



Department of
Environmental
Conservation

Appropriate Care and Brownfield Cleanup Agreement (BCA) Amendments, DER – 32

May 22, 2019

Volunteer Status and Appropriate Care (ECL § 27-1405 (1)(b))

The Definition of a “Volunteer” requires a two step analysis:

1. Must provide information that the applicant’s liability arises solely as a result of ownership or operation of or involvement with the site after the disposal or discharge of contaminants; AND
2. That the applicant exercised appropriate care with respect to the contamination found at the facility.

What is Appropriate Care?

To show that an applicant exercised appropriate care an applicant must demonstrate that it took reasonable steps to:

1. Stop continuing releases;
2. Prevent any threatened future release; and
3. Prevent or limit human, environmental, or natural resource exposure to any previously released contamination.

Examples of “Reasonable Steps Taken”

1. Entering a remedial program to address contamination.
2. Emptying and removal of ASTs, USTs or any other stored contaminants on site.
3. Securing the property to prevent illegal disposal of additional contaminants.
4. Reporting/cleaning up petroleum spills.

NOTE: Lack of knowledge of the contamination on the site does not demonstrate that an applicant exercised appropriate care.



BCA Amendments Chart

Amendment Needed

- Additional Applicant
- Change/Addition of Site Owner
- Change/Addition of Tax parcel Numbers
- Change in Site Address
- Change in Site Name
- Minor Change in Acreage
- Significant Addition of Property*

Amendment Not Necessary

- Change in Owner Address
- Change in Applicant Address
- Additional Contacts
- De minimus Change in Acreage (survey error)
- Changes in Email Addresses



Major v. Minor Amendments

- Most amendments are minor – add, substitute, remove a party (unless removing a participant and replacing with a volunteer), minor change in property size, change in property address or tax lot information.
- Major modifications include addition or subtraction of more than an insignificant portion of the site or seek to add property that would otherwise not be eligible due to contamination levels. If major, may result in a new separate site.



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**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

July 2015



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Failure to meet COC deadline

- Generation 2 deadline is 12/31/19
- If you end up not getting your COC this year, you will become Gen 3
- All Gen 2 sites that do not obtain a COC this year will be sent an amendment reflecting Gen 3 status.
- DEC will still maintain original BCA date for calculating eligible remedial/site prep costs
 - DTF will retain final authority and determinations on tax credits

Deadlines for Amendments

Deadline: November 1

- Amendments should be submitted as early as possible
- Amendment applications received after deadline may delay the issuance of the COC

Most Common Reasons for an Amendment

- Names of parties have changed
- Property is sold prior to COC issuance
- Property description has changed
- Staff discovers substantial discrepancy with BCA
- Owner is not a party to the BCA