



Department of
Environmental
Conservation

Brownfield Cleanup Agreement (BCA) Amendments, Certificates of Completion (COC), and post-COC Obligations

Ensuring accuracy and keeping your COC

April 19, 2016

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
- Deminimus Change in Acreage
- Changes in Email Addresses



Major v. Minor Amendments

- DER 32 has been rescinded as of June 2015 (because of “3rd generation,” need for regulatory revisions)
- Factors department will consider to determine if major or minor – new parcel added, acreage added, anticipated future land use of new area
- Major amendments require submission of full BCP application under the “3rd Generation” BCP
- Department plans to re-issue DER-32 or similar guidance upon adoption of broader Part 375 regulatory revisions

Effect of 3rd Generation BCP

- Major Amendments require a new application under 3rd Generation
- Major Amendments will result in a new 3rd generation site
 - Affects NYC sites most significantly
- Being a new 3rd generation site could have benefits for applicants (phased implementation; reuse of structure)
- Department will attempt to reduce administrative burdens on two separate sites to the extent possible
- Minor Amendments require amendment form, and sites will continue to be treated as 1st or 2nd generation, depending on when they entered the program



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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



Department of
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Deadlines for Amendments

Deadline: September 1

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

Reasons for an Amendment

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

COC Issuance

- Issued to the applicant(s) on the BCA, as amended
- Covers site acreage and parcel(s) on the BCA, as amended
- One COC issued per site
- No partial or interim COC
- No COC prior to completion of all remedial elements
- COC entitles holder(s) to liability release and tax credits

Disclaimer

- DEC makes no warranties, expressed or implied, regarding your ability to obtain tax credits
- NYS Dept. of Tax and Finance can answer tax questions

Post COC issues

- Property is subdivided with multiple owners: Who is responsible for site management?
- Add parties: transfer and record COC
- Failure to record Notice of COC: grounds for revocation
- Conditional Track 1: easement will be on the property, easement needs to be terminated and recorded; failure to meet conditions could require modified easement, revised COC
- PRRs
- Changes of Use

Change in Use

ECL § 27-1425

- Change of ownership
- Erection of any structure
- Creation of a park or other public or private recreational facility
- Any activity likely to disrupt or expose contamination (i.e. digging) or increased human exposure
- Any activity that will or may tend to interfere with an ongoing or completed remedial program or the continued ability to implement site controls

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
**60-Day Advance Notification of Site Change of Use, Transfer of
 Certificate of Completion, and/or Ownership**



(to be submitted to: Chief, Site Control Section, New York State Department of Environmental Conservation, Division of Environmental Remediation, 625 Broadway, Albany NY 12233-7020; at least 60 days prior to any change of use, transfer of a Certificate of Completion, or change in ownership of a site as required by 6NYCRR Part 375-1.11(d) and 375-1.9(f))

I. Site Name: _____ **DEC Site ID No.** _____

II. Contact Information of Person Submitting Notification:

Name: _____

Address 1: _____

Address 2: _____

Phone: _____ E-mail: _____

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): _____

IV. Description: Describe proposed change(s) indicated above. Provide maps, drawings, and/or parcel information as applicable. If "Other," explain how such change may affect the site's proposed, ongoing, or completed remedial program (attach additional sheets if needed).

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) _____ (Date)

 (Print Name)

Address 1: _____

Address 2: _____

Phone: _____ E-mail: _____

Change in Use: Ownership

- Certification that prospective purchaser has been provided a copy of BCA
- Within 15 days of transfer, notice submitted to the Department providing
 - Name of new owner
 - Contact information
- Filing change of use for change in ownership does not relieve you of need for a BCA amendment (if pre-COC)

Transfer of COC

COC may be transferred to successors and assigns, provided that:

- Department shall be provided advance notice pursuant to Change of Use regulations (6 NYCRR 375-1.11(d))
- Within 30 days of transfer, file the Notice of Transfer and provide the Department with proof of the filing
- Upon filing of the Notice of Transfer, COC shall be deemed issued to successor or assign.
- Any party transferred a COC is responsible for O&M of any engineering controls and compliance with institutional controls in accordance with the SMP and the EE

Site Management . . . Forever

- Obligations do not cease once a COC is issued
 - Payment of costs continues (for participants)
- DEC needs to know who is responsible for reporting, maintaining cover systems, running SVE systems
 - Transfer of COC
- Failure to perform ongoing responsibilities
 - Revocation of the COC
 - Revocation notice: 30 days to cure

Conclusion

- Address BCA, Amendments, & COC issues in advance
- Compliance doesn't end with getting the COC
- Long-term requirements must be met
- Failure may result in penalties or loss of COC/Tax Credits/Liability Protection, etc.

Thank You

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