

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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September 29, 2014  
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Public Record

FINANCE DOCKET NO. 35141

U S RAIL CORPORATION—CONSTRUCTION AND OPERATION EXEMPTION—  
BROOKHAVEN RAIL TERMINAL

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**RESPONSE OF BROOKHAVEN RAIL TERMINAL AND BROOKHAVEN  
RAIL, LLC TO BOARD DIRECTIVE TO FILE PROOF OF COMPLIANCE  
WITH SPECIFIED ENVIRONMENTAL CONDITIONS**

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**David T. Ralston, Jr.  
Zachary L. Coffelt  
Foley & Lardner LLP  
3000 K Street, N.W.  
Washington, D.C. 20007**

***Counsel for Brookhaven Rail  
Terminal  
and Brookhaven Rail, LLC***

Dated: September 29, 2014

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SURFACE TRANSPORTATION BOARD

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The Surface Transportation Board (“Board”), by decision served August 28, 2014, denied the March 14, 2014 motion by the Town of Brookhaven (“Town”) to re-open the above-titled matter. *U S Rail Corporation—Construction And Operation Exemption—Brookhaven Rail Terminal*, STB Finance Docket No. 35141 (STB served Aug. 28, 2014) (“2014 Decision”). The Board’s 2014 Decision also directed respondents Brookhaven Rail Terminal (“BRT”) and Brookhaven Rail, LLC, a Class III rail carrier (“Brookhaven Rail”)(collectively, “Respondents”), to file proof of compliance with three environmental conditions, 2014 Decision at 4, that were specified by the Board in its 2010 decision, *U S Rail Corporation—Construction And Operation Exemption—Brookhaven Rail Terminal*, STB Finance Docket No. 35141 (STB served Sept. 9, 2010)(“2010 Decision”).<sup>1</sup> This filing responds to the Board’s directive in the 2014 Decision to

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<sup>1</sup> In the 2010 Decision, the Board granted an exemption under 49 U.S.C. § 10502 from the provisions of 49 U.S.C. § 10901 for U S Rail Corporation (“US Rail”) to construct and operate an 18,000-foot rail line on a 28-acre parcel (“Parcel A”) in Yaphank, Suffolk County New York. US Rail assigned its construction and operation authority, and underlying leasehold interest in Parcel A, to US Rail New York, LLC (“US Rail NY”). 2014 Decision at 1, n.2. Brookhaven Rail is the successor to US Rail NY as to Parcel A, *id.*, and will be referred to herein in lieu of US Rail NY. BRT is the trade name for Brookhaven Terminal Operations, LLC, and will be referred to with respect to the actual transload facility on Parcel A.

provide proof of compliance with the three environmental conditions specified in the 2010 Decision.

### FACTS

The three pertinent environmental conditions were set forth in the Appendix, Environmental Mitigation Conditions, 2010 Decision at 9. They provide that Brookhaven Rail shall:

1. Employ best management practices before and during construction to minimize erosion, sedimentation, and instability of soils. (“EC No. 1”).
2. Develop and implement a spill prevention, control, and countermeasures plan (SPCC Plan) to ensure protection of the Nassau-Suffolk Sole Source Aquifer in the event of an accidental spill. The SPCC Plan shall be developed in accordance with Article 12 of the Suffolk County Sanitary Code and EPA regulation at 40 C.F.R. § 112.7. (“EC No. 2”).
3. Consult with the U.S. Department of Agriculture’s Natural Resources Conservation Service at the Syracuse, NY office prior to initiating rail line construction activities at the Brookhaven Rail Terminal Site. (“EC No. 3”).

*Id.* at Appendix Item Nos. 2, 3 and 4.

Appendix Item No. 1 required compliance with the applicable terms of the Stipulation of Settlement (“Stipulation”) entered in the federal court case of *Sills Road Realty, LLC v. Town of Brookhaven*, Civ. No. 07-CV-4584 (E.D.N.Y, filed April 21, 2010). The Stipulation was filed with the Board in this matter on April 26, 2010. Although the Board’s 2014 Decision does not require that Respondents address compliance with the Stipulation, 2014 Decision at 4, the Stipulation bears a short discussion as, in a number of respects, the Stipulation overlaps with the

Board's requirements in EC Nos. 1-3, and Respondents addressed those conditions in tandem with the Stipulation. First, Paragraph 2 of the Stipulation provides that the Stipulation constitutes "full site plan review and approval" of the US Rail's (now BRT's) Parcel A site plan "for all purposes of New York State and local law." Second, the Stipulation provides that Sidney B. Bowne & Son, LLP ("Bowne") or another licensed professional engineering firm would be retained to conduct bi-monthly inspections of construction on Parcel A. Bowne was also required to provide the Town, on a bi-monthly basis, with inspection reports evidencing said inspections and certifying that all site improvements on Parcel A covered in each report were in general accord with the approved site plan and Applicable Standards, which were defined in the Stipulation as the Town's Code and Suffolk County's Code referenced on the site plan, and all applicable federal standards. Third, Paragraph 5 of the Stipulation requires that the project comply with mitigation and/or conditions imposed by the Board, *i.e.*, EC Nos. 1-3.

### **DISCUSSION**

#### **1. EC No 1: Employ Best Management Practices For Erosion Control, Sedimentation and Soil Stability During Construction.**

The Board's Section of Environmental Analysis ("SEA") issued a Draft Environmental Assessment ("Draft EA") on July 26, 2010. 2010 Decision at 3, 5-6. The Draft EA's Glossary defines a "best management practice" as a "[t]echnique that various parties (*e.g.*, the construction industry) use to minimize or avoid adverse impacts to the environment. The [STB] may designate these techniques as mitigation measures." Draft EA at ix.<sup>2</sup>

When the Board's 2010 Decision was issued, Bowne, which has been involved in the BRT project since 2007, had already prepared a set of engineered construction plans for Parcel

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<sup>2</sup> The SEA's Final Environmental Analysis, issued on August 20, 2010, does not contain further discussion as to what constitutes a "best management practice," nor does the Board's final 2010 Decision.

A, dated August 2007, versions of which were used by the parties as documents in the Stipulation and related matters. Bowne is a professional engineering firm that prepares engineering plans for site development, storm water management, environmental engineering, municipal planning, structural engineering, traffic engineering, construction management, and the like. Declaration of Larry Kuo, Exhibit 1. As noted above, Respondents' engagement of Bowne for engineering and inspections was specifically approved in the Stipulation, *supra* 4.

On September 22, 2010, shortly after the Board's 2010 decision was issued, Bowne revised the Parcel A engineering plans to add the Erosion and Sedimentation Control Plan ("Parcel A ESC Plan" or "Plan") for Parcel A, Construction Phases 1, 2 and 3. Exhibits 1 and 1(a).<sup>3</sup> The Parcel A ESC Plan, Exhibit 1(a), during construction activities, constitutes a best management practice consistent with the Board's 2010 Decision and the Draft EA glossary definition. Exhibit 1.

Bowne also considered, shortly after the Board's 2010 Decision, whether a formal Storm Water Pollution Prevention Plan ("SWPPP") would be needed in addition to the Parcel A ESC Plan.<sup>4</sup> Having concluded it was not needed, Bowne, on BRT's behalf, sought approval of the

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<sup>3</sup> Exhibit 1(a) provides a reference copy of the Parcel A ESC Plan. Respondents have separately filed with Board an engineering drawing with the Plan and a CD-Rom with the Plan to facilitate ease of reading the Plan.

<sup>4</sup> New York State Department of Environmental Conservation ("NYSDEC") administers New York's State Pollutant Discharge Elimination System ("SPDES"), an approved state program under the National Pollutant Discharge Elimination System ("NPDES"), a federal program under Section 402 of the Clean Water Act. Construction activities that result in storm water discharges to state or federal waters require a permit from NYSDEC. Under the SPDES, NYSDEC provides a general permit, *SPDES General Permit For Stormwater Discharges From Construction Activity*, Permit No. GP-0-10-001 (effective Jan. 29, 2010), under which owners or operators of construction activities can elect coverage, provided they comply with the requirements of the permit. See, [http://www.dec.ny.gov/docs/water\\_pdf/gpconspmt10.pdf](http://www.dec.ny.gov/docs/water_pdf/gpconspmt10.pdf). A SWPPP is one of the requirements of General Stormwater Permit No. GP-0-10-001.

Town to proceed with the Parcel A project under a waiver of the formal SWPPP requirement. Exhibit 1 and 1(b). In Bowne's letter seeking the formal SWPPP-waiver, Bowne described the erosion control and run-off steps that, even in the absence of a formal SWPPP, would be taken under the Parcel A ESC Plan during construction:

During all phases of construction, runoff would be stored on-site and if it exceeds the capacity as indicated in each phase, the additional runoff would be discharged to the roadway catch basins/drywells and infiltrate into the ground. Erosion control measures as shown on the Erosion Control Plan, such as silt fence, stabilization construction entrance and straw bales will be implemented. There is no potential discharge to surface waters.

Exhibit 1(b) at 2.<sup>5</sup> The Town concurred that a formal SWPPP would not be needed, and so advised Bowne by letter dated March 16, 2012, Exhibit 1(c).<sup>6</sup>

The Town also advised the NYSDEC that the Town concurred that a formal SWPPP would not be required by an email copy of the Town's letter to Ms. Sara Dorman, NYSDEC Environmental Program Specialist, Exhibit 1(c) at 2. Since the March 2012 Town letter, NYSDEC has not requested additional information from Respondents concerning Parcel A storm water management, and therefore Respondents have not sought coverage under NYSDEC General Stormwater Permit No. GP-0-10-001. Declaration of Thomas Miller, Exhibit 2. Accordingly, the Parcel A ESC Plan is the governing erosion and sedimentation control and soil stability best management practice document with respect to EC No. 1.

BRT implemented the Parcel A ESC Plan requirements during the three construction phases on Parcel A. Exhibit 2 and Exhibit 2(a). Commencing on November 17, 2010, Bowne conducted twice monthly inspections of BRT's implementation of the overall Parcel A

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<sup>5</sup> The Bowne letter discusses construction Phases 1, 2 and 3, which refer to the phasing plan outlined in Attachment E to the Stipulation.

<sup>6</sup> The reference in Exhibit 1(c) to a letter of September 15, 2011 is an error. It should refer to the letter of November 15, 2010, Exhibit 1(b).

engineering plans, including the Parcel A ESC Plan, during the construction phases. Exhibit 1. Bowne's inspections were conducted jointly with Mr. Thomas Miller, BRT's construction manager for Parcel A. As part of the inspection process, Mr. Miller provided Bowne's inspector with a written report on the Parcel A ESC Plan implementation, and Bowne submitted the Miller reports to the Town with Bowne's monthly inspection report.<sup>7</sup> Exhibits 1 and 2. That process continues to the present as construction on Parcel A is not quite completed (but will be in the next few months). The Bowne reports indicated the construction activity occurring on-site. Exhibits 1 and 2. So far as Mr. Kuo and Respondents know, the Town has not deemed Respondents' Parcel A project to be non-compliant with the Parcel A ESC Plan, nor has the Town issued citations or stop-work orders to Respondents directed at alleged Parcel A ESC Plan violations. Exhibits 1 and 2.<sup>8</sup> Accordingly, Respondents have to date complied with, and continue to comply with, EC No. 1. Once construction on Parcel A is finished, Respondents will file a notice with the Board that the EC No. 1 has been completed.

## **2. EC No. 2: Spill Prevention, Control, and Countermeasures Plan.**

As to EC No. 2, BRT has a Spill Prevention Control and Countermeasure Plan ("SPCC Plan") prepared by P.W. Grosser Consulting, Inc. ("Grosser"), and approved by Theresa M.

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<sup>7</sup> As a matter of convenience, Mr. Miller used the Construction Site Log Book form at Appendix H, entitled New York Standards and Specifications For Erosion and Sediment Control, of *SPDES General Permit For Stormwater Discharges From Construction Activity*, Permit No. GP-0-10-001, for his bi-monthly reports, and those forms were submitted to the Town. Exhibit 2. As discussed previously, Respondents did not elect coverage under that general permit, as Bowne determined, and the Town concurred, that a formal SWPPP was not required. Where the Appendix H form references SWPPP, Mr. Miller was referring to the Parcel A ESC Plan. Exhibit 2.

<sup>8</sup> While the Town's March 13, 2014 request to re-open the exemption proceeding alleges generic violations of EC No. 1, it does not provide specific facts in support of those allegations, nor does it allege that the Town issued citations or stop work orders to Respondents in connection with the Parcel A ESC Plan. *Id.* at 9 (referring to EC No. 1 as "Environmental Condition No. 2). Nor does it provide specific facts with respect to the EC Nos. 2 and 3.

Colabella, Professional Engineer, dated August 22, 2013, Declaration of Theresa M. Colabella, Exhibit 3 and Exhibit 3(a)(signature pages at end of Exhibit 3(a)). Grosser is an environmental engineering, consulting and compliance firm headquartered in Bohemia, New York, holding the requisite New York licenses, that has served a wide variety of federal, state, municipal and private clients for more than 20 years. Exhibit 3. Grosser is an approved contractor on the U.S. General Services Administration Multiple Award Schedule for environmental consulting and remediation services. *Id.*

Jim Newell, Brookhaven Rail's President and authorized signatory for BRT, approved the SPCC Plan and stated management was committed to implementing the SPCC measures, SPCC Plan, Exhibit 3(a), at 8 (signature page at end of Exhibit 3(a)); Declaration of Jim Newell, Exhibit 4. BRT's SPCC Plan complies with U.S. Environmental Protection Agency ("EPA") regulation 40 C.F.R. § 112.7—General requirements for Spill Prevention, Control, and Countermeasures Plans, EPA regulation 40 C.F.R. § 112.8—Spill prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities), and NYSDEC regulation 6 NYCRR 374-2.6 – Standards for Used Oil Processors and Refiners. Exhibit 3. Additionally, Respondents and P.W. Grosser are discussing with Suffolk County staff the extent to which the Suffolk County Sanitary Code Article 12 permit requirements are applicable to BRT's present and future operations (principally bio-diesel and used oil transfers). Exhibit 4. Respondents will file a notice with the Board once that determination is made.

Brookhaven Rail and BRT have implemented the requirements of the SPCC Plan, including the SPCC training required by its SPCC Plan, with the next annual training to be conducted by P.W. Grosser scheduled for September 29, 2014. Exhibit 4. On September 29, P.W. Grosser will also be surveying Respondents' current operations and site conditions, and

will update the SPCC Plan as needed. *Id.* BRT recently acquired additional SPCC safety equipment, Exhibit 4(a). BRT has not experienced a toxic or hazardous waste spill or incident of similar nature at the site. Exhibit 4.

**3. EC No. 3: Consultation with USDA, NRCS.**

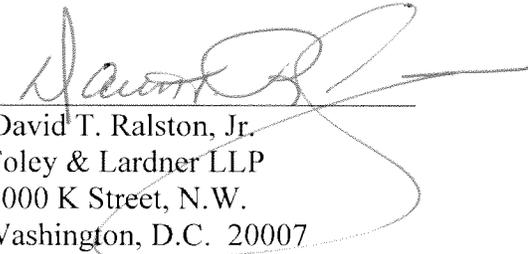
Compliance with EC No. 3 was accomplished by letter from Gerard T. Drumm (then counsel for Sill Road Realty, LLC), to Astor F. Boozer, State Conservationist at the U.S. Department of Agriculture, Natural Resources Conservation Services (“NRCS”), dated September 15, 2010, on Sills Road Realty, LLC letterhead, Exhibit 5. Mr. Drumm’s letter recounts that he had called Mr. Boozer on September 13, 2010 to discuss the Board’s EC No. 3, which Mr. Drumm described as encompassing “the final site plan, NRCS practices to improve successful establishment, long-term survival and future functional value of new plantings at the BRT.” *Id.*

Mr. Drumm reported that BRT intended to “engage in the near future a landscape architect to finalize the vegetation plan for the project and will advise our architect to consult with you or your staff, as you direct, about the appropriate vegetation selections and ongoing practices which will meet the goals of successful establishment, survival and functionality of new plantings contemplated by the TB and your agency’s comments to the STB.” *Id.*

Mr. Boozer advised BRT to consult with an expert at the county level on those issues, which Respondents did, as confirmed by the email dated September 28, 2012, from Polly Weigand, Soil District Technician at the Suffolk County Soil and Water Conservation District, titled “Planting recommendations,” to Mr. Drumm, Exhibit 6. Accordingly, Respondents have fulfilled the requirement of EC No. 3.

Respectfully submitted,

*Brookhaven Rail Terminal and Brookhaven  
Rail, LLC*

By:   
David T. Ralston, Jr.  
Foley & Lardner LLP  
3000 K Street, N.W.  
Washington, D.C. 20007

*Counsel for Brookhaven Rail Terminal and  
Brookhaven Rail, LLC*

Dated: September 29, 2014

## CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2014, I caused to be served the foregoing Response Of Brookhaven Rail Terminal And Brookhaven Rail To Board Directive To File Proof Of Compliance With Specified Environmental Conditions, by first-class mail, postage prepaid, upon the following Parties of Record in this proceeding:

TO: Judah Serfaty, Esq.  
Rosenberg Calica & Birney LLP  
100 Garden City Plaza, Suite 408  
Garden City, NY 11530

Robert M. Calica, Esq.  
Rosenberg Calica & Birney LLP  
100 Garden City Plaza, Suite 408  
Garden City, NY 11530

NYS Dept of Transportation  
50 Wolf Road  
Albany, NY 12232  
Attn: Robert A. Rybak, Esq.

Lyngard Knutson, Esq.  
Region 2 E.P.A.  
290 Broadway, 25<sup>th</sup> Floor  
New York, NY 10007

NYS Dept. of Environmental Conservation  
New York Natural Heritage Program  
Albany, NY 12233-4757  
Attn: Tara Seoane

Field Office Supervisor  
U.S. Fish and Wildlife Service  
Long Island Field Office  
340 Smith Road  
Shirley, NY 11967

MTA Long Island Rail Road  
Jamaica Station  
Jamaica, NY 11435-4380  
ATTN: Helena E. Williams

New York & Atlantic Railway  
68-01 Otto Road  
Glendale, NY 11385  
ATTN: Paul Victor



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David T. Ralston, Jr.

**RESPONSE OF BROOKHAVEN RAIL TERMINAL AND BROOKHAVEN  
RAIL, LLC TO BOARD DIRECTIVE TO FILE PROOF OF COMPLIANCE  
WITH SPECIFIED ENVIRONMENTAL CONDITIONS**

**EXHIBITS**

- Exhibit 1      Declaration of Larry Kuo
  - Exhibit 1(a)    Parcel A ESC Plan
  - Exhibit 1(b)    Sidney B. Bowne & Son, LLP Letter of November 15, 2010
  - Exhibit 1(c)    Town of Brookhaven Letter of March 16, 2012
- Exhibit 2      Declaration of Thomas Miller
  - Exhibit 2(a)    Parcel A ESC Plan
- Exhibit 3      Declaration of Theresa M. Colabella
  - Exhibit 3(a)    BRT Spill Prevention Control and Countermeasure Plan
- Exhibit 4      Declaration of Jim Newell
  - Exhibit 4(a)    Photo of BRT Fire and Water Truck
- Exhibit 5      Gerard T. Drumm's Letter of September 15, 2010
- Exhibit 6      Polly Weigand Email of September 28, 2012

**EXHIBIT 1**



**Sidney B. Bowne  
& Son, LLP**  
235 East Jericho Turnpike  
PO Box 109  
Mineola, NY 11501  
Phone: 516-746-2350  
Fax: 516-747-1396  
www.bownegroup.com

DECLARATION OF SIDNEY B. BOWNE & SON, LLP

I, Larry Kuo, state:

1. My name is Larry Kuo. I serve as project engineer/ manager for Sidney B. Bowne & Son, LLP (“Bowne”). I have 17 years of experience as a civil engineer. This declaration is made on personal knowledge.

2. Bowne is a professional engineering firm that prepares engineering plans for site development, storm water management, environmental engineering, municipal planning, structural engineering, traffic engineering, construction management, and the like. Bowne has been involved in the Brookhaven Rail Terminal, Yaphank project since 2007.

3. Sills Road Realty, LLC (“Sills”) engaged Bowne to prepare engineering and related plans for the site development of the Brookhaven Rail Terminal (“BRT”) on the property known as Parcel A, in Yaphank, New York. On September 17, 2010, the agreement with Sills was amended to add the services discussed in the Stipulation of Settlement (“Stipulation”) entered in the federal court case of *Sills Road Realty, LLC v. Town of Brookhaven*, Civ. No. 07-CV-4584 (E.D.N.Y, filed April 21, 2010), which included periodic inspections by Bowne of BRT construction on Parcel A to determine that the construction generally conformed to the approved site plan, and reports to the Town of Brookhaven (“Town”).

4. Bowne prepared site engineering plans for development of Parcel A as an intermodal transfer facility. On September 22, 2010, Bowne prepared the Erosion and Sedimentation Control Plan (“Parcel A ESC Plan”) for Parcel A, Construction Phases 1, 2 and 3. Exhibit (a).<sup>1</sup>

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<sup>1</sup> The references to construction Phases 1, 2 and 3 refer to the phasing plan outlined in Attachment E to the Stipulation.

5. I am familiar with the 2010 decision of the Surface Transportation Board (“Board”), *U S Rail Corporation—Construction And Operation Exemption—Brookhaven Rail Terminal*, STB Finance Docket No. 35141 (STB served Sept. 9, 2010)(“2010 Decision”). The Appendix of the 2010 Decision contains specified environmental conditions, including condition no. 2, best management practices for erosion and sedimentation control during construction on Parcel A. Condition no. 2 is the only item with which Bowne was involved. The term “best management practice” is defined in the Board’s Section of Environmental Analysis’ Draft Environmental Assessment (“Draft EA”) of July 26, 2010. The Draft EA’s Glossary defines a “best management practice” as a “technique that various parties (e.g., the construction industry) use to minimize or avoid adverse impacts to the environment. The [STB] may designate these techniques as mitigation measures.” Draft EA at ix.

6. In my professional opinion, the Parcel A ESC Plan during construction activities constitutes a best management practice consistent with the Board’s 2010 Decision and the Draft EA glossary definition.

7. Bowne also considered, whether a Storm Water Pollution Prevention Plan (“SWPPP”) would be needed under New York law in addition to the Parcel A ESC Plan. Bowne determined that a SWPPP was not required, and Bowne, on BRT’s behalf, sought approval of the Town of Brookhaven to proceed with the Parcel A project under a waiver of the formal SWPPP requirement. Exhibit (b).

8. In Bowne’s letter seeking the SWPPP-waiver from the Town, Bowne described the erosion control and run-off steps that, even in the absence of a formal SWPPP, would be taken under the Parcel A ESC Plan during construction:

During all phases of construction, runoff would be stored on-site and if it exceeds the capacity as indicated in each phase, the

additional runoff would be discharged to the roadway catch basins/drywells and infiltrate into the ground. Erosion control measures as shown on the Erosion Control Plan, such as silt fence, stabilization construction entrance and straw bales will be implemented. There is no potential discharge to surface waters.

Exhibit (b) at 2. The Town concurred that a formal SWPPP would not be needed, and so advised Bowne by letter dated March 16, 2012, Exhibit (c).

9. The Town also advised the NYSDEC that the Town concurred that a formal SWPPP would not be required by an email copy of the Town's letter to Ms. Sara Dorman, NYSDEC Environmental Program Specialist, Exhibit (c) at 2.

10. Since the March 2012 Town letter, NYSDEC has not requested additional information from Bowne concerning Parcel A storm water management, and therefore it is not necessary for the Parcel A project to be covered under a storm water discharge permit, such as the NYSDEC General Stormwater Permit No. GP-0-10-001.

11. Commencing on November 17, 2010, Bowne conducted twice monthly inspections of BRT's implementation of the overall Parcel A site plan, including the Parcel A ESC Plan, during the construction phases. Bowne's inspections were conducted jointly with a representative of BRT, typically Mr. Thomas Miller, BRT's construction manager for Parcel A. As part of the inspection process, BRT provided Bowne's inspector with a written report on the Parcel A ESC Plan implementation, and Bowne submitted those reports to the Town with Bowne's periodic inspection reports.<sup>2</sup> That process continues to the present as construction on Parcel A is not quite completed (we were informed that the site may be completed in the next few months).

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<sup>2</sup> As a matter of convenience, BRT used the Construction Site Log Book form at Appendix H, entitled New York Standards and Specifications For Erosion and Sediment Control, of *SPDES General Permit For Stormwater Discharges From Construction Activity*, Permit No. GP-0-10-001, for its compliance reports, and those forms were submitted to the Town.

12. The Bowne reports indicate the construction activity occurring on-site. So as far as I know, the Town has not deemed the Parcel A project to be non-compliant with the Parcel A ESC Plan, nor has the Town issued citations or stop-work orders directed at alleged Parcel A ESC Plan violations.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 29 September 2014.



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Larry Kuo

**EXHIBIT 1(a)**





**EXHIBIT 1(b)**



**Sidney B. Bowne  
& Son, LLP**

235 East Jericho Turnpike  
PO Box 109  
Mineola, NY 11501  
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[www.bownegroup.com](http://www.bownegroup.com)

November 15, 2010

Gregg G. Kelsey, P.E., Assistant Town Engineer  
Town of Brookhaven Planning  
One Independence Hill  
Farmingville, NY 11738

Re: SWPPP Waiver Request  
Brookhaven Rail Terminal  
Sills Road (C.R. 101) & L.I.E. South Service Road, Yaphank, NY

Dear Mr. Kelsey:

On behalf of our Client, we are to prepare an analysis of the stormwater runoff on the construction site for the above captioned project towards a request for a State Pollution Discharge Elimination System (SPDES) permit waiver to the filing of a Stormwater Pollution Prevention Plan (SWPPP) for stormwater discharges from construction activities.

The analysis will demonstrate that there is no potential for a discharge from the construction site to Waters of the United States or to a municipal separate storm sewer system that discharges to the Waters of the United States. The total site area is 1,223,205 SF (28.08 Ac.). The justifications are as follows:

- The nearest surface water to the subject property is the Carmans River which is approximately 1 mile northeast. Between the subject property and surface water are developed areas and roadways.
- In the initial phase of construction, represented by the "Phase 1 – Erosion & Sediment Control Plan" shows the area of excavation and the existing conditions of the property consists of a wooded area. The natural wooded state of the property and proposed clear area will allow most of the stormwater runoff to infiltrate into the ground. The total surface storage area is 135,734 CF which yields a capacity for a 2.8" rainfall event during periods when the ground is frozen (100% runoff). More typically, for normal ground conditions and a runoff coefficient of 0.3, on-site storage of 135,734 CF is sufficient for a rainfall event of 9.3". The Phase 1 erosion control plan will be implemented for the proposed Phase 1 area. Any runoff exceeding the storage area from the phase 1 excavated area on-site will discharge to the adjacent railroad and wooded area to the south.
- In the remaining phases of construction, phase 2 will be for the installation of the tracks along the eastern portion of the property and connection to the Long Island Rail Road tracks to the south and phase 3 will be construction of the remaining portion of the site. The site drainage will be designed to retain on-site a total of 5 inch rainfall where minimum of 2 inches will be in drywells and maximum of 3 inches of surface pond storage. Any runoff exceeding the on-site storage capacity will discharge to the Long Island Expressway drainage system which discharges to a recharge basin.

**Sidney B. Bowne & Son, LLP**

Gregg Kelsey  
November 15, 2010  
Page: 2

- SCDPW record plans indicates that the drainage inlets in Sills Road fronting the subject property are catch basins which connects to a drainage collection system flowing north and connects to the New York State Department of Transportation (NYSDOT) drainage system below the Long Island Expressway. The NYSDOT drainage system runs along the North Service Road and discharges into a recharge basin which infiltrates into the ground, as such; the stormwater sewer system does not discharge into a surface water body. The inlets along the South Service Road are connected and discharges to a recharge basin off the South Service Road.
- Based on the soils within the area, the subsurface profile conditions consists mostly of fine to medium sand soils that are considered rateable (or drainable) soil materials for infiltration. Based on a nearby USGS monitoring well, the highest groundwater was at elevation 37.5 which is approximately 51' below lowest proposed ground surface.

Enclosed for your use, please find the following documents:

- Portion of Hagstrom Map
- USGS Groundwater Monitoring well # S3530.1
- Phase 1: Erosion & Sediment Control Plan (sheet EC-1, Rev. #8 dated 9/22/10)
- Phase 2: Erosion & Sediment Control Plan (sheet EC-2, Rev. #8 dated 9/22/10)
- SCDPW Record Plans (sheet 46R2 & 47 R2, dated 1975)
- NYSDOT record plans (drawing # GP-7 & GP-8, dated 1966 and DU-14 & 15, dated Aug. 2001)

During all phases of construction, runoff would be stored on-site and if it exceeds the capacity as indicated in each phase, the additional runoff would discharge to the roadway catch basins/drywells and infiltrate into the ground. Erosion control measures as shown on the Erosion Control Plan, such as silt fence, stabilized construction entrance and straw bales will be implemented. There is no potential discharge to surface waters.

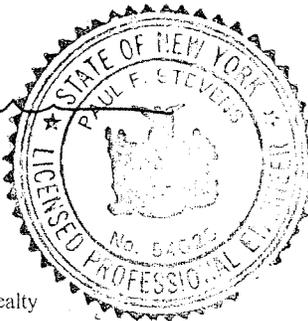
Based on the above analysis and enclosed materials, we request a waiver of the filing of the SWPPP for stormwater discharges from construction activities.

Please feel free to call should you have any questions or require additional information.

Sincerely,



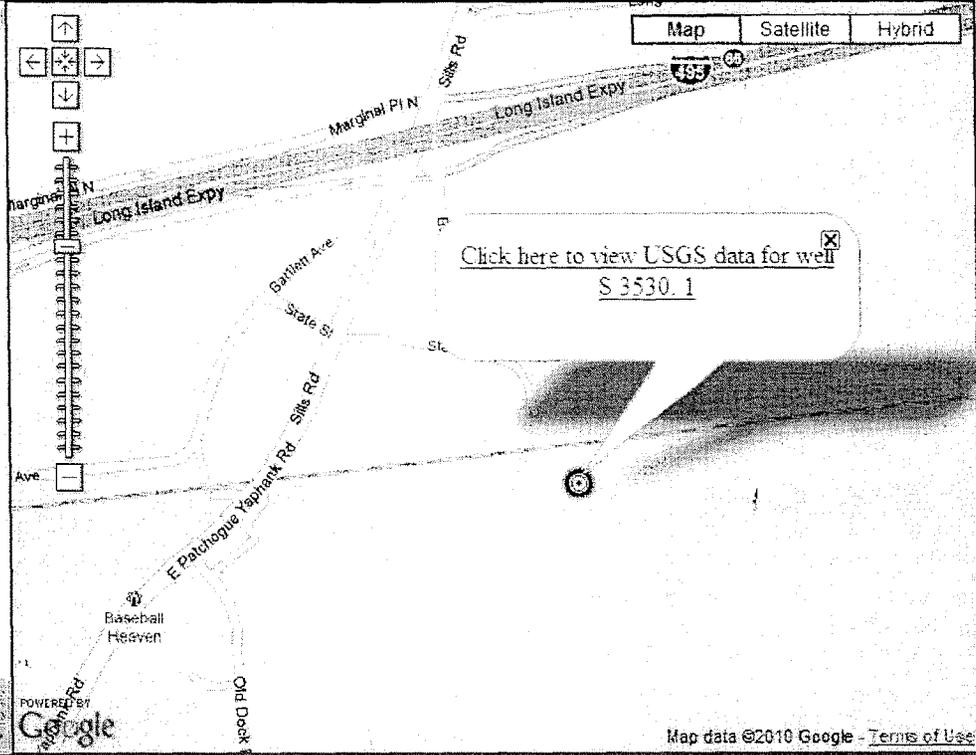
Paul F. Stevens, P.E.  
Associate Partner  
NYS license # 54623



CC: Andy Kaufman, Sills Road Realty  
Gerard Drumm, Sills Road Realty

### Water Level Monitoring Wells

- [Wainscott](#)
- [Wainscott](#)
- [Watermill](#)
- [Watermill](#)
- [West Babylon](#)
- [West Bay Shore](#)
- [West Hills](#)
- [West Hills](#)
- [West Islip](#)
- [West Islip](#)
- [West Islip](#)
- [Westhampton](#)
- [Wheatley Heights](#)
- [Wyandanch](#)
- [Yaphank](#)
- [Yaphank](#)
- [Yaphank](#)
- [Yaphank](#)
- [Yaphank](#)



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Contact USGS  
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### National Water Information System: Web Interface

USGS Water Resources

Data Category:  
Groundwater

Geographic Area:  
New York



[News](#) New Real-Time and Site Web Services! - updated August 26, 2010

# Groundwater levels for New York

ALL DATA ARE EASTERN STANDARD TIME

Search Results -- 1 sites found

Search Criteria

<p>Agency code = usgs  site_no list = • 404918072560301  Minimum number of levels = 1</p>
---

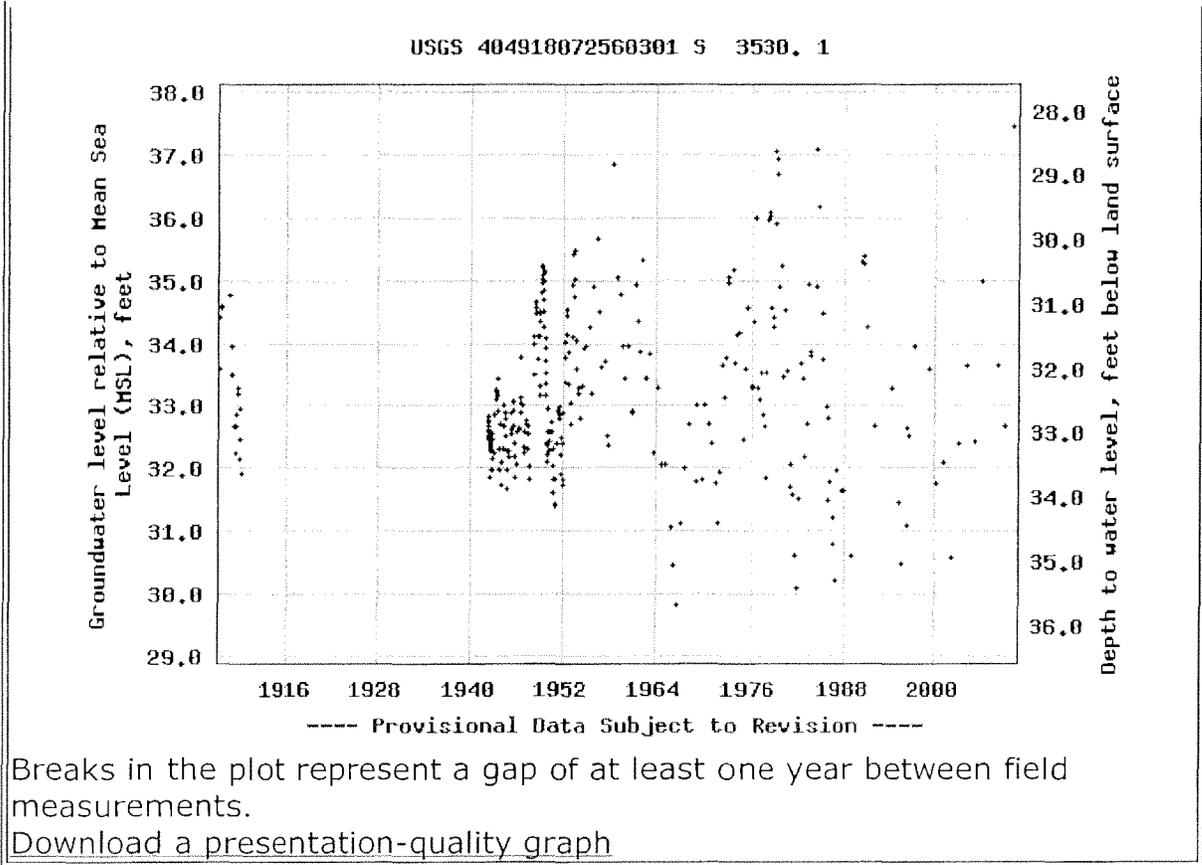
[Save file of selected sites to local disk for future upload](#)

## USGS 404918072560301 S 3530. 1

Available data for this site    Groundwater: Field measurements



<p>Suffolk County, New York  Hydrologic Unit Code 02030202  Latitude 40°49'18", Longitude 72°56'03" NAD27  Land-surface elevation 65.6 feet above sea level NGVD29  The depth of the well is 45 feet below land surface.  This well is completed in the Northern Atlantic Coastal Plain aquifer system (S100NATLCP) national aquifer.  This well is completed in the Glacial Aquifer, Upper (112GLCLU) local aquifer.</p>	<p><b>Output formats</b></p> <p><a href="#">Table of data</a></p> <p><a href="#">Tab-separated data</a></p> <p><a href="#">Graph of data</a></p> <p><a href="#">Reselect period</a></p>
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U.S. Department of the Interior | U.S. Geological Survey

**Title: Groundwater for New York: Water Levels**  
**URL: <http://waterdata.usgs.gov/ny/nwis/gwlevels?>**



Page Contact Information: [New York Water Data Maintainer](#)  
 Page Last Modified: 2010-09-23 09:32:22 EDT  
 2.22 2.19 nadww01

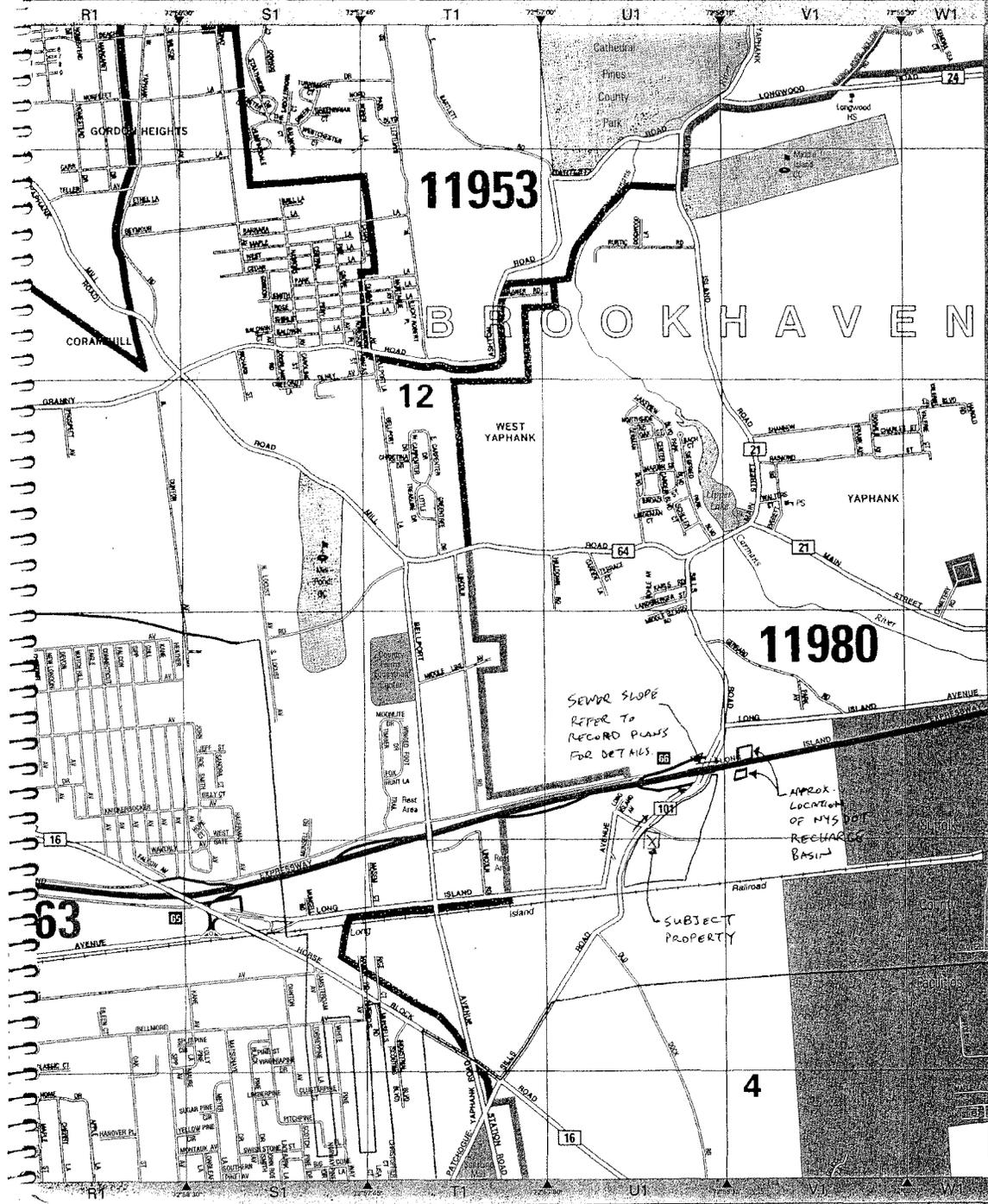


Quickly estimate distance:  
Each grid box represents approximately  
0.65 mi. horizontally by 0.86 mi. vertically.

Scale 1:24,000  
0 1,000 2,000 3,000 4,000 5,000 Feet  
0 200 400 600 800 1,000 1,200 1,400 Meters

Joins Map 26

27

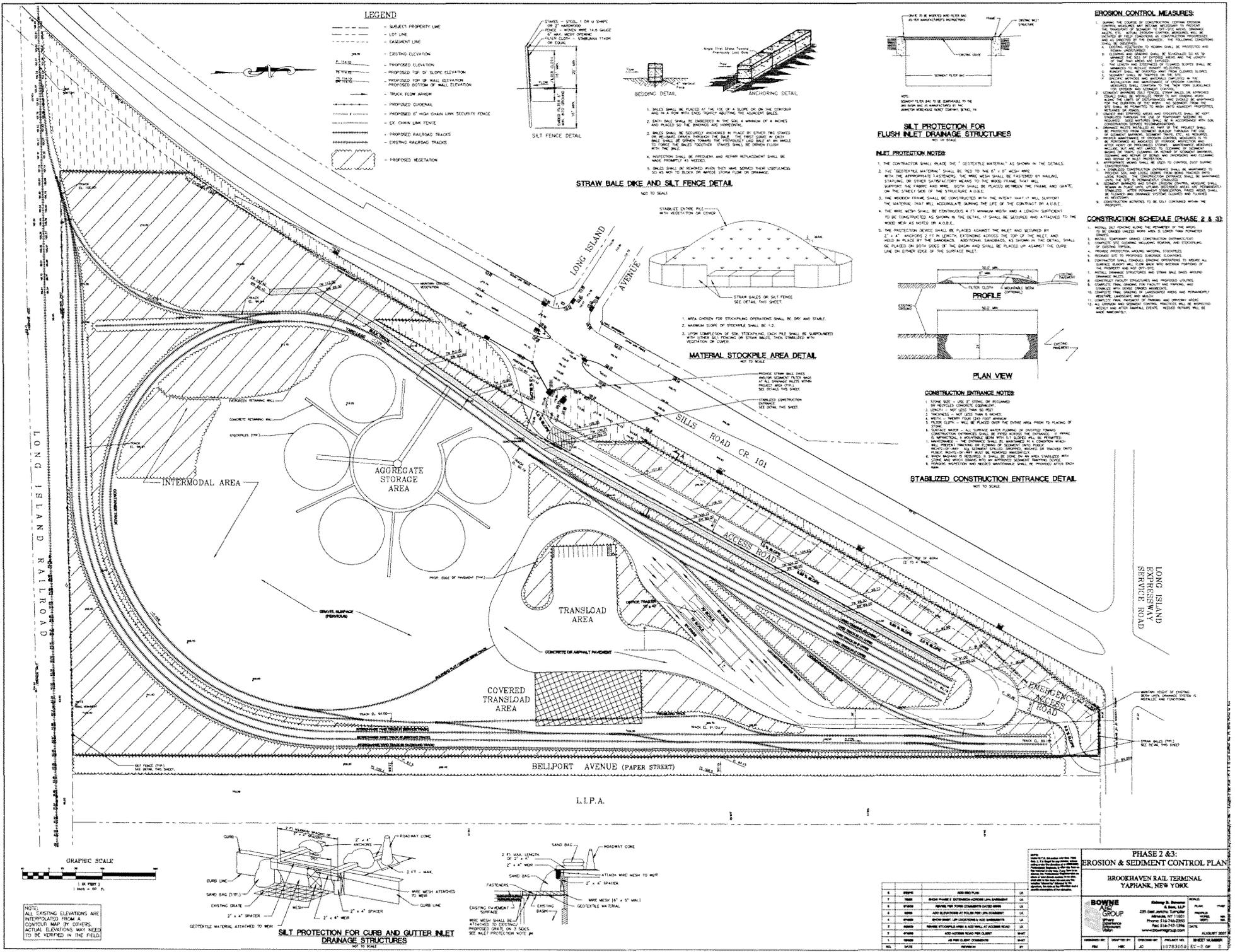


Joins Map 28

© 1995 Map Company, Inc.

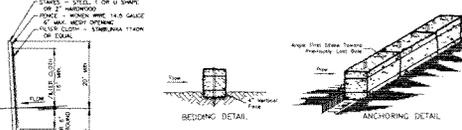
67





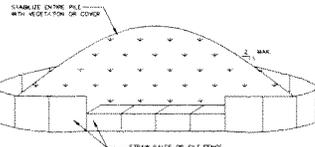
**LEGEND**

- SURVEY PROPERTY LINE
- - - - - LOT LINE
- - - - - EASEMENT LINE
- - - - - EXISTING ELEVATION
- - - - - PROPOSED ELEVATION
- - - - - PROPOSED TOP OF SLOPE ELEVATION
- - - - - PROPOSED TOP OF WALL ELEVATION
- - - - - PROPOSED BOTTOM OF WALL ELEVATION
- - - - - TRUCK FLOW ARROW
- - - - - PROPOSED CURBLINE
- - - - - PROPOSED HIGH CHAIN LINK SECURITY FENCE
- - - - - EX. CHAIN LINK FENCE
- - - - - PROPOSED RAILROAD TRACKS
- - - - - EXISTING RAILROAD TRACKS
- - - - - PROPOSED VEGETATION



1. BALES SHALL BE PLACED AT THE TOE OF A SLOPE ON THE DOWNDRIVE SIDE IN A ROW WITH ENDS TOWARD THE SLOPELINE.
2. EACH BALE SHALL BE EMBEDDED IN THE SOIL A MINIMUM OF 4 INCHES AND PLACED ON THE BEDDING AND ANCHORING.
3. BALES SHALL BE SECURELY ANCHORED IN PLACE BY EITHER TWO STAPLES OR ONE STAPLE AND ONE WIRE. THE STAPLES AND WIRE SHALL BE PLACED TOGETHER. STAPLES SHALL BE DRIVEN FLUSH WITH THE SOIL.
4. ANCHORING WIRE OR WIRE AND WIRE REPLACEMENT SHALL BE MADE PERMANENTLY AS NOTED.
5. SOIL SHALL BE REMOVED WHEN IT HAS BECOME TOO DISTURBED TO BE USED AS BEDDING OR ANCHORING.

**STRAW BALE DIKE AND SILT FENCE DETAIL**

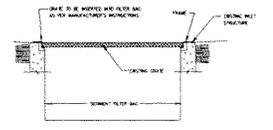


1. AREA CHOSEN FOR STOCKPILE OPERATIONS SHALL BE DRY AND STABLE.
2. MAXIMUM SLOPE OF STOCKPILE SHALL BE 1:1.
3. UPON COMPLETION OF SOIL STRIPPING, EACH PILE SHALL BE SURROUNDED WITH LINES OF STAPLED STRAW BALE DIKE STABILIZED WITH VEGETATION OR COIR.

**MATERIAL STOCKPILE AREA DETAIL**



1. AREA CHOSEN FOR STOCKPILE OPERATIONS SHALL BE DRY AND STABLE.
2. MAXIMUM SLOPE OF STOCKPILE SHALL BE 1:1.
3. UPON COMPLETION OF SOIL STRIPPING, EACH PILE SHALL BE SURROUNDED WITH LINES OF STAPLED STRAW BALE DIKE STABILIZED WITH VEGETATION OR COIR.



**EROSION CONTROL MEASURES**

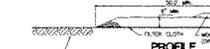
1. THE GRASS COVER SHALL BE MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD AND SHALL BE RESEED AS NECESSARY TO MAINTAIN A DENSE COVER.
2. THE GRASS COVER SHALL BE MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD AND SHALL BE RESEED AS NECESSARY TO MAINTAIN A DENSE COVER.
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**SILT PROTECTION FOR FLUSH INLET DRAINAGE STRUCTURES**

**MATERIAL STOCKPILE AREA DETAIL**

**CONSTRUCTION ENTRANCE NOTES**

1. THE CONTRACTOR SHALL PLACE THE GEOTEXTILE MATERIAL AS SHOWN IN THE DETAILS.
2. THE GEOTEXTILE MATERIAL SHALL BE TIED TO THE 6" x 12" WOOD FRAME WITH THE APPROPRIATE FASTENERS. THE WIRE SHALL BE FASTENED BY NAILING, STAPLING OR OTHER APPROPRIATE MEANS TO THE WOOD FRAME. THAT WILL SUPPORT THE FABRIC AND WIRE. BOTH SHALL BE PLACED BETWEEN THE FRAME AND GRADE ON THE STREET SIDE OF THE STRUCTURE ABOVE.
3. THE WOODEN FRAME SHALL BE CONSTRUCTED WITH THE INTENT THAT IT WILL SUPPORT THE MATERIAL THAT WILL ACCUMULATE DURING THE LIFE OF THE CONTRACT AS ABOVE.
4. THE WIRE MESH SHALL BE CONTINUOUS 4 FT MINIMUM WIDTH AND A LENGTH SUFFICIENT TO BE CONSTRUCTED AS SHOWN IN THE DETAIL. IT SHALL BE SECURED AND ATTACHED TO THE WOOD WITH AS NOTED IN A.D.B.C.
5. THE PROTECTION DEVICE SHALL BE PLACED AGAINST THE INLET AND SECURED BY 2" x 4" ANCHORS 2 FT IN LENGTH EXTENDING ABOVE THE TOP OF THE INLET AND HELD IN PLACE BY THE SANDBAGS. ADDITIONAL SANDBAGS AS SHOWN IN THE DETAIL SHALL BE PLACED AT BOTH ENDS OF THE DEVICE AND SHALL BE PLACED UP AGAINST THE CURB LINE ON EITHER SIDE OF THE SURFACE INLET.



**STABILIZED CONSTRUCTION ENTRANCE DETAIL**



**CONSTRUCTION ENTRANCE NOTES**

1. STONE SIZE - USE 2" STONES OR SMALLER OR BETTER.
2. LENGTH - NOT LESS THAN 30 FEET.
3. THICKNESS - NOT LESS THAN 18 INCHES.
4. WIRE - HEAVY POLYPROPYLENE FIBER.
5. FILTER CLOTH - SHALL BE PLACED OVER THE ENTIRE AREA PRIOR TO PLACING OF STONE.
6. SURFACE WATER - ALL SURFACE WATER FLOWING IN DIRECTION OF CONSTRUCTION ENTRANCE SHALL BE STOPPED BY THE ENTRANCE. IT SHALL BE COLLECTED IN A DRAINAGE DITCH OR TRUCKED INTO A STORAGE AREA. ALL SURFACE WATER SHALL BE STOPPED BY THE ENTRANCE. IT SHALL BE COLLECTED IN A DRAINAGE DITCH OR TRUCKED INTO A STORAGE AREA. ALL SURFACE WATER SHALL BE STOPPED BY THE ENTRANCE. IT SHALL BE COLLECTED IN A DRAINAGE DITCH OR TRUCKED INTO A STORAGE AREA.
7. SANDBAGS - SANDBAGS SHALL BE PLACED AT BOTH ENDS OF THE ENTRANCE AND SHALL BE PLACED UP AGAINST THE CURB LINE ON EITHER SIDE OF THE SURFACE INLET.
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**STABILIZED CONSTRUCTION ENTRANCE DETAIL**



**CONSTRUCTION SCHEDULE (PHASE 2 & 3)**

1. INITIAL SITE PREPARATION INCLUDING THE REMOVAL OF THE EXISTING CURB AND THE INSTALLATION OF THE NEW CURB.
2. INITIAL CURBLINE SHALL BE CONSTRUCTED IMMEDIATELY UPON THE START OF CONSTRUCTION.
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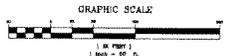
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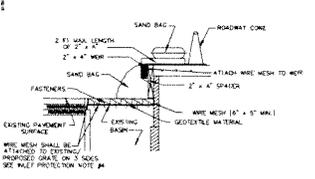
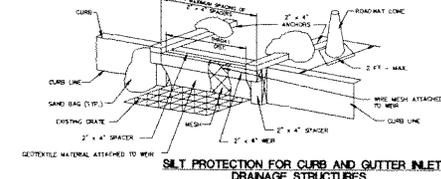
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NOTE: ALL EXISTING ELEVATIONS ARE INTERPOLATED FROM A CONTIGUOUS MAP OR OTHERS. ACTUAL ELEVATIONS MAY VARY TO BE NOTED IN THE FIELD.



**PHASE 2 & 3: EROSION & SEDIMENT CONTROL PLAN**  
**BROOKHAVEN RAIL TERMINAL**  
**YAPHANK, NEW YORK**

**BOWNE GROUP**  
 235 West 47th Street  
 New York, NY 10036  
 Phone: 212-749-2700  
 Fax: 212-749-2700  
 www.bownegroup.com

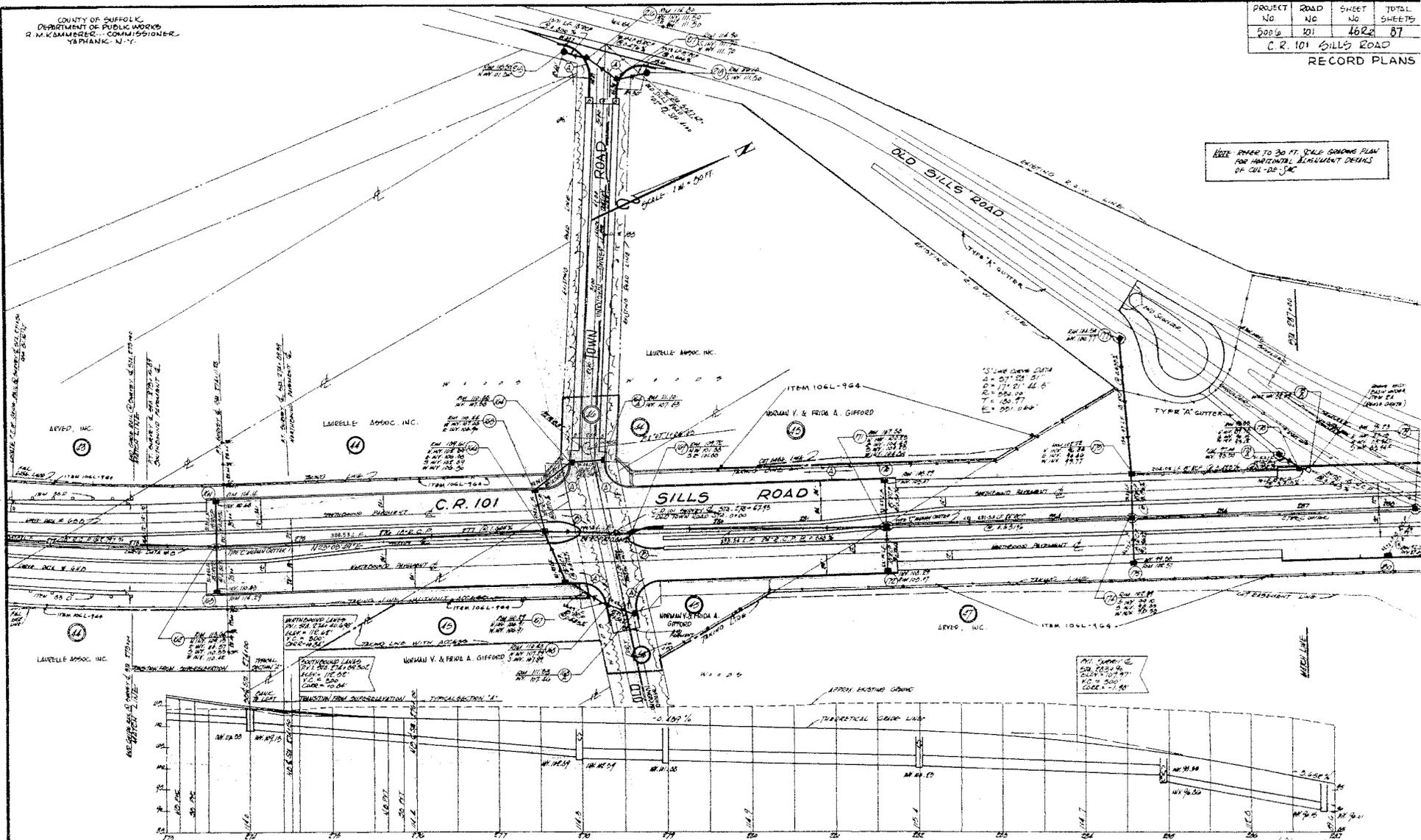
DATE: 08/01/2007  
 SHEET: 100-100-0001-01  
 PROJECT: BROOKHAVEN RAIL TERMINAL  
 DRAWN BY: J. LUCASIO  
 CHECKED BY: J. LUCASIO

COUNTY OF SUFFOLK  
DEPARTMENT OF PUBLIC WORKS  
R. M. KAMMERER, COMMISSIONER  
YAPHANK, N. Y.

PROJECT NO.	ROAD NO.	SHEET NO.	TOTAL SHEETS
5056	101	462	87

C.R. 101 SILLS ROAD  
RECORD PLANS

NOTE: REFER TO 30 FT. SCALE GRADING PLAN FOR HORIZONTAL ALIGNMENT DETAILS OF C&G-J&K



MADE BY: J. Brown  
CHECKED BY: J. Brown  
TRACED BY: J. Brown  
COMPARED BY: J. Brown

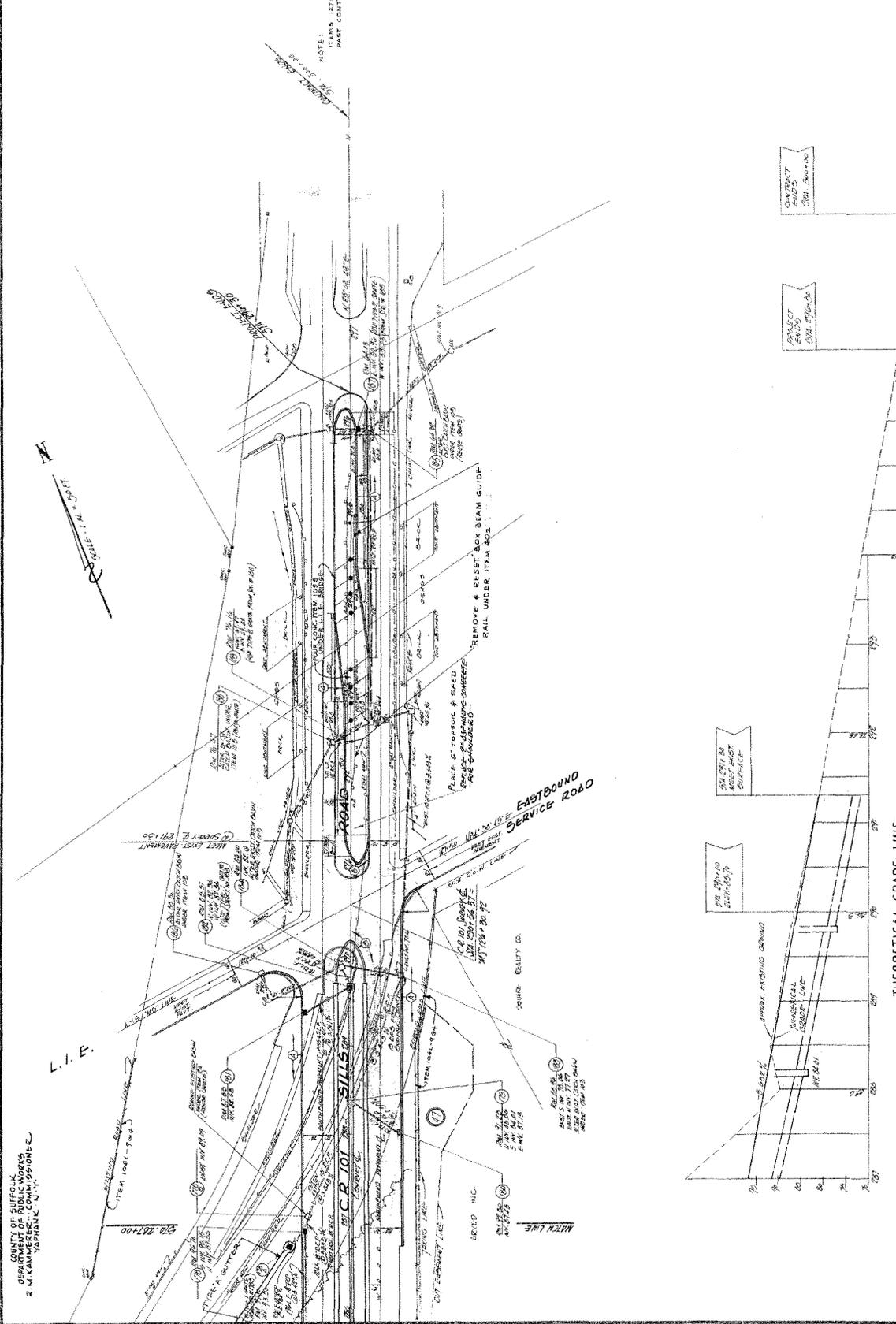
DATE: 7/2  
DATE: 7/2  
DATE: 7/2  
DATE: 7/2

THEORETICAL GRADE LINE  
SCALE: HORIZONTAL: 1 IN. = 50 FT.  
VERTICAL: 1 IN. = 10 FT.

NO.	DATE	REVISION	APPROVED BY
1	7-5-74	ADJUSTED GRADE WITH EXISTING	William V. & Frieda A. Gifford
2	8-30-74	REVISIONS LEFT DRAW	William V. & Frieda A. Gifford
	DATE	REVISION	APPROVED BY: R. S. MADRILLATE

PROJECT NO.	ROAD NO.	SHEET NO.	TOTAL SHEETS
2006	101	47	87

C.R. 101 SILLS ROAD



COUNTY OF SUFFOLK WORKS  
R. M. KAMMERER, COMMISSIONER  
YAPHANE, N.Y.

MADE BY: [Signature]  
CHECKED BY: [Signature]  
DESIGNED BY: [Signature]  
DATE: 7/20/06  
DATE: 7/20/06  
DATE: 7/20/06

DATE: 5-5-75  
DATE: 8-20-74  
DATE: [Signature]

APPROVED BY: [Signature]  
APPROVED BY: [Signature]

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APPROVED BY: [Signature]

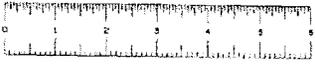
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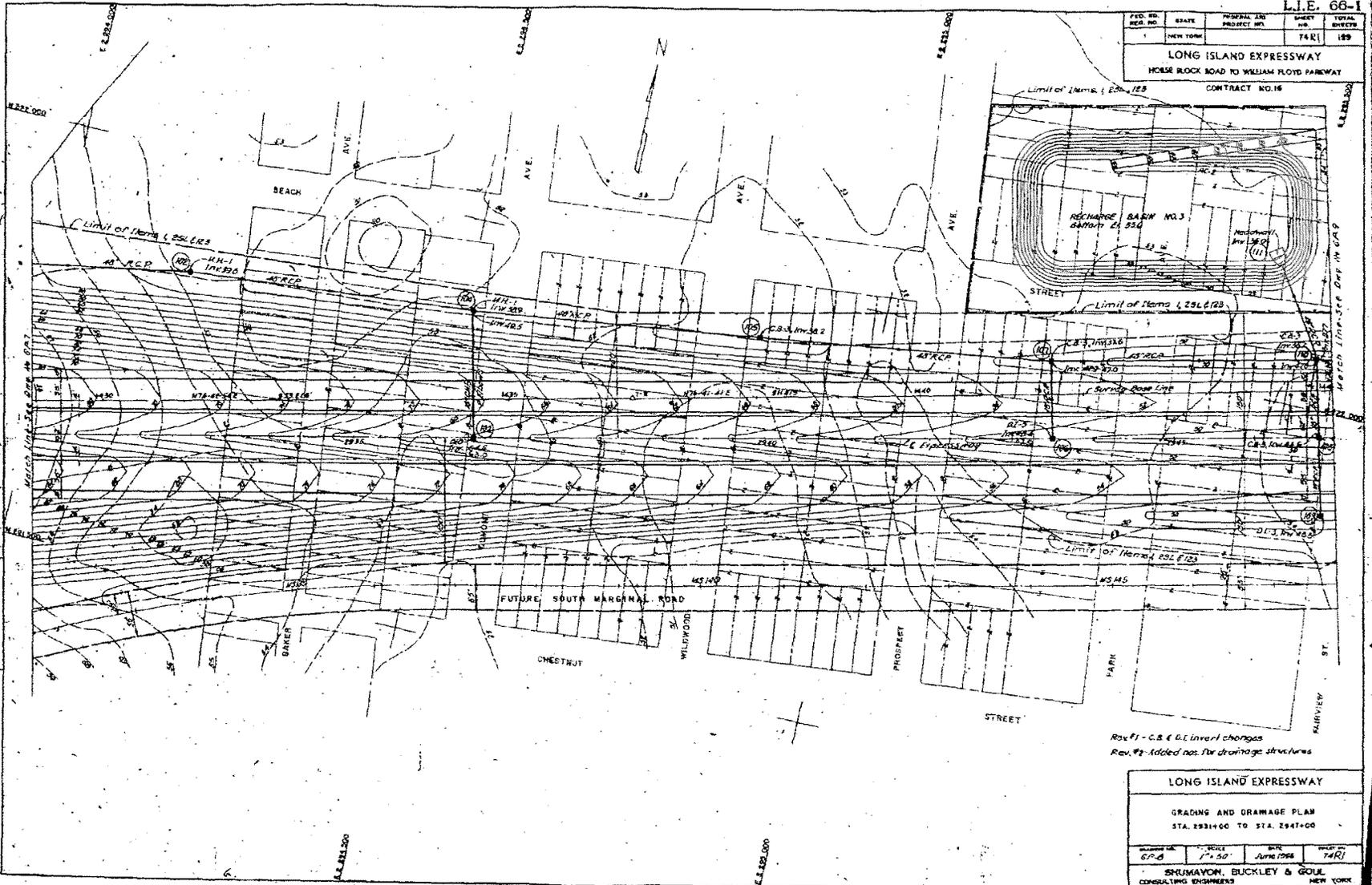


L.I.E. 66-1

FED. RES. NO.	STATE	FEDERAL AID PROJECT NO.	SHEET NO.	TOTAL SHEETS
1	NEW YORK		74R1	189

LONG ISLAND EXPRESSWAY  
HORSE BLOCK ROAD TO WILLIAM FLOYD PARKWAY

CONTRACT NO. 16



Rev. #1 - C.B. & G.L. Invert changes  
Rev. #2 - Added nos. for drainage structures

LONG ISLAND EXPRESSWAY			
GRADING AND DRAINAGE PLAN			
STA. 2831+00 TO STA. 2847+00			
DATE	BY	CHECKED	APPROVED
6-27-58	J.M.S.	JUNE 1958	74R1
SHUMAYON, BUCKLEY & GOUL			
CONSULTING ENGINEERS			
NEW YORK			

Date: 6-27-58  
 Drawn by: M.K.  
 Checked by: J.M.S.  
 Project: L.I.E. 66-1

FED. ROAD DIST. NO. 1  
 STATE N.Y.  
 CONTRACT NO. D258893  
 SHEET TOTAL 173  
 NO. 113

LONG ISLAND EXPRESSWAY  
 SERVICE ROADS  
 EXIT 65 TO ST.  
 SUFFOLK COUNTY  
 R.L.A.

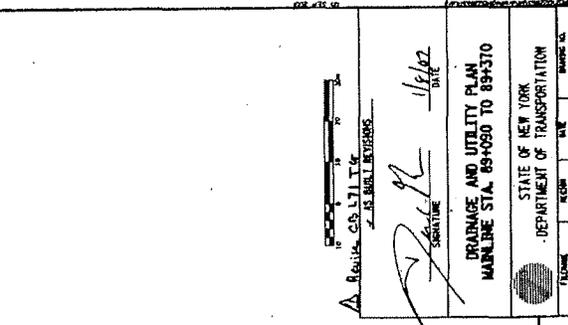
UNDERGROUND UTILITY QUALITY LEVEL:  
 - WATER MAIN ALONG SKILLS ROAD NORTHWARD RT. + Q.L.R.  
 STA. 538+34.10 RT. - STA. 538+34.00 RT. + Q.L.R.  
 - GAS MAIN STA. 538+34.50 RT. - STA. 538+44.50 RT. + Q.L.R.  
 ALONG SKILLS ROAD EA 1011 NORTHWARD, LT. + Q.L.R.  
 ALONG SKILLS ROAD EA 1011 NORTHWARD RT. + Q.L.R.  
 - TELEPHONE ALONG SKILLS ROAD SOUTHWARD LT. + Q.L.R.  
 - ELECTRIC COUNTER POLE GROUND WIRE LOCATED PARALLEL TO  
 AND BETWEEN TWO OVERHEAD 138KV TRANSMISSION LINES

SEE DRG NO. DU-15  
 MATCH LINE STA. 41+00

SEE DRG NO. DU-15  
 MATCH LINE STA. 85+70

SEE DRG NO. DU-15  
 MATCH LINE STA. 41+00

SEE DRG NO. DU-15  
 MATCH LINE STA. 41+00



A. REALTOR, C.S. LITTLE  
 Z.B. BULL, EXTENSIVE

DATE 11/6/67  
 SIGNATURE

STATE OF NEW YORK  
 DEPARTMENT OF TRANSPORTATION  
 DRAINAGE AND UTILITY PLAN  
 MAINLINE STA. 85+050 TO 85+370

FUNCTIONAL MANAGER, BURGESS, JOB MANAGER, J. STEINBERG, DESIGNED BY, W. LY, CHECKED BY, R. J. BURGESS, ESTIMATED BY, B. H. S. A., OMAFED BY, M. C. J. T., CHECKED BY, J. P. C. M. A.





# Town of Brookhaven Long Island

**Mark Lesko**, Supervisor

March 16, 2012

Paul Stevens, P.E.

Sidney B. Bowne & Son, LLP

235 East Jericho Turnpike

Mineola, NY 11501

J.E. B. BOWNE  
MAR 20 2012  
STEVENS, P.E.

RE: Brookhaven Rail Terminal  
Sills Road Realty  
SWPPP Conditional release  
Surface Transportation Board Docket No. FD 35141  
SCTM# 0200 66300 0300 001000

Dear Mr. Stevens:

We are in receipt of your letter dated September 15, 2011 that indicates your position on the above site's status concerning the coverage under the NYSDEC General Storm water Permit. After reviewing the information provided in your letter, it appears that runoff from site development has no potential for discharge into waters of the US or to a MS4 system that discharges to waters of the US.

This project's construction and post construction activities will not result in discharge to waters of the US. The attached aerial photos, marked up site plan and relief maps made from 2007 LIDAR digital terrain modeling demonstrates this claim.

The proposed site plan provides for a combination of gravel roadways, aggregate storage areas, paved parking, access roadway and natural re-vegetated low points with generally a two-inch storage in leaching pools and an additional three inch storage in on-site ponding plus infiltration into well-drained sandy soils. A significant portion of the site is below the road elevation or collects in ponding areas so most on-site runoff will remain on-site. The site is being graded to be lower in elevation to the existing rail line to the south. This creates a new low point in the area and all access roads will be higher in elevation than the site. The exception to this is along the northern end of the property where the site meets the existing South Service Road of the Long Island Expressway, Route 495. A possible overflow from the site is the emergency access driveway on the South Service Road. The existing Service Road drainage system is comprised of a collection system that discharges into an area recharge basin south of the Long Island Expressway service road, just east of the emergency access driveway. Overflow from the site would travel over the roadway, enter the drainage catch basins and the collection system for the

**Department of Planning, Environment and Land Management**

Brenda Prusinowski, AICP, Deputy Commissioner

Division of Engineering

Gregg G. Kelsey, P.E., Assistant Town Engineer

One Independence Hill • Farmingville • NY 11738 • Phone (631) 451-6298 • Fax (631) 451-6419

[www.brookhaven.org](http://www.brookhaven.org)

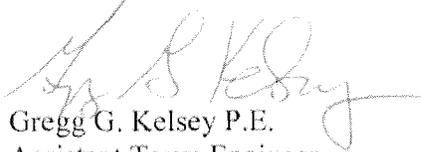
State recharge basin. The State recharge basin would overflow locally as ponding areas in the road way and the surrounding area low points further to the East.

The site access will be a connection to the existing roadway to the west, Sills Road, CR 101, which is generally higher in elevation than the site and is served by a positive collection system connected to the existing State recharge basin. Construction runoff and post construction overflow from this site would proceed to this off-site collection system, recharge basins and local low point until recharged into the ground.

We hope this clarifies our belief on this issue. If you need additional information, please contact us. If the NYSDEC requires additional information to substantiate these claims, we will request you provide them this information in a timely manner and provide us with a copy of their response. If any conditions on site change in a matter that could potentially lead to a discharge of stormwater to surface waters, it is the sole responsibility of the owner to gain the appropriate coverage under GP-0-10-001.

Please contact me should you have any questions.

Sincerely,



Gregg G. Kelsey P.E.  
Assistant Town Engineer

GGK:gk

Encl:

cc: Sara Dorman, NYSDEC – via e-mail only  
    Germaine Ortiz, Assistant Civil Engineer – via e-mail only  
    Anthony Graves, Acting Storm Water Manager – via e-mail only  
    James Esposito, Principal Engineering Inspector – via e-mail only  
    David Barnes, Red Team Leader – via e-mail only  
    Isabel Morris – via e-mail only  
    Andy Kaufman – via e-mail only





**EXHIBIT 1(c)**



# Town of Brookhaven Long Island

**Mark Lesko**, Supervisor

March 16, 2012

Paul Stevens, P.E.

Sidney B. Bowne & Son, LLP

235 East Jericho Turnpike

Mineola, NY 11501

MAR 20 2012

RE: Brookhaven Rail Terminal  
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SWPPP Conditional release  
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[www.brookhaven.org](http://www.brookhaven.org)

State recharge basin. The State recharge basin would overflow locally as ponding areas in the road way and the surrounding area low points further to the East.

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Please contact me should you have any questions.

Sincerely,

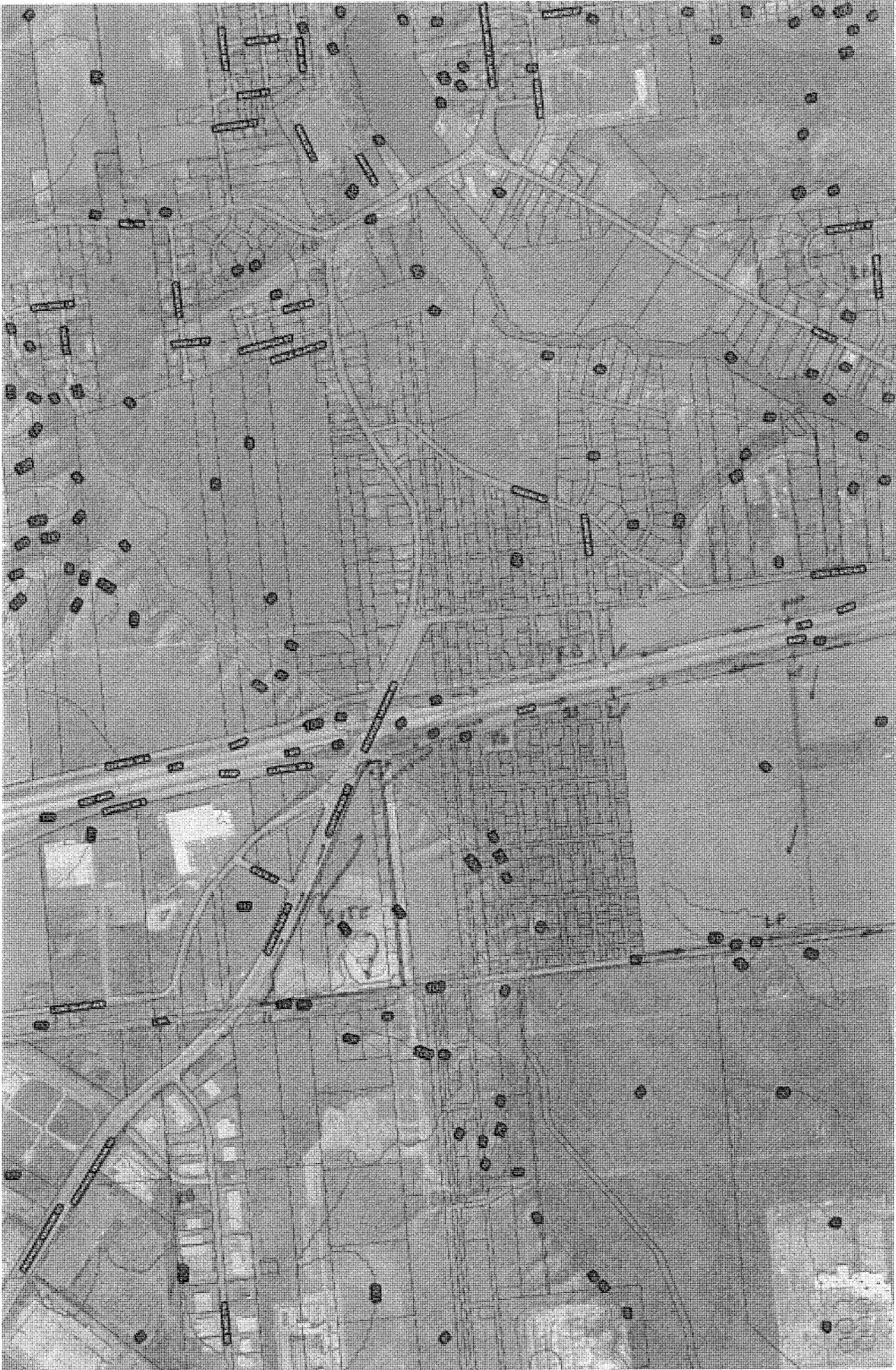


Gregg G. Kelsey P.E.  
Assistant Town Engineer

GGK:gk

Encl:

cc: Sara Dorman, NYSDEC – via e-mail only  
    Germaine Ortiz, Assistant Civil Engineer – via e-mail only  
    Anthony Graves, Acting Storm Water Manager – via e-mail only  
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    David Barnes, Red Team Leader – via e-mail only  
    Isabel Morris – via e-mail only  
    Andy Kaufman – via e-mail only





**EXHIBIT 2**

## DECLARATION OF THOMAS MILLER

I, Thomas Miller state:

1. My name is Thomas Miller. I am employed by Brookhaven Terminal Operations, LLC and serve as Facilities Manager for the Brookhaven Rail Terminal (“BRT”), Yaphank, New York. This declaration is made on personal knowledge.

2. BRT is located in Yaphank, New York, operating on property adjacent to Sills Road and the Long Island Expressway. The BRT property is designated as and commonly referred to as “Parcel A.” I have served as Facilities Manager for the construction on Parcel A since 9/20/2014. In that capacity my duties entail receiving material, monitoring inventory levels, operated the scale house, and include the implementation and monitoring of BRT’s erosion and sedimentation control program on Parcel A during construction.

3. Sidney B. Bowne & Son, LLP (“Bowne”) prepared engineering and related plans for the development of Parcel A as a rail-trucking intermodal facility. Those plans include the Parcel A Erosion and Sedimentation Control Plan (“Parcel A ESC Plan” or “Plan”), Construction Phases 1, 2 and 3. Exhibit (a).<sup>1</sup> I am familiar with the Parcel A ESC Plan and supervised its implementation by BRT.

4. In addition to preparing the engineering plans and the Parcel A ESC Plan, Bowne also conducted periodic inspections of BRT construction on Parcel A to determine that the construction conformed to the approved plans. Bowne then reported on the results of its

---

<sup>1</sup> Construction Phase 1 on the first page of the Parcel A ESC Plan, and Phases 2 and 3 on the second page, Exhibit (a) at 1 and 2, refer to the phasing plan outlined in Attachment E to the Stipulation of Settlement (“Stipulation”) entered in the federal court case of *Sills Road Realty, LLC v. Town of Brookhaven*, Civ. No. 07-CV-4584 (E.D.N.Y, filed April 21, 2010). The Stipulation contains provision concerning construction, such as retaining Bowne for inspections and reports on development.

inspections to the Town of Brookhaven (“Town”). I usually accompanied Bowne’s inspector when they inspected the Parcel A construction.

5. I am familiar with a letter from the Town in which the Town agreed with Bowne that a formal Storm Water Pollution Prevention Plan (“SWPPP”) would not be required under New York law, Exhibit (b). The New York State Department of Environmental Conservation (“NYSDEC”) was advised that the Town agreed that a formal SWPPP would not be required by an email copy of the Town’s letter to Ms. Sara Dorman, NYSDEC Environmental Program Specialist, Exhibit (b) at 2.

6. The Town’s letter also requested that BRT advise the Town if NYSDEC request further information concerning Parcel A storm water management, Exhibit (b) at 2. So far as I know, since the Town’s March 2012 letter NYSDEC has not requested additional information from BRT concerning Parcel A storm water management. Consequently, BRT has not sought coverage under NYSDEC General Stormwater Permit No. GP-0-10-001.

7. BRT implemented the Parcel A ESC Plan requirements during the three construction phases on Parcel A, and continues to do so. The Plan provided eight (8) overall Erosion Control Measures for Phase 1, Exhibit (a) at 1 (entitled “Erosion Control Measures” and at the top right-hand corner), and six (6) specific Phase 1 Construction Schedule requirements, *id.* (“Construction Schedule (Phase 1)”). Those steps were implemented during Phase 1 (which is now completed), per the details provided in the detail and note sections on the Plan for Phase 1, *id.*

8. As to Phases 2 and 3, the Plan provides nine (9) overall Erosion Control Measures for Phase 1, Exhibit (a) at 2 (entitled “Erosion Control Measures” and at the top right-hand corner), which are the same eight measures as in Phase 1, plus an additional measure that

construction activities be contained within Parcel A, *id.* at page 2, item no. 9. The Phase 2 and 3 Plan also has 12 specific Phase 2 and 3 Construction Schedule requirements, *id.* (“Construction Schedule (Phase 2 & 3)”). These are the six (6) specific Phase 1 Construction Schedule requirements, plus six additional ones, *id.* at Construction Schedule items 6-11. Those have been implemented during Phases 2 and 3, per the details provided in the detail and note sections on the Plan for Phase 2 and 3, *id.*

9. Commencing in 2010, Bowne conducted twice monthly inspections of BRT’s implementation of the overall Parcel A engineering plans, including the Parcel A ESC Plan. As part of the inspection process, I provided Bowne’s inspector with a written report on the Parcel A ESC Plan implementation, and I am advised that Bowne submitted my reports to the Town with Bowne’s inspection reports. As a matter of convenience, rather than create my own form for my Parcel A SWPPP Plan compliance reports, I used the Construction Site Log Book form at Appendix H of the New York Standards and Specifications For Erosion and Sediment Control, *SPDES General Permit For Stormwater Discharges From Construction Activity*, Permit No. GP-0-10-001, even though a formal SWPPP was not required. Where the Appendix H form references SWPPP, I was referring to the Parcel A ESC Plan.

10. The Parcel A ESC Plan implementation and Bowne inspection process continues to the present as construction on Parcel A is not quite completed (but will be in the next few months). So far as I know, the Town has not deemed the BRT Parcel A project to be non-compliant with the Parcel A ESC Plan, nor has the Town issued citations or stop-work orders to BRT directed at alleged Parcel A ESC Plan violations.

[Signature on following page.]

I declare under penalty of perjury that the foregoing is true and correct. Executed on  
29, September 2014.

---

Thomas Miller

**EXHIBIT 2(a)**





**EXHIBIT 3**

## DECLARATION OF THERESA M. COLABELLA

I, Theresa M. Colabella, state:

1. My name is Theresa M. Colabella. I am a licensed professional engineer and serve as Vice President for P.W. Grosser Consulting, Inc. (“Grosser”). Grosser is an environmental engineering, consulting and compliance firm headquartered in Bohemia, New York, holding the requisite New York licenses, that has served a wide variety of federal, state, municipal and private clients for more than 20 years. Grosser is an approved contractor on the U.S. General Services Administration Multiple Award Schedule for environmental consulting and remediation services.

2. I prepared the Spill Prevention Control and Countermeasure Plan (“SPCC Plan”) for Brookhaven Rail Terminal, Yaphank, New York, dated August 22, 2013, Exhibit (a). BRT’s SPCC Plan complies with U.S. Environmental Protection Agency (“EPA”) regulation 40 C.F.R. § 112.7–General requirements for Spill Prevention, Control, and Countermeasures Plans, EPA regulation 40 C.F.R. § 112.8–Spill prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities), and NYSDEC regulation 6 NYCRR 374-2.6 – Standards for Used Oil Processors and Refiners.

3. Jim Newell, Brookhaven Rails’ President and authorized signatory for BRT, has approved the SPCC Plan and stated management was committed to implementing the SPCC measures, SPCC Plan, Exhibit (a), at 8.

4. BRT has conducted the training required by its SPCC, and our next annual training is scheduled for September 29, 2014. I am advised that BRT has implemented the other requirements of the SPCC, and has not had a toxic or hazardous waste spill (or similar incident) at the BRT site.

5. The SPCC Plan currently being updated to reflect current and expected/seasonal site conditions.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 26  
September 2014.

A handwritten signature in black ink, appearing to read "Theresa Colabella", written over a horizontal line.

Theresa M. Colabella

**EXHIBIT 3(a)**

# SPILL PREVENTION CONTROL AND COUNTERMEASURE PLAN

## Brookhaven Rail Terminal Yaphank, New York

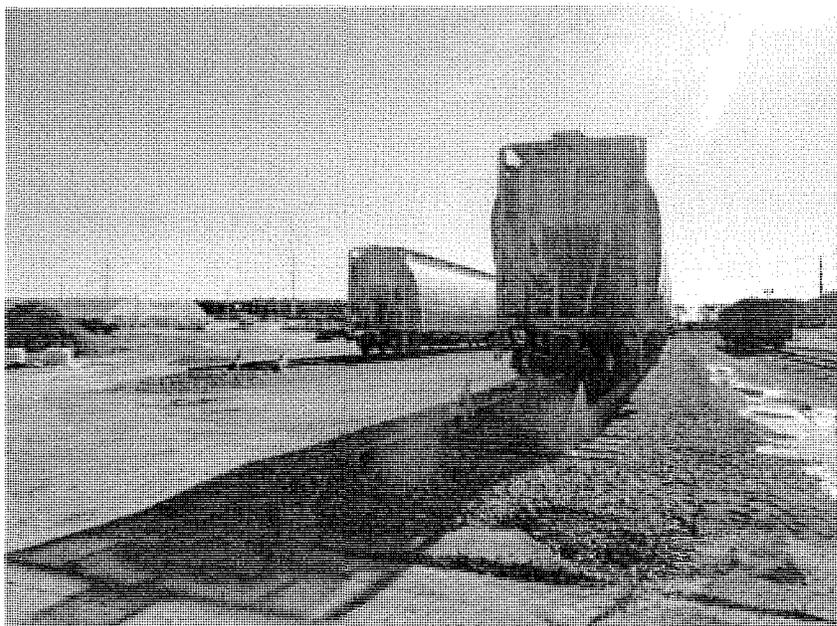
Prepared for:  
Brookhaven Rail Terminal  
205 Sills Road  
Yaphank, NY 11980



Project No.: BRT1301  
Initial Plan

Prepared By:

P.W. Grosser Consulting, Inc.  
630 Johnson Avenue, Suite 7  
Bohemia, NY 11716  
Phone: (631) 589-6353  
Fax: (631) 589-8705



*SPCC PLAN  
Brookhaven Rail Terminal  
205 Sills Road  
Yaphank, NY 11980*

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- 1.3 Plan Review (40 CFR 112.3 and 112.5)
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**(Excluding Production Facilities)**

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*SPCC PLAN  
Brookhaven Rail Terminal  
205 Sills Road  
Yaphank, NY 11980*

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- C: Record of Discharge Prevention Briefings and Training
- D: Emergency Contacts
- E: Discharge Response Equipment Inventory
- F: Agency Notification Standard Report

# **SPILL PREVENTION CONTROL AND COUNTERMEASURE PLAN**

Brookhaven Rail Terminal  
Yaphank, New York



Prepared for: Brookhaven Rail Terminal

Prepared By: P.W. Grosser Consulting, Inc.

*SPCC PLAN  
Brookhaven Rail Terminal  
205 Sills Road  
Yaphank, NY 11980*

## **Introduction**

The purpose of the Spill Prevention, Control, and Countermeasure (SPCC) Plan is to describe measures implemented by Brookhaven Rail Terminal (BRT) to prevent oil discharges from occurring, and to prepare BRT to respond in a safe, effective, and timely manner to mitigate the impacts of the discharge.

This Plan has been prepared to meet the requirements of the Title 40, Code of Federal Regulations, Part 112 (40 CFR part 112) and the Contingency Plan requirements for Used Oil Processors as outlined in 6 NYCRR Part 374-2.6(c)(2).

In addition to fulfilling regulatory requirements, the SPCC Plan is used as a reference for used oil storage information, as a tool to communicate practices on preventing and responding to discharges with employees, and as a resource during emergency response.

BRT management has determined that the BRT facility (the “Facility”) does not pose a risk of substantial harm under 40 CFR Part 112, as recorded in the “Substantial Harm Determination” included in Appendix B of this Plan.

This Plan provides guidance on key actions that BRT must perform to comply with the SPCC rule:

- Perform preventive maintenance of equipment, secondary containment systems, and discharge prevention systems described in this Plan as needed to keep them in proper operating conditions.
- Conduct annual employee training as outlined in the Personnel, Training, and Spill Prevention Procedures section of this Plan (Section 3.6) and document the training sessions on the log included in Appendix C.
- If either of the following occurs submit the SPCC Plan to the EPA Region 2 Regional Administrator (RA) and the New York State Department of Environmental Conservation Region 1 (NYSDEC), along with other information as detailed in Section 3.1 of this Plan:
  - The Facility discharges more than 1,000 gallons of oil into or upon the navigable waters of the U.S. or adjoining shorelines in a single spill event; or
  - The Facility discharges oil in quantity greater than 42 gallons in each of two spill events within any 12-month period.
- Review the SPCC Plan at least once every five (5) years and amend it to include more effective prevention and control technology, if such technology will significantly reduce the likelihood of a spill event and has been proven effective in the field at the time of the

*SPCC PLAN  
Brookhaven Rail Terminal  
205 Sills Road  
Yaphank, NY 11980*

review. Plan amendments, other than administrative changes discussed above, must be recertified by a Professional Engineer (PE) on the certification page in Section 1.1 of this Plan.

- Amend the SPCC immediately whenever there is a change in Facility design, construction, operation, or maintenance that materially affects the Facility's spill potential. The revised Plan must be recertified by a Professional Engineer.
- Review the Plan on an annual basis. Update the Plan to reflect any "administrative changes" that are applicable, for example the list of emergency equipment changes, or if there are personnel changes or revisions to the contact information, such as phone numbers. Administrative changes must be documented in the Plan review log of Section 1.3 of this Plan, but do not have to be certified by a PE.

*SPCC PLAN  
Brookhaven Rail Terminal  
205 Sills Road  
Yaphank, NY 11980*

**1.1 Professional Engineer Certification (40 CFR 112.3(d))**

**ENGINEER'S CERTIFICATION OF SPCC PLAN**

In accordance with 40 CFR Part 112.3(d), I hereby certify that I or my agent have visited and examined the Facility, and being familiar with the requirements of 40 CFR Part 112, attest that this SPCC Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of 40 CFR Part 112 and the contingency plan requirements in 6 NYCRR Part 374-2.6(c)(2). I also certify that procedures for required inspections and testing as referenced in this SPCC Plan have been established and that this SPCC Plan is adequate for this Facility. This certification in no way relieves the owner or operator of this Facility of the duty to fully implement this SPCC Plan in accordance with the requirements of 40 CFR Part 112 and the contingency plan requirements in 6 NYCRR Part 374-2.6(c)(2). This Plan is valid only to the extent that BRT installs, maintains, tests, and inspects equipment and materials; trains personnel; and maintains documentation as specified in this Plan.

Theresa M. Colabella, P.E. \_\_\_\_\_

Name of Professional Engineer

(Seal)

\_\_\_\_\_  
Signature of Professional Engineer

Registration Number 081911, State of New York

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

*SPCC PLAN  
Brookhaven Rail Terminal  
205 Sills Road  
Yaphank, NY 11980*

**1.2 Location of SPCC Plan (40 CFR 112.3(e) & 6 NYCRR 374-2.6(c)(2)(iii)(‘a’))**

In accordance with 40 CFR 112.3(e), a complete copy of this SPCC Plan is maintained at the Facility in the Scale House Office. The Scale House Office is attended whenever the Facility is operating, i.e., generally 6am to 4pm, 6 days per week. The security booth at the entrance of the Facility is attended 24 hours a day, seven days a week 365 days a year.

**1.3 Plan Review (40 CFR 112.3 and 112.5)**

**1.3.1 Changes in Facility Configuration (6 NYCRR 374-2.6(c)(2)(iv)(‘a’) – (‘e’))**

In accordance with 40 CFR 112.5(a) and 6 NYCRR 374-2.6(c)(iv), Brookhaven Rail Terminal periodically reviews and evaluates this SPCC Plan for any change in the Facility design, construction, operation, or maintenance that materially affects the Facility’s potential for an oil discharge, including, but not limited to:

- applicable regulations are revised;
- the plan fails in an emergency;
- the facility changes – in its design, construction, operation, maintenance, or other circumstances – in a way that materially increases the potential for fires, explosions, or releases of used oil, or changes the response necessary in an emergency;
- the list of emergency coordinators changes;
- the list of emergency equipment changes;
- commissioning of containers;
- construction or installation of piping systems;
- construction or demolition that might alter secondary containment structures; or
- changes of product or service, revisions to standard operation, and use of new or modified industry standards or maintenance procedures.

Amendments to the Plan made to address changes of this nature are referred to as technical amendments, and must be certified by a PE. Non-technical amendments can be done (and must be documented in this section) by the facility owner and/or operator. Non-technical amendments include the following:

- changes to Facility operations or site plan that do not materially affect BRT’s potential for an oil discharge;
- change in the name or contact information (i.e., telephone numbers) of individuals responsible for the implementation of this Plan; or
- change in the name or contact information of spill response or cleanup contractors.

BRT must review the SPCC Plan and make the needed revisions to the SPCC Plan as soon as possible after the change occurs. The Plan must be implemented as soon as possible following any technical amendment. BRT management is responsible for initiating and coordinating revisions to the SPCC Plan.

*SPCC PLAN  
Brookhaven Rail Terminal  
205 Sills Road  
Yaphank, NY 11980*

**1.3.2 Scheduled Plan Reviews**

In accordance with 40 CFR 112.5(b), BRT reviews this SPCC Plan at least once every five years. Revisions to the Plan, if needed, are made within six months of the five-year review. A registered Professional Engineer certifies any technical amendment to the Plan, as described above, in accordance with 40 CFR 112.3(d). The SPCC was created on August 22, 2013. The next plan review is therefore scheduled to take place on or prior to August 22, 2018.

**1.3.3 Record of Plan Reviews**

Scheduled reviews and Plan amendments are recorded in the Plan Review Log (Table 1-1). This log must be completed even if no amendment is made to the Plan as a result of the review. Unless a technical or administrative change prompts an earlier review of the Plan, the next scheduled review of this Plan must occur by August 16, 2018.

**Table 1-1: Plan Review Log**

<b>By</b>	<b>Date</b>	<b>Activity</b>	<b>PE certification required?</b>	<b>Comments</b>
Theresa Colabella, PE	Aug 22, 2013	Initial Plan	Yes	None

\*Previous PE certifications of this Plan are summarized below.

<b>Date</b>	<b>Scope</b>	<b>PE Name</b>	<b>Licensing State and Registration No.</b>
August 2013	Initial Plan	Theresa Colabella, PE PW Grosser Consulting	NY - 081911

*SPCC PLAN  
Brookhaven Rail Terminal  
205 Sills Road  
Yaphank, NY 11980*

**Part 1: Plan Administration**

**1.4 Management Approval and Designated Person (40 CFR 112.7)**

Brookhaven Rail Terminal (BRT) is committed to the prevention of discharges of oil to navigable waters or the environment, and maintains the highest standards for spill prevention, control and countermeasures through periodic review, updating and implementation of this SPCC Plan. BRT will provide the manpower, equipment and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful. This SPCC Plan is fully approved by the management of BRT as required by 40 CFR 112.7 and has been implemented as described.

Signature:

\_\_\_\_\_   
 Jim Newell, COO

Date:

\_\_\_\_\_

*SPCC PLAN  
Brookhaven Rail Terminal  
205 Sills Road  
Yaphank, NY 11980*

**1.5 Facilities, Procedures, Methods or Equipment Not Yet Fully Operational (40 CFR 112.7)**

N/A

**1.6 Compliance with Applicable Requirements (40 CFR 112.7(a)(2))**

The Facility is in compliance with 40 CFR 112.7(a)(2). There are no deviations to this plan.

*SPCC PLAN  
Brookhaven Rail Terminal  
205 Sills Road  
Yaphank, NY 11980*

**Part 2: General Facility Information**

Facility Name: Brookhaven Rail Terminal

Location: 205 Sills Road  
Yaphank, New York 11980

Manager: Jim Newell  
Chief Operating Officer

Phone Number: 631-924-8800, Cell 646-302-1432

Owner/Operator: Brookhaven Terminal Operations, LLC and  
Brookhaven Rail, LLC  
205 Sills Road  
Yaphank, New York 11980

Type: Rail Terminal

Date of Initial Operations: 2011

Latitude: N 40 degrees 49 minutes 30 seconds  
Longitude: W 72 degrees 56 minutes 19 seconds

**2.1 Facility Description (40 CFR 112.7(a)(3))**

**2.1.1 Location and Activities**

The Facility is located off exit 66 of the Long Island Expressway at 205 Sills Road in Yaphank, New York. A Vicinity Map showing the location of the Facility is provided as Figure 1 and a Site Plan showing the Facility layout is provided as Figure 2 in Appendix A. BRT is the first multi-modal rail freight facility on Long Island to provide rail based shipping, warehousing and Logistic Services. The Facility has been in operation since 2011 and at present includes 13,000 feet of track. Presently, the developed portion of the site measures approximately 28 acres. Clearance work for an additional 90 acres has started and another 234 acres will be developed in the future.

Used oil transfer operations include an anticipated area at the south eastern portion of the property as indicated on Figure 2. Trucks with a maximum capacity of 6,800 gallons of used oil will transfer contents to an awaiting railcar with a maximum capacity of 26,000 gallons. It is anticipated that, on average, four railcars will be filled and shipped out to destination facilities or transfer stations weekly.

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**2.1.2 Facility Layout Diagram (40 CFR 112.7(a)(3))**

Figure 1 in Appendix A shows the general location of the Facility on a U.S. Geological Survey topographical map. Figure 2 presents a layout of the Facility and the location of the oil transfer area. There is a single storm water drain in the area as indicated on Figure 2.

**2.1.3 Oil Storage**

There is no permanent on-site oil storage owned by BRT.

Two 500-gallon diesel tanks and one 700-gallon diesel tank were noted on-site but do not belong to BRT. The tanks are owned and maintained by Watral Construction. BRT has requested that Watral Construction maintain a separate SPCC Plan for their tanks and any equipment brought on site which can contain over 55-gallons of oil.

**2.2 Evaluation of Discharge Potential**

**2.2.1 Distance to Navigable Waters and Adjoining Shorelines and Flow Paths**

The Facility is located approximately one mile southwest of Yaphank's Lower Lake. It is not anticipated that a spill from the Facility is capable of reaching navigable waters.

The Facility has no history of discharges.

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**Part 3: Discharge Prevention – General SPCC Provisions**

The following measures are implemented to prevent oil discharges during the handling, use, or transfer of used oil at the Facility. Oil-handling employees have received training in the proper implementation of these measures. Training records are maintained with the SPCC Plan in Appendix C.

**3.1 Spill Reporting (40 CFR 112.7(a)(4) & 6 NYCRR 374- 2.6(c)(2)(ii)(‘a’))**

The discharge notification form included in Appendix F will be completed upon immediate detection of a discharge and prior to reporting a spill to the proper notification contacts.

**3.1.1 Discharge Notification (6 NYCRR 374- 2.6(c)(2)(vi)(‘d’) & 6 NYCRR 374- 2.6(c)(2)(vi)(‘i’))**

The COO is the Emergency Coordinator for the Facility as identified in the Emergency Contact List in Appendix D. Any size discharge (i.e., one that creates a sheen, emulsion, or sludge) that affects or threatens to affect navigable waters or adjoining shorelines must be reported immediately by the Emergency Coordinator to the National Response Center at 1-800-424-8802 and the NYSDEC HOTLINE (within 2 hours of spill) at 1-800-457-7362. The Center is staffed 24 hours a day. The same notifications must be made by the Emergency Coordinator if it is determined that a release, fire or explosion at the Facility could threaten human health, or the environment, outside the Facility. The Emergency Coordinator will notify the appropriate local authorities and will be available to help appropriate officials decide whether local areas should be evacuated.

A summary sheet is included in Appendix F to facilitate reporting to the National Response Center. The person reporting the discharge must provide the following information:

- Name, location, organization, and telephone number
- Name and address of the party responsible for the incident
- Date and time of the incident
- Location of the incident
- Source and cause of the release or discharge
- Types of material(s) released or discharged
- Quantity of materials released or discharged
- Danger or threat posed by the release or discharge
- Possible hazards to human health, or the environment, outside the Facility
- Number and types of injuries (if any)
- Media affected or threatened by the discharge (i.e., water, land, air)
- Weather conditions at the incident location
- Any other information that may help emergency personnel respond to the incident

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Contact information for reporting a discharge to the appropriate authorities is listed in Appendix D and is also posted in prominent locations throughout the Facility (e.g., in the Scale House Office and at the used oil transfer area).

In addition to the above reporting, 40 CFR 112.4 requires that information be submitted to the United States Environmental Protection Agency (EPA) Regional Administrator and the appropriate state agency in charge of oil pollution control activities (see contact information in Appendix D) whenever the Facility discharges (as defined in 40 CFR 112.1(b)) more than 1,000 gallons of oil in a single event, or discharges (as defined in 40 CFR 112.1(b)) more than 42 gallons of oil in each of two discharge incidents within a 12-month period. The following information must be submitted to the EPA Regional Administrator and to NYSDEC within 15 days:

- Name, address and telephone number of the Facility;
- Name, address and telephone number of the owner/operator;
- Date, time and type of incident (e.g. fire, explosion, release);
- Name and quantity of material(s) involved;
- The extent of injuries, if any;
- An assessment of actual or potential hazards to human health or the environment, where this is applicable;
- Estimated quantity and disposition of recovered material that resulted from the incident;
- Maximum storage or handling capacity and normal daily throughput;
- Corrective action and countermeasures taken including a description of equipment repairs and replacements;
- Description of Facility, including maps, flow diagrams, and topographical maps;
- Cause of the discharge(s) to navigable waters and adjoining shorelines, including a failure analysis of the system and subsystem in which the failure occurred;
- Additional preventive measures taken or contemplated to minimize possibility of recurrence; and
- Other pertinent information requested by the Regional Administrator.

A standard report for submitting the information to the EPA Regional Administrator and to the NYSDEC is included in Appendix F of this plan.

### **3.1.2 Discharge Response**

This section describes the response and cleanup procedures in the event of an oil discharge. The uncontrolled discharge of oil to groundwater, surface water, or soil is prohibited by state and possibly federal laws. Immediate action must be taken to control, contain, and recover discharged product.

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In general, the following steps are taken:

- Eliminate potential spark sources;
- If possible and safe to do so, identify and shut down source of the discharge to stop the flow;
- Contain the discharge with sorbents, berms, fences, trenches, sandbags, or other material;
- Contact the Emergency Coordinator or his/her alternate;
- The Emergency Coordinator or his/her alternate will contact regulatory authorities and the response organization; and
- Collect and dispose of recovered products according to regulation.

For the purpose of establishing appropriate response procedures, this SPCC Plan classifies discharges as either “minor” or “major,” depending on the volume and characteristics of the material released.

A list of Emergency Contacts is provided in Appendix D. A list of discharge response material kept at the Facility is included in Appendix E.

### **3.1.3 Response to a Minor Discharge**

A “minor” discharge is defined as one that poses no significant harm (or threat) to human health and safety or to the environment. Minor discharges are generally those where:

- The quantity of product discharged is small (e.g., 5 gallons of oil);
- Discharged material is easily stopped and controlled at the time of the discharge;
- Discharge is localized near the source;
- Discharged material is not likely to reach water;
- There is little risk to human health or safety; and
- There is little risk of fire or explosion.

Minor discharges can usually be cleaned up by trained BRT personnel. The following guidelines apply:

- Immediately notify the Emergency Coordinator.
- Under the direction of the Emergency Coordinator, contain the discharge with discharge response materials and equipment. Place discharged debris in properly labeled waste containers.
- The Emergency Coordinator will complete the discharge notification form (Appendix F) and attach a copy to this SPCC plan.
- If the discharge involves more than 5 gallons of oil, the Emergency Coordinator will call the New York State Department of Environmental Conservation (NYSDEC) at 800-457-7362.

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**3.1.4 Response to a Major Discharge (6 NYCRR 374- 2.6(c)(2)(ii)(‘c’) & (‘f’) & 6 NYCRR 374-2.6(c)(2)(iii)(‘b’) & 6 NYCRR 374-2.6(c)(2)(vi)(‘a’) – (‘c’) & (‘e’) & (‘f’) & (‘h’))**

A major discharge is defined as one that cannot be safely controlled or cleaned up by trained Facility personnel, such as when:

- The discharge is large enough to spread beyond the immediate discharge area;
- The discharged material enters navigable water;
- The discharge requires special equipment or training to clean up;
- The discharged material poses a hazard to human health or safety; or
- There is a danger of fire or explosion.

In the event of a major discharge, the following guidelines apply:

- All workers must immediately evacuate the discharge site via the designated exit routes and move to the designated staging areas at a safe distance from the discharge. Personnel will be notified of the evacuation by the Emergency Coordinator via cellular phone. Due to the size of the site and the maximum possible discharge, it is anticipated that the Scale House Office will be a safe area for regrouping personnel. Evacuation routes are indicated on Figure 2.
- If the Emergency Coordinator is not present at the Facility, the Alternate Emergency Coordinator shall notify the Primary Emergency Coordinator of the discharge and has authority to initiate notification and response. Certain notifications are dependent on the circumstances and type of discharge. For example, if oil reaches neighboring property, the owner of the neighboring property must be notified.
- The Emergency Coordinator must call for medical assistance if workers are injured.
- The Emergency Coordinator must notify the Fire Department or Police Department.
- The Emergency Coordinator must immediately contact the DEC Hotline.
- Any such calls must be recorded on the Discharge Notification form in Appendix F and attach a copy to this SPCC Plan.
- The Emergency Coordinator coordinates cleanup and obtains assistance from the Oil Spill Response Organization (OSRO) as identified on the emergency contact list (Appendix D) or other response organization as necessary.
- The Emergency Coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other used oil, hazardous waste, solid waste or used oil-derived fuels or products at the Facility. These measures will include, where applicable, stopping processes and operation, collecting and containing released used oil, and removing or isolating containers.
- The Emergency Coordinator must immediately identify the character, exact source, amount, areal extent of any released materials. This may be done by observation or review of Facility records, logs, invoices, manifests, bills of lading, or other shipping documents and, if necessary, by chemical analysis.
- Concurrently, the Emergency Coordinator must assess possible hazards to human health or the environment that may result from the release, fire or explosion. This assessment must consider both direct and indirect effects of the release, fire or explosion (e.g. the effects of any toxic, irritating, or asphyxiating gases that are

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generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions).

- If the Facility stops operation in response to a fire, explosion, or release, the Emergency Coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes or other equipment, wherever appropriate.
- If the major discharge causes the Facility to be shut down for more than 24 hours, the Emergency Coordinator will notify the used oil railcar companies and the used oil tanker truck companies of the situation. Used oil will not be accepted at the Facility until the Facility is operational again.
- The Emergency Coordinator will ensure that, in the event of a major discharge, no waste or used oil that may be incompatible with released material is recycled, treated, stored, or disposed of until cleanup procedures are completed in the affected Facility area(s).
- The Emergency Coordinator will also ensure that all emergency equipment listed in the SPCC is cleaned and fit for its intended use before operations are resumed.
- The Emergency Coordinator will notify the Regional NYSDEC Director and local authorities that the Facility is in compliance with the previous two bullet points before operations are resumed in the affected area(s) of the Facility.

A copy of this plan has been forwarded to the 7<sup>th</sup> Precinct Suffolk County Police Department, Yaphank Fire Department, Brookhaven Memorial Hospital, NYS Emergency Response Commission and Suffolk County Department of Fire, Rescue and Emergency Services in accordance with 6 NYCRR 374-2.6(c)(2)(ii)(‘c’).

### **3.1.5 Waste Disposal (6 NYCRR 374-2.6(c)(2)(vi)(‘g’))**

Used oil recovered from a spill will be stored in the portable trucks that will be delivered by the OSRO. This waste will be transported off site by the OSRO to one of the facilities listed in the table below for disposal or recycling. Contaminated spill response materials which include personnel protective equipment (PPE), decontamination solutions, adsorbents, contaminated equipment and materials that could not be properly decontaminated for reuse, and spent chemicals will be stored in compatible containment devices until it is transported offsite by the OSRO.

In the event that a spill contaminates soil, the soil will be properly delineated, remediated and disposed of in accordance with federal, state and local regulations. The OSRO will transport contaminated soil offsite for proper disposal.

As previously stated, wastes including recovered product, contaminated soil, contaminated equipment and material, personnel protective equipment, decontamination solutions, adsorbents and spent chemicals resulting from a major discharge response will be removed by a cleanup contractor, transported offsite by a licensed transporter and disposed of at a permitted facility in accordance with applicable federal, state, and local regulatory requirements. Although a spill has never occurred at the site, disposal routes have been anticipated. The table below addresses disposal facilities for the aforementioned waste.

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**Table 3-1: Spill Materials Disposal Locations**

<b>Material</b>	<b>Disposal Facility</b>	<b>Location</b>	<b>Permit</b>
Recovered Product	Tradebe	Bridgeport, CT	CTD002593887
Contaminated Soil	Clean Earth	Carteret, NJ/Philadelphia, PA	N/A
Contaminated Equipment and Materials (drums, tank parts, valves, etc.)	Tradebe	Bridgeport, CT	CTD002593887
Personnel Protective Equipment (PPE)	Tradebe	Bridgeport, CT	CTD002593887
Decontamination Solutions	Tradebe	Bridgeport, CT	CTD002593887
Adsorbents	Tradebe or Clean Earth	Bridgeport, CT or Carteret, NJ, Philadelphia, PA	CTD002593887/ N/A
Spent Chemicals	Tradebe	Bridgeport, CT	CTD002593887

### 3.1.6 Cleanup Contractors and Equipment Suppliers

Contact information for specialized spill response and cleanup contractors are provided in Appendix D. These contractors have the necessary equipment to respond to a discharge of oil that affects adjoining properties in Yaphank, New York.

Spill response supplies are stored in the Scale House Office and are available to on-site personnel. Spill response supplies include absorption pads, boots, gloves, safety glasses, non-sparking shovels and a report form. The inventory of response supplies and equipment is provided in Appendix E of this Plan. The inventory is verified on a monthly basis. Additional supplies and equipment may be ordered from one of many suppliers, such as:

Stauffer Glove & Safety  
361 E. Sixth Street  
Red Hill, PA 18076  
Bob Frey 845-627-2368

New Pig  
One Pork Avenue  
Tipton, PA 16684-0304  
1-800-468-4647  
www.newpig.com

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DENIOS, Inc.  
1152 Industrial Blvd.  
Louisville, KY 40219  
1-877-388-0187

**3.2 Potential Discharge Volumes and Direction of Flow (40 CFR 112.7(b))**

Table 3-2 presents expected volume, discharge rate, general direction of flow in the event of equipment failure, and means of secondary containment possible discharge scenarios. Emergency contacts are provided in Appendix D in case of a spill.

**Table 3-2: Potential Discharge Volume and Direction of Flow**

Potential Event	Maximum volume released (gallons)	Maximum discharge rate (gpm)	Direction of Flow	Secondary Containment
Railcar overfill	35	70	To soil	50-gallon drip pan placed underneath railcar
Tank truck rupture at loading area	6,800	Gradual to instantaneous	To soil	Roll-out secondary containment system
Railcar rupture	26,000	Gradual to instantaneous	To soil	None

**3.3 Containment and Diversionary Structures (40 CFR 112.7(c))**

A combination of portable secondary containment systems (e.g. roll-out secondary containment, drip pans) and land-based spill response measures (e.g. oil absorbents) are used to prevent a discharge from reaching navigable waters.

For railcars:

**Drip pans** - Drip pans are used to contain small leaks from piping/hose connections. A large, 50-gallon, portable drip pan is also placed underneath the railcar prior to the commencing of used oil transfer in case overfilling occurs.

**Sorbent material** - Spill response supplies are stored in the Scale House Office and are available to on-site personnel. Spill response supplies include absorption pads, boots, gloves, safety glasses, and non-sparking shovels. Spill response supplies are transported from the Scale House Office to the used oil transfer area during each transfer event.

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For tanker trucks:

**Roll-out secondary containment** – A roll-out secondary containment system is utilized to provide secondary containment for trucks during railcar loading operations.

**3.4 Practicability of Secondary Containment (40 CFR 112.7(d))**

BRT management has determined that secondary containment is practicable at this Facility.

**3.5 Inspections, Tests, and Records (40 CFR 112.7(e))**

Visual inspections of railcars, trucks and hoses are conducted prior to, during and immediately following loading/unloading operations. No written records of these inspections are maintained.

**3.6 Personnel, Training, and Discharge Prevention Procedures (40 CFR 112.7(f) & 6 NYCRR 374-2.6(c)(2)(v))**

The Primary Emergency Coordinator is responsible for oil discharge prevention, control and response preparedness activities at this Facility. At all times there is at least one employee either on the Facility premises or on call with the responsibility for coordinating emergency response measures. The Emergency Coordinators (primary and alternate) are thoroughly familiar with all aspects of the Facility's SPCC Plan, all operations and activities at the Facility, the location and characteristics of used oil handled, the location of all records within the Facility, and Facility layout. The Emergency Coordinators (primary and alternate) also have the authority to commit resources needed to carry out the SPCC Plan.

Oil-handling facility personnel will be instructed in the operation and maintenance of oil pollution prevention equipment, discharge procedure protocols, applicable pollution control laws, rules and regulations, general Facility operations, and the content of this SPCC plan. Any new Facility personnel with oil-handling responsibilities are provided with this same training prior to being involved in any oil operations.

Annual discharge prevention briefings are held by the Emergency Coordinator for all Facility personnel involved in oil operations. The briefings are aimed at ensuring continued understanding and adherence to the discharge prevention procedures presented in the SPCC plan. The briefings also highlight and describe known discharge events and failures, malfunctioning components, and recently implemented precautionary measures and best practices. Facility operators and other personnel will have the opportunity during the briefings to share recommendations concerning health, safety, and environmental issues encountered during Facility operations.

Records of the briefings and discharge prevention training are kept in the form shown in Appendix C and maintained with this SPCC Plan for a period of three years. Records of training are kept in the training log located in the SPCC Plan in the Scale House Office.

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**3.7 Security (40 CFR 112.7(g))**

The Facility is partially fenced with security cameras in the process of being installed around the main portions of the Facility. Security personnel are on-site 24 hours a day, seven day a week, 365 days per year.

There are no stationary oil pumps on-site which require locked starter controls when not in use. There is also no oil piping at the Facility which requires secure capping or blank-flanging when not in service or in standby.

Facility lighting is provided in the used oil transfer areas of the Facility and provides adequate protection against vandalism. Lighting also provides sufficient illumination of the used oil transfer area for discovery of spill events during evening hours.

**3.8 Tank Truck Loading/Unloading Rack Requirements (40 CFR 112.7(h))**

The potential for discharges during tank truck unloading operations is of particular concern at this Facility. BRT management is committed to ensuring the safe transfer of material to the railcars. The following measures are implemented to prevent oil discharges during tank truck unloading operations.

**3.8.1 Secondary Containment (40 CFR 112.7(h)(1))**

A roll-out secondary containment system is utilized to provide secondary containment for tank trucks during railcar loading operations. A drip pan is placed at the hose connection.

**3.8.2 Overfill Protection**

A large 50-gallon drip pan is placed underneath the railcar in case overfilling occurs. As the railcar loading operation is continually observed, it is estimated that it will take a maximum of 30 seconds for either the truck driver or the overseeing Facility personnel to shut down the pump in an overfill event. As the used oil is pumped at 70 gallons per minute (GPM), the 50-gallon drip pan has been deemed acceptable for overfill protection.

**3.8.3 Loading/Unloading Procedures (40 CFR 112.7(h)(2) and (3))**

Suppliers must meet minimum requirements and regulations for tank truck unloading established by the U.S. Department of Transportation. BRT management assures that the vendor understands the site layout, knows the protocol for entering the Facility and unloading product, and has the necessary equipment to respond to a discharge from the vehicle or fuel delivery hose.

The Facility Manager or his/her designee supervises used oil deliveries for all new supplies, and continually observes deliveries for existing, approved suppliers.

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Unloading of tanker trucks takes place only in the designated loading unloading area.

Smoking is not permitted while loading or unloading any flammable liquid. No person carrying any flame or lighted cigar, pipe, or cigarette shall be allowed in the vicinity.

A tanker truck must be attended by a qualified person at all times when it is being loaded. The person who is responsible for loading the railcar is also responsible for ensuring that the truck is also attended.

After completion of an unloading operation, BRT personnel perform the following, prior to vehicular departure.

- Check all valves for closure, both on the vehicle and on the receptacle;
- Ensure unloading hose is disconnected from the tank truck and properly stowed and;
- Check all drains and outlets for leakage, take corrective actions as required.

No flammable liquid shall be loaded into or unloaded from any motor vehicle while the engine is running.

Vehicle filling operations are performed by Facility personnel trained in proper discharge prevention procedures. The truck driver and Facility personnel remain with the vehicle at all times while fuel is being transferred. Transfer operations are performed according to the minimum standard operating procedures listed in the forms following this section.

**3.9 Brittle Fracture Evaluation (40 CFR 112.7(i))**

The Facility does not contain any field constructed tanks and therefore this section is not applicable.

**3.10 Conformance with State and Local Applicable Requirements (40 CFR 112.7(j))**

The Facility conforms to State and local applicable requirements.

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**Part 4: Discharge Prevention – SPCC Provisions for Onshore Facilities (Excluding Production Facilities)**

**4.1 Facility Drainage (40 CFR 112.8(b))**

The Facility has a stormwater drainage system with the closest storm water drain being located approximately 50 yards away from the used oil transfer area. This storm drain is covered during any used oil transfer activities. The next closest storm drain is located approximately 200 yards away from the used oil transfer area and is not anticipated to be impacted in the event of a spill.

Any potential discharge from a railcar or tanker truck which is not restrained by secondary containment will be discharged to soil and is not anticipated to travel off-site.

The Facility consists of 28 developed acres, approximately 50% of the Facility is covered by buildings or paved impervious surfaces. The remainder consists of compacted gravel, grass and low-lying vegetation. Clearance work for an additional 90 acres has been started.

**4.2 Bulk Storage Containers (40 CFR 112.8(c))**

There are no bulk storage containers at the Facility and therefore 40 CFR 112.8(c)(1) through 40 CFR 112.8(c)(3), 40 CFR 112.8(c)(6) and 40 CFR 112.8(c)(8) are not applicable.

**4.2.1 Corrosion Protection (40 CFR 112.8(c)(4))**

No buried metallic storage tanks requiring cathodic protection exist at the Facility.

**4.2.2 Partially Buried and Bunkered Storage Tanks (40 CFR 112.8(c)(5))**

This section is not applicable since there are no partially buried or bunkered storage tanks at this Facility.

**4.2.3 Heating Coils (40 CFR 112.8(c)(7))**

There are no storage containers with heating coils at the Facility and therefore this section is not applicable.

**4.2.4 Effluent Treatment Facilities (40 CFR 112.8(c)(9))**

Effluent is not discharged from the Facility and therefore this section is not applicable.

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**4.2.5 Visible Discharges (40 CFR 112.8(c)(10))**

Visible discharges from any vehicle, container or appurtenance – including seams, gaskets, piping, pumps, valves, rivets, and bolts – are corrected upon discovery.

**4.2.6 Mobile and Portable Containers (40 CFR 112.8(c)(11))**

There are no mobile or portable containers at the Facility.

**4.3 Transfer Operations, Pumping, and In-Plant Processes (40 CFR 112.8(d))**

Used oil unloading activities are performed at the Facility. Used oil is delivered by 6,800 gallon tank trucks operated by multiple vendors. Used oil is pumped from the bottom of the tanker truck to the top of the railcar. Prior to any receipt, the railcar is checked to insure sufficient capacity exists to accept the total contents of the delivery. During deliveries, BRT personnel:

- Constantly monitor the fuel level in all tanks, and
- Perform a physical inspection of the unloading area.

The Facility Manager is responsible for all used oil transfers but may designate a qualified person to manage this responsibility.

There is no aboveground piping which carries petroleum products at the Facility.

After completion of an unloading operation, BRT personnel perform the following, prior to vehicular departure.

- Check valves for closure, both on the vehicle and on the railcar;
- Ensure unloading hose is disconnected from the tank truck and properly stowed and;
- Check the area for leakage, take corrective actions as required.

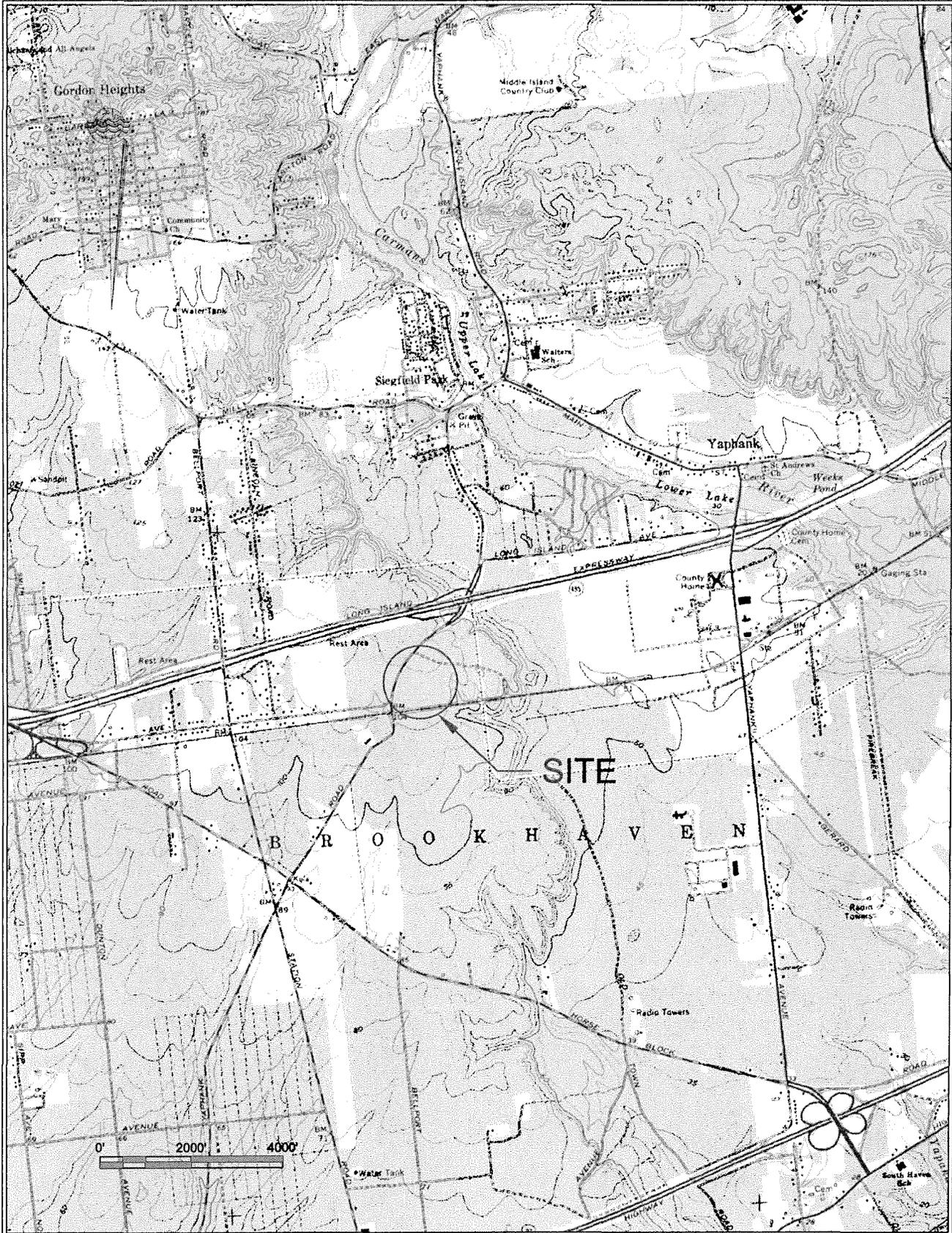
Refer to section 3.8.2 Loading/Unloading Procedures.

Warning signs for aboveground piping and appurtenances are unnecessary as there are none.

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## **Appendix A**

### **Vicinity Map and Site Plan**





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## Appendix B

### Substantial Harm Determination

Facility Name: Brookhaven Rail Terminal  
Facility Address: 205 Sills Road  
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1. Does the Facility transfer oil over water to or from vessels and does the Facility have a total storage capacity greater than or equal to 42,000 gallons?

Yes \_\_\_ No ✓

2. Does the Facility have a total oil storage capacity greater than or equal to 1 million gallons and does the Facility lack secondary containment that is sufficiently large to contain the capacity of the largest aboveground oil storage tank plus sufficient freeboard to allow for precipitation within any aboveground storage tank area?

Yes \_\_\_ No ✓

3. Does the Facility have a total oil storage capacity greater than or equal to 1 million gallons and is the Facility located at a distance (as calculated using the appropriate formula in 40 CFR part 112 Appendix C, Attachment C-III or a comparable formula) such that a discharge from the Facility could cause injury to fish and wildlife and sensitive environments?

Yes \_\_\_ No ✓

4. Does the Facility have a total oil storage capacity greater than or equal to 1 million gallons and is the Facility located at a distance (as calculated using the appropriate formula in 40 CFR part 112 Appendix C, Attachment C-III or a comparable formula) such that a discharge from the Facility would shut down a public drinking water intake?

Yes \_\_\_ No ✓

5. Does the Facility have a total oil storage capacity greater than or equal to 1 million gallons and has the Facility experienced a reportable oil spill in an amount greater than or equal to 10,000 gallons within the last 5 years?

Yes \_\_\_ No ✓

#### **Certification**

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete.

Signature

Title

\_\_\_\_\_

\_\_\_\_\_

Name (type or print)

Date

\_\_\_\_\_

\_\_\_\_\_

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## **Appendix C**

### **Record of Discharge Prevention Briefings and Training**

Briefings will be scheduled and conducted by the Facility owner or operator for operating personnel at regular intervals to ensure adequate understanding of this SPCC Plan. The briefings will also highlight and describe known discharge events or failures, malfunctioning components, and recently implemented precautionary measures and best practices. Personnel will also be instructed in operation and maintenance of equipment to prevent the discharge of oil, and in applicable pollution laws, rules, and regulations. Facility operators and other personnel will have an opportunity during the briefings to share recommendations concerning health, safety, and environmental issues encountered during Facility operations.



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**Appendix D  
6 NYCRR 374- 2.6(c)(2)(ii)(‘d’)  
Emergency Contacts**

**EMERGENCY TELEPHONE NUMBERS:**

<b>Primary Emergency Coordinator:</b>	<b><u>Office</u></b>	<b><u>Cell</u></b>	<b><u>Home</u></b>
Jim Newell COO 121 Kingfisher Drive Ponte Vedra Beach, FL 32082	631-924-8800	646-302-1432	646-302-1432

**Alternate**

Chris Flynn Facility Manager 69 Joyce Drive Hauppauge, NY 11788	631-924-8800	631-832-5808	631-832-5808
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**Alternate**

Tom Miller 7 Galleon Lane East Setauket, NY 11733	631-924-8800	631-338-2923	631-338-2923
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**Local Emergency Response**

Yaphank Fire Department

General Emergency	911
Dispatcher	631-924-3200

Suffolk Police Department

General Emergency	911
Non-emergency response	631-852-2677
7 <sup>th</sup> Precinct Front Desk	631-852-8700

Suffolk County Department of Health Services

Office of Pollution Control	631-854-2501
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Brookhaven Memorial Hospital

631-654-7100

*SPCC PLAN  
Brookhaven Rail Terminal  
205 Sills Road  
Yaphank, NY 11980*

**Oil Spill Response Organization/Cleanup Contractors**

Miller Environmental Group, Inc. 845-569-1200

**Notification**

NYSDEC HOTLINE (within 2 hours of spill) 800-457-7362

National Response Center- Federal 800-424-8802

United States Coast Guard (for spills reaching water) 718-354-4121

*SPCC PLAN  
Brookhaven Rail Terminal  
205 Sills Road  
Yaphank, NY 11980*

**Appendix E**  
**6 NYCRR 374- 2.6(c)(2)(ii)('e')**  
**On-Site and Contractor Discharge Response Equipment Inventory**

The discharge response equipment inventory is verified during the monthly inspection and must be replenished as needed.

**Brookhaven Rail Terminal Spill Response Equipment available on site:**

<b>Equipment Type</b>	<b>Units</b>	<b>Response Time</b>	<b>Location / Effective Daily Recovery Rate</b>
Absorbent pads	10 pads	3 min	Scale House Office / .5 gal
Shovels	4	3 min	Scale House Office / NA
Neoprene gloves	4 pairs	3 min	Scale House Office / NA
Safety glasses	4 pairs	3 min	Scale House Office / NA
Disposable latex response boots	4 pairs	3 min	Scale House Office / NA
Fire extinguishers	5	3 min	Scale House Office / NA
Front end loaders	2	5 min	Within 0.5 mile radius of used oil transfer area
Bulldozers	2	5 min	Within 0.5 mile radius of used oil transfer area
Excavators	2	5 min	Within 0.5 mile radius of used oil transfer area

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Inspector Name: \_\_\_\_\_

Inspector Signature: \_\_\_\_\_

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

**Brookhaven Rail Terminal Spill Response Equipment Monthly Checklist:**

<b>Equipment Type</b>	<b>Minimum Amount</b>	<b>Quantity available on-site</b>	<b>Notes</b>
Absorbent pads	10 pads		
Shovels	4		
Neoprene gloves	4 pairs		
Safety glasses	4 pairs		
Disposable latex response boots	4 pairs		
Fire extinguishers	5		
Front end loaders	2		
Bulldozers	2		
Excavators	2		

# **MEG OPERATION CENTERS AND EQUIPMENT**

EMERGENCY TELEPHONE NUMBER FOR ALL OPERATION CENTERS

(800) 394-8606 (631)-369-4900

## **LONG ISLAND OPERATIONS CENTER: Calverton, NY; COMPANY HEADQUARTERS**

(3) Project Managers	(3) Supervisors
(15) Hazmat Technicians	(50) Temp Labor Workers
(6) 5,460- Gallon Vacuum Trucks	(2) 2,000- Gallon Vacuum Trucks
(2) Vacuum Units	(3) Skimming Systems
(7) Pumping Systems & Hose	(1) Storage Bladder
(3) Guzzler Air Vacuum Trucks	(2) Roll-Off Trucks
(20) Roll-Off Containers 20-yard	(2) Sets of Confined Space Entry Equipment
(6) Response Trucks – Fully Loaded	(12) High-Pressure, Hot-Water Washing Units
(3) 24' Workboats	(14) 12' – 18' Aluminum Outboard Workboats
(2) LCM 34' & 74'	20,000 feet Containment Boom
(6) Sets of Level A & B PPE	(2) Mobile Decontamination Trailers
(1) Complete Set of Air Monitoring Equipment	(1) Magnetic Patch Kit
(8) All Terrain Vehicles	(1) Boom Truck
(2) Frac Tanks –20,000 gal/each	(8) Oil Skimmers
(4) Light towers with generators	(2) 20-yard Vacuum Boxes
(20) 3,500 psi Pressure Washers	(15) HEPA Vacs – portable
(9) Portable Generators 5Kw-20Kw-300Kw	(1) D/D Chemical diaphragm pump - 2"
(2) Backhoes	(1) 50 ton Lowboy
(3) Mercury Spill Kits	(1) Mercury Vacuum

## **NEW YORK METRO OPERATIONS CENTER: Brooklyn, NY**

(2) Project Managers	(2) Supervisors
(10) Hazmat Technicians	(20) Temp Labor Workers
(2) 5,460- Gallon Vacuum Trucks	(1) 2,000- Gallon Vacuum Trucks
(2) Guzzler Air Vacuum Trucks	(1) Roll-Off Truck
(4) 20-yard Roll-Off Containers	(1) 20,000-Gallon Frac Tanks
(1) Set of Confined Space Entry Equipment	(2) Response Trucks – Fully Loaded
(6) Sets of Level A & B PPE	(2) Mobile Decontamination Trailers
(1) Complete Set of Air Monitoring Equipment	(1) Magnetic Patch Kit
(2) High-Pressure, Hot-Water Washing Units	5,000 feet Containment Boom
(2) Frac Tanks –20,000 gal/each	(1) Oil Skimmer
(2) Mercury Spill Kits	(1) Mercury Vacuum

**Miller Environmental Group, Inc.**  
**538 Edwards Ave., Calverton, NY 11933**  
**(800) 394-8606 www.millerenv.com (631) 369-4900**

# **MEG OPERATION CENTERS AND EQUIPMENT**

EMERGENCY TELEPHONE NUMBER FOR ALL OPERATION CENTERS

(800) 394-8606 (631)-369-4900

## **NEWBURGH OPERATIONS CENTER; Newburgh, NY**

(2) Project Managers	(2) Supervisors
(15) Hazmat Technicians	(20) Temp Labor Workers
(1) 5,460- Gallon Vacuum Trucks	(2) 2,000- Gallon Vacuum Trucks
(1) Vacuum Units	(1) Skimming Systems
(5) Pumping Systems & Hose	(1) Storage Bladder
(1) Guzzler Air Vacuum Trucks	(1) Roll-Off Truck
(6) 20-yard Roll-Off Containers	(1) 20,000-Gallon Frac Tanks
(2) Sets of Confined Space Entry Equipment	(2) Response Trucks – Fully Loaded
(3) High-Pressure, Hot-Water Washing Units	(2) 24' Workboats
(2) 12' – 18' Aluminum Outboard Workboats	10,000 feet Containment Boom
(6) Sets of Level A & B PPE	(1) Mobile Decontamination Trailer
(2) All Terrain Vehicles	(1) Frac Tank –20,000 gal/each
(1) 20 yard Vacuum Box	(2) Light towers with Generator
(1) Complete Set of Air Monitoring Equipment	(1) Magnetic Patch Kit
(2) Backhoes	(5) HEPA Vacs – portable
(2) Mercury Spill Kits	(1) Mercury Vacuum

## **PORT JEFFERSON OPERATIONS CENTER; Port Jefferson, NY**

(2) Project Managers	(2) Supervisors
(20) Marine Personnel	(50) Temp Labor Workers
(2) Skimming Systems	(8) Utility Work Boats—(14 ft - 96 ft)
(17) Pumping Systems & Hose	(1) Storage Bladder
(3) High-Pressure, Hot-Water Washing Units	3,000 feet Containment Boom
(2) All Terrain Vehicles	(2) Light towers with Generator

## **NEW HAVEN OPERATIONS CENTER; New Haven, CT**

(1) Project Manager	(1) Supervisor
(2) Marine Personnel	(20) Temp Labor Workers
(1) Utility Work Boats—(65 ft)	2,000 feet Containment Boom
(2) Pumping Systems & Hose	(1) Storage Bladder

**Miller Environmental Group, Inc.**  
**538 Edwards Ave., Calverton, NY 11933**  
**(800) 394-8606 www.millerenv.com (631) 369-4900**

# MEG OPERATION CENTERS AND EQUIPMENT

EMERGENCY TELEPHONE NUMBER FOR ALL OPERATION CENTERS

(800) 394-8606 (631)-369-4900

## PHILADELPHIA METRO OPERATIONS CENTER; Paulsboro, NJ

(2) Project Managers	(3) Supervisors
(8) Hazmat Technicians	(20) Temp Labor Workers
(1) 5,460- Gallon Vacuum Trucks	(2) 2,000- Gallon Vacuum Trucks
(1) HAZMAT Response Unit	(1) Spill Response Trailer
(1) Guzzler Air Vacuum Trucks	(1) Roll-Off Truck
(6) 20-yard Roll-Off Containers	(1) 20,000-Gallon Frac Tanks
(2) Sets of Confined Space Entry Equipment	(2) Response Trucks – Fully Loaded
(2) High-Pressure, Hot-Water Washing Units	(4) 24' - 34' Workboats
(5) 12' – 18' Aluminum Outboard Workboats	20,000 feet Containment Boom
(1) Complete Set of Air Monitoring Equipment	(1) Magnetic Patch Kit
(6) Sets of Level A & B PPE	(1) Boom Truck
(2) Oil Skimming Systems	(2) All Terrain Vehicles

## ALBANY OPERATIONS CENTER; Schenectady, NY

(3) Project Managers	(3) Supervisors
(6) Hazmat Technicians	(20) Temp Labor Workers
(2) Vacuum Trucks	(1) Roll-Off Trailer
(2) Guzzler Air Vacuum Trucks	(2) 20,000-Gallon Frac Tanks
(5) 20-yard Roll-Off Containers	(2) Sets of Confined Space Entry Equipment
(2) Response Trucks – Fully Loaded	(2) Utility Work Boats-- Boston Whaler
(2) High-Pressure, Hot-Water Washing Units	2,000 feet Containment Boom
(6) Sets of Level A & B PPE	(2) Mobile Decontamination Trailers
(2) All Terrain Vehicles	(1) Pump Trailer w/ Hose
(1) 5 ton Grove Crane 4WD	(1) 200 gpm Transfer Pump-Food Grade
(1) Light tower with Generator	(3) Portable 2000kw Generators
(1) 150 feet of S/S Chemical Hose	(2) HEPA Vacs - portable
(2) D/D Chemical diaphragm pump - 2"	(1) Backhoe
(4) D/D Air Transfer Pumps – 3"	(1) HAZMAT Hammock
(1) Complete Set of Air Monitoring Equipment	(1) Magnetic Patch Kit
(1) 50 ton Lowboy	(1) 20 yard Vacuum Box

## STATEN ISLAND OPERATIONS CENTER; Staten Island, NY

(2) Project Managers	(3) Supervisors
(33) Marine Personnel	(50) Temp Labor Workers
(2) Vacuum Units	(3) Skimming Systems
(17) Pumping Systems & Hose	(1) Storage Bladder
(2) Response Trucks – Fully Loaded	(25) Utility Work Boats—(14 ft - 100 ft)
(3) High-Pressure, Hot-Water Washing Units	12,000 feet Containment Boom
(2) All Terrain Vehicles	(1) Boom Truck
(2) Light towers with Generator	(2) Portable 5000kw Generators

**Miller Environmental Group, Inc.**  
**538 Edwards Ave., Calverton, NY 11933**  
**(800) 394-8606 www.millerenv.com (631) 369-4900**

*SPCC PLAN  
Brookhaven Rail Terminal  
205 Sills Road  
Yaphank, NY 11980*

## **Appendix F**

### **Agency Notification Standard Report**

**Spill Response Notification Form**

*Initial Notification to NRC Must not be Delayed Pending Collection of all Information*

Reporter's Last Name \_\_\_\_\_ First \_\_\_\_\_  
Position \_\_\_\_\_

Phone Numbers: 631-924-8800

Company: Brookhaven Rail Terminal  
Organization Type: Rail Terminal  
Facility Capacity: 0 Gallons Permanent Storage  
Up to 32,800 gallons of temporary used oil storage

Address: 205 Sills Road  
Yaphank, New York 11980

Latitude: N 40 degrees 49 minutes 30 seconds  
Longitude: W 72 degrees 56 minutes 19 seconds

Were Materials Released \_\_\_\_\_ (Y/N) Confidential \_\_\_\_\_ (Y/N)

Meeting Federal Obligations to Report \_\_\_\_\_ (Y/N) Date Called \_\_\_\_\_  
Calling for Responsible Party \_\_\_\_\_ (Y/N) Time Called \_\_\_\_\_

Incident Description

Source and/or Cause of Incident \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date \_\_\_\_\_ Time of Incident \_\_\_\_\_ AM/PM

Incident Address/Location \_\_\_\_\_  
\_\_\_\_\_

Nearest City: Brookhaven State: New York County: Suffolk Zip: 11980

Distance from City: 4.5 Units of Measure: miles Direction from City: North  
River Mile: N/A

Section: \_\_\_\_\_ Township: \_\_\_\_\_ Range: \_\_\_\_\_ Borough: \_\_\_\_\_  
Container Type \_\_\_\_\_ Tank Capacity \_\_\_\_\_ Units \_\_\_\_\_

**Material**

CHRIS Code	Material Released	Quantity Released (gallons)	Quantity in Water (gallons)

**Response Action**

Actions Taken to Correct, Control or Mitigate Incident: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Impact**

Number of Injuries: \_\_\_\_\_ Number of Deaths: \_\_\_\_\_  
Were there Evacuations? \_\_\_\_\_ (Y/N) Number Evacuated: \_\_\_\_\_  
Damage in dollars (approximate): \_\_\_\_\_ Medium Affected: \_\_\_\_\_  
Description: \_\_\_\_\_  
Additional Information about Medium: \_\_\_\_\_

**Response Record**

**National Response Center (NRC)**

Name of Caller: \_\_\_\_\_  
Agency Contact: \_\_\_\_\_  
Time and Date of Notification: \_\_\_\_\_  
Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Emergency Coordinator Notified: \_\_\_\_\_  
Name of Caller: \_\_\_\_\_

Agency Contact: \_\_\_\_\_

Time and Date of Notification: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Federal On Scene Coordinator**

Name of Caller: \_\_\_\_\_

Agency Contact: \_\_\_\_\_

Time and Date of Notification: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**NYSDEC**

Name of Caller: \_\_\_\_\_

Agency Contact: \_\_\_\_\_

Time and Date of Notification: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Others**

Initials of Caller: \_\_\_\_\_

Agency Contact: \_\_\_\_\_

Time and Date of Notification: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Additional Information



**Part A: Discharge Information**

General Information when reporting a spill to outside authorities:  
Name: Brookhaven Rail Terminal  
Address: 205 Sills Road  
Yaphank, NY 11980  
Telephone: 631-924-8800  
Owner/Operator: Brookhaven Rail Terminal  
Primary Contact Person: Jim Newell, COO  
Primary Contact #: Office: (631)-924-8800 Cell: (646) 302-1432 Home: (646) 302-1432

Type of oil:	Discharge date and time:
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Quantity released:	Discovery date and time:
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Quantity released to a waterbody:	Discharge duration:
-----------------------------------	---------------------

Location/Source:

Actions taken to stop, remove or mitigate impacts of the discharge:

Affected media:

<input type="checkbox"/> air	<input type="checkbox"/> storm water sewer/POTW
<input type="checkbox"/> water	<input type="checkbox"/> dike/berm/oil-water separator
<input type="checkbox"/> soil	<input type="checkbox"/> other: _____

Notification person:	Telephone contact:
	Business:
	24-hr:

Nature of discharges, environmental/health effects, and damages:

Injuries, fatalities or evacuation required?  Yes  No  
If yes, please specify:

Agencies Contacted:

Spill response number:

Operator number:

Corrective actions taken:

<b>Part B: Notification Checklist</b>		
	Date and time	Name of person receiving call
<b>Discharge in any amount</b>		
Emergency Coordinators Jim Newell (631)-924-8800 / (646)-302-1432		
Chris Flynn (631)-924-8800 / (631)-832-5808		
<b>Discharge in amount exceeding 5 gallons and not affecting a waterbody or groundwater</b>		
Miller Environmental Group, Inc. (845)-569-1200		
Yaphank Fire Department General Emergency 911 Dispatcher (631)-924-3200		
New York Department of Environmental Conservation (800)-457-7362		
<b>Discharge in any amount and affecting (or threatening to affect) a waterbody</b>		
National Response Center (800) 424-8802		
New York Department of Environmental Conservation (800)-457-7362		
Yaphank Fire Department General Emergency 911 Dispatcher (631)-924-3200		
Miller Environmental Group, Inc. (845)-569-1200		

*SPCC PLAN  
Brookhaven Rail Terminal  
205 Sills Road  
Yaphank, NY 11980*

1.1 Professional Engineer Certification (40 CFR 112.3(d))

**ENGINEER'S CERTIFICATION OF SPCC PLAN**

In accordance with 40 CFR Part 112.3(d), I hereby certify that I or my agent have visited and examined the Facility, and being familiar with the requirements of 40 CFR Part 112, attest that this SPCC Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of 40 CFR Part 112 and the contingency plan requirements in 6 NYCRR Part 374-2.6(c)(2). I also certify that procedures for required inspections and testing as referenced in this SPCC Plan have been established and that this SPCC Plan is adequate for this Facility. This certification in no way relieves the owner or operator of this Facility of the duty to fully implement this SPCC Plan in accordance with the requirements of 40 CFR Part 112 and the contingency plan requirements in 6 NYCRR Part 374-2.6(c)(2). This Plan is valid only to the extent that BRT installs, maintains, tests, and inspects equipment and materials; trains personnel; and maintains documentation as specified in this Plan.

Theresa M. Colabella, P.E.

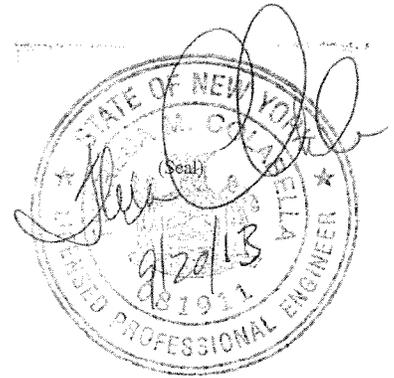
Name of Professional Engineer

*Theresa M. Colabella*

Signature of Professional Engineer

Registration Number 081911, State of New York

Date: September 20, 2013



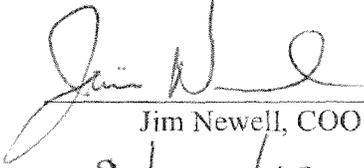
*SPCC PLAN  
Brookhaven Rail Terminal  
205 Sills Road  
Yaphank, NY 11980*

**Part 1: Plan Administration**

**1.4 Management Approval and Designated Person (40 CFR 112.7)**

Brookhaven Rail Terminal (BRT) is committed to the prevention of discharges of oil to navigable waters or the environment, and maintains the highest standards for spill prevention, control and countermeasures through periodic review, updating and implementation of this SPCC Plan. BRT will provide the manpower, equipment and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful. This SPCC Plan is fully approved by the management of BRT as required by 40 CFR 112.7 and has been implemented as described.

Signature:

  
\_\_\_\_\_  
Jim Newell, COO

Date:

9/20/2013  
\_\_\_\_\_

**EXHIBIT 4**

## DECLARATION OF JIM NEWELL

I, Jim Newell, state:

1. My name is Jim Newell, and I serve as President of Brookhaven Rail, LLC (“Brookhaven Rail”), a Class III rail carrier operating at the Brookhaven Rail Terminal (“BRT”), Yaphank, New York. This declaration is made on personal knowledge.

2. I have worked for more than 45 years in rail carrier operations, beginning with Seaboard Airline Railroad, and later for Family Line Railroad, CSX, TransLoad America, Inc., and US Rail New York, LLC (“US Rail New York”), now Brookhaven Rail. I hold a B.S. in Business from Tampa College and a M.A. in Business from Jacksonville University.

3. I have served as President of Brookhaven Rail since August 2013, and was previously Chief Operating Office of US Rail New York. As Chief Operating Officer of US Rail New York, and now as President of Brookhaven Rail, I have been and continue to be responsible for rail carrier operations at BRT. Those duties include implementation of the August 2013 Spill Prevention Control and Countermeasure Plan (“SPCC Plan”) prepared by P.W. Grosser Consulting, Inc. (“P.W. Grosser”). For purposes of the SPCC Plan, I am also an authorized agent and signatory for BRT.

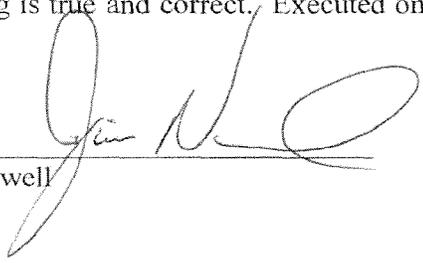
4. I worked with P.W. Grosser staff on development of BRT’s SPCC Plan, and Ms. Theresa Colabella of P.W. Grosser is the Professional Engineer of record for BRT’s SPCC Plan. I understand that a copy of the SPCC Plan will be provided with a declaration by Ms. Colabella. I approved the SPCC Plan on behalf of Brookhaven Rail and BRT, and stated management’s commitment to implementing the SPCC measures, SPCC Plan at 8. Under the SPCC Plan, I am the designated responsible person at BRT. *Id.*

5. I have been advised by P.W. Grosser that BRT's SPCC Plan complies with U.S. Environmental Protection Agency ("EPA") regulation 40 C.F.R. § 112.7—General requirements for Spill Prevention, Control, and Countermeasures Plans, EPA regulation 40 C.F.R. § 112.8—Spill prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities), and NYSDEC regulation 6 NYCRR 374-2.6 – Standards for Used Oil Processors and Refiners. Additionally, we and P.W. Grosser are discussing with Suffolk County staff the extent to which the Suffolk County Sanitary Code Article 12 requirements are applicable to BRT operations (principally bio-diesel and used oil transfers).

6. Brookhaven Rail and BRT have implemented the requirements of the SPCC Plan, including the SPCC training required by its SPCC Plan, with the next annual training to be conducted by P.W. Grosser scheduled for September 29, 2014. On September 29 P.W. Grosser will also be surveying our current operations and site conditions, and will update the SPCC Plan as needed. BRT recently acquired additional SPCC safety equipment, Exhibit (a).

7. I am pleased to report that neither Brookhaven Rail nor BRT has experienced a toxic or hazardous waste spill or incident of similar nature.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 29 September 2014.

  
\_\_\_\_\_  
Jim Newell

**EXHIBIT 4(a)**



**EXHIBIT 5**



September 15, 2010

Astor F. Boozer  
State Conservationist  
United States Department of Agriculture  
Natural Resources Conservation Services  
441 South Salinas Street  
Suite 354  
Syracuse, New York 13202-2450

Re: U S Rail Corporation-Construction and Operation Exemption-Brookhaven Rail Terminal-  
STB Docket No. FD 35141

Dear Mr. Boozer:

Confirming my telephone message to you of September 13, 2010, I am the legal counsel to the Brookhaven Rail Terminal ("BRT") project. As you may know, on September 9, 2010, the Surface Transportation Board ("STB") authorized the construction and operation of the BRT with the directive, among other environmental mitigation measures, to consult with your offices and consider, in the project's final site plan, NCRS practices to improve the successful establishment, long term survival and future functional value of new plantings at the BRT.

We welcome this opportunity to initiate the contemplated consultation process with NCRS and to consider NCRS recommendations for appropriate vegetation and practices to be used at the BRT. We intend to engage in the near future a landscape architect to finalize the vegetation plan for the project and will advise our architect to consult with you or your staff, as you direct, about the appropriate vegetation selections and ongoing practices which will meet the goals of successful establishment, survival and functionality of new plantings contemplated by the STB and your agency's comments to the STB.

We look forward to working with NCRS in implementing the environmental mitigation measures outlined in the STB's decision.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gerard T. Drumm", is written over a large, stylized circular flourish. Below the signature, the name "Gerard T. Drumm" is printed in a black, sans-serif font.

Gerard T. Drumm

cc: Troy Brady  
Mark Cuthbertson  
Robert Ryback  
James H.M. Savage, Esq.

485 Underhill Boulevard, Suite 103, Syosset, NY 11791  
Tel. (516) 364-4433 Fax (516) 677-1911

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**EXHIBIT 6**

**From:** Weigand, Polly [Polly.Weigand@suffolkcountyny.gov]  
**Sent:** Friday, September 28, 2012 10:39 AM  
**To:** Gerard Drumm (gdrumm-sills@optonline.net)  
**Subject:** Planting recommendations  
**Attachments:** WarmSeasonGrassEstablishmentSpecLongIslandwithForbsSept2012.pdf; Native Plant ResourcesFinal2-2012.pdf; DECL-DeerTongue.pdf; ERSP.pdf; NewEnglandAster.pdf; Panicum virgatum.doc; RoundheadedLespedesa.pdf; Schizachyrium scoparium.pdf; SONUGrayGoldenrod.pdf; sorghastrum nutans.pdf; virginiacreeper.pdf; northeast-plants-for-bees-xerces3.pdf; pollinators\_in\_natural\_areas\_xerces\_society.pdf; pollinator-three-steps\_fact\_sheet2.pdf; roadside-guidelines\_xerces-society1.pdf; SeedingRecommendationsFinalBRT.docx.pdf

Hi Gerry,

Here are the recommendations and supporting documents.

Please let me know if you have any questions.

Cheers! Polly

Polly L. Weigand  
Soil District Technician  
Suffolk County Soil and Water Conservation District  
423 Griffing Ave.  
Riverhead, NY 11901  
(631) 727-2315 x3