownfield Cleanup Program Guide at Section 2.4(1)(B).

## Attachment 01

### **Site Description and BCP Eligibility Statement 300 Ohio Street Site Brownfield Cleanup Program Application**

Since the Applicant became involved with the property after the disposal or discharge of contaminants, and has exercised appropriate care with respect to the contamination, it is entitled to Volunteer status under NY ECL27-1405(1)(b).

**Based on the foregoing and as further set forth in this BCP application, the Site meets the Contamination Element and the Complication Element tests. As such, the Site qualifies as a Brownfield Site eligible for participation in the BCP, with the Applicant as a Volunteer, because (A) there is confirmed contamination across the Site, and (B) the contamination is complicating the redevelopment and re-use of the Site.**

Upon approval of program eligibility by the Department, the Applicant is prepared to reimburse the outstanding Spill Fund Claim.



**FIGURE 1-1**



## SITE LOCATION AND VICINITY MAP

BROWNFIELD CLEANUP PROGRAM APPLICATION

300 OHIO STREET SITE

BUFFALO, NEW YORK

PREPARED FOR

4216 GROUP, LLC



2558 HAMBURG TURNPIKE  
SUITE 300  
BUFFALO, NY 14218  
(716) 856-0635

PROJECT NO.: 0136-037-100

DATE: JUNE 2011

DRAFTED BY: NTM



**FIGURE 1-2**



Base Image per Bing Maps    Property Boundary Approximate per Erie Co. GIS    Not to Scale



2558 HAMBURG TURNPIKE  
SUITE 300  
BUFFALO, NY 14218  
(716) 856-0635

## **SITE PLAN (AERIAL)**

**BROWNFIELD CLEANUP PROGRAM APPLICATION**

**300 OHIO STREET SITE**

**BUFFALO, NEW YORK**

PREPARED FOR

**4216 GROUP, LLC**

PROJECT NO.: 0136-037-100

DATE: JUNE 2011

DRAFTED BY: NTM

## SITE PHOTOGRAPHS

Photo 1:



Photo 2:



Photo 3:



Photo 4:



- Photo 1: Subject Property (300-354 Ohio Street) (looking southeast along Ohio St.)
- Photo 2: Subject Property (300 Ohio St. parcel) - former fuel dispenser islands (looking northwest)
- Photo 3: Subject Property (300 Ohio Street parcel) - covered pit (looking northeast)
- Photo 4: Subject Property (300 Ohio St. parcel) - exposed UST fill port (looking east)

**300 Ohio Street Site  
Buffalo, New York**





## SITE PHOTOGRAPHS

Photo 5:



Photo 6:



Photo 7:



Photo 8:



Photo 5: Subject Property (11 Chicago Street parcel) – former truck terminal in distance (looking east)

Photo 6: Subject Property (49 and 53 Mackinaw Street parcels) – former truck terminal (looking north)

Photo 7: Subject Property (53 Mackinaw Street parcel) – soil and debris pile (looking east)

Photo 8: Subject Property (49 Mackinaw Street parcel) – brick wood and debris piles (looking west)

**300 Ohio Street Site  
Buffalo, New York**



## SITE PHOTOGRAPHS

Photo 9:



Photo 10:



Photo 11:



- Photo 9: Subject Property (75 Chicago St.) – dumping activities including tire, metal, and wood debris (looking south along Mackinaw)
- Photo 10: Subject Property (73 Chicago St.) – dumping activities including tires, wood and miscellaneous debris pile (looking south along Mackinaw)
- Photo 11: Adjacent off-site property (55 Chicago St.) – historic former E&B machinery co. manufacturing building (looking east along Chicago St)

**300 Ohio Street Site  
Buffalo, New York**



## ATTACHMENT 02

### PARCEL DESCRIPTION FIGURE 2-1 TAX MAP

## Attachment 02

### Parcel Description 300 Ohio Street Site Brownfield Cleanup Program Application

#### PARCEL DESCRIPTION

The Project Site consists of 11 adjoining parcels totaling approximately 5.0-acres, located in the City of Buffalo, Erie County, New York (see Figure 2-1).

The parcels included in this application are described as:

Parcel Address	SBL No.	Acreage	Current Parcel Owner
300 Ohio Street	122.10-2-14	2.36	Petroleum Sales and Service, Inc 300 Ohio Street Buffalo, NY 14204
326 Ohio Street	122.10-2-13	0.1	Petroleum Sales and Service, Inc 300 Ohio Street Buffalo, NY 14204
328 Ohio Street	122.10-2-12	0.1	Petroleum Sales and Service, Inc 300 Ohio Street Buffalo, NY 14204
340 Ohio Street	122.10-2-11	0.42	Petroleum Sales and Service, Inc 300 Ohio Street Buffalo, NY 14204
354 Ohio Street	122.10-2-10	0.5	Petroleum Sales and Service, Inc 300 Ohio Street Buffalo, NY 14204
11 Chicago Street	122.10-2-15	0.26	Petroleum Sales and Service, Inc 300 Ohio Street Buffalo, NY 14204
71 Chicago Street	122.10-2-17	0.07	4216 Group, LLC 295 Main St., Suite 210 Buffalo, NY 14203
73 Chicago Street	122.10-2-18	0.06	4216 Group, LLC 295 Main St., Suite 210 Buffalo, NY 14203

## Attachment 02

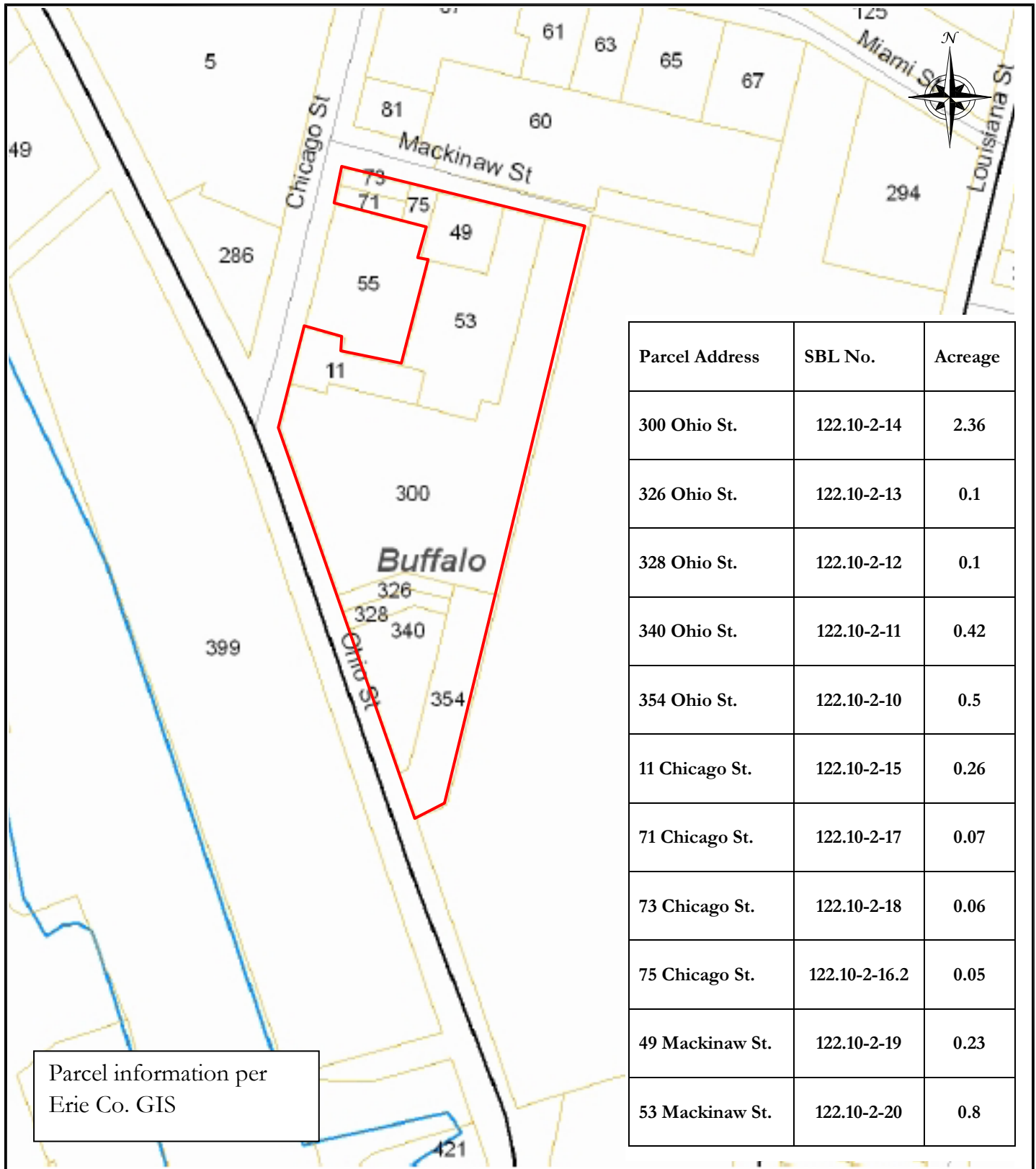
**Parcel Description**  
**300 Ohio Street Site**  
**Brownfield Cleanup Program Application**

75 Chicago Street	122.10-2-16.2	0.05	4216 Group, LLC 295 Main St., Suite 210 Buffalo, NY 14203
49 Mackinaw Street	122.10-2-19	0.23	Petroleum Sales and Service, Inc 300 Ohio Street Buffalo, NY 14204
53 Mackinaw Street	122.10-2-20	0.8	Petroleum Sales and Service, Inc 300 Ohio Street Buffalo, NY 14204

Parcel boundaries correspond to the City of Buffalo tax map boundaries. The metes and bounds description of the BCP Project Site will be provided to the NYSDEC upon completion of the boundary survey.



**FIGURE 2-1**



2558 HAMBURG TURNPIKE  
SUITE 300  
BUFFALO, NY 14218  
(716) 856-0635

PROJECT NO.: 0136-037-100

DATE: JUNE 2011

DRAFTED BY: NTM

## TAX MAP

BROWNFIELD CLEANUP PROGRAM APPLICATION

300 OHIO STREET SITE

BUFFALO, NEW YORK

PREPARED FOR

4216 GROUP, LLC

# ATTACHMENT 03

## PROJECT DESCRIPTION & SCHEDULE

**Project Description & Schedule**  
**300 Ohio Street Site**  
**Brownfield Cleanup Program Application**

**PROJECT DESCRIPTION**

4216 Group, LLC plans to redevelop the 11 adjoining parcels into a mixed-use commercial development. A redevelopment plan has not been finalized. The remediation activities will include the excavation and removal of the existing underground storage tanks (USTs) and all appurtenant piping; demolition of the product dispensers and filling islands; excavation of petroleum-impacted soil encountered; demolition of the existing truck terminal, former restaurant/office building and former machining factory building.

4216 Group, LLC, acting as a Volunteer is willing to remediate the Site under the Brownfield Cleanup Program (BCP), and is submitting this BCP application for eligibility into the Program. Upon acceptance into the BCP, 4216 Group, LLC will submit a Remedial Investigation/Alternative Analysis/Interim Remedial Measures (RI/AA/IRM) Work Plan.

**PROJECT SCHEDULE**

The environmental engineering and consulting tasks, including completion and implementation of a Remedial Investigation/Alternatives Analysis/Interim Remedial Measures Work Plan (RI/AA/IRM Work Plan), are estimated as follows:

July 2011 – Submit BCP application

August 2011 – Execute Brownfield Cleanup Agreement (BCA)

Fall 2011 – Submit RI/AA/IRM Work Plan

Spring/Summer 2012 – Complete Remedial Investigation and Field Activities

Fall 2012 – Submit RI/AA/IRM Report

Winter 2012 – Submit Site Management Plan (SMP)

Spring 2013 – Submit Final Engineering Report (FER)

Summer/Fall 2013 – Receive Certificate of Completion (COC)



# ATTACHMENT 04

## PROPOSED REDEVELOPMENT PLAN

(NOT INCLUDED)