NEW YORK STATE OF OPPORTUNITY | Department of Environmental Conservation

# BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

## PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

**Check the appropriate box below based on the nature of the amendment modification requested:**

☑ Amendment to [check one or more boxes below]

- ☑ Add
- ☐ Substitute
- ☐ Remove
- ☐ Change in Name

applicant(s) to the existing Brownfield Cleanup Agreement [*Complete Section I-IV below and Part II*]

Does this proposed amendment involve a transfer of title to all or part of the brownfield site? ☑ Yes ☐ No

If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See http://www.dec.ny.gov/chemical/76250.html

☐ Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]

☐ Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]

☐ **Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY:** Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

☐ Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment:

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***Please refer to the attached instructions for guidance on filling out this application***

| Section I. Existing Application Information | | |
|---|---|---|
| BCP SITE NAME: BICC Cables Site | | BCP SITE NUMBER: C360051 |
| NAME OF CURRENT APPLICANT(S): One Point Street, Inc. | | |
| INDEX NUMBER OF EXISTING AGREEMENT: W310630503 | | DATE OF EXISTING AGREEMENT: 5/18/05 |
| **Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)** | | |
| NAME 734-6 Broadway Mezz LLC | | |
| ADDRESS c/o Extell Development Company, 805 Third Avenue 7th Floor | | |
| CITY/TOWN New York | | ZIP CODE 10022 |
| PHONE 646-964-6302 | FAX | E-MAIL abarnett@extelldev.com |
| Is the requestor authorized to conduct business in New York State (NYS)? ☑ Yes ☐ No<br>• If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation & Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS. | | |
| NAME OF NEW REQUESTOR'S REPRESENTATIVE Abba Barnett, Extell Development Company | | |
| ADDRESS 805 Third Avenue 7th Floor | | |
| CITY/TOWN New York | | ZIP CODE 10022 |
| PHONE 646-964-6302 | FAX | E-MAIL abarnett@extelldev.com |
| NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) | | |
| ADDRESS | | |
| CITY/TOWN | | ZIP CODE |
| PHONE | FAX | E-MAIL |
| NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) Christine Leas, Sive Paget & Riesel, P.C. | | |
| ADDRESS 460 Park Avenue | | |
| CITY/TOWN New York, NY | | ZIP CODE 10022 |
| PHONE 212-421-2150 | FAX 212-421-1891 | E-MAIL CLEAS@SPRLAW.COM |
| Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? ☑ Yes ☐ No | | |
| Describe Requestor's Relationship to Existing Applicant:<br>Requestor will be purchasing site from existing Applicant. | | |

| **Section III. Current Property Owner/Operator Information (only include if new owner/operator or new existing owner/operator information is provided, and highlight new information)** | | |
|---|---|---|
| OWNER'S NAME (if different from requestor) One Point Street, Inc. | | |
| ADDRESS 159 Alexander Street PO Box 863 | | |
| CITY/TOWN Yonkers, New York | | ZIP CODE 10701 |
| PHONE 914-954-8300 | FAX | E-MAIL ronshem59@icloud.com |
| OPERATOR'S NAME (if different from requestor or owner) | | |
| ADDRESS | | |
| CITY/TOWN | | ZIP CODE |
| PHONE | FAX | E-MAIL |

**Section IV. Eligibility Information for New Requestor (Please refer to ECL § 27-1407 for more detail)**

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

1. Are any enforcement actions pending against the requestor regarding this site? ☐ Yes ☑ No

2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site? ☐ Yes ☑ No

3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? ☐ Yes ☑ No
   Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.

4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the subject law; ii) any order or determination; iii) any regulation implementing ECL Article 27 Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment. ☐ Yes ☑ No

5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, Department assigned site number, the reason for denial, and other relevant information. ☐ Yes ☑ No

6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants? ☐ Yes ☑ No

7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state? ☐ Yes ☑ No

8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department? ☐ Yes ☑ No

9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application? ☐ Yes ☑ No

10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order? ☐ Yes ☑ No

11. Have all known bulk storage tanks on-site been registered with DEC? ☐ Yes ☑ No

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

| ☐ PARTICIPANT | ☑ VOLUNTEER |
|---|---|
| A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination. | A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.<br><br>NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.<br><br>**If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.** |

Requestor's Relationship to Property (check one):

☐ Prior Owner ☐ Current Owner ☑ Potential /Future Purchaser ☐ Other_____

If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted**. Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site Is this proof attached? ☑ Yes ☐ No

**Note: a purchase contract does not suffice as proof of access.**

**Section V. Property description and description of changes/additions/reductions (if applicable)**

ADDRESS

CITY/TOWN ZIP CODE

TAX BLOCK AND LOT (TBL) (in existing agreement )

| Parcel Address | Parcel No. | Section No. | Block No. | Lot No. | Acreage |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |

Check appropriate boxes below:

☐ Changes to metes and bounds description or TBL correction

☐ Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

Approximate acreage added:_____

ADDITIONAL PARCELS:

| Parcel Address | Parcel No. | Section No. | Block No. | Lot No. | Acreage |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |

☐ Reduction of property

Approximate acreage removed: _____

PARCELS REMOVED:

| Parcel Address | Parcel No. | Section No. | Block No. | Lot No. | Acreage |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |

If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, or acceptable site map to this application.

## Supplement to the Application To Amend Brownfield Cleanup Agreement And Amendment - Questions for Sites Seeking Tangible Property Credits in New York City ONLY.

| | |
|---|---|
| Property is in Bronx, Kings, New York, Queens, or Richmond counties. | ☐ Yes ☑ No |
| Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. | ☐ Yes ☐ No |
| **Please answer questions below and provide documentation necessary to support answers.** | |
| 1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see DEC's website for more information. | ☐ Yes ☐ No |
| 2. Is the property upside down as defined below? | ☐ Yes ☐ No |

**From ECL 27-1405(31):**

"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.

3. Is the project an affordable housing project as defined below? ☐ Yes ☐ No

**From 6 NYCRR 375- 3.2(a) as of July 1, 2015:**

(a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.

(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, that defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' households annual gross income.

(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, that sets affordable units aside for tenants at a defined maximum percentage of the area median income.

(3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.

## PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

| **Existing Agreement Information** | |
|---|---|
| BCP SITE NAME: BICC Cables Site | BCP SITE NUMBER: C360051 |
| NAME OF CURRENT APPLICANT(S): 734-6 Broadway Mezz LLC | |
| INDEX NUMBER OF EXISTING AGREEMENT: W31063-05-03 | |
| EFFECTIVE DATE OF EXISTING AGREEMENT: May 18, 2005 | |

Declaration of Amendment:

By the Requestor(s) and/or Applicant(s) signatures below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from any obligations held under the Agreement or those same laws.

**Statement of Certification and Signatures: New Requestor(s) (if applicable)**

(Individual)

I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am (title Authorized Signatory) of (entity 734-6 Broadway Mezz LLC); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

_____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 09/08/15 Signature: _____

Print Name: ABBA BARNETT

**SUBMITTAL INFORMATION:**

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

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

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**FOR DEPARTMENT USE ONLY**

**BCP SITE T&A CODE:**_____ **LEAD OFFICE:**_____

**PROJECT MANAGER:**_____

**Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)**

(Individual)

I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date:_____ Signature:_____

Print Name:_____

(Entity)

I hereby affirm that I am PRESIDENT (title) of One Point Street, Inc. (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. _____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 8-19-2015 Signature: _____

Print Name: Ron Shemesh

**REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

| | |
|---|---|
| ☐ PARTICIPANT<br>A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination. | ☐ VOLUNTEER<br>A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination. |

**Effective Date of the Original Agreement:**

**Signature by the Department:**

DATED: OCT 16 2015

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:_____

Robert W. Schick, P.E., Director
Division of Environmental Remediation

**BROWNFIELD CLEANUP PROGRAM (BCP)**
**INSTRUCTIONS FOR COMPLETING A BCP AMENDMENT APPLICATION**

This form must be used to add a party, modify a property description, or reduce/expand property boundaries for an existing BCP Agreement and/or Application. **NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.**

**SECTION II NEW REQUESTOR INFORMATION**

Requestor Name

Provide the name of the person(s)/entity requesting participation in the BCP. (If more than one, attach additional sheets with requested information. If an LLC, the members/owners names need to be provided on a separate attachment). The requestor is the person or entity seeking DEC review and approval of the remedial program.

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

Requestor Address, etc.

Provide the requestor's mailing address, telephone number; fax number and e-mail address.

Representative Name, Address, etc.

Provide information for the requestor's authorized representative. This is the person to whom all correspondence, notices, etc will be sent, and who will be listed as the contact person in the BCA. Invoices will be sent to the representative unless another contact name and address is provided with the application.

Consultant Name, Address, etc.

Provide information for the requestor's consultant.

Attorney Name, Address, etc.

Provide information for the requestor's attorney.

**SECTION III CURRENT PROPERTY OWNER/OPERATOR INFORMATION - only include if new owner/operator or new existing owner/operator information is provided, and highlight new information in form.**

Owner Name, Address, etc.

Provide information for the new owner of the property. List all new parties holding an interest in the property.

Operator Name, Address, etc.

Provide information for the new operator (if different from the new requestor or owner).

**SECTION IV NEW REQUESTOR ELIGIBILITY INFORMATION**

As a separate attachment, provide complete and detailed information in response to any eligibility questions answered in the affirmative. It is permissible to reference specific sections of existing property reports; however, it is requested that such information be summarized. For properties with multiple addresses or tax parcels, please include this information for each address or tax parcel.

**SECTION V PROPERTY DESCRIPTION AND DESCRIPTION OF CHANGES / ADDITIONS / REDUCTIONS (IF APPLICABLE)**

NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.

Property Address

Provide a street address, city/town, and zip code. For properties with multiple addresses, provide information for all.

Tax Parcel Information

Provide the tax parcel/section/block/lot information. If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, and/or acceptable site map to this application. Tax map information may be obtained from the tax assessor's office for all tax parcels that are included in the property boundaries. Attach a county tax map with identifier numbers, along with any figures needed to show the location and boundaries of the property. Include a USGS 7.5 minute quad map on which the property appears.

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through September 18, 2015.

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Selected Entity Name: 734-6 BROADWAY MEZZ LLC
Selected Entity Status Information

**Current Entity Name:** 734-6 BROADWAY MEZZ LLC
**DOS ID #:** 4814878
**Initial DOS Filing Date:** SEPTEMBER 03, 2015
**County:** NEW YORK
**Jurisdiction:** DELAWARE
**Entity Type:** FOREIGN LIMITED LIABILITY COMPANY
**Current Entity Status:** ACTIVE

Selected Entity Address Information

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**
C/O CT CORPORATION SYSTEM
111 EIGHTH AVENUE
NEW YORK, NEW YORK, 10011

**Registered Agent**

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this

information is not recorded and only available by viewing the certificate.

***Stock Information**

| # of Shares | Type of Stock | $ Value per Share |
|---|---|---|
| No Information Available | | |

*Stock information is applicable to domestic business corporations.

**Name History**

| Filing Date | Name Type | Entity Name |
|---|---|---|
| SEP 03, 2015 | Actual | 734-6 BROADWAY MEZZ LLC |

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

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

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**WRITTEN CONSENT OF THE MANAGER**

The undersigned, being the manager of 734-6 Broadway Mezz LLC, a Delaware limited liability company (the "Company"), does hereby resolve that:

1. Abba Barnett is a representative of the Company and has the full power and authority on behalf of the Company, as an Authorized Signatory, to:

    a. Execute documents in connection with the application of the Company for participation in the New York State Brownfield Cleanup Program (the "BCP");

    b. Enter into agreements with the New York State Department of Environmental Conservation (the "DEC") in connection with the Company's participation in the BCP;

    c. Execute any and all documents in connection with the Company's participation in the BCP, including but not limited to applications, agreements, easements and tax returns;

    d. Take any action necessary to the furtherance of the Company's participation in the BCP, including but not limited to conducting negotiations on behalf of the Company.

2. The authority hereby conferred shall be deemed retroactive, and any and all acts authorized herein which were performed prior to the passage of this consent are hereby approved and ratified. The authority hereby conferred shall continue in full force and effect until the DEC shall have received notice, in writing, of the revocation hereof by a resolution duly adopted by the Manager of the Company. Any such revocation shall be effective only as to actions taken by the Company subsequent to DEC's receipt of such notice.

3. The undersigned hereby represents and warrants that (i) the undersigned is the Manager of the Company; and (ii) the consent of the Manager is sufficient to authorize the Company to take the aforementioned actions.

Gary Barnett, Manager

Dated: 09/08/15
New York, NY

# One Point Street, Inc.

159 Alexander Street
Yonkers, New York 10701

August 19, 2015

Abba Barnett
734-6 Broadway Mezz LLC
c/o Extell Development Company
805 Third Avenue, 7th floor
New York, NY 10022

Re: Access to Property for Purposes of BCP

Dear Mr. Barnett:

We are writing this letter to follow up on the recent conversations relating to your application to the NYS Brownfield Cleanup Program for the BICC Cables Site in Yonkers, NY.

One Point Street, Inc. as current fee owner of the Site, hereby grants 734-6 Broadway Mezz LLC access to the property to perform any and all activities necessary to implement the Brownfield Cleanup Program in the event that 734-6 Broadway Mezz LLC enters into a Brownfield Cleanup Agreement with the New York State Department of Environmental Conservation.

This commitment shall become effective upon 734-6 Broadway Mezz LLC signing as indicated below.

Very truly yours,

One Point Street, Inc.

By: _____
Ron Shemesh

AGREED AND ACCEPTED:
734-6 Broadway Mezz LLC

By: _____
Abba Barnett

**Application to Amend BCA for BICC Cables Site # C360051**

**ADDENDUM**

**Section II. New Requestor Information**

Other than its current status as a party to a contract for the purchase of the site, Requestor has never had any connection to the site, the Existing Applicant, nor to prior owners or operators of the site. Please note that a Notice of Change of Use was also submitted to the DEC on September 18, 2015 describing the planned transfer of title.

**Section IV. Eligibility Information**

The Requestor meets the eligibility criteria of the BCP as a Volunteer. As indicated in Section II, the Requestor does not currently own the site, and has never had any connection to the site other than as a contract vendee, nor does the Requestor have any current or past connection to the existing Applicant, nor to prior owners or operators of the site. Upon amendment of the BCA to add Requestor as a Volunteer, Requestor will ensure that site conditions are managed with appropriate care, pursuant to the Department-approved ROD and applicable Department-approved work plans.