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ATTORNEYS AND COUNSELORS
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April 4, 2006

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BUREAU OF
TECHNICAL SUPPORT

VIA: FEDERAL EXPRESS

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

Re: **257 W. Genesee LLC** - Applications for Amendment to BCP Agreements
- BURA West Site, Buffalo, New York - BCP Site #C915195
- Former Buffalo Service Center Site, Buffalo, New York - BCP Site #C915194
Our File No. 92427.2

Dear Sir or Madam:

Please find enclosed a hard copy as well as a CD copy in pdf format for each of the above-referenced Applications for Amendment to BCP Agreement submitted herewith for each of the following Sites:

- BURA West Site, Buffalo, New York, BCP Site #C915195; and
- Former Buffalo Service Center Site, Buffalo, New York, BCP Site #C915194

Please contact me if you have concerns or issues with this amended application.

Very truly yours,

HARTER, SECREST & EMERY LLP

Craig A. Slater

DIRECT DIAL: 716-845-4223
E-MAIL: CSLATER@HSELAW.COM

CAS:jp

Enclosures

cc: Maura Desmond (DEC-Region 9) w/hard copy encls.
(via 1,2,3 Courier Delivery)
Pat Shea w/encl.
John Gaskin w/encl.
Craig A. Slater, Esq.



NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION



APPLICATION FOR AMENDMENT TO
BROWNFIELD CLEANUP PROGRAM (BCP) AGREEMENT

03/06

Section I. Existing Agreement Information

BCP SITE NAME: FORMER BUFFALO SERVICE CENTER SITE BCP SITE NUMBER: C 915194

NAME OF APPLICANT(S) UNDER EXISTING AGREEMENT: DUKE REALTY HN NEW YORK LLC

INDEX NUMBER OF EXISTING AGREEMENT:: B9-0695-05-06 (A)

Section II. Requestor Information

NAME: 257 W. GENESEE LLC

ADDRESS: 600 EAST 90th STREET, SUITE 100

CITY/TOWN: INDIANAPOLIS, INDIANA

ZIP CODE: 46240

PHONE: 317-808-6309

E-MAIL

pat.shea@dukerealty.com

FAX: 317-808-6702

NAME OF REQUESTOR'S REPRESENTATIVE: ,

PATRICK R. SHEA, DEVELOPMENT SERVICES MANAGER, DUKE REALTY CORPORATION

ADDRESS: 600 EAST 90th STREET, SUITE 100

CITY/TOWN: INDIANAPOLIS, INDIANA

ZIP CODE: 46240

PHONE: 317-808-6309

FAX: 317-808-6702

E-MAIL: pat.shea@dukerealty.com

NAME OF REQUESTOR'S CONSULTANT: QLT BUFFALO LLC

ADDRESS: 11911 FREEDOM DRIVE, SUITE 900

CITY/TOWN: RESTON, VIRGINIA

ZIP CODE: 20190

PHONE: 703-709-6500

FAX: 703-709-8505

E-MAIL: jbulman@escva.com

NAME OF REQUESTOR'S ATTORNEY: CRAIG A. SLATER, HARTER, SECREST & EMERY LLP

ADDRESS: TWELVE FOUNTAIN PLAZA, SUITE 400

CITY/TOWN: BUFFALO, NEW YORK

ZIP CODE: 14202-2293

PHONE: 716-853-1616

FAX: 716-853-1617

E-MAIL: cslater@hselaw.com

THE 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 contamination.

NOTE: By checking this box, the requestor certifies that he/she has exercised appropriate care with respect to the contamination found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; and iii) prevent or limit human, environmental, or natural resource exposure to any previously released contamination.

Section II. Requestor Information (Continued)

Requestor's Relationship to Property (check one):

Prior Owner ☐ Current Owner ☒ Potential/Future Purchaser ☐ Other ☐ _____

If requestor is not the site owner, requestor will have access to the property throughout the BCP project.

Yes No

(Note: proof of site access must be submitted for non-owners)

Describe Requestor's Relationship to Existing Applicant:

257 West Genesee LLC is owned by and a subsidiary of Duke HN New York LLC.

Section III. Current Site Owner/Operator Information (only include 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 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 <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 2. Is the requestor subject to an existing order relating to contamination at the site? | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 4. Has the requestor been determined to have violated any provision of ECL Article 27? | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 5. Has the requestor previously been denied entry to the BCP? | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving contaminants? | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 7. Has the requestor been convicted of a criminal offense that involves a violent felony, fraud, bribery, perjury theft, or offense against public administration? | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 8. Has the requestor knowingly falsified or concealed material facts or knowingly submitted or made use of a false statement in a matter before the Department? | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.8(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 <input type="checkbox"/> No <input checked="" type="checkbox"/> |

Statement of Certification and Signatures: Requestor

(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.

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.

Date: 4/3/06 Signature:  Print Name: John R. GASKIN

Statement of Certification and Signatures: Existing Applicant

(Individual)

I hereby affirm that I am a party to the Brownfield Cleanup Agreement referenced in Section I above, that I am aware of this Application for an Amendment to that Agreement, and that I will execute an Amendment to that Agreement if this Application for an Amendment is approved.

Date: _____ Signature: _____ Print Name: _____

(Entity)

I hereby affirm _____ (entity) which is a party to the Brownfield Cleanup Agreement referenced in Section I above, that I am aware of this Application for an Amendment to that Agreement, and that _____ will execute an Amendment to that Agreement if this Application for an Amendment is approved.

Date: 4/3/06 Signature:  Print Name: John R. GASKIN

SUBMITTAL INFORMATION:

Three (3) complete copies are required.

- I. **Two (2)** copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) on a CD or diskette, 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

- II. **One (1)** hard copy must be sent to the DEC regional contact in the regional office covering the county in which the site is located. Please check DEC's website for the address of our regional offices:
<http://www.dec.state.ny.us/website/der/index.html>

FOR DEPARTMENT USE ONLY

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

PROJECT MANAGER:_____