



NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION



BROWNFIELD CLEANUP PROGRAM (BCP)
APPLICATION TO AMEND AND AMENDMENT

PART I. BROWNFIELD CLEANUP AMENDMENT APPLICATION

Check the appropriate box below based on the nature of the amendment modification requested:

Amendment to [*check one or more boxes below*]

- Add
- Substitute
- Remove
- Change in Name

an applicant(s) to the existing Brownfield Cleanup Agreement [*Complete Section I-IV below and Part II*]

Does this proposed amendment involve a transfer of title to all or part of the brownfield site? Yes No

If yes, pursuant to 6 NYCRR Part 375-1.11(d), please also submit a Change of Use form.

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*]

Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment:

Shifting of the western boundary of the BCP line due to the presence of a 24-inch diameter City of Buffalo water main. BCP line would shift 2-4 feet to the east.

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

04/2014

Section I. Existing Application Information			
BCP SITE NAME: Webster Block		BCP SITE NUMBER C915270	
NAME OF CURRENT APPLICANT(S) HARBORcenter Development LLC			
INDEX NUMBER OF EXISTING AGREEMENT: C915270-01-13		DATE OF EXISTING AGREEMENT: March 6, 2013	
Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)			
NAME			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
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	
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:			
<input type="checkbox"/> 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.		<input checked="" type="checkbox"/> 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. New Requestor Information continued (if no change to Current Applicant, skip to Section V)

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)

Requester must submit proof that the party signing this Application and Amendment has the authority to bind the Requester. 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.

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 subject to an existing order 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
4. Has the requestor been determined to have violated any provision of ECL Article 27? Yes No
5. Has the requestor previously been denied entry to the BCP? Yes No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving contaminants? Yes No
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 No
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 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

Section V. Property description and description of changes/additions/reductions (if applicable)

ADDRESS 75 Main Street

CITY/TOWN Buffalo

ZIP CODE 14203

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

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
Portion of 75 Main Street, Buffalo NY	111	17	13	2	
Portion of Washington Street, Buffalo NY	No SBL				
total acreage of BCP project:					2.01

Check appropriate boxes below:

- Changes to metes and bounds description or TBL correction
- Addition of property (may require a standard application depending on the size and nature of addition – see attached instructions)

Approximate acreage added: _____

ADDITIONAL PARCELS:

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

- Reduction of property
- Approximate acreage removed: 0.01

Note: Total parcel measures 2.07 acres. BCP area is 2.01 acres (est. March 2013). Requested modification will reduce BCP area to 2.00 acres

PARCELS REMOVED:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
Portion of 75 Main Street, Buffalo New York	111	17	13	2	0.01

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.

PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: Webster Block	BCP SITE NUMBER: C915270
NAME OF CURRENT APPLICANT(S): HARBORcenter Development LLC	
INDEX NUMBER OF EXISTING AGREEMENT: C915270-01-13	
EFFECTIVE DATE OF EXISTING AGREEMENT: March 6, 2013	

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)
<p>(Individual)</p> <p>I acknowledge and agree to the general terms and conditions set forth in DER-32 <i>Brownfield Cleanup Program Applications and Agreements</i>. I also agree that in the event of a conflict between the general terms and conditions of participation set forth in DER-32 and the terms contained in a site-specific BCA, the terms in the BCA shall control. 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.</p> <p>Date: _____ Signature: _____ Print Name: _____</p>
<p>(Entity)</p> <p>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 acknowledge and agree to the general terms and conditions set forth in DER-32 <i>Brownfield Cleanup Program Applications and Agreements</i>. I also agree that in the event of a conflict between the general terms and conditions of participation set forth in DER-32 and the terms contained in a site-specific BCA, the terms in the BCA shall control. 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.</p> <p>Date: _____ Signature: _____ Print Name: _____</p>

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 Authorized Representative (title) of HARBORcenter Development 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. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 8/26/14 Signature: Clifford Benson Print Name: Clifford Benson

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Status of Agreement:

<input type="checkbox"/> 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.	<input type="checkbox"/> 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.
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Effective Date of the Original Agreement:

Effective Date of the Amendment:

Signature by the Department:

DATED:

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By:

Robert W. Schick, P.E., Director
Division of Environmental Remediation

SUBMITTAL INFORMATION:

Three (3) complete copies are required.

- **Two (2) copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) on a CD, 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) paper 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 information on our regional offices.**

FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE: _____

LEAD OFFICE: _____

PROJECT MANAGER: _____

**BROWNFIELD CLEANUP PROGRAM (BCP)
INSTRUCTIONS FOR COMPLETING A BCP APPLICATION AMENDMENT**

This form must be used to add a party, modify a property description, or reduce/expand property boundaries for an existing BCP Agreement and/or Application. **NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate. See Section V.H of DER-32: *Brownfield Cleanup Program Applications and Agreements* for further details.**

SECTION II	NEW REQUESTOR INFORMATION
Requestor Name	Provide the name of the person(s)/entity requesting participation in the BCP. (If more than one, attach additional sheets with requested information. If an LLC, the members/owners names need to be provided on a separate attachment). The requestor is the person or entity seeking DEC review and approval of the remedial program. 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 <u>NYS Department of State's Corporation & Business Entity Database</u> . A print-out of entity information from the database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.
Address, etc.	Provide the requestor's mailing address, telephone number; fax number and e-mail address.
Representative Name	Provide the name of the requestor's authorized representative. This is the person to whom all correspondence, notices, etc will be sent, and who will be listed as the contact person in the BCA.
Representative Address, etc	Provide the representative's mailing address, telephone number, fax number and e-mail address. Invoices will be sent to the representative unless another contact name and address is provided with the application.
Consultant Name	Provide the name of the requestor's consultant.
Consultant address, etc	Provide the mailing address, telephone number, fax number and e-mail address.
Attorney Name	Provide the name of the requestor's attorney.
Attorney address, etc	Provide the mailing address, telephone number, fax number and e-mail address.
Participant/Volunteer Certification	The requestor is required to certify whether it is applying as a "Participant" or a "Volunteer" as defined in Environmental Conservation Law (ECL) 27-1405.1.
Relationship to Property	The requestor is required to identify its relationship to the property (previous owner, current owner, etc). If the requestor is not the owner, proof of access to the property throughout the BCP project must be provided (e.g. an access agreement).

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 in form.
Owner Name	Provide the name of the new owner of the property. List <u>all</u> new parties holding an interest in the property.
Owner Address, etc	Provide the new owner's mailing address, telephone number, fax number and e-mail address.
Operator Name	Provide the name of the new operator (if different from the new requestor or owner).
Operator Address, etc	Provide the new operator's mailing address, telephone number, fax number and e-mail address.

SECTION IV**NEW REQUESTOR ELIGIBILITY INFORMATION**

As a separate attachment, provide complete and detailed information in response to any eligibility questions answered in the affirmative. It is permissible to reference specific sections of existing property reports; however, it is requested that such information be summarized. For properties with multiple addresses or tax parcels, please include this information for each address or tax parcel.

1. Enforcement Action Pending Are any enforcement actions relating to the proposed brownfield property pending against the requestor?
2. Existing Order Is the requestor presently subject to an order for the investigation, removal or remediation of the contamination at the property?
3. Outstanding Spill Fund Claim Is the requestor subject to an outstanding claim by the Spill Fund? Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.
4. Violation of ECL Article 27 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 related order or determination; iii) any regulation implementing Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment.
5. Previous BCP Denial Has the requestor previously applied for and been denied entry into 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.
6. Negligent/Intentionally Tortious Act 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?
7. Criminal Convictions 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?
8. False Statements 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?
9. BCP Application Denial 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?

SECTION V**PROPERTY DESCRIPTION AND DESCRIPTION OF CHANGES / ADDITIONS / REDUCTIONS (IF APPLICABLE)**

NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate. See Section V.H of DER-32: Brownfield Cleanup Program Applications and Agreements for further details.

Property Address Provide a street address, city/town, and zip code. For properties with multiple addresses, provide information for all.

Tax Parcel Information Provide the tax parcel/section/block/lot information. 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, and/or acceptable site map to this application. Tax map information may be obtained from the tax assessor's office for all tax parcels that are included in the property boundaries. Attach a county tax map with identifier numbers, along with any figures needed to show the location and boundaries of the property. Include a USGS 7.5 minute quad map on which the property appears.

