



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 [  
 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 below art 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:

The equitable owners of Lancaster Avenue Development, LLC (formerly Chapin Place MAR, LLC) and Gates Circle Holdings, LLC are the same. Gates, however, is the present title owner and Lancaster is the present Volunteer. The substitution of Gates as the sole BCA party will provide global unity of title, the development name, and BCP project implementation.

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

0 /2014

**Section I Existing Application Information**

BCP SITE NAME: **3 Gates Circle** BCP SITE NUMBER: **C915272**  
 NAME OF CURRENT APPLICANT(S): **Lancaster Avenue Development, LLC (formerly Chapin Place MAR, LLC)**  
 INDEX NUMBER OF EXISTING AGREEMENT: **C915272-02-13** DATE OF EXISTING AGREEMENT: **March 19, 2013**

**Section II New Requestor Information (if no change to Current Applicant, skip to Section V)**

NAME **Gates Circle Holdings, LLC**  
 ADDRESS **2760 Kenmore Avenue, Suite 100**  
 CITY/TOWN **Buffalo** ZIP CODE **14150**  
 PHONE **(716) 876-8899** FAX **(716)876-6850** E-MAIL **TVaeth@TMMontante.com**

Is the requestor authorized to conduct business in New York State (NYS)?  Yes  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 **Timothy Vaeth, Manager**  
 ADDRESS **2760 Kenmore Avenue, Suite 100**  
 CITY/TOWN **Buffalo** ZIP CODE **14150**  
 PHONE **(716) 876-8899** FAX **(716)876-6850** E-MAIL **TVaeth@TMMontante.com**

NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) **Benchmark Environmental Engineering & Science, PLLC**  
 ADDRESS **2558 Hamburg Turnpike, Suite 300**  
 CITY/TOWN **Lackawanna** ZIP CODE **14218**  
 PHONE **(716) 856-0599** FAX **(716)856-0583** E-MAIL **TForbes@BenchmarkTurnkey.com**

NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) **Craig A. Slater, Esq.**  
 ADDRESS **26 Mississippi Street, Suite 400**  
 CITY/TOWN **Buffalo** ZIP CODE **14203**  
 PHONE **(716)845-6760** FAX **(716)845-6764** E-MAIL **CSlater@CSlaterLaw.com**

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 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 Requester 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:

The equitable owners of Lancaster Avenue Development, LLC (formerly Chapin Place MAR, LLC) and Gates Circle Holdings, LLC are the same. Gates, however, is the present title owner and Lancaster is the present Volunteer.

**Section III: Current Property Owner/Operator Information (only include if new owner/operator or new address information is provided, and highlight new information)**

OWNER'S NAME (if different from requestor) <b>Gates Circle Holdings, LLC</b>		
ADDRESS <b>2760 Kenmore Avenue, Suite 100</b>		
CITY/TOWN <b>Buffalo</b>		ZIP CODE <b>14150</b>
PHONE <b>(716) 876-8899</b>	FAX <b>(716) 876-6850</b>	E-MAIL <b>TVaeth@TMMontante.com</b>
OPERATOR'S NAME (if different from requestor or owner)		
ADDRESS		
CITY/TOWN		ZIP CODE
PHONE	FAX	E-MAIL

**Section IV: Eligibility Information for New Requester (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?  | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Is the requestor subject to an existing order relating to contamination at the site?  | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 3. Is the requestor subject to an outstanding claim by the Spill Fund for this site?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 4. Has the requestor been determined to have violated any provision of ECL Article 27?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 5. Has the requestor previously been denied entry to the BCP?  | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving contaminants?  | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> 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?  | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> 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?  | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> 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? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

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

ADDRESS

CITY/TOWN ZIP CODE

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

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

Check appropriate boxes below:

Changes to metes and bounds description or TBL correction

Addition of property (may require a \_\_\_\_\_ depending on the \_\_\_\_\_ nature of \_\_\_\_\_ – 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: \_\_\_\_\_

PARCELS REMOVED:

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

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**

**AMENDMENT**

Existing Agreement Information	
BCP SITE NAME: <b>3 Gates Circle</b>	BCP SITE NUMBER: <b>C915272</b>
NAME OF CURRENT APPLICANT(S): <b>Lancaster Avenue Development, LLC (formerly Chapin Place MAR, LLC)</b>	
INDEX NUMBER OF EXISTING AGREEMENT: <b>C915272-02-13</b>	
EFFECTIVE DATE OF EXISTING AGREEMENT: <b>March 19, 2013</b>	

**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 acknowledge and agree to the general terms and conditions set forth in DER-32 *Brownfield Cleanup Program Applications and Agreements*. 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.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

(Entity)

**Member of Gates Circle Holdings, LLC**

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 *Brownfield Cleanup Program Applications and Agreements*. 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. My \_\_\_\_\_ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 1/26/15 Signature:  Print Name: **J. Timothy Vaeth**

**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)

Lancaster Avenue Development, LLC (formerly Chapin Place MAR, LLC)

I hereby affirm that I am a Member (title) of / (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: 1/26/15 Signature: J. Timothy Vaeth Print Name: J. Timothy Vaeth

**REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

<input type="checkbox"/> <b>PARTICIPANT</b> 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"/> <b>VOLUNTEER</b> 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)** 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 our regional offices

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**FOR DEPARTMENT USE ONLY**

**BCP SITE T&A CODE:** \_\_\_\_\_

**LEAD OFFICE:** \_\_\_\_\_

**PROJECT MANAGER:** \_\_\_\_\_