



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*] **See Attached Schedule A and B**

☒ 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*] **See Attached Schedule A and B**

☐ **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:

SEE ATTACHED ADDENDUM.

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 more than an 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: Site II-13 Tecumseh Phase II Business Park		BCP SITE NUMBER: C915198M	
NAME OF CURRENT APPLICANT(S): Tecumseh Redevelopment Inc. and Buffalo and Erie County Industrial Land Development Corporation			
INDEX NUMBER OF AGREEMENT: C915198M-06-22		DATE OF ORIGINAL AGREEMENT: 07/01/2022	
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)? <input type="checkbox"/> Yes <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No			
3. Describe Requestor's Relationship to Existing Applicant:			

Section III. Current Property Owner/Operator Information (only include if new owner/operator)
Owner below is: ☐ Existing Applicant ☐ New Applicant ☐ Non-Applicant

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.

12. Requestor's Relationship to Property (check one):

☐

Prior Owner

☐

Current Owner

☐

Potential /Future Purchaser

☐

Other

13. 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)

1. Property information on current agreement:

ADDRESS 2303 Hamburg Turnpike

CITY/TOWN Lackawanna

ZIP CODE 14218

TAX BLOCK AND LOT (SBL)

TOTAL ACREAGE OF CURRENT SITE: 1.91

Parcel Address	Section No.	Block No.	Lot No.	Acreage
A portion of 2303 Hamburg Turnpike, Lackawanna, NY 14218	141.11	1	52	1.91

2. Check appropriate boxes below:

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

2a. PARCELS ADDED: See Schedule A

Parcel Address	Section No.	Block No.	Lot No.	Acreage Added by Parcel
A portion of 2303 Hamburg Turnpike, Lackawanna, NY 14218	141	1	52	2.45

Total acreage to be added: 2.45

- ☐ Reduction of property

2b. PARCELS REMOVED:

Parcel Address	Section No.	Block No.	Lot No.	Acreage Removed by Parcel

- ☒ Change to SBL (e.g. merge, subdivision, address change)

Total acreage to be removed: _____

2c. NEW SBL INFORMATION: See Schedule C

Parcel Address	Section No.	Block No.	Lot No.	Acreage
A portion of 2303 Hamburg Turnpike, Lackawanna, NY 14218	141.11	1	52.1	4.36

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.

3. TOTAL REVISED SITE ACREAGE: 4.36

See Schedule B

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
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.	<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>From ECL 27-1405(31):</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

Existing Agreement Information	
BCP SITE NAME: Site II-13 Tecumseh Phase II Business Park	BCP SITE NUMBER: C915198M
NAME OF CURRENT APPLICANT(S): Tecumseh Redevelopment Inc. and Buffalo and Erie County Industrial Land Development Corporation	
INDEX NUMBER OF AGREEMENT: C915198M-06-22	
EFFECTIVE DATE OF ORIGINAL AGREEMENT: 07/01/2022	

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: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am President/CEO (title) of Buffalo and Erie County Industrial Land Development Corporation (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. My _____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 6/21/2022 Signature: 

Print Name: John Cappellino

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Please see the following page for submittal instructions.

NOTE: Applications submitted in fillable format will be rejected.

Status of Agreement:



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.

Effective Date of the Original Agreement: 7/1/2022

Signature by the Department:

DATED: 8/19/2022

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: Andrew Guglielmi

Andrew Guglielmi, Director Division of
Environmental Remediation

Site Code: C915198M

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 ^{Director of Land and Remediation} (title) of ^{Tecumseh} Redevelopment 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. My _____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 7-1-2022 Signature: *Keith Nagel*

Print Name: Keith Nagel

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Please see the following page for submittal instructions.

NOTE: Applications submitted in fillable format will be rejected.

Status of Agreement:

☐ 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.

Effective Date of the Original Agreement: 07/01/2022

Signature by the Department:

DATED: 8/19/2022

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: *Andrew Guglielmi*

Andrew Guglielmi, Director
Division of Environmental Remediation

Site Code: C915198M

SUBMITTAL REQUIREMENTS:

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in final, non-fillable 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

- **NOTE: Applications submitted in fillable format will be rejected.**

FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE: _____ LEAD OFFICE: Region 9, DER
PROJECT MANAGER: Andrew Zwack

HARRIS BEACH PLLC
ATTORNEYS AT LAW

726 EXCHANGE STREET, SUITE 1000
BUFFALO, NY 14210
(716) 200-5050

ROBERT G. MURRAY

DIRECT: (716) 200-5180
FAX: (716) 200-5224
BMURRAY@HARRISBEACH.COM

July 1, 2022

VIA FEDERAL EXPRESS

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

RE: Site II-13 Tecumseh Phase II Business Park
BCP Site Number C915198M
BCP Application to Amend Brownfield Cleanup Agreement and Amendment

Dear Sir or Madam:

Enclosed please find a Brownfield Cleanup Program ("BCP") Application to Amend Brownfield Cleanup Agreement and Amendment for Site II-13 Tecumseh Phase II Business Park, BCP Site No. C915198M (the "BCP First Amendment Application").

This BCP First Amendment Application is being submitted to increase the size of, and modify the boundaries of, the real property identified within the existing Brownfield Cleanup Agreement for Site No. C915198M ("Site II-13"). Specifically, an approximate 2.45+/- acre parcel of real property will be added to Site II-13, said 2.45 acre parcel of real property being removed from BCP Site No. C915198K ("Site II-11"), and said removed parcel being specifically referred to as the "ILDC Retained Parcel" as described within the attached BCP First Amendment Application. Note an amendment to the Site II-11 Brownfield Cleanup Agreement to remove the ILDC Retained Parcel from Site II-11 was submitted to the Department of Environmental Conservation on or about May 24, 2022.

Please be advised that the ILDC Retained Parcel is being removed from Site II-11 and added to Site II-13 for ultimate conveyance to the City of Lackawanna (the "City") to be used/dedicated as a public roadway serving the needs of the Renaissance Commerce Park ("RCP") located within the City. The ILDC Retained Parcel constitutes a component portion of the contemplated roadways to be constructed within the RCP. The ILDC anticipates submitting additional applications to amend Brownfield Cleanup Agreements to similarly amend other BCP sites within the Renaissance Commerce Park to remove a portion of the future roadways from such sites and to add such removed parcels to Site II-13.

This BCP First Amendment Application is also being submitted to confirm that the current Tax Parcel/SBL No. for Site II-13, as amended to include the ILDC Retained Parcel, is 141.11-1-52.1, as further as described within the attached BCP First Amendment Application.

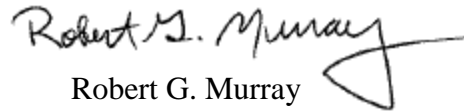
Chief, Site Control Section
July 1, 2022
Page 2

HARRIS BEACH PLLC
ATTORNEYS AT LAW

We have also enclosed a CD-ROM with electronic copies in Portable Document Format.

Please feel free to contact me if you require additional information. Thank you for your attention to this matter.

Very truly yours


Robert G. Murray

RGM/kd
Enclosures

ADDENDUM

Part I Subsection 2:

The underlying purpose of this Amendment is to increase the size of Site II-13 (BCP Site No. C915198M) by adding certain real property to Site II-13 that will be removed from Site No. II-11 (BCP Site No. C915198K). Site II-11 is presently comprised of 10.74 acres of real property. As disclosed in an amendment to the Brownfield Cleanup Agreement for Site II-11 submitted on or about May 24, 2022 to the Department of Environmental Conservation, the Buffalo and Erie County Industrial Land Development Corporation ("ILDC") intends to sell a portion of Site II-11, consisting of 8.29 acres of real property, to The Uniland Partnership of Delaware, L.P. ("UPD"), with the remaining 2.45 acres of Site II-11 to be retained by the ILDC ("ILDC Retained Parcel") for the future development of a road system in the Renaissance Commerce Park in Lackawanna, New York. To effectuate the ILDC's contemplated conveyance of Site II-11 to UPD and to ensure the ILDC Retained Parcel will remain enrolled in the Brownfield Cleanup Program and subject to a Brownfield Cleanup Agreement, the ILDC seeks approval to add the ILDC Retained Parcel to Site II-13. A map of Site II-11 depicting the ILDC Retained Parcel, to be added to Site II-13, is attached hereto as Schedule A. A map depicting the revised Site II-13, including Site II-13 original real property ("Site II-13 Original Property") and the ILDC Retained Parcel, is attached hereto as Schedule B.

This Amendment is also being submitted to confirm the Tax Parcel/SBL No. for the Site II-13 Original Property and the ILDC Retained Parcel ("Sites"). The original Brownfield Cleanup Agreements for both Site II-13 and Site II-11 listed the Sites as being part of the historical Tax Parcel/SBL No. 141.11-1-52 and 141.11-1-1.111, respectively. At the time of conveyance of the Sites from Tecumseh Redevelopment Inc. to the Buffalo and Erie County Industrial Land Development Corporation, the Sites were identified as part of Tax Parcel/SBL No. 141.11-1-48.1. Over time and as a result of conveyances of other land, the Tax Parcel/SBL No. of which the Sites are a part evolved to be Tax Parcel/SBL No. 141.11-1-48.13. As a result of later conveyances of other parcels, the Sites then became part of Tax Parcel/SBL No. 141.11-1-52. As of the date of this Amendment, the Sites are part of Tax Parcel/SBL No. 141.11-1-52.1. The new Tax Parcel/SBL No. for Site II-11 was disclosed in a prior amendment to the Brownfield Cleanup Agreement for Site II-11, filed on or about May 24, 2022 with the New York State Department of Environmental Conservation. Please see the tax map attached hereto Schedule C and made part hereof, which confirms the current Tax Parcel/SBL No. for the Sites.

SCHEDULE A

SCHEDULE B

SCHEDULE C

