



Department of  
Environmental  
Conservation

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

### PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

#### 1. Check the appropriate box(es) below based on the nature of the amendment modification requested:

☐ Amendment to modify the existing BCA: [check one or more boxes below]

- ☐ Add applicant(s)
- ☐ Substitute applicant(s)
- ☐ Remove applicant(s)
- ☐ Change in Name of applicant(s)

☐ Amendment to reflect a transfer of title to all or part of the brownfield site

1a. A copy of the recorded deed must be provided. Is this attached? ☐ Yes ☐ No

1b. ☐ Change in ownership ☐ Additional owner (such as a beneficial owner)

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)

#### 2. Required: Please provide a brief narrative on the nature of the amendment:

Amend the BCA to add Lot 4 to the as the subsurface soil profile and analytical results noted for Lot 4 are consistent with those observed on adjacent Lots 5 and 6 already accepted into the BCP. The redevelopment site will be remediated to achieve a Track 1 cleanup, which would require removal of all soil and fill materials exceeding UUSCOs down to bedrock. Based on the attached study results and figures, and the fact that the subsurface conditions are consistent with those observed on Lots 5 and 6, it is anticipated that Lot 4 will have further exceedances of lead and mercury.

A similar application was submitted to the Department on September 16, 2020, which was denied by the Department by letter dated November 25, 2020. Since such time, additional sampling has been conducted and new data obtained. This application is based upon this updated data which supports the eligibility of Lot 4 for inclusion into the BCP.

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

**\*Submission of a full BCP application will be required should this application be determined to be a major amendment. If the amendment involves a non-insignificant change in acreage, applicants are encouraged to consult with the DEC project team prior to submitting this application.\***

**Section I. Current Agreement Information**

BCP SITE NAME: 28 South Division Street

BCP SITE NUMBER: C360198

NAME OF CURRENT APPLICANT(S): 28 South Division Owner LLC

INDEX NUMBER OF AGREEMENT: C360198-06-20 DATE OF ORIGINAL AGREEMENT: 6-4-20

**Section II. New Requestor Information** (complete only if adding new requestor or name has changed)

NAME

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

1. Is the requestor authorized to conduct business in New York State (NYS)? ☐ Yes ☐ No

- If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (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

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

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)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

2. 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

3. Describe Requestor's Relationship to 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)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

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. Are there any unregistered bulk storage tanks on-site which require registration? ☐ 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

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

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

NOTE: By checking this box, 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.

**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 28 South Division Street

CITY/TOWN New Rochelle, NY

ZIP CODE 10805

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

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
28 South Division Street		2	414	0008	.811
44 South Division Street		2	414	0005	.08
42 South Division Street		2	414	0006	.095

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: .08

**ADDITIONAL PARCELS:**

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
48 South Division Street		2	414	0004	.08

☐

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.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Please answer questions below and provide documentation necessary to support answers.</b>	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see <a href="#">DEC's website</a> for more information.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><b>From ECL 27-1405(31):</b></p> <p>"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.</p>	
3. Is the project an affordable housing project as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>From 6 NYCRR 375- 3.2(a) as of August 12, 2016:</p> <p>(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.</p> <p>(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, which 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.</p> <p>(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, which sets affordable units aside for home owners at a defined maximum percentage of the area median income.</p> <p>(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.</p>	

## PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

<b>Existing Agreement Information</b>	
BCP SITE NAME: 28 South Division Street	BCP SITE NUMBER: C360198
NAME OF CURRENT APPLICANT(S): 28 South Division Owner LLC	
INDEX NUMBER OF EXISTING AGREEMENT: C360198-06-20	
EFFECTIVE DATE OF EXISTING AGREEMENT: 06-04-2020	

### 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 \_\_\_\_\_) of (entity \_\_\_\_\_); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; 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: \_\_\_\_\_ Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_



**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: 2/12/2021 Signature: \_\_\_\_\_

Print Name: Todd Rechler

(Entity) 28 South Division Owner LLC

I hereby affirm that I am Authorized Person (title) of 28 South Division Owner LLC (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: 2/12/2021 Signature:  \_\_\_\_\_

Print Name: Todd Rechler, Authorized Person

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

Status of Agreement:

<input type="checkbox"/> <b>PARTICIPANT</b> 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.	<input checked="" type="checkbox"/> <b>VOLUNTEER</b> 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.
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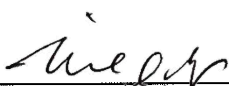
**Effective Date of the Original Agreement:** June 4, 2020

**Signature by the Department:**

DATED: March 12, 2021

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

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



**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:** \_\_\_\_\_

A subsurface investigation was conducted between May 2019 and January 2021, and included the following:

- A geophysical survey to investigate the potential presence of underground storage tanks (USTs) and buried aboveground storage tanks (ASTs) from past on-site uses.
- Collection and laboratory analysis of 40 soil samples from 18 locations via soil borings and test pits.
- Installation of a probe with the collection of 1 soil vapor sample for laboratory analysis.

The sample locations are provided on Figure 2, and the results of the analysis are provided in Figures 4, 5 and 6.

### **Summary of Environmental Findings**

1. The stratigraphy, from the surface down, consisted of fill materials comprising sand and silt with varying amounts of gravel, cobbles, plant roots, asphalt concrete, brick, wood, ceramic (fill) to approximately 11 feet below ground surface (bgs). The fill was underlain by brown sand with trace amounts of silt, clay, gravel, sand weathered bedrock to the terminus of the borings/test pits on presumed bedrock.
2. Concentration of one volatile organic compound (VOC), acetone, were detected at a concentration of 0.063 parts per million (ppm), above its 6 New York Codes, Rules, and Regulations (NYCRR) NYSDEC Part 375 Unrestricted Use Soil Cleanup Objective (UUSCO) of 0.05 ppm.
3. Metals were detected in one or more of the soil samples analyzed with three metals [lead, mercury, and zinc] exceeding the UUSCOs in both the shallow and the deeper sampling intervals. In addition, mercury was detected at a concentration of 1.4 ppm and exceeded its Restricted Residential Soil Cleanup Objective (RRSCO) of 0.81 ppm in one sample; and lead was detected above its RRSCO of 400 ppm in two samples.
4. Concentrations of polycyclic aromatic hydrocarbons (PAHs), a class of semi-volatile organic compounds (SVOCs), were detected above the RRSCOs in three samples.
5. The pesticides 4,4'-DDT and 4,4'-DDE were detected in multiple samples and at concentrations exceeding their respective UUSCOs.
6. The PFAS compounds, perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), were detected in multiple samples and at concentrations exceeding their respective unrestricted use guidance values.
7. VOCs, including petroleum-related compounds, were detected in the soil vapor sample at concentrations of up to 460 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ). Solvent-related compounds were detected, including PCE, at concentrations of up to  $2.2 \mu\text{g}/\text{m}^3$ .

### **Conclusions**

The subsurface soil profile and soil sample analytical results noted for Lot 4 are consistent with those observed on adjacent Lots 5 and 6, already accepted into the BCP. PAHs were detected in three samples at concentrations exceeding their respective RRSCOs. Mercury (maximum of 1.4 ppm) was detected in one of the samples and lead (maximum of 631 ppm) was detected in two samples at concentrations exceeding their respective RRSCOs. Metals (lead, zinc, nickel, mercury, chromium, and copper) were detected in multiple soil samples collected from throughout the Lot 4 property at concentrations exceeding the UUSCOs, including in soil down to bedrock. Similarly, lead and mercury concentrations were found to exceed the RRSCOs in soil samples analyzed from Lots 5 and 6.

In addition to these soil conditions, petroleum-related VOCs were detected by the soil vapor testing, including BTEX compounds, suggesting that the site may be contaminated with petroleum in untested areas of Lot 4.

The elevated metals and compounds detected may be attributed to former on-site uses (e.g., home heating oil use) and the quality of the fill at the Site, which is of unknown origin. The redevelopment site will be remediated to achieve a Track 1 Cleanup, which would require removal of all soil and fill materials exceeding the UUSCOs down to bedrock. Based on this study, and the fact that subsurface conditions (qualitatively and quantitatively) are consistent with those observed for Lots 5 and 6, further RRSCO exceedances of PAHs, lead and mercury, and potentially other metals and compounds, are anticipated on Lot 4.



Map Source:  
giswww.westchestergov.com (GIS database)

# **LEGEND**

- PROPOSED BCP PROJECT SITE BOUNDARY
- LOT BOUNDARY
- LOT 4 ADDITION



440 Park Avenue South, New York, NY 10016

**28 South Division Street**  
New Rochelle, New York

**PROPOSED BCP SITE**

DATE <b>2/28/2021</b>
PROJECT NO. <b>190188</b>
FIGURE <b>1</b>