

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental
Protection Agency-Reg 2
2014 APR 30 AM 11:17
REGIONAL HEARING
CLERK

IN THE MATTER OF:

Atlantic Funding and Real Estate, LLC
and
Alfred Spaziano
P.O. Box 26350
Rochester, New York 14626

Respondents,

SPDES Permit No. NYR10V310

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. §1319(g)

**CONSENT AGREEMENT
AND FINAL ORDER**

DOCKET No. CWA-02-2013-3401

I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency (“EPA”) having filed the complaint referenced herein on September 5, 2013, against Respondents, Atlantic Funding and Real Estate, LLC and Alfred Spaziano; and

Complainant and Respondents, having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (“CA/FO” or “Agreement”) without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered as follows:

II. PROCEDURAL AND FACTUAL BACKGROUND

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g).
2. The Complaint alleges that Respondents are liable for eighteen (18) distinct violations of the CWA, some of which continued for one hundred seventy-seven (177) days, for a total of two thousand three hundred seventeen (2,317) days of violations, in the operation of its construction site known as “Gateway Landing,” off Canal Landing Boulevard at Bellewood Drive, near Longleaf Boulevard, in the Towns of Gates and Greece, in Monroe County, New York, which have resulted, among other things, in the discharge of stormwater pollution into waters of the United States, in violation of Sections 301 and 402 of the Act, 33 U.S.C. § 1311

and § 1342, respectively, and proposes to assess a civil penalty of one hundred twenty thousand dollars (\$120,000).

3. Respondents filed an Answer and requested a hearing pursuant to 40 C.F.R. Part 22.
4. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in this Complaint. Respondents waive any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in the Complaint, consent to the terms of this Agreement.
5. Respondents hereby waive their right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

III. TERMS OF SETTLEMENT

A. **Civil Penalty**

1. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), given the nature of the alleged violations, Respondents' agreement to perform a Supplemental Environmental Project ("SEP"), and other relevant factors, EPA has determined that **fifty thousand dollars (\$50,000)** is an appropriate civil penalty to settle this action.
2. Respondents shall pay the full penalty amount within thirty (30) calendar days of their receipt of the fully executed CA/FO. If the due date for payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00a.m. Eastern Time to be considered received that day.
3. Payment shall be made by one of the following methods:

By cashier's or certified check. A cashier's or certified check, including the name and docket number of this case, for \$50,000.00, payable to "Treasurer, United States of America," mailed to:

Regular Mail

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Overnight Mail

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

By Wire Transfer: Wire transfers should be directed to the Federal Reserve Bank of New York with the following information:

ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

33 Liberty Street
New York, NY 10045

Field tag 4200 of Fedwire message should read, "D 68010727 Environmental Protection Agency."

Online: This option is available through the Department of Treasury, at www.pay.gov. Enter "sfo 1.1" in the search field. Open the form and complete the required fields.

4. Respondents shall send a copy of the check, or record of payment if made by other means, immediately following payment, to:

Christopher Saporita, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007

5. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date (on the 1st late day, 30 days of interest will have accrued), at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.
6. A handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the due date of any payment, and for each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
7. In addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if any of the payments are not received by the applicable due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is twenty percent (20%) of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter. Respondents also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.

8. Respondents shall not claim the penalty as a federal or other tax deduction or credit.
9. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

B. Supplemental Environmental Project

1. Beginning no later than thirty (30) days after receiving a copy of the Consent Agreement and Final Order, Respondents shall commence construction in compliance with the schedule in III.B.4. of the **Bioswale Supplemental Environmental Project (“SEP”)** (see Exhibit A).
2. The parties agree that the SEP is intended to secure significant environmental protection or public health improvements, namely the reduction of polluted stormwater discharges to waters of the United States.
3. Respondents hereby certify that, as of the date of this Agreement, Respondents are not required to perform or develop this SEP as part of any federal, state or local law or regulation; nor are Respondents required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondents further certify that they have not received, and are not presently negotiating to receive, credit in any other enforcement action for the SEP.
4. Respondents shall complete construction of the SEP no later than October 31, 2014, as follows:
 - Milestone 1: Construct silt fence downslope of active construction area by April 20, 2014.
 - Milestone 2: Complete fine grading, rock hounding and permanent seeding in contributing green areas area by July 11, 2014.
 - Milestone 3: Stabilize the contributing drainage areas by August 22, 2014.
 - Milestone 4: Construct silt fence downslope of the bioswale area by August 22, 2014.
 - Milestone 5: Begin construction of the bioswale area, along with performance of the weekly reporting requirement, by August 29, 2014.
 - Milestone 6: Landscape and seed bioswale area by September 12, 2014.
 - Milestone 7: Complete bioswale area by October 31, 2014.
 - Milestone 8: Conclude Weekly Reporting Requirement by October 31, 2014.
5. Respondents shall spend no less than **sixty-eight thousand seven hundred twenty-five dollars (\$68,725)**, or equivalent in parts, labor or materials, in accordance with the specifications set forth in Exhibit A. To the extent Respondents use in-house labor or Respondents’ employees, equipment, materials or supplies, market rates will apply.

6. Any public statement, oral or written, in print, film, website or other media, made by Respondents that refer to the SEP shall include the following language: "This project was undertaken as part of the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of Sections 301 and 402 of the Clean Water Act (Docket number CWA-02-2013-3401)."

C. Reporting

1. During the performance of the SEP in accordance with the schedule in III.B.4, Respondents shall submit to EPA copies of the weekly inspection reports created pursuant to the applicable permit, within one week of each inspection.
2. Respondents shall submit a **SEP Completion Report** to EPA within 30 days after completion of the last milestone but no later than November 30, 2014, containing the following information:
 - a. A detailed description of the SEP as implemented;
 - b. A description of any operating problems encountered and the solutions thereto;
 - c. Itemized costs;
 - d. Certification that the SEP has been fully implemented pursuant to the provisions of this Agreement; and
 - e. A description of the future environmental and public health benefits resulting from implementation of the SEP.
3. Respondents shall maintain legible copies of documentation of the underlying information for the SEP Completion Report for three (3) years following completion of the last milestone, and shall provide said documentation to EPA, upon request, not more than seven days after such request.
4. In itemizing costs in the SEP completion report, Respondents shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment has been made or for which Respondents have used Respondents' employees, equipment, materials or supplies, at market rate prices. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.
5. Respondents shall submit the weekly inspection reports, as described above, and the SEP Completion Report by first class mail, to:

Douglas McKenna, Chief
Water Compliance Branch
U.S. Environmental Protection Agency, Region 2
290 Broadway, 20th floor

New York, NY 10007

and

Christopher Saporita, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007

6. Respondents agree that failure to timely submit a complete SEP Completion Report shall be deemed a violation of this Agreement, and Respondents shall become liable for stipulated penalties pursuant to Section III.D, below.
7. Respondents agree that EPA may inspect the SEP and the surrounding Gateway Landing parcel at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.
8. In all documents or reports submitted to EPA pursuant to this Agreement, Respondents shall, by an authorized officer, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by including and signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.
9. After receipt of the SEP Completion Report, EPA will notify Respondents, in writing, regarding:
 - a. Any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondents to correct any deficiencies; or
 - b. Indicate that EPA concludes that the project has been completed satisfactorily; or
 - c. Determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Section III.D, below.

If EPA elects to exercise option (a) or (c), above, (i.e., if the SEP Completion Report is determined to be deficient, but EPA has not yet made a final determination about the adequacy of SEP completion itself), or has determined that the SEP has not been completed satisfactorily, EPA shall permit Respondents the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within thirty (30) days of receipt of such notification. EPA and Respondents shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary

to the SEP Completion Report or additional work to be performed to complete the SEP. If agreement cannot be reached on any such issue within this thirty (30) day period, the Director of EPA's Division of Enforcement and Compliance Assistance shall provide a written statement of EPA's decision on the adequacy of the SEP Completion Report or completion of the SEP to Respondents, which decision shall be final and binding upon Respondents. In the event the SEP is not completed as contemplated herein, as determined by EPA, Respondents shall become liable for stipulated penalties pursuant to Section III.D, below.

D. Stipulated Penalties

1. In the event that Respondents fail to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Section III.B, above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph III.B.5, above (\$68,725), unless excused by Paragraph D.2, below (Force Majeure), Respondents shall be liable for stipulated penalties according to the provisions set forth below:
 - a. Except as provided in subparagraphs (i)-(iii), immediately below, where Respondents fail to perform the SEP pursuant to this Agreement, Respondents shall pay a stipulated penalty to the United States in the amount of **thirty-four thousand three hundred sixty-three dollars (\$34,363)**.
 - i. If Respondents complete the SEP in accordance with Section III.B, but expends less than 75 percent of the amount required to be spent (\$51,544), Respondents shall pay a stipulated penalty to the United States of **eight thousand five hundred ninety dollars (\$8,590)**.
 - ii. If Respondents complete the SEP in accordance with Section III.B, and expends at least 90 percent of the amount required to be spent for the project (\$61,853), Respondents shall not be liable for any stipulated penalty for incomplete performance of the SEP.
 - iii. If Respondents do not complete the SEP in accordance with Section III.B, but the Complainant determines that Respondents made good faith and timely efforts to do so, and Respondents certify, with supporting documentation, that at least 90 percent of the amount which was required to be spent (\$61,853), was expended on the SEP, Respondents shall not be liable for any stipulated penalty.
 - b. If Respondents fail to submit the SEP Completion Report required by Section III.C, above, Respondents shall pay a stipulated penalty of \$100.00 per day from the day the report was originally due until the day the report is submitted.
 - c. The determinations of whether the SEP has been satisfactorily completed and whether Respondents have made a good faith, timely effort to implement the SEP

shall be within the sole reasonable discretion of EPA.

- d. Stipulated penalties shall begin to accrue on the day after performance of the SEP is due, and/or the day after the SEP Completion Report is due, whichever is applicable, and shall continue to accrue through the final day of the completion of the SEP or the submission of the report.
 - e. Respondents shall pay stipulated penalties not more than fifteen (15) days after receipt of a written demand by EPA for such penalties. The method of payment shall be in accordance with Paragraphs III.A.3 and III.A.4, above, and interest and late charges shall be paid in accordance with Paragraphs III.A.5, III.A.6 and III.A.7, above.
2. Respondents shall not be liable for stipulated penalties for delays caused by a Force Majeure. "Force Majeure," is any event arising from causes beyond the control of Respondents, or any entity or individual directed or controlled by Respondents, which delays or prevents the performance of any obligation under this Agreement, despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Respondents' financial inability to perform any obligation under this Agreement. If any event occurs or has occurred that may delay Respondents' performance of any obligations under this Agreement for more than one week, Respondents shall notify EPA by telephone and by email, at (212) 637-3203 and saporita.chris@epa.gov, respectively, within 48 hours of when Respondents first knew that the event might cause a delay. Within ten (10) days thereafter, Respondents shall mail a written explanation to EPA, at the address listed in Paragraph C.5, above, describing the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken (including actual or proposed completion dates) to prevent or minimize the delay, and Respondents' reasons for attributing such delay to a Force Majeure event (if they intend to assert such a claim). EPA will respond, in writing, within 14 days with its determination of whether a delay was caused by a Force Majeure. That determination shall be within the sole reasonable discretion of EPA. If EPA agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Agreement that are affected by the Force Majeure event will be extended by EPA for such time as is necessary to complete those obligations. If EPA does not agree that the delay or anticipated delay is attributable to a Force Majeure event, Respondents will be subject to stipulated penalties for the delay, in accordance with Paragraph D.1, above.

IV. OTHER TERMS AND CONDITIONS

1. Failure by Respondents to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of the Agreement and for such other relief as may be appropriate.

2. This Agreement shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
3. This Agreement constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the violations alleged in the Complaint. Compliance with this Agreement shall not be a defense to any enforcement actions commenced pursuant to federal laws and regulations administered by EPA for violations other than those alleged in the Complaint.
4. Each undersigned representative of the parties to this Agreement certifies that she or he is fully authorized by the party represented to enter into the terms and conditions of this Agreement and to execute and legally bind that party to it.
5. The provisions of this Agreement shall be binding upon the Respondents, their officers, directors, agents, servants, authorized representatives and successors or assigns.
6. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Agreement.
7. Respondents consent to service upon them by delivery of a copy of this Agreement by mail or by an EPA employee other than the Headquarters or Regional Hearing Clerks.

FOR RESPONDENTS:

BY:

Al Spaziano
Signature

4.28.2014
Date

Al Spaziano
Name (Please print)

Manager
Title (Please print)

FOR COMPLAINANT:

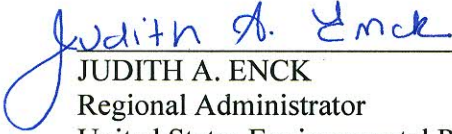
Dore LaPosta
DORE LAPOSTA

Director, Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007

4/29/14
Date

V. FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Headquarters Hearing Clerk, U.S. EPA, Washington, DC.



JUDITH A. ENCK
Regional Administrator
United States Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007

April 29, 2014
Date

**Proposed Supplemental Environmental Project
GATEWAY LANDING**

Detailed Description of the Project

The proposed Supplemental Environmental Project ("SEP" of "Project") consists of the construction of a linear bio-swale containing a rain garden stormwater practice. Specifically the Project will include the following work:

1. The area is currently a swale. The swale will be replaced by a 20,204 S.F. bio-swale, which includes water filtering soil media in support of a proposed 7,800 S.F. rain garden.

Estimated cost of the project:

Engineering Design	\$ 6,500
Earthwork (+/- 2,300 cy @ \$9.25/cy)	\$ 23,000
Seed Mix (10 lbs @ 160.00 /lb)	\$ 1,600
21 trees (+/- \$500.00/tree)	\$ 10,500
175 shrubs (+/- \$55.00/shrub)	\$ 9,625
Mulch (185 cy @ \$60.00/cy)	\$ 11,100
Stakeout	\$ 1,400
Construction Inspection	\$ 2,500
As built	\$ 2,000
Yearly maintenance	\$ 500
Total	\$ 68,725

**Proposed Supplemental Environmental Project
GATEWAY LANDING**

Estimated Savings or profit

None

Anticipated Environmental and Ecological Benefits

The proposed Project will slow and clean stormwater runoff from the impervious areas on the site including portions of the parking areas. The proposed Project will provide pre-treatment for runoff prior to it entering the existing basin. The proposed Project has been designed to enhance infiltration, improve water quality by removing pollutants and reduce the volume of runoff leaving the site. The SEP has the potential to reduce runoff by approximately 10,062 ft³. The SEP will also include a variety of aesthetically pleasing native plant material, which will make the Project more visually interesting.

Relationship to the Violations

This SEP has a direct relationship to the Erie Canal, which is the resource that was allegedly affected. The proposed Project is intended to pre-treat water that falls on an approximately 0.60-acre area of impervious surface. Infiltration of the water quality volume will significantly reduce and remove urban pollutants, including petroleum by-products, heavy metals and suspended solids from the stormwater runoff before it ultimately enters the Erie Canal. These pollutants will be captured within the bioswale and thereby reduce loading in the existing storm water management facility.

Coordination with Third parties

The Owner shall provide the contractor with the required materials.

Construction inspection will be provided by a Consultant firm.

Project Milestones and Schedule for Implementation

Engineering Design	March 2014
Construction	September 2014

Length of Time the Proposed SEP is Expected to be Used

The proposed SEP is expected to remain in service indefinitely given proper maintenance and care.

**Proposed Supplemental Environmental Project
GATEWAY LANDING**

Stormwater Calculations:

Project Area Water Quality Volume:

$$WQ_v = (p)(R_v)(A_p)/12$$

where:

$$P = 90\% \text{ rainfall number} = 0.90$$

$$R_v = 0.05 + 0.009 (55) = 0.545$$

$$A_p = \text{Area contributing to the practice} = 1.01 \text{ acres}$$

$$\begin{aligned} WQ_v &= (.9)(0.545)(1.01)/12 \\ &= 0.041 \text{ acre-ft} \\ &= 1,798 \text{ ft.}^3 \end{aligned}$$

Storage Capacity:

Bio-Retention/Infiltration Area

$$V_{\text{soil}} = A_{\text{sm}} \times D_{\text{sm}} \times P_{\text{sm}}$$

where:

$$A_{\text{sm}} = 7,800 \text{ ft.}^2$$

$$D_{\text{sm}} = 2.5'$$

$$P_{\text{sm}} = 0.5$$

$$V_{\text{soil}} = 7800 \times 2.5 \times 0.5 = 9,750 \text{ ft.}^3$$

$$V_{\text{drainage}} = A_{\text{dl}} \times D_{\text{dl}} \times P_{\text{dl}}$$

where:

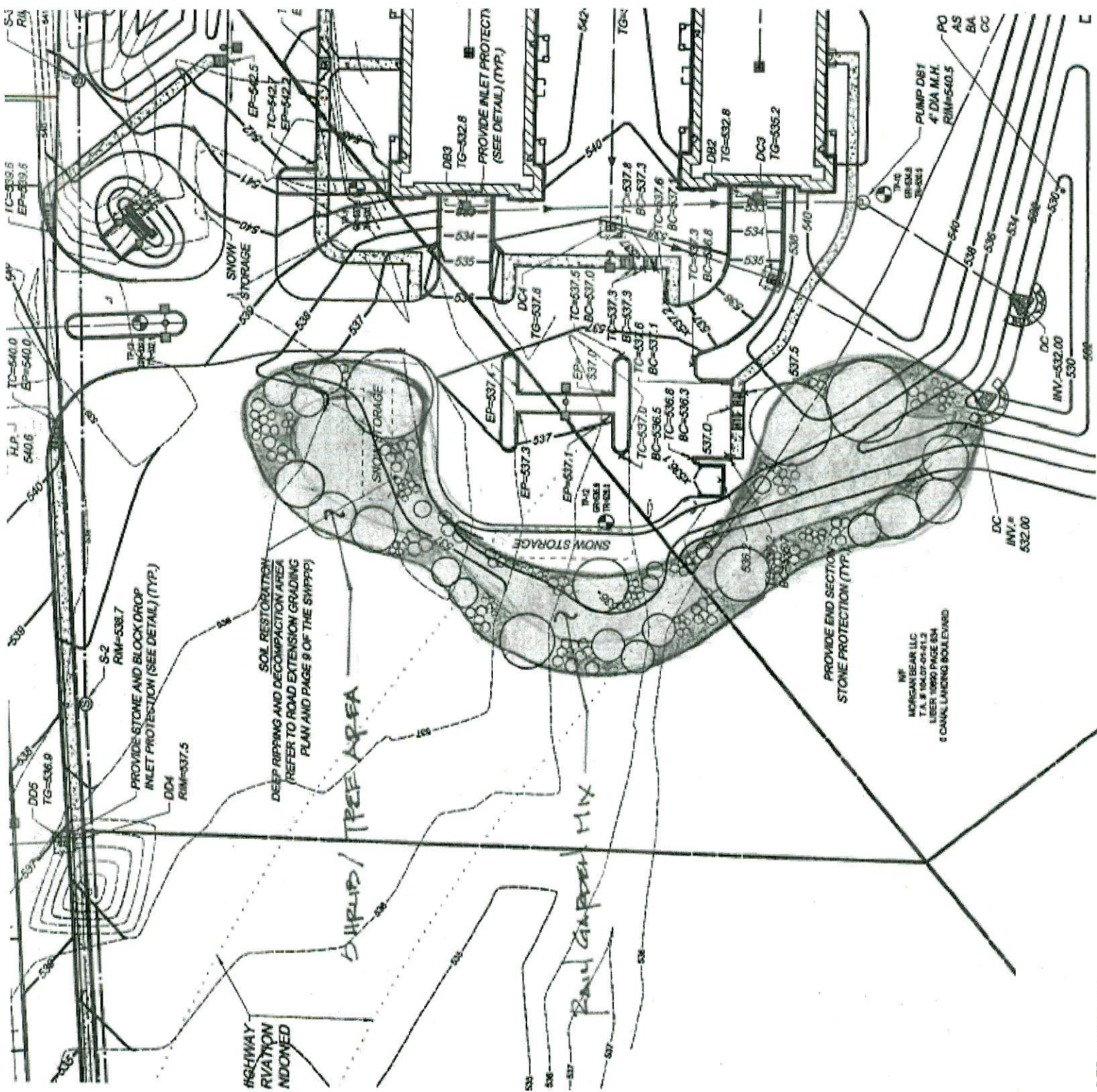
$$A_{\text{dl}} = 7,800 \text{ ft.}^2$$

$$D_{\text{dl}} = 1.0'$$

$$P_{\text{dl}} = 0.4$$

$$V_{\text{drainage}} = 7800 \times 1.0 \times 0.4 = 312 \text{ ft.}^3$$

Total Storage Volume = 9,750 + 312



PROVIDE STONE AND BLOCK DROP INLET PROTECTION (SEE DETAIL) (TYP.)

SOIL RESTORATION DEEP RIPPER AND DECOMPACTION AREA (REFER TO ROAD EXTENSION GRADING PLAN AND PAGE 9 OF THE SWPPP)

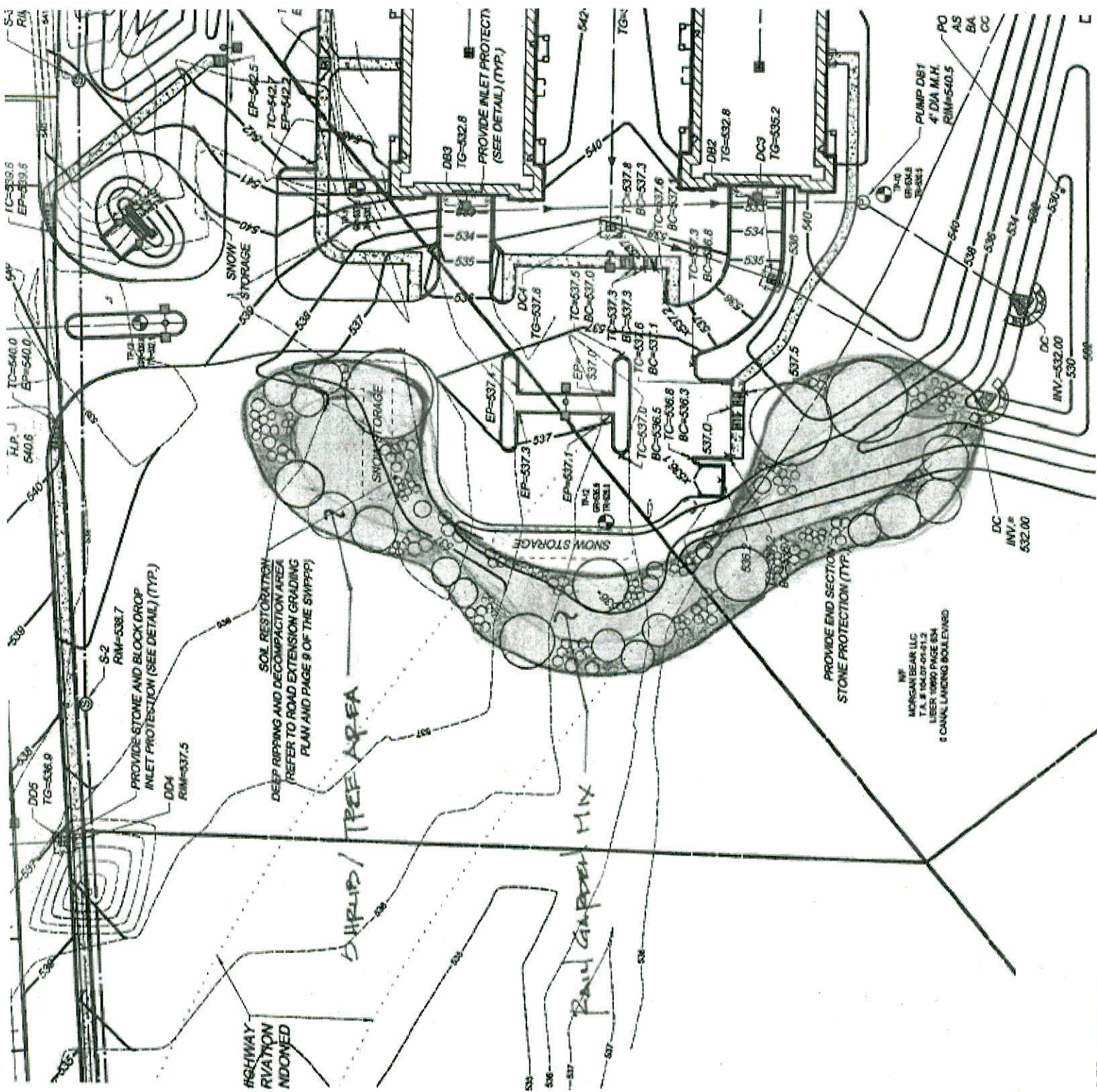
PROVIDE END SECTION STONE PROTECTION (TYP.)

MF
MORGAN BEAR LLC
T.A.# 104.07-01-11.2
LIBER 1090 PAGE 54
1 CANAL LANDING BOULEVARD

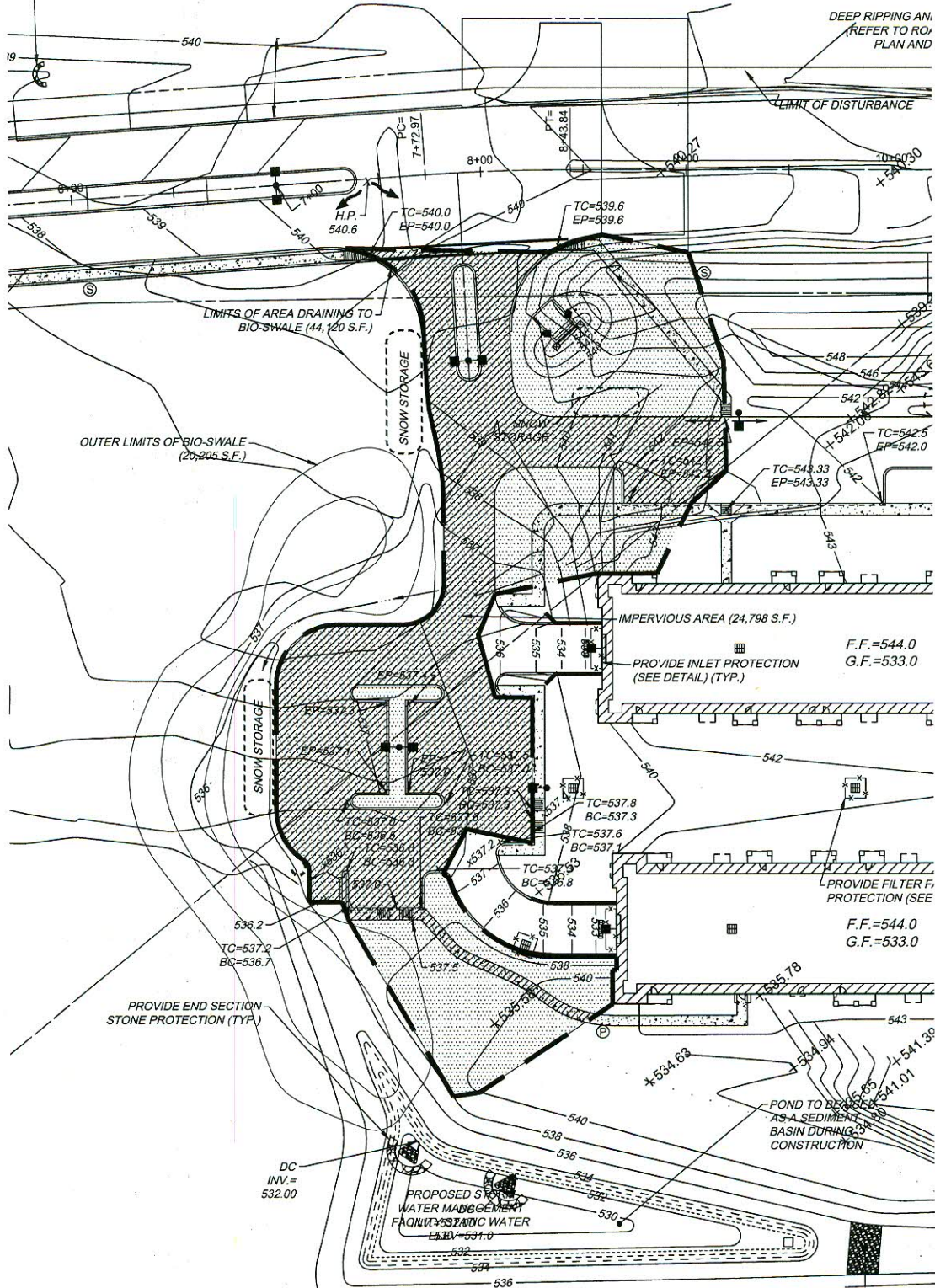
RAILWAY DIVISION ADJACENT

SHRUB/TREE AREA

RAIL GARDEN HWY



POSED 10' WIDE
MENT TO THE
SHE COUNTY
AUTHORITY



GRAPHIC SCALE



(IN FEET)
1 inch = 50 ft.

COPYRIGHT © 2011 COSTICH ENGINEERING, P.C. <small>THIS INSTRUMENT AND THE PERSON USING IT UNDER THE DIRECTION OF A REGISTERED ENGINEER, LAND SURVEYOR, ARCHITECT, PROFESSIONAL LANDSCAPE ARCHITECT, PROFESSIONAL ENGINEER OR PROFESSIONAL SURVEYOR ARE NOT TO BE REPRODUCED, COPIED, REPRODUCED, TRANSMITTED, OR USED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, PROFESSIONAL ENGINEER OR PROFESSIONAL SURVEYOR. THE USER OF THIS DOCUMENT AGREES TO HOLD THE ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, PROFESSIONAL ENGINEER OR PROFESSIONAL SURVEYOR HARMLESS FROM AND RELEASE THEM FROM ALL LIABILITY FOR THE CONSEQUENCES OF THE USE OF THIS DOCUMENT.</small>	PROJECT NUMBER M.R.C. DRAWING C.A.C. REVISIONS 1 D.T.H. 2 D.T.H. DATE 02/26/14 SCALE 1"=50'	 COSTICH ENGINEERING 317 LAKE AVENUE ROCKHETER, NEW YORK 14620 (609) 458-3220	TITLE OF PROJECT GATEWAY LANDING CANAL LANDING BOULEVARD TITLE OF DRAWING PROPOSED BIO SWALE
	LOCATION: TAX PARCEL NO. 910407 40.3 & 104 07.1, TOWN LOT 100, OF PROJECT: 1000 NORTH PLAZA, TOWN OF GATEWAY, FIELD # 400800A FOR CHALK, TOWN OF GATEWAY, COUNTY OF ROCKSTAR, STATE OF NEW YORK.		CLIENT ATLANTIC PROGRESS AND REAL ESTATE, LLC <small>1000 NORTH PLAZA ROCKHETER, NEW YORK 14620</small>

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Atlantic Funding and Real Estate, LLC
and
Alfred Spaziano
P.O. Box 26350
Rochester, New York 14626

Respondents,

SPDES Permit No. NYR10V310

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. §1319(g)

**CONSENT AGREEMENT
AND FINAL ORDER**

DOCKET No. CWA-02-2013-3401

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above referenced docket number, on the persons listed below, in the following manner:

Original and One Copy by EPA Internal Mail:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

Copy by Certified Mail Return Receipt Requested:

Alfred Spaziano and
Atlantic Funding and Real Estate, LLC
P.O. Box 26350
Rochester, New York 14626

Copy by Mail:

Jennifer Dougherty, Esq.
Phillips Lytle LLP
3400 HSBC Center
Buffalo, NY 14203

Honorable Susan L. Biro
U.S. Environmental Protection Agency
1099 14th Street, N.W., Suite 350
Washington, DC 20005

April 30, 2014
Date
LYNN KHOERY
Print Name

Lynn Khoery
Signature
Administrative Assistant, ORC
Print Title