



New York State Department of Environmental Conservation

Brownfield Cleanup Program

Citizen Participation Plan for 1440 Empire Boulevard

Site #C828135

1440 Empire Boulevard
Penfield
Monroe County, New York

October 2009

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Note: The information presented in this Citizen Participation Plan was current as of the date of its approval by the New York State Department of Environmental Conservation. Portions of this Citizen Participation Plan may be revised during the brownfield site’s remedial process.

Applicant: 1440 Empire Boulevard Development Corp. (“Applicant”)
Site Name: 1440 Empire Boulevard (“site”)
Site Address: 1440 Empire Boulevard, Penfield, New York
Site County: Monroe
Site Number: C828135

1. WHAT IS NEW YORK’S BROWNFIELD CLEANUP PROGRAM?

New York’s Brownfield Cleanup Program (BCP) is designed to encourage the private sector to investigate, remediate (clean up) and redevelop brownfields. A brownfield is any real property where redevelopment or reuse may be complicated by the presence or potential presence of a contaminant. A brownfield typically is a former industrial or commercial property where operations may have resulted in environmental contamination. A brownfield can pose environmental, legal and financial burdens on a community. If the brownfield is not addressed, it can reduce property values in the area and affect economic development of nearby properties.

The BCP is administered by the New York State Department of Environmental Conservation (NYSDEC) which oversees Applicants that conduct brownfield site remedial activities.¹ An Applicant is a person whose request to participate in the BCP has been accepted by NYSDEC. The BCP contains investigation and remediation (cleanup) requirements, ensuring that cleanups protect public health and the environment. When NYSDEC certifies that these requirements have been met, the property can be reused or redeveloped for the intended use.

For more information about the BCP, go online at: www.dec.state.ny.us/website/der/bcp .

2. CITIZEN PARTICIPATION PLAN OVERVIEW

This Citizen Participation (CP) Plan provides members of the affected and interested public with information about how NYSDEC will inform and involve them during the investigation and remediation of the site identified above. The public information and involvement program will be carried out with assistance, as appropriate, from the Applicant.

Appendix A contains a map identifying the location of the site.

Project Contacts

¹ “Remedial activities”, “remedial action”, and “remediation” are defined as all activities or actions undertaken to eliminate, remove, treat, abate, control, manage, or monitor contaminants at or coming from a brownfield site.

Appendix B identifies NYSDEC project contact(s) to whom the public should address questions or request information about the site's remedial program. The public's suggestions about this CP Plan and the CP program for the site are always welcome. Interested people are encouraged to share their ideas and suggestions with the project contacts at any time.

Document Repositories

The locations of the site's document repositories also are identified in Appendix B. The document repositories provide convenient access to important project documents for public review and comment.

Site Contact List

Appendix C contains the brownfield site contact list. This list has been developed to keep the community informed about, and involved in, the site's investigation and remediation process. The brownfield site contact list will be used periodically to distribute fact sheets that provide updates about the status of the project. These will include notifications of upcoming remedial activities at the site (such as fieldwork), as well as availability of project documents and announcements about public comment periods.

The brownfield site contact list includes, at a minimum:

- chief executive officer and official(s) principally involved with relevant zoning and planning matters of each county, city, town and village in which the site is located;
- residents, owners, and occupants of the site and properties adjacent to the site;
- the public water supplier which services the area in which the site is located;
- any person who has requested to be placed on the site contact list;
- the administrator of any school or day care facility located on or near the site for purposes of posting and/or dissemination of information at the facility;
- document repositories.

Where the site or adjacent real property contains multiple dwelling units, the Applicant will work with NYSDEC to develop an alternative method for providing such notice in lieu of mailing to each individual. For example, the owner of such a property that contains multiple dwellings may be requested to prominently display fact sheets and notices required to be developed during the site's remedial process. This procedure would substitute for the mailing of such notices and fact sheets, especially at locations where renters, tenants and other residents may number in the hundreds or thousands, making the mailing of such notices impractical.

The brownfield site contact list will be reviewed periodically and updated as appropriate. Individuals and organizations will be added to the site contact list upon request. Such requests should be submitted to the NYSDEC project contact(s) identified in Appendix B. Other additions to the brownfield site contact list may be made on a site-specific basis at the discretion of the NYSDEC project manager, in consultation with other NYSDEC staff as appropriate.

CP Activities

Appendix D identifies the CP activities, at a minimum, that have been and will be conducted during the site's remedial program. The flowchart in Appendix E shows how these CP activities integrate with the site remedial process. The public is informed about these CP activities through fact sheets and notices developed at significant points in the site's remedial process.

- **Notices and fact sheets** help the interested and affected public to understand contamination issues related to a brownfield site, and the nature and progress of efforts to investigate and remediate a brownfield site.
- **Public forums, comment periods and contact with project managers** provide opportunities for the public to contribute information, opinions and perspectives that have potential to influence decisions about a brownfield site's investigation and remediation.

The public is encouraged to contact project staff at any time during the site's remedial process with questions, comments, or requests for information about the remedial program.

This CP Plan may be revised due to changes in major issues of public concern identified in Section 6 or in the nature and scope of remedial activities. Modifications may include additions to the brownfield site contact list and changes in planned citizen participation activities.

3. SITE INFORMATION

Site Description

- **location** – 1440 Empire Boulevard, Town of Penfield, Monroe County
- **setting** –Suburban waterfront
- **site size** – 4.4 acres
- **adjacent properties** –residential and commercial properties, including a restaurant, boat storage facility, and a car sales and repair shop.

Site History

- The site is currently vacant waterfront property. A portion of the parcel was formerly a disposal area for construction and demolition debris (C&D).
- Elevated levels of petroleum products and the polychlorinated biphenyl (PCB) “Aroclor 1254” were identified in the fill soils on the western portion of the subject site.

Environmental History/Site environmental investigations:

Sear Brown 2001

A Phase I Environmental Site Assessment and a Phase II Environmental Test-Pit Program were performed on the Site by Sear-Brown in 2000 and 2001. At the time that Sear-Brown conducted its work, the acreage of the property totaled about 27 acres. The subject of this BCP is an approximately 4.4-acre parcel. Therefore, some of Sear-Brown's findings may not apply to the Site as it is defined for this Application.

The Sear-Brown Phase I ESA findings include the following:

- the presence of empty 55-gallon drums in various areas of the site which could have leaked or spilled;
- construction debris on the site including asphalt, cement blocks, PVC pipes, metal, and concrete as a result of the former operation of the site for C&D debris disposal;
- the presence of other fill materials including municipal solid waste and ash fill;
- the filling, with unknown materials, of formerly excavated areas during the operation of the site as a sand pit/quarry;
- the location of regulated wetlands adjacent to the western part of the site as identified by the United States Fish & Wildlife Service and NYSDEC.

In February 2001, Sear-Brown conducted a Phase II Environmental Test-Pit Program and detected the following soil contaminants:

- petroleum-related compounds;
- metals including mercury, zinc, arsenic, cadmium, chromium, copper, lead, and nickel;
- the polychlorinated biphenyl (PCB) Aroclor 1254; and
- combustion ash at various locations.

Passero Associates 2002

Passero Associates conducted a Limited Phase II Environmental Site Assessment on November 20th and 21st, 2002. Ten soil samples, one shallow groundwater sample, and one deeper groundwater sample were collected for laboratory analysis.

Contaminants of concern including petroleum-related compounds and polychlorinated biphenyls (PCBs) were identified in soils determined to be used as fill.

Additional groundwater samples were collected on December 20, 2002 to investigate areas of concern indicated by the results of the November sampling event.

RESULTS

Soils

Petroleum-related compounds and polychlorinated biphenyls (PCBs) were identified in soils determined to be used as fill on the western portion of the site.

4. REMEDIAL PROCESS

Note: See Appendix E for a flowchart of the brownfield site remedial process.

Application

The Applicant has applied for and been accepted into New York's Brownfield Cleanup Program as a Volunteer. This means that the Applicant was not responsible for the disposal or discharge of the contaminants or whose ownership or operation of the site took place after the discharge or disposal of contaminants. The Volunteer must fully characterize the nature and extent of contamination onsite, and must conduct a "qualitative exposure assessment," a process that characterizes the actual or potential exposures of people, fish and wildlife to contaminants on the site and to contamination that has migrated from the site.

The Applicant in its Application proposes that the site will be used for restricted purposes such as multi-use residential (townhomes) or commercial development.

To achieve this goal, the Applicant will conduct remedial activities at the site with oversight provided by NYSDEC. The Brownfield Cleanup Agreement executed by NYSDEC and the Applicant sets forth the responsibilities of each party in conducting a remedial program at the site.

Investigation

If the Applicant conducts a remedial investigation (RI) of the site, it will be performed with NYSDEC oversight. The Applicant must develop a remedial investigation work plan, which is subject to public comment as noted in Appendix D. The goals of the investigation are as follows:

1. Define the nature and extent of contamination in soil, surface water, groundwater and any other impacted media;
2. Identify the source(s) of the contamination;

3. Assess the impact of the contamination on public health and/or the environment; and
4. Provide information to support the development of a Remedial Work Plan to address the contamination, or to support a conclusion that the contamination does not need to be addressed.

The Applicant will prepare an RI Report after it completes the RI. This report will summarize the results of the RI and will include the Applicant's recommendation of whether remediation is needed to address site-related contamination. The RI Report is subject to review and approval by NYSDEC. Before the RI Report is approved, a fact sheet that describes the RI Report will be sent to the site's contact list.

NYSDEC will determine if the site poses a significant threat to public health and/or the environment. If NYSDEC determines that the site is a "significant threat," a qualifying community group may apply for a Technical Assistance Grant (TAG). The purpose of a TAG is to provide funds to the qualifying community group to obtain independent technical assistance. This assistance helps the TAG recipient to interpret and understand existing environmental information about the nature and extent of contamination related to the site and the development/implementation of a remedy.

An eligible community group must certify that its membership represents the interests of the community affected by the site, and that its members' health, economic well-being or enjoyment of the environment may be affected by a release or threatened release of contamination at the eligible site.

For more information about the TAG Program and the availability of TAGs, go online at: www.dec.state.ny.us/website/der/guidance/tag/.

Remedy Selection

After NYSDEC approves the RI Report, the Applicant will be able to develop a Remedial Work Plan if remediation is required. The Remedial Work Plan describes how the Applicant would address the contamination related to the site.

The public will have the opportunity to review and comment on the draft Remedial Work Plan. The site contact list will be sent a fact sheet that describes the draft Remedial Work Plan and announces a 45-day public comment period. NYSDEC will factor this input into its decision to approve, reject or modify the draft Remedial Work Plan.

A public meeting may be held by NYSDEC about the proposed Remedial Work Plan if requested by the affected community and if significant substantive issues are raised about the draft Remedial Work Plan. Please note that, in order to request a public meeting, the health, economic well-being or enjoyment of the environment of those requesting the public meeting must be threatened or potentially threatened by the site. In addition, the request for the public meeting should be made within the first 30 days of the 45-day public comment period for the draft Remedial Work Plan. A public meeting also may be held at the discretion of the NYSDEC project manager in consultation with other NYSDEC staff as appropriate.

Construction

Approval of the Remedial Work Plan by NYSDEC will allow the Applicant to design and construct the alternative selected to remediate the site. The site contact list will receive notification before the start of site remediation. When the Applicant completes remedial activities, it will prepare a final engineering report that certifies that remediation requirements have been achieved or will be achieved within a specific time frame. NYSDEC will review the report to be certain that the remediation is protective of public health and the environment for the intended use of the site. The site contact list will receive a fact sheet that announces the completion of remedial activities and the review of the final engineering report.

Certificate of Completion and Site Management

Once NYSDEC approves the final engineering report, it will issue the Applicant a Certificate of Completion. This Certificate states that remediation goals have been achieved, and relieves the Applicant from future remedial liability, subject to statutory conditions. The Certificate also includes a description of any institutional and engineering controls or monitoring required by the approved remedial work plan. If the Applicant uses institutional controls or engineering controls to achieve remedial objectives, the site contact list will receive a fact sheet that discusses such controls.

An institutional control is a non-physical restriction on use of the brownfield site, such as a deed restriction that would prevent or restrict certain uses of the remediated property. An institutional control may be used when the remedial action leaves some contamination that makes the site suitable for some, but not all uses.

An engineering control is a physical barrier or method to manage contamination, such as a cap or vapor barrier.

Site management will be conducted by the Applicant as required. NYSDEC will provide appropriate oversight. Site management involves the institutional and engineering controls required for the brownfield site. Examples include: operation of a water treatment plant, maintenance of a cap or cover, and monitoring of groundwater quality.

5. CITIZEN PARTICIPATION ACTIVITIES

CP activities that have already occurred and are planned during the investigation and remediation of the site under the BCP are identified in Appendix D: Identification of Citizen Participation Activities. These activities also are identified in the flowchart of the BCP process in Appendix E. NYSDEC will ensure that these CP activities are conducted, with appropriate assistance from the Applicant.

All CP activities are conducted to provide the public with significant information about site findings and planned remedial activities, and some activities announce comment periods and request public input about important draft documents such as the Remedial Work Plan.

All written materials developed for the public will be reviewed and approved by NYSDEC for clarity and accuracy before they are distributed. Notices and fact sheets can be combined at the discretion, and with the approval of, NYSDEC.

6. MAJOR ISSUES OF PUBLIC CONCERN

This section of the CP Plan identifies major issues of public concern, if any, that relate to the site. Additional major issues of public concern may be identified during the site's remedial process.

There are several important issues of concern relative to this BCP:

1. A Bald Eagle nest is located on adjacent property in close proximity to the northern border of the subject site;
2. The shoreline and lands inland from the shore of Irondequoit Bay are a NYSDEC-protected wetland area to the west-northwest of the subject site; and
3. Irondequoit Bay is located just west of the subject site.

Stakeholders in these issues are the Town of Penfield officials (Appendix C), the Irondequoit Bay Coordinating Committee, and users of Irondequoit Bay.

Appendix A – Site Location Maps





Appendix B – Project Contacts and Document Repositories

Project Contacts

For information about the site's remedial program, the public may contact the following project staff:

Mathew P. Gillette, PE
Project Manager
NYSDEC Region 8
Division of Environmental Remediation
6274 E. Avon-Lima Road,
Avon, NY 14414-9519
585-226-5308

Lisa LoMaestro Silvestri
Citizen Participation Specialist
NYSDEC Region 8
6274 E. Avon-Lima Road,
Avon, NY 14414-9519
585-226-5326

For Site Health-Related Questions:

Melissa Menetti
Project Manager
New York State Department of Health
Flanigan Square – Room 300,
547 River Street
Troy, NY 12180-7866
800-458-1158 x 2780

Jeffrey M. Kosmala, PE
Sr. Public Health Engineer
Monroe County Department of Public Health
111 Westfall Rd, Room 938
Rochester, NY 14620
(585) 753-5470

Document Repositories

The document repositories identified below have been established to provide the public with convenient access to important project documents:

Penfield Public Library
1985 Baird Road,
Penfield, NY 14526

Phone: 585-340-8720
Hours: Mon.-Thurs. 10am-9pm; Fri. 10am-6pm; Sat. 10am-5pm; Sun. 1-5pm

NYSDEC Region 8
6274 E. Avon-Lima Road,
Avon, NY 14414-9519

Attn: Mathew Gillette
Phone: 585-226-5308
Hours: Mon. thru Fri. 8:30am-4:45pm
(call for appointment)

Appendix C – Brownfield Site Contact List

NYSDEC will mail fact sheets to the list of interested parties stated below. If you would like to add someone to the list, please contact:

Peter S. Morton, C.P.G.
Passero Associates
100 Liberty Pole Way
Rochester, NY 14604
(585) 325-1000

Chief Executive Officers and Zoning Board Chairpersons

George Wiedemer, Supervisor
Town of Penfield
3100 Atlantic Avenue
Penfield, NY 14526

Doug Fox, Director of Planning
Town of Penfield
3100 Atlantic Avenue
Penfield, NY 14526

Planning Board
Town of Penfield
3100 Atlantic Avenue
Penfield, NY 14526

Harold Morehouse
Director of Building and Zoning
Town of Penfield
3100 Atlantic Avenue
Penfield, NY, 14526

Zoning Board
Town of Penfield
3100 Atlantic Avenue
Penfield, NY, 14526

County Executive Maggie Brooks
Monroe County Administration
110 County Office Building
39 West Main Street
Rochester, NY 14614

Terrence Slaybaugh, Director
Monroe County Dept. of
Planning & Development
8100 City Place
50 West Main St.
Rochester, NY 14614

Local and Elected Officials

The Honorable Eric Massa
1 Grove Street
Suite 101
Pittsford, NY 14534

The Honorable David R. Koon
NYS Assembly
268 Fairport Village Landing
Fairport, NY 14450

The Honorable James Alesi
NYS Senate
220 Packett's Landing
Fairport, NY 14450

The Honorable Kirsten
Gillibrand
United States Senate
Kenneth B. Keating Federal
Office Building
100 State Street
Room 4195
Rochester, NY 14614

The Honorable Charles
Schumer
United States Senate
Kenneth B. Keating Federal
Office Building
100 State Street
Room 3040
Rochester, NY 14614

Wayne Zyra, President
Monroe County Legislature
410 County Office Building
39 W. Main St.
Rochester, NY 14614

Cheryl Dinolfo
Monroe County Clerk
101 County Office Bldg
39 W Main St
Rochester, NY 14614

Louise Hartshorn
Monroe Co EMC
Po Box 92832
111 Westfall Rd
Rochester, NY 14692-8932

Penfield Fire Company
1838 Penfield Rd
Penfield, NY 14526

Sheriff Patrick O'Flynn
Monroe County Sheriff
130 S Plymouth Ave
Rochester, NY 14614

State Agency Officials

Lisa LoMaestro-Silvestri
NYSDEC
6274 E Avon-Lima Rd
Avon, NY 14414-9519

Bart Putzig PE
NYSDEC
6274 E Avon-Lima Rd
Avon, NY 14414

Matthew Gillette, PE
NYSDEC
6274 E Avon-Lima Rd
Avon, NY 14414-9519

Captain Mike VanDurme
NYSDEC
6274 E Avon-Lima Rd
Avon, NY 14414-9519

Melissa Menetti
NYSDOH - BEEI
Flanigan Square - Room 300
547 River Street
Troy, NY 12180-7866

Joseph Hausbeck, Esq.
DEC Project Attorney
270 Michigan Street
Buffalo, NY 14203-2999

Local News Media

News Director
WROC-TV
201 Humboldt Street
Rochester, NY 14610

Assignment Desk
YNN Rochester Channel 9
71 Mount Hope Avenue
Rochester, NY 14620

Assignment Editor
WHEC-TV 10
191 East Avenue
Rochester, NY 14604

Assignment Editor
WOKR-TV 13
P.O. Box 20555
Rochester, NY 14602

News Director
WXXI-TV 21
280 State Street
Rochester, NY 14614

News Director
WUHF FOX 31
191 East Avenue
Rochester, NY 14604

WHAM-AM
P.O. Box 40400
Rochester, NY 14604

WXXI-AM
280 State Street
Rochester, NY 14614

Metro Desk
Democrat & Chronicle
55 Exchange Boulevard
Rochester, NY 14614

Linda Quinlan
Editor
Irondequoit Post
440 Titus Avenue
Rochester, NY 14617

News Editor
City Newspaper
250 North Goodman Street
Rochester, NY 14607

Jennifer Wedow
Assignment Editor
Penfield Post
40 North Avenue
Webster, NY 14580

Public Water Supplier

Monroe County Water
Authority
475 Norris Drive
PO Box 10999
Rochester, NY 14610-0999

Administrators of Schools or Daycare Facilities

Paul Theule, Principal
Rochester Christian School
260 Embury Road
Rochester, NY 14625

Additional Individuals Requesting Information

Citizens Enviromental Coalition
Western NY Office
Attn: Kelly Main-Travers,
33 Central Ave, 3rd floor
Albany, NY 12210

Center for Environmental Info
55 St. Paul St.
Rochester, NY 14604

Mr. Robert Holmes
Hydro Qual, Inc.
1200 Scottsville Rd
Bldg C, Suite 120
Rochester, NY 14624

Appendix D – Identification of Citizen Participation Activities

Required Citizen Participation (CP) Activities	CP Activities Occur at this Point
Application Process: <ul style="list-style-type: none"> • Prepare brownfield site contact list (BSCL) • Establish document repositories • Publish notice in Environmental Notice Bulletin (ENB) announcing receipt of application and 30-day comment period 	<p>At time of preparation of application to participate in BCP.</p> <p>When NYSDEC determines that BCP application is complete. The 30-day comment period begins on date of publication of notice in ENB. End date of comment period is as stated in ENB notice. Therefore, ENB notice, newspaper notice and notice to the BSCL should be provided to the public at the same time.</p>
After Execution of Brownfield Site Cleanup Agreement: <ul style="list-style-type: none"> • Prepare citizen participation (CP) plan 	<p>Draft CP Plan must be submitted within 20 days of entering Brownfield Site Cleanup Agreement. CP Plan must be approved by NYSDEC before distribution.</p>
After Remedial Investigation (RI) Work Plan Received: <ul style="list-style-type: none"> • Mail fact sheet to BSCL about proposed RI activities and announcing 30-day public comment period on draft RI Work Plan 	<p>Before NYSDEC approves RI Work Plan. If RI Work Plan is submitted with application, comment periods will be combined and public notice will include fact sheet. 30-day comment period begins/ends as per dates identified in fact sheet.</p>
After RI Completion: <ul style="list-style-type: none"> • Mail fact sheet to BSCL describing results of RI 	<p>Before NYSDEC approves RI Report.</p>
After Remedial Work Plan (RWP) Received: <ul style="list-style-type: none"> • Mail fact sheet to BSCL about proposed RWP and announcing 45-day comment period • Public meeting by NYSDEC about proposed RWP (if requested by affected community or at discretion of NYSDEC project manager in consultation with other NYSDEC staff as appropriate) 	<p>Before NYSDEC approves RWP. 45-day comment period begins/ends as per dates identified in fact sheet. Public meeting would be held within the 45-day comment period.</p>
After Approval of RWP: <ul style="list-style-type: none"> • Mail fact sheet to BSCL summarizing upcoming remedial construction 	<p>Before the start of remedial construction.</p>
After Remedial Action Completed: <ul style="list-style-type: none"> • Mail fact sheet to BSCL announcing that remedial construction has been completed • Mail fact sheet to BSCL announcing issuance of Certificate of Completion (COC) 	<p>At the time NYSDEC approves Final Engineering Report. These two fact sheets should be combined when possible if there is not a delay in issuance of the COC.</p>

Appendix E – Brownfield Cleanup Program Process

