HARRIS BEACH 3

ATTORNEYS AT LAW

ONE GRIMSBY DRIVE HAMBURG, NEW YORK 14075-3764 (716) 646-5050

RECEIVED

Ms. Kelly Bologna Chief, Site Control Section New York State Dept. of Environmental Conservation Division of Environmental Remediation 625 Broadway Albany, NY 12233 MAY - 7 2004 BUREAU OF TECHNICAL SUPPORT

RE: Brownfield Cleanup Program (BCP) Application of Krog USC Associates I, LLC ("Krog") under New York Environmental Conservation Law § 27-1407:

Dear Ms. Bologna:

May 5, 2004

On behalf of our client, Krog USC Associates I, LLC, ("Krog"), we hereby apply for a determination that Krog is eligible to participate as a volunteer in the Brownfield Cleanup Program under Section 27-1407 of the New York Environmental Conservation Law.

Krog is making this application, attached hereto, for purposes of developing a 275,600 square foot manufacturing facility on 25 acres of land at the Buffalo Lakeside Commerce Park (formerly know as the Union Ship Canal) (the "Site").

By way of background, please note that the Site comprises portions of two parcels (Parcel 1 and Parcel 2) at the Buffalo Lakeside Commerce Park, each of which is subject to the Voluntary Cleanup Program ("VCP") and a Voluntary Cleanup Agreement ("VCA") with Downtown Development, Inc., as the Volunteer thereunder. The site number for Parcel 1 is V00319-9, the VCA index number is B9-0568-99-12(A), and the VCA is attached hereto as Exhibit A. The site number for Parcel 2 is V00435-9, the VCA index number is B9-0568-99-12(B), and this VCA is attached hereto as Exhibit B.

On April 28, 2004, Anthony Quartararo, Esq., of the New York State Department of Environmental Conservation, Superfund and Voluntary Cleanup Bureau, informed us that a BCP agreement is appropriate for this project at the Site. Mr. Quartararo also informed us that because Krog was not an original signatory to the either of the aforementioned VCAs, Krog could not transition into the BCP from the VCP and would need to submit a BCP application.

In support of this application, the following documents are enclosed:

- 1. Fully executed Brownfield Cleanup Program Application Form (the "Application");
- 2. Exhibit A: VCP Agreement: Index #: B9-0568-99-12 (A);
- 3. Exhibit B: VCP Agreement: Index #: B9-0568-99-12 (B);
- 4. Exhibit C: Erie County Tax Map;

ATTORNEYS AT LAW

May 5, 2004 Page 2

- 5. Exhibit D: Metes and Bounds Description of the Site;
- 6. Exhibit E: "Hanna Furnace Site: Characterization of the Former Railroad Yard", June 1999 and Revised October 1999, Malcolm Pirnie, Inc.;
- 7. Exhibit F: "Supplemental Investigation Report: Hanna Furnace Site The Former Railroad Yard Area (Subparcel 1), July 2000 and Revised January 2001, Malcolm Pirnie, Inc.:
- 8. Exhibit G: "Site Investigation Report, Hanna Furnace Parcel 2", June 2002, O'Brien & Gere Engineers, Inc.;
- 9. Exhibit H: "Remedial Action Work Plan, Hanna Furnace Site, The Former Railroad Yard Area (Subparcel 1)", February 2002, Malcolm Pirnie, Inc.;
- 10. Exhibit I, "Remedial Action Work Plan, Hanna Furnace Site: Subparcel 2, Buffalo, New York", November 2002, O'Brien & Gere Engineers, Inc.;
- 11. Exhibit J, "Historical Summary and Archival Photographs, The Hanna Furnace Corporation and the Union Ship Canal Report", November 2002, PanAmerican Consultants, Inc.
- 12. Exhibit K, "Final Generic Environmental Impact statement for the Development of the Union Ship Canal District", January 2002, Ecology and Environment, Inc.

Also enclosed please find a letter from Peter Krog, Manager of Krog, appointing Robert G. Murray as attorney with Harris Beach LLP to represent Krog for any and all purposes with respect to the BCP Application.

Upon review by your office of the foregoing, we request that Krog enter into a Brownfield Cleanup Agreement ("BCA") as soon as practicable so that costs incurred after execution thereof are eligible for purposes of claiming the BCP Brownfield Redevelopment Tax Credit. It is understood that the BCA will supercede and replace the VCA for Parcel 1 and the VCA for Parcel 2 only with respect to the Site.

If you need further information in connection with this application, or are considering a determination inconsistent with the above request, please contact me a1-800-685-1429.

Very truly yours,

Robert G. Murray

Cc: Peter Krog
Shawn Griffin, Esq.
Munesh Patel, Esq.
Ed Daniel, Esq.

Krog USC Associates, I, LLC 4 Centre Drive Orchard Park, NY 14127

May 5, 2004

Ms. Kelly Bologna Chief, Site Control Section New York State Dept. of Environmental Conservation Division of Environmental Remediation 625 Broadway Albany, NY 12233

RE: Brownfield Cleanup Program (BCP) Application of Krog USC Associates I, LLC ("Krog") under Environmental Conservation Law § 27-1407:

Dear Ms. Bologna,

As Manager of Krog USC Associates, I, LLC, (the "Company"), I hereby appoint Robert G. Murray, Esq., as attorney with Harris Beach, LLP, with office located at One Grimsby Drive, Hamburg, NY 17075, to represent the Company for any and all purposes with respect to the Brownfield Cleanup Program application, and as the person withwhom all officials from the New York State Department of Environmental Conservation will communicate with respect to all questions and matters relating to the application.

Mr. Murray can be reached 1-800-685-1429. If you have any questions, please contact me at (716) 667-1234.

Peter Krog

Truly Yours,

Dated this 5th day of May, 2004

Notary Public

HERBERT J. HEIMERL, III
Notary Public, State of New York
Qualified in Erie County
My Commission Expires October 31, 2002 6



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION



BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION ECL ARTICLE 27 / TITLE 14

			10/9/03
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NAME Krog USC Associates	, I, LLC		
ADDRESS 4 Centre Drive			
CITY/TOWN Orchard Park, NY	7	ZIP CODE 14	1.27
PHONE (716) 667-1234	FAX (716) 667	-1258	E-MAIL plkrog@krogcorp.com
NAME OF APPLICANT'S REPRESENTATIVE	Peter L. Kro	g	
ADDRESS 4 Centre Drive			
СІТУЛОWN Orchard Park, N	7	ZIP CODE 14	127
PHONE (716) 667-1234	FAX (716) 667	-1258	E-MAIL plkrog@krogcorp.com
ONE OF THE BOXES BELOW: PARTICIPANT An applicant who either 1) was the owner of the sit of hazardous waste or discharge of petroleum or responsible for the contamination, unless the liabil of ownership, operation of, or involvement with disposal of hazardous waste or discharge of petrol Applicant Relationship to Property (check one):	(2) is otherwise a person lity arises solely as a result the site subsequent to the	solely as a result of ownership, the disposal of hazardous wast NOTE: By checking this bo appropriate care with respect reasonable steps to: i) stop any	x, the applicant certifies that he/she has exercised to the hazardous waste found at the facility by taking continuing discharge, ii) prevent any threatened future at human, environmental, or natural resource exposure
Previous Owner Current Owner	KPotential /Future Pur	chaser	
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OWNER'S NAME (if different from applicant)	Downtown Deve	lopment, Inc.	
ADDRESS 275 Oak Street, Su	ite 150		
CITY/TOWN Buffalo, NY		ZIP CODE 14	203
PHONE (716) 856-6525	FAX (716) 856-	-6754	E-MAIL
OPERATOR'S NAME (if different from applican	nt)		
ADDRESS			
CITY/TOWN		ZIP CODE	
DHONE	TAV		TATATE

A STATE OF THE PARTY OF THE PAR	Shelinologation		
ľ	SITE NAME Buffalo Lakeside Commerce Park		
	SITE ADDRESS CITY/TOWN 7TP CODE		
ŀ	1818 Fuhrman Blvd. Buffalo, NY	14024	
-	COUNTY Erie SITE SIZE (ACRES) 25		
F	LATITUDE N 42 50.027' LONGITUDE W 78 50.579'		
	PLEASE ATTACH A COUNTY TAX MAP WITH IDENTIFIER NUMBERS, ALONG WITH ANY FIGURES NEEDED TO SHOW THE BOUNDARIES OF THE SITE. ALSO INCLUDE A USGS 7.5 MINUTE QUAD MAP IN WHICH THE SITE IS LOCATED. *	LOCATIO	N AND
	 DO THE SITE BOUNDARIES CORRESPOND TO TAX MAP METES AND BOUNDS? ** IF NO, PLEASE ATTACH A METES AND BOUNDS DESCRIPTION OF THE SITE. 	□YES	∑ K _{NO}
	2. IS THE SITE PART OF A DESIGNATED BROWNFIELD OPPORTUNITY AREA PURSUANT TO GML970-R? IF YES, IDENTIFY AREA (NAME)	□YES	XX _{NO}
	3. IS THE SITE PART OF A DESIGNATED EN-Zone PURSUANT TO TL § 21(b)(6).	□YES	KX _{NO}
L	IF YES, IDENTIFY AREA (NAME)		
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	1. ARE ANY ENFORCEMENT ACTIONS PENDING AGAINST THE APPLICANT REGARDING THIS SITE?	□YES	M NO
	2. IS THE APPLICANT SUBJECT TO AN OUTSTANDING CLAIM BY THE SPILL FUND FOR THIS SITE?	□YES	XXNO
	3. HAS THE APPLICANT VIOLATED ANY PROVISION OF ECL ARTICLE 27?	□YES	₹ MO
1	医海膜试验 医克里氏 医骨髓 化二甲基磺胺 化二甲基苯酚 异菌 医马克氏试验检尿 医原性皮肤 化二氯化二甲基	□YES	XX _{NO}
1	4. HAS THE APPLICANT BEEN PREVIOUSLY DENIED ENTRY TO THE BCP?		
	5. HAS THE APPLICANT COMMITTED A NEGLIGENT OR INTENTIONALLY TORTIOUS ACT REGARDING HAZARDOUS WASTE OR PETROLEUM?	□YES	™ NO
	6. HAS THE APPLICANT BEEN CONVICTED OF A CRIMINAL OFFENSE THAT INVOLVES A VIOLENT FELONY, FRAUD, BRIBERY, PERJURY, THEFT, OR OFFENSE AGAINST PUBLIC ADMINISTRATION?	□YES	₹ ŽÍNO
	7. HAS THE APPLICANT KNOWINGLY FALSIFIED STATEMENTS OR CONCEALED MATERIAL FACTS IN A MATTER RELATED TO THE DEPARTMENT?	□YES	x⊠NO
	8. HAS THE APPLICANT, BASED ON THE PROVISIONS OF ECL ARTICLE 27-1407 (OR A SIMILAR PROVISION OF FEDERAL OR STATE LAW), 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
	Site de Figio III (2) in memeration (Priesses explications) (1448) (3) 4400 (3) 4400 (3) 4400 (3) 4400 (3) 440		
	1. DOES THE SITE MEET THE DEFINITION OF A BROWNFIELD SITE (REAL PROPERTY, THE REDEVELOPMENT OR REUSE OF WHICH MAY BE COMPLICATED BY THE PRESENCE OR POTENTIAL PRESENCE OF A HAZARDOUS WASTE, PETROLEUM, POLLUTANT, OR CONTAMINANT)?	Elyes	□ _{NO}
	2. IS THE SITE LISTED ON THE NATIONAL PRIORITIES LIST?	□YES	×⊠ _{NO}
	3. IS THE SITE LISTED ON THE NYS REGISTRY OF INACTIVE HAZARDOUS WASTE DISPOSAL SITES? IF YES, PLEASE PROVIDE: SITE #	□YES	ONEK
	4. IS THE SITE SUBJECT TO A PERMIT UNDER ECL ARTICLE 27, TITLE 9, OTHER THAN AN INTERIM STATUS FACILITY?	□YES	NO/Ex
	5. IS THE SITE SUBJECT TO A CLEANUP ORDER UNDER NAVIGATION LAW ARTICLE 12 OR ECL ARTICLE 17 TITLE 10?	□YES	ONEK
	6. IS THE SITE SUBJECT TO A STATE OR FEDERAL ENFORCEMENT ACTION RELATED TO HAZARDOUS WASTE OR PETROLEUM?	□YES	×⊠NO
100	Hopga <i>n</i> agopioi		
ſ	PLEASE ATTACH A DESCRIPTION OF THE PROJECT WHICH INCLUDES THE FOLLOWING COMPONENTS:		
	• PURPOSE AND SCOPE OF THE PROJECT • ESTIMATED PROJECT SCHEDULE See attachment		
	ESTIMATED PROJECT SCHEDULE See accachment		

Page 2 of 4

* Exhibit C contains the Erie County Tax Maps

** Exhibit D contains the Metes adn Bounds description

	Stoley.				
TO THE EXTENT THAT EXISTING FOLLOWING: 1. ENVIRONMENTAL DATA	INFORMATION/STO	UDIES/REPORTS ARE A	VAILABLE TO THE API	PLICANT, PLEASE A	АТТАСН ТНЕ
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2. RESIDENTS, OWNERS, AND O					
3. LOCAL NEWS MEDIA FROM W				See attach	
4. THE PUBLIC WATER SUPPLIES					ment
5. ANY PERSON WHO HAS REQU	A Section of the Control of the Cont				4 a a k a b
6. THE ADMINISTRATOR OF AN				See attachm	
7. THE LOCATION OF A DOCUM	ENT REPOSITORY F	OR THE PROJECT (E.G.,	LOCAL LIBRARY)	Jee accaciiii	
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	and the second	
3. Is the proposed use consistent with applicable brownfield opportunity area designations? (See GML 970-r)		
4. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, other adopted land use plans?	XX 🗖	
5. Are there any Environmental Justice Concerns? (See §27-1415(3)(p)).		
6. Are there any federal or State land use designations relating to this site?	□ k <u>k</u> k □	口
7. Do the population growth patterns and projections support the proposed use?	XIXI 🗆	
8. Is the site accessible to existing infrastructure?	XIXI 🗆	
9. Are there important cultural resources, including federal or state historic or heritage sites or Native American religious sites proximate to the site? See Exhibit J		
10. Are there important federal, state or local natural resources, including waterways, wildlife refuges, wetlands, or critical habitats of endangered or threatened species proximate to the site? See Exhibit K		
11. Are there floodplains proximate to the site?		
12. Are there any institutional controls currently applicable to the site? See Exhibit I	XÄ 🗆	
13. Describe on attachment the proximity to real property currently used for residential use, and to urban, commagricultural, and recreational areas. See Exhibits J and K	nercial, indu	strial,
14. Describe on attachment the potential vulnerability of groundwater to contamination that might migrate from proximity to wellhead protection and groundwater recharge areas. See Exhibits J and K	the site, inc	luding
15. Describe on attachment the geography and geology of the site. See Exhibits J and K		
Section entering (Spilles (16)) (By applicant who is an individual)	. Na poutur anni de Sal Sal sa	
I hereby affirm that information provided on this form and its attachments is true and complete to the best of my belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to se Penal Law.	ction 210.45	
(By an applicant other than an individual) I certify that I am Ware (title) of (entity); that I am authorized by that entity to rapplication; that this application was prepared by me or under my supervision and direction; and that information form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false therein is punishable as a Class A misdemean pursuant to Section 210.45 of the Penal Law Date: 5/5/64 Signature: Print Name: Print Name: Print Name:	nake this on provided	on this
UBMITTAL INFORMATION: our (4) complete copies, one with original signatures, are required. Three (3) of the copies, one with original signatures, 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 One (1) copy must be sent to the DEC regional contact in the regional office covering the county in whi		

PROJECT MANAGER:

BCP SITE T&A CODE:_

Attachment to Brownfield Cleanup Program Application Krog USC Associates I, LLC

Project Description:

Krog USC Associates, I, LLC, ("Krog") intends to develop a 276,500 square foot manufacturing and distribution facility (the "Facility") on approximately 25 acres of land (the "Site") at the Buffalo Lakeside Commerce Park (formerly known as Union Ship Canal). Costs of cleaning up the site, The Facility will be occupied by CertainTeed, a national manufacturing company. Krog is currently under contract to purchase the Site from Downtown Development, Inc. ("DDI") and it is expected that closing will take place within the next few weeks.

Site's Environmental History:

2. Owners: Krog is not related to any prior Site owner. Former Site owners and the current Site owner are listed below in chronological order:

Hanna Furnace Corporation
Shenango Furnace Company
Jordan & Foster Scrap & Recycling Corporation
City of Buffalo, 65 Niagara Square, Buffalo, NY 14202, 716 851-4200
Downtown Development Inc., 617 Main Street, Buffalo, NY 14203, 716 856-6525

3. Operators: Krog is not related to any former Site operator. Former Site operators are listed below in chronological order:

Hanna Furnace Corporation
Shenango Furnace Company
Jordan & Foster Scrap & Recycling Corporation

Contact List Information:

1. Chief Executive Officers and Zoning Board Chairpersons Addresses:

Erie County Executive Joel A. Giambra, Edward A. Rath County Building, 95 Franklin Street, Room 1600, Buffalo NY 14202.

Mayor Anthony Masiello, 65 Niagara Square, Buffalo NY 14202.

James Lewis, III, Chairman, Zoning Board of Appeals, 1801 City Hall, Buffalo NY 14202.

Attachment to Brownfield Cleanup Program Application Krog USC Associates I, LLC

2. Residents, owners, and occupants of the Site and properties adjacent to the Site:

South Buffalo Railroad 1200-C Scottville Road Suite 200 Rochester, NY

CSX Transportation Inc. 500 Water Street Jacksonville, FL 32202

Downtown Development Inc., 617 Main Street Buffalo, NY 14203

Sherland Corporation, Inc. 134 Cranewood Drive West Seneca, NY 14224

3. Local News Media:

The Buffalo News One News Plaza P.O. Box 100 Buffalo, NY 14240

Business First 465 Main St. Buffalo, NY 14203-1793

4. Public Water Supplier:

City of Buffalo Water Division City Hall 65 Niagara Square Buffalo NY 14202

5. Persons who have requested to be placed on the Site contact list:

None

6. <u>Document Repository</u>:

Buffalo & Erie County Public Libraries Dudley Branch Library 2010 South Park Avenue Buffalo, NY 14220