

February 7, 2017

Chief, Site Control Section  
New York State Department of Environmental Conservation  
Division of Environmental Remediation, Region 9  
625 Broadway  
Albany, New York 12233-7020

**Re: 2424 Hamburg Turnpike Site  
Site No. C915296  
Lackawanna, New York  
Brownfield Cleanup Program (BCP) Application to Amend Brownfield  
Cleanup Agreement and Amendment and Notification of Site Change of  
Ownership**

Dear Chief:

Benchmark Environmental Engineering & Science, PLLC (Benchmark) has completed and attached the following documents:

- Brownfield Cleanup Program (BCP) Application to Amend Brownfield Cleanup Agreement and Amendment
- 60-Day Advance Notification of Site Change of Use, Transfer of Certificate of Completion, and/or Ownership

The documents were completed to notify the Department of the change in property/parcel ownership from Samuel Siegel c/o David Siegel at 300 Main Street, Buffalo, NY 14202 to the current owner and BCP Applicant/Requestor, 2424 Hamburg Turnpike, LLC at 2558 Hamburg Turnpike, Suite 340, Buffalo, New York 14218. The property transaction took place on November 20, 2015, subsequent to the Site being accepted into the BCP.

**Strong Advocates, Effective Solutions, Integrated Implementation**

[www.benchmarkturnkey.com](http://www.benchmarkturnkey.com)

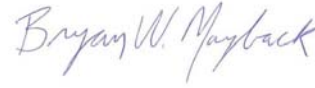
2558 Hamburg Turnpike, Suite 300 | Buffalo, NY 14218  
phone: (716) 856-0599 | fax: (716) 856-0583

If you have any questions or would like to discuss the documents please contact me at (716) 856-0635.

Sincerely,  
Benchmark Environmental Engineering & Science, PLLC



Michael A. Lesakowski  
Sr. Project Manager



Bryan Mayback  
Sr. Project Scientist

cc: Craig Slater (The Slater Law Firm, PLLC) (e-copy)  
Chad Staniszewski (NYSDEC Region 9) (e-copy)  
Krista Anders (NYSDOH) (e-copy)

File: 0345-015-001

Attachments



## BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

### PART I. BROWNFIELD CLEANUP AGREEMENT 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

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), 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*]

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*]

**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)

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

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

Section I. Existing Application Information			
BCP SITE NAME:		BCP SITE NUMBER:	
NAME OF CURRENT APPLICANT(S):			
INDEX NUMBER OF EXISTING AGREEMENT: C915296-10-15 DATE OF EXISTING AGREEMENT:			
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)?			
		Yes	No
<ul style="list-style-type: none"> <li>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 &amp; 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.</li> </ul>			
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	
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?			
		Yes	No
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) 2424 Hamburg Turnpike, LLC		
ADDRESS 2558 Hamburg Turnpike, Suite 340		
CITY/TOWN Buffalo, NY		ZIP CODE 14218
PHONE 716-856-0635	FAX 716-856-0583	E-MAIL pwerthman@benchmarkturnkey.com
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.**

Requestor's Relationship to Property (check one):

Prior Owner    Current Owner    Potential /Future Purchaser    Other \_\_\_\_\_

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)

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 additional citizen participation depending on the nature of the expansion – 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.

# 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.	Yes	No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	Yes	No
<b>Please answer questions below and provide documentation necessary to support answers.</b>		
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see <a href="#">DEC's website</a> for more information.	Yes	No
2. Is the property upside down as defined below?	Yes	No
<p><b>From ECL 27-1405(31):</b></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?	Yes	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:	BCP SITE NUMBER:
NAME OF CURRENT APPLICANT(S):	
INDEX NUMBER OF EXISTING AGREEMENT:	
EFFECTIVE DATE OF EXISTING AGREEMENT:	

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 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: _____</p> <p>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 am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.</p> <p>_____ 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: _____</p> <p>Print Name: _____</p>

**Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)**

I hereby affirm that I am Managing Member (title) of 2424 Hamburg Turnpike, 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. Paul H. Werthman's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 2/7/2017

Signature: 

Print Name: Paul H. Werthman

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

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:**

**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:**

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

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**FOR DEPARTMENT USE ONLY**

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

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

**60-Day Advance Notification of Site Change of Use, Transfer of  
Certificate of Completion, and/or Ownership**

Required by 6NYCRR Part 375-1.11(d) and 375-1.9(f)

To be submitted at least 60 days prior to change of use to:

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

**I. Site Name:** 2424 Hamburg Turnpike Site **DEC Site ID No.** C915296

**II. Contact Information of Person Submitting Notification:**

Name: Paul H. Werthman  
Address1: 2558 Hamburg Turnpike, Suite 340, Buffalo, NY 14218  
Address2:  
Phone: 716-856-0635 E-mail: pwerthman@benchmarkturnkey.com

**III. Type of Change and Date:** Indicate the Type of Change(s) (check all that apply):

- ☒ Change in Ownership or Change in Remedial Party(ies)  
☐ Transfer of Certificate of Completion (CoC)  
☐ Other (e.g., any physical alteration or other change of use)

Proposed Date of Change (mm/dd/yyyy): Nov 20, 2015

**IV. Description:** Describe proposed change(s) indicated above and attach maps, drawings, and/or parcel information.

Change in property/parcel ownership from Samuel Siegel c/o David Siegel at 300 Main Street, Buffalo, NY 14202 to the current property owner and BCP Applicant/Requestor 2424 Hamburg Turnpike, LLC at 2558 Hamburg Turnpike, Suite 340 Buffalo, New York 14218. Real Property Information from the Erie County GIS Site showing 2424 Hamburg Turnpike, LLC as the current property owner is attached. The deed along with the agreement is also attached

If "Other," the description must explain and advise the Department how such change may or may not affect the site's proposed, ongoing, or completed remedial program (attach additional sheets if needed).

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- V. **Certification Statement:** Where the change of use results in a change in ownership or in responsibility for the proposed, ongoing, or completed remedial program for the site, the following certification must be completed (by owner or designated representative; see §375-1.11(d)(3)(i)):

I hereby certify that the prospective purchaser and/or remedial party has been provided a copy of any order, agreement, Site Management Plan, or State Assistance Contract regarding the Site's remedial program as well as a copy of all approved remedial work plans and reports.

Name: \_\_\_\_\_

(Signature)

2/7/2017

(Date)

Paul H. Werthman

(Print Name)

Address1: 2558 Hamburg Turnpike, Suite 340, Buffalo, NY 14218

Address2: \_\_\_\_\_

Phone: 716-856-0635

E-mail: pwerthman@benchmarkturnkey.com

- VI. **Contact Information for New Owner, Remedial Party, or CoC Holder:** If the site will be sold or there will be a new remedial party, identify the prospective owner(s) or party(ies) along with contact information. If the site is subject to an Environmental Easement, Deed Restriction, or Site Management Plan requiring periodic certification of institutional controls/engineering controls (IC/ECs), indicate who will be the certifying party (attach additional sheets if needed).

**Current Owner**

☐ Prospective Owner ☐ Prospective Remedial Party ☐ Prospective Owner Representative

Name: 2424 Hamburg Turnpike

Address1: Attn: Paul H. Werthman

Address2: 2558 Hamburg Turnpike, Suite 340, Buffalo, New York 14218

Phone: 716-856-0635

E-mail: pwerthman@benchmarkturnkey.com

Certifying Party Name: Benchmark Environmental Engineering and Science, PLLC

Address1: 2558 Hamburg Turnpike, Suite 300, Buffalo, NY 14218

Address2: \_\_\_\_\_

Phone: 716-856-0599

E-mail: tforbes@benchmarkturnkey.com



**VII. Agreement to Notify DEC after Transfer:** If Section VI applies, and all or part of the site will be sold, a letter to notify the DEC of the completion of the transfer must be provided. If the current owner is also the holder of the CoC for the site, the CoC should be transferred to the new owner using DEC's form found at <http://www.dec.ny.gov/chemical/54736.html>. This form has its own filing requirements (see 6NYCRR Part 375-1.9(f)).

Signing below indicates that these notices will be provided to the DEC within the specified time frames. If the sale of the site also includes the transfer of a CoC, the DEC agrees to accept the notice given in VII.3 below in satisfaction of the notice required by VII.1 below (which normally must be submitted within 15 days of the sale of the site).

Within 30 days of the sale of the site, I agree to submit to the DEC:

1. the name and contact information for the new owner(s) (see §375-1.11(d)(3)(ii));
2. the name and contact information for any owner representative; and
3. a notice of transfer using the DEC's form found at <http://www.dec.ny.gov/chemical/54736.html> (see §375-1.9(f)).

Name: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print Name)

Address1: \_\_\_\_\_

Address2: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

### Continuation Sheet

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative  
Name: \_\_\_\_\_

Address1: \_\_\_\_\_

Address2: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative  
Name: \_\_\_\_\_

Address1: \_\_\_\_\_

Address2: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative  
Name: \_\_\_\_\_

Address1: \_\_\_\_\_

Address2: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative  
Name: \_\_\_\_\_

Address1: \_\_\_\_\_

Address2: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative  
Name: \_\_\_\_\_

Address1: \_\_\_\_\_

Address2: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative  
Name: \_\_\_\_\_

Address1: \_\_\_\_\_

Address2: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

## Real Property Information

<b>Parcel Status</b>	ACTIVE	<b>City\Town</b>	Lackawanna	<b>Village</b>	
<b>S-B-L</b>	141.59-5-2	<b>Owner</b>	2424 HAMBURG TURNPIKE LLC	<b>SWIS</b>	140900
<b>Property Location</b>	2424 HAMBURG TPKE	<b>Mailing Address</b>			
<b>Property Class</b>	433 AUTO BODY	<b>Line 2</b>	STE 300		
<b>Assessment</b>	137000	<b>Line 3</b>			
<b>Taxable</b>	137000	<b>Street</b>	2558 HAMBURG TPKE		
<b>Desc</b>	L 26	<b>City/State</b>	LACKAWANNA NY		
<b>Desc</b>	BILLBOARD #400 A5 40	<b>Zip</b>	14218		
<b>Deed Book</b>	11288	<b>Deed Page</b>	4519		
<b>Frontage</b>	460	<b>Depth</b>	100	<b>Acres</b>	1.2
<b>Year Built</b>		<b>Square Ft</b>			
<b>Beds</b>		<b>Baths</b>			
<b>FirePlace</b>		<b>School</b>	LACKAWANNA CITY DIST		

[Owner History](#) [Tax Payment History](#)

Google maps

[Click Here](#)

Owner Name  {Last Name First} or

Property Address   No./ Street

S-B-L

Search All



**FILED**

NOV 20 2015

Executors Deed

**This Indenture** **ERIE COUNTY  
CLERK'S OFFICE**

Made the 26 day of October Two Thousand and Fifteen

**Between**

**HERBERT M. SIEGEL and DAVID A. SIEGEL**, Co-Executors of the Last Will and Testament of **SAMUEL SIEGEL**, (Surrogate Case No. 1994-1912) late of the Village of Williamsville, New York, deceased, residing at 300 Main Street, Buffalo, New York 14202.

*Parties of the First Part, and*

**2424 HAMBURG TURNPIKE, LLC**, with an office for the transaction of business located at 2558 Hamburg Turnpike, Suite 340, Buffalo, New York 14218

*Party of the Second Part*

*Witnesseth, that the Parties of the First Part, by virtue of the power and authority to them given in and by the said Last Will and Testament, and in consideration of One and No More Dollars (\$1.00 and No More ) lawful money of the United States, paid by the Parties of the Second Part, does hereby grant and release unto the Parties of the Second Part, and its successors and assigns forever,*

*All that Tract or Parcel of Land, situate in the City of Lackawanna, County of Erie and State of New York, being part of Lot No. 26, Township 10, Range 8 of the Buffalo Creek Reservation, described as follows:*

BEGINNING at a point in the northeasterly line of the Hamburg Turnpike as now monumented, 308.80 feet southeast of the point of intersection of the said northeasterly line of Hamburg Turnpike with the southerly line of Holbrook Street; thence northeasterly at right angles to Hamburg Turnpike, 100 feet to the lands of the United States Government as shown in the Erie County Clerk's Office in Liber 3113 of Deeds at page 101; thence southeasterly and at right angles and along the lands of the United States Government, 460 feet to a point in the north line of land of Anthony Palumbo, which were conveyed by deed recorded in the Erie County Clerk's Office in Liber 4961 of Deeds at page 13; thence southwesterly at right angles and along the said Palumbo's lands, 98 feet to the northeasterly line of Hamburg Turnpike as now monumented; and thence northwesterly along said northeasterly line of Hamburg Turnpike, 460 feet to the point or place of beginning.

**TOGETHER** with the appurtenances, **AND ALSO** all the estate which the said Testator had at the time of his decease, in said premises, **AND ALSO** the estate therein, which the Parties of the First Part have power to convey or dispose of, whether individually, or by virtue of said Will or otherwise.

**TO HAVE AND TO HOLD** the premises herein granted unto the Party of the Second Part, and its assigns forever.

**AND** the Parties of the First Part covenant that they have not done or suffered anything whereby the said premises have been encumbered in any way whatsoever.

This deed is subject to the trust provisions of Section 13 of the New York Lien Law.

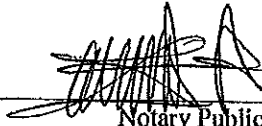
*This conveyance is made pursuant to a Contract of Purchase and Sale and is made in the ordinary course of business and is not intended to defraud creditors.*

STATE OF FLORIDA

COUNTY OF Palm Beach ) SS.:

On the 26<sup>th</sup> day of October 2015, before me, the undersigned, personally appeared Herbert M. Siegel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the City of Palm Beach Gardens and State of Florida (or other place where acknowledgment was taken).

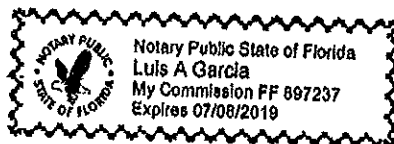


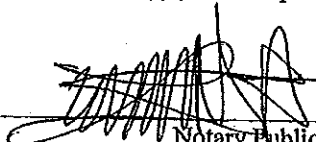
  
Notary Public

STATE OF FLORIDA

COUNTY OF Palm Beach ) SS.:

On the 26<sup>th</sup> day of October 2015, before me, the undersigned, personally appeared David A. Siegel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the City of PBG and State of Florida (or other place where acknowledgment was taken).



  
Notary Public

Doc #453601.2

IN WITNESS WHEREOF, the Parties of the First Part have hereunto set their hands the day and year first above written.

IN PRESENCE OF

ESTATE OF SAMUEL SIEGEL

By: Herbert M. Siegel  
Herbert M. Siegel, Co-Executor

By: David A. Siegel  
David A. Siegel, Co-Executor

## AGREEMENT

This Agreement is entered into as of this 20 day of November, 2015 by and between **2424 HAMBURG TURNPIKE LLC** ("2424") and the **ESTATE OF SAMUEL SIEGEL** ("Seller").

### RECITALS:

WHEREAS, the Seller and Turnkey Environmental Restoration LLC ("Turnkey") on behalf of an entity to be formed entered into a Contract of Purchase and Sale Agreement dated April 9, 2015 (the "Contract") for the sale of the property commonly known as 2424 Hamburg Turnpike, Lackawanna, New York (the "Property"); and

WHEREAS, pursuant to Paragraph 11.5 of the Contract, the Purchaser agreed to indemnify and hold harmless the Seller, Herbert M. Siegel and David A. Siegel from any and all Real Property Environmental Cleanup Costs (as defined in the Contract) for the Property.

NOW, THEREFORE, the parties agree as follows:


1. The parties acknowledge that 2424 was assigned and assumed all obligations if Purchaser as that term is defined in the Contract.
2. The Purchaser and its related affiliated companies, including Turnkey by execution hereof agrees to release, indemnify and hold harmless the Seller, Herbert M. Siegel and David A. Siegel from any and all Real Property Environmental Cleanup Costs for the Property.
3. The Seller and the Purchaser acknowledge that the indemnification contained herein does not apply to any other possible claims except for the Real Property Environmental Cleanup Costs.
4. This Agreement shall be construed under the laws of the State of New York.
5. This Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

PURCHASER:

2424 HAMBURG TURNPIKE LLC

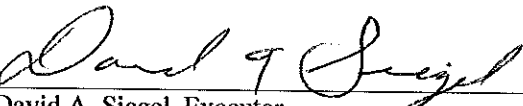
By

  
Paul Werthman, Manager

SELLER:

ESTATE OF SAMUEL SIEGEL

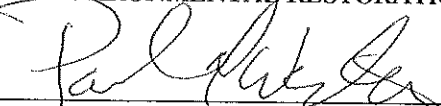
By

  
David A. Siegel, Executor

TURNKEY:

TURNKEY ENVIRONMENTAL RESTORATION, LLC

By

  
Paul Werthman, Manager