

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Office of the Director

625 Broadway, 12th Floor, Albany, New York 12233-7011

P: (518) 402-9706 | F: (518) 402-9020

www.dec.ny.gov

DEC 18 2019

Mr. Jason Yots  
c/o Buffalo Freight House LLC  
221 Bedford Avenue  
Buffalo, NY 14216

Re: Certificate of Completion  
68 Tonawanda Street  
Site No. C915316  
Buffalo, Erie County

Dear Mr. Yots:

Congratulations on having satisfactorily completed the remedial program at the 68 Tonawanda Street BCP Site. Enclosed please find an original, signed Certificate of Completion (COC). The New York State Department of Environmental Conservation (Department) is pleased to inform you that the Final Engineering Report is hereby approved, allowing the COC to be issued for the above-referenced site.

Please note that you are required to perform the following tasks:

- If you are the site owner, you must record a notice of the COC in the recording office for the County (or Counties) where any portion of the site is located within 30 days of issuance of the COC; or if you are a prospective purchaser of the site, you must record a notice of the COC within 30 days of the date that you acquire the site. A copy of the recorded notice should be provided to the Department's project manager. If you are a non-owner, you must work with the owner to assure the notice of COC is recorded within the time frame specified. A standard notice form is attached to this letter. Please return the proof of recording to:

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



Department of  
Environmental  
Conservation

- Provide the notice of the COC to the Document Repositories within 10 days of issuance of the COC. The Department will develop a fact sheet announcing the issuance of the COC and describing the institutional and engineering controls (IC/ECs), if any, that are required at the site and distribute it to the County Listserv within 10 days; and
- Implement the Department-approved Site Management Plan (SMP) which details the activities necessary to assure the performance, effectiveness, and protectiveness of the remedial program; and you must report the results of these activities to the Department in a Periodic Review Report (PRR) which also includes any required IC/EC Certifications. The site IC/ECs are identified on the attached Site Management Form. The first PRR including the certification of the IC/ECs is due to the Department in April 2021.

If you have any questions regarding any of these items, please contact Mr. Glenn M. May at 716-851-7220.

Sincerely,



Michael J. Ryan, P.E.  
Director  
Division of Environmental Remediation

ec w/ enclosure:

J. Brydges – BE3, [jbrydges@be3corp.com](mailto:jbrydges@be3corp.com)  
 J. Yots – Common Bond Real Estate, [yots@commonbondrealestate.com](mailto:yots@commonbondrealestate.com)  
 J. Yots - Borrelli & Yots PLLC, [jasonyots@borrelliyots.com](mailto:jasonyots@borrelliyots.com)  
 C. Bethoney – NYSDOH, [charlotte.bethoney@health.ny.gov](mailto:charlotte.bethoney@health.ny.gov)  
 A. Ghosh – NYSDOH, [arunesh.ghosh@health.ny.gov](mailto:arunesh.ghosh@health.ny.gov)  
 Matt Gokey, [matthew.gokey@tax.ny.gov](mailto:matthew.gokey@tax.ny.gov)  
 Paul Takac, [paul.takac@tax.ny.gov](mailto:paul.takac@tax.ny.gov)

ec w/o enc.:

G. May - NYSDEC, R9  
 S. Radon - NYSDEC, RHWG, R9  
 G. Heitzman - NYSDEC, Assistant Division Director  
 M. Cruden - NYSDEC, Bureau Director, Remedial Section E  
 J. Dougherty - OGC, Buffalo



NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)  
***CERTIFICATE OF COMPLETION***

**CERTIFICATE HOLDER(S):**

**Name**

Buffalo Freight House LLC

**Address**

221 Bedford Avenue, Buffalo, NY 14216

**BROWNFIELD CLEANUP AGREEMENT:**

**Application Approval:** 7/7/17

**Agreement Execution:** 8/2/17

**Agreement Index No.:** C915316-06-17

**Application Approval Amendment:** 12/4/19

**Agreement Execution Amendment:** 12/4/19

**SITE INFORMATION:**

**Site No.:** C915316    **Site Name:** 68 Tonawanda Street

**Site Owner:** Buffalo Freight House LLC

**Street Address:** 68 Tonawanda Street

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

**Site Size:** 1.740 Acres

**Tax Map Identification Number(s):** 88.50-2-1.2

**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:** Restricted-Residential, Commercial, and Industrial

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

**Tax Credit Provisions:**

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 28%.

Tangible Property Credit is 15%. Comprised of 10% Base, 5% EnZone

Dependent upon the project being developed in a manner consistent with the approved Brownfield Cleanup Program application, additional rate increases may be available if the site is developed as affordable housing (5%), if the Certificate Holder receives a separate Determination of Conformance with the BOA from the Secretary of State (5%), or if the site is used primarily for manufacturing activities (5%) not to exceed a maximum 24 %.



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 Book of Deeds 11337, Page 6175.

#### **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 is not received within such 30-day period, the Certificate shall be deemed modified or vacated on the 31st day after the Department's notice.

Basil Seggos  
Commissioner  
New York State Department of Environmental Conservation

By: \_\_\_\_\_



Date: \_\_\_\_\_

12/18/19

Michael J. Ryan, P.E., Director  
Division of Environmental Remediation

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

*68 Tonawanda Street, Site ID No. C915316*  
*68 Tonawanda Street, Buffalo, Erie County, New York, 14207*  
*Buffalo, Erie County, Tax Map Identification Number 88.50-2-1.2*

**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 Buffalo Freight House LLC for a parcel approximately 1.740 acres in size located at 68 Tonawanda 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):

- ☐ Unrestricted Use, as set forth in 6 NYCRR 375-1.8(g)(1)i
- ☐ 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.

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 Book of Deeds 11337, Page 6175.

**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.

**68 Tonawanda Street, Site ID No. C915316  
68 Tonawanda Street, Buffalo, Erie County, New York, 14207**

**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 revoked if the Environmental Easement as implemented, if applicable, is not protective or enforceable.

**PLEASE TAKE NOTICE**, the Certificate may entitle the Certificate holder(s) to tax credits in accordance with Tax Law Sections 21, 22 and 23.

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

**WHEREFORE**, the undersigned has signed this Notice of Certificate

Buffalo Freight House LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF NEW YORK        ) SS:  
COUNTY OF                )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, 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.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

**Please record and return to:**  
Buffalo Freight House LLC  
Mr. Jason Yots  
221 Bedford Avenue  
Buffalo, NY 14216

**EXHIBIT A**  
**METES & BOUNDS**

**SCHEDULE "A" PROPERTY DESCRIPTION**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Lots 103 - 106, 163, 164, 215 and 216 of the Parish Tract described as follows:

BEGINNING at the point of intersection of the westerly line of Tonawanda Street (99 feet wide) with the northeasterly line of Dearborn Street (66 feet wide);

Thence North  $42^{\circ}29'18''$  West, along the northeasterly line of Dearborn Street, a distance of 102.00 feet to a point in the westerly line of lands of CSX Corporation Inc.;

Thence North  $05^{\circ}20'56''$  East, along the said westerly line of CSX Corporation Inc., a distance of 922.13 feet to a point;

Thence South  $84^{\circ}13'19''$  East, a distance of 83.03 feet to a point in the said westerly line of Tonawanda Street;

Thence South  $05^{\circ}46'41''$  West, along said westerly line of Tonawanda Street, a distance of 990.00 feet to the point or place of beginning.

Containing 1.74 acres of land.



**EXHIBIT B**  
**SITE SURVEY MAP**

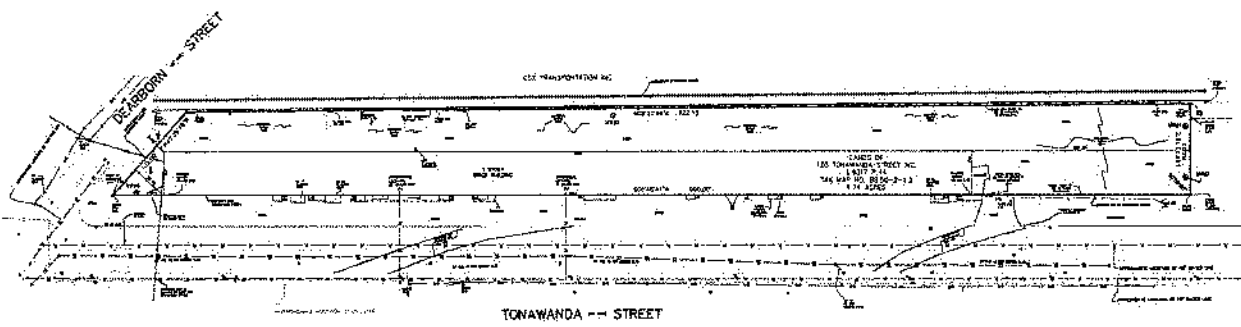


AS SURVEYED LOCAL DESCRIPTION AND ENVIRONMENTAL EASEMENT

"THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL EASEMENT HELD BY THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PURSUANT TO TITLE 36 OF ARTICLE 73 OF THE NEW YORK ENVIRONMENTAL CONSERVATION LAW. THE ENGINEERING AND INSTRUMENTAL CONTROLS FOR THIS EASEMENT ARE SET FORTH IN THE SITE MANAGEMENT PLAN (SMP). A COPY OF THE SMP MUST BE OBTAINED BY ANY PARTY WITH AN INTEREST IN THE PROPERTY. THE SMP CAN BE OBTAINED FROM THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DIVISION OF ENVIRONMENTAL REMEDIATION, SITE CONTROL SECTION, 625 BROADWAY, ALBANY, NY 12233 OR AT DEWEES@DEC.NY.GOV."

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 NOS. 103-109, 163, 164, 215 AND 216 OF THE PARISH TRACT DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT OF INTERSECTION OF THE WESTERLY LINE OF TONAWANDA STREET (38 FEET WIDE) WITH THE NORTHEASTERLY LINE OF DEARBORN STREET (68 FEET WIDE); THENCE NORTH 42° 29' 18" WEST, ALONG THE NORTHEASTERLY LINE OF DEARBORN STREET, A DISTANCE OF 102.00 FEET TO A POINT IN THE WESTERLY LINE OF LANDS OF CSX TRANSPORTATION, INC.; THENCE NORTH 05° 20' 06" EAST, ALONG THE SAID WESTERLY LINE OF CSX TRANSPORTATION, INC., A DISTANCE OF 322.13 FEET TO A POINT; THENCE SOUTH 84° 37' 19" EAST, A DISTANCE OF 82.03 FEET TO A POINT IN THE SAID WESTERLY LINE OF TONAWANDA STREET; THENCE SOUTH 05° 45' 41" WEST, ALONG SAID WESTERLY LINE OF TONAWANDA STREET, A DISTANCE OF 599.00 FEET TO THE POINT OR PLACE OF BEGINNING, CONTAINING 1.74 ACRES OF LAND.



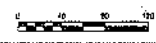
LEGEND

1	EXISTING MANHOLE
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3	EXISTING DRIVE
4	EXISTING SIDEWALK
5	EXISTING FENCE
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11	EXISTING SIDEWALK
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89	EXISTING FENCE
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91	EXISTING EASEMENT
92	EXISTING RIGHT-OF-WAY
93	EXISTING STREET
94	EXISTING DRIVE
95	EXISTING SIDEWALK
96	EXISTING FENCE
97	EXISTING LOT CORNER
98	EXISTING EASEMENT
99	EXISTING RIGHT-OF-WAY
100	EXISTING STREET

NOTES:  
1. ALL DIMENSIONS SHOWN ARE APPROXIMATE.  
2. EXISTING DRIVE WHEN INTERFERED TO BE IN LINE OF DRIVE'S CENTER LINE.  
3. ALL DIMENSIONS SHOWN ARE APPROXIMATE.  
4. EXISTING DRIVE WHEN INTERFERED TO BE IN LINE OF DRIVE'S CENTER LINE.

PREPARED AND DRAWN BY: [Name]  
CHECKED BY: [Name]  
DATE: [Date]

ENGINE: [Name]  
SURVEYOR: [Name]  
DATE: [Date]



BOUNDARY SURVEY  
OF TONAWANDA STREET  
IN THE CITY OF BUFFALO, COUNTY OF ERIE, STATE OF NEW YORK  
CREDENCE BOUNDARY, LLC  
1000 [Address]  
[City, State, Zip]  
[Phone Number]  
[Fax Number]  
[Email Address]



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
Site Management Form  
12/5/2019



**SITE DESCRIPTION**

**SITE NO.** C915316

**SITE NAME** 68 Tonawanda Street

**SITE ADDRESS:** 68 Tonawanda Street **ZIP CODE:** 14207

**CITY/TOWN:** Buffalo

**COUNTY:** Erie

**ALLOWABLE USE:** Restricted-Residential, 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 checked="" type="checkbox"/>	<input type="checkbox"/>

**Periodic Review Frequency:**

**Periodic Review Report Submitted Date:**

**Description of Institutional Control**

**Buffalo Freight House LLC**

221 Bedford Avenue

**68 Tonawanda Street**

Environmental Easement

Block: 2

Lot: 1

Sublot: 2

Section: 88

Subsection: 50

S\_B\_L Image: 88.50-2-1.2

Ground Water Use Restriction

IC/EC Plan

Landuse Restriction

Monitoring Plan

O&M Plan

Site Management Plan

Soil Management Plan



## Description of Engineering Control

**Buffalo Freight House LLC**

221 Bedford Avenue

**68 Tonawanda Street**

Environmental Easement

Block: 2

Lot: 1

Sublot: 2

Section: 88

Subsection: 50

S\_B\_L Image: 88.50-2-1.2

Vapor Mitigation

Cover System

Monitoring Wells