

# DER-32 / BROWNFIELD CLEANUP PROGRAM APPLICATIONS AND AGREEMENTS

New York State Department of Environmental Conservation

## DEC Program Policy

**Issuing Authority:** Val Washington

**Title:** Deputy Commissioner  
Office of Remediation and Materials Management

**Date Issued:** June 22, 2010

**Latest Date Revised:**

### I. Summary

This Program Policy provides guidance on the application process and the general terms and conditions for Brownfield Site Cleanup Agreements (BCAs) under the New York State Department of Environmental Conservation (DEC) Brownfield Cleanup Program (BCP), as well as the process to amend and terminate a BCA. The terms and conditions herein are in addition to the regulatory terms and conditions at 6 NYCRR 375-1.5, 375-3.4 and 375-3.5, and such other terms and conditions as may be set forth in the BCA. Further, in the event of a conflict between the general terms and conditions herein and the site-specific BCA, the terms in the BCA shall control. The application for inclusion into the BCP will require the party to acknowledge and agree to the general terms and conditions provided in this guidance.

### II. Policy

Legislation establishing the BCP (see Article 27, Title 14 of the Environmental Conservation Law [ECL]) sets forth application provisions and requires DEC to execute a BCA prepared in accordance with ECL 27-1409 for the purpose of completing a brownfield site remedial program. The statute does not prescribe the detailed steps of the application process or the timeframe for execution of the BCA. In recognition of the benefit of guidance on the application process, benefit of timely execution of the BCA, and the overall legislative intent of timely advancement of the remedial program, DEC will establish an application and BCA process that is more predictable and expeditious.

The procedures in this policy are intended for the use and guidance of both DEC staff and those seeking to participate in the BCP. The policy is not intended to create any substantive or procedural rights enforceable by any party in administrative or judicial litigation with DEC unless, or until, such terms are incorporated into a site-specific BCA. DEC reserves the right to vary these procedures to address site-specific circumstances, and to revise them as it deems appropriate based on changes in law or its experience in implementing this policy.

### III. Purpose and Background

There are thousands of abandoned and likely contaminated properties (ECL 27-1403) that threaten the health and vitality of the communities they burden. Because these sites, known as brownfields, discourage redevelopment in established, usually urban, communities, they also contribute to sprawling

development and loss of open space. It is the policy of the State of New York (State) to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution in order to enhance the health, safety, and welfare of the people of the State and their overall economic and social well being. It is the policy of the State to have processes in place which facilitate the timely implementation of remedial programs. DEC is able to advance these policies, by adopting procedures that encourage timely participation in the BCP and the cleanup of contaminated real property for reuse and redevelopment. Defining the application process and the terms of participation in the BCP will advance these policies and provide greater certainty and predictability.

## **IV. Responsibility**

The responsibility for maintaining and updating this policy lies with the Bureau of Program Management in the Division of Environmental Remediation (DER). DER program staff are responsible for implementing this policy, with input from other involved DEC Divisions (e.g., Office of General Counsel).

## **V. Procedure**

### **A. Application Process**

**1. Pre-Application meeting.** DEC strongly encourages any party that is considering applying to the BCP to schedule a pre-application meeting with DEC staff to discuss the program's benefits, obligations and procedures. The pre-application meeting:

- a. is designed to provide an overview of the BCP and to help potential requestors understand the application process;
- b. is intended to assist in the development of an application that is complete and establishes a clear basis for acceptance into the program;
- c. includes a discussion of site characteristics, development plans, environmental conditions and possible remedy scenarios; and
- d. should be attended by the potential requestor, and the requestor's legal counsel and environmental consultant.

**2. Scheduling a Pre-Application Meeting.** The meeting can be scheduled by contacting the DER Regional Contact for the DEC region in which the site is located. The Regional Contact can be found on DEC's [website](#). DER recommends that requestors fill out and bring a draft BCP application to the meeting.

**3. Pre-application studies.** Potential requestors should make every effort to secure all available environmental sampling data for the site, including regional groundwater or soil data. If there is limited available information, the potential requestor should consider performing a Phase I (ASTM E1527) and/or a Phase II (ASTM E1903) Environmental Site Assessment of the properties being

considered for the application. To provide a basis for an eligibility determination by DEC, the information must be sufficient to establish that the site conforms to the definition of a brownfield.

**4. Application completion.** A person who seeks to participate in the BCP (requestor) shall submit an application pursuant to ECL 27-1407 and 6 NYCRR 375-3.4. A copy of the BCP application is available on DEC's [website](#). Such application should not be submitted until the person is ready, willing and able to advance the remedial project. A person is ready, willing and able when such person is prepared to enter into a BCA with DEC within 100 days<sup>1</sup> of submitting the application. Such application will include a statement acknowledging and agreeing to the requirement to execute a BCA within 60 days of notice of approval. Such application will also include a statement acknowledging and agreeing to the general terms and conditions set forth in this policy. Further, such statement shall set forth that in the event of a conflict between the general terms and conditions of participation and the terms contained in a site-specific BCA, the terms in the BCA shall control.

**5. Multiple applications.** Generally, only one application can be submitted, and one BCA executed, for a development project. In limited circumstances, DEC may consider multiple applications/BCAs for a development project where the:

- a. development project spans more than 25 acres;
- b. approach does not negatively impact the remedial program, including timing, ability to appropriately address areas of concern, and management of off-site concerns; and
- c. approach is not advanced to increase the value of future tax credits (i.e., circumvent the tax credit caps provided under New York State Tax Law Section 21).

**6. Application submittal.**

- a. The requestor should submit one complete paper copy of the application (including all supporting documentation) with original signatures and one complete electronic copy on CD in Portable Document Format (pdf) to:

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

- b. One complete paper copy of the application (including all supporting documentation) with original signatures and one complete electronic copy on CD in Portable Document Format (PDF) should be submitted to the appropriate DER Regional Contact. A list of the Regional Contacts is available on DEC's [website](#).

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<sup>1</sup> "Days" refers to calendar days throughout this policy unless otherwise stated.

**7. Land use.** In addition to eligibility information, site history, and environmental data/reports, the application requires information regarding the current, intended and reasonably anticipated future land use.

- a. This information consists of responses to the “land use” factors to be considered relative to the “Land Use” criterion (section IX of the BCP application).
- b. This land use information will be used by DEC, in addition to all other relevant information, to determine whether the proposed use is consistent with the currently identified, intended and reasonably anticipated future land use of the site at this stage. Further, this land use finding is subject to information regarding contamination at the site or other information which could result in the need for a change in this determination being borne out during the remedial investigation.
- c. DEC will again consider each of the land use factors at the remedy selection stage to ensure that the information in the application was correct and that no new information has come to light to alter that determination; e.g., if residences are found next door to the site when the application indicated otherwise. The application submission regarding land use is preliminary. The final land use determination is made at the remedy selection stage.
- d. If the use proposed for the site does not conform with applicable zoning laws or maps, or the reasonably anticipated future use of the site, DEC will not approve a remedy for the non-conforming use unless:
  - the remedy is based on a cleanup level that would require fewer restrictions on the use of the site than would be allowed based upon current zoning laws or maps. If the proposed remedy is based on a cleanup level that would require greater restrictions than would be allowed based upon current zoning laws or maps, DEC may disregard the Applicant’s proposed use and approve a remedy based upon the most restrictive use which is consistent with existing zoning laws or maps; or
  - it can be shown to DEC’s satisfaction that zoning changes are, or will be, sought. In this case, DEC will conditionally approve the remedy but will not issue a Certificate of Completion until the site use is consistent with existing zoning laws or maps.
- e. For many projects, this land use information is similar to the information set forth in the State Environmental Quality Review Act (SEQRA) documentation, Business Plan/Prospectus and /or Phase I Environmental Study. In this regard, it may be helpful for parties to time the BCP application with the commencement of the SEQRA process or other milestones.

**8. Contact List and Document Repository.** To be considered complete the application must include the Brownfield Site Contact List (Contact List) in accordance with [DER-23 Citizen Participation Handbook for Remedial Programs](#) (DER-23). The application must also identify a document repository in accordance with DER-23. The document repository is a place where interested parties can conveniently review the project documents, such as the applications and work plans (e.g., a local library). The repository is to be established at the time of application submittal so it can be utilized during the public comment period.

## **B. Determination of Complete Application**

1. The first step in the application review and approval process is an evaluation to determine if the application is complete. To help ensure that the application is determined complete, requestors should review the list of [common application deficiencies](#) and carefully read the [BCP application instructions](#), both available on DEC's website.

2. DEC will notify the Administrator of the New York Environmental Protection and Spill Compensation Fund (Oil Spill Fund) upon receipt of the application to determine if there is an outstanding claim against the party requesting participation. The Administrator of the Oil Spill Fund will notify the requestor and DEC of any outstanding claim within 30 days of receipt of the application.

3. DEC will send a notification to the requestor within 10 days of receiving the application, indicating whether such application is complete or incomplete.

4. If the application is found to be incomplete:

- a. the requestor will be notified via email or phone call regarding minor deficiencies. The requestor must submit information correcting the deficiency to DEC within the 10-day review time frame; or
- b. the requestor will receive a formal Letter of Incomplete Application (LOI) if an application is substantially deficient or if a response to a minor deficiency is not received within the 10-day period. The LOI will detail all of the missing information and request submittal of the information within 10 days. If the information is not submitted within 30 days from the date of the LOI, the application will be deemed withdrawn. In this case, the requestor may resubmit the application without prejudice in accordance with section A.6 above.

5. If the application is determined to be complete, DEC will send a Letter of Complete Application (LOC) that includes the dates of the public comment period. The LOC will:

- a. include an approved public notice to be sent to all parties on the Contact List included with the application;
- b. provide instructions for publishing the public notice in the newspaper on the date specified in the letter, and instructions for mailing the notice to the Contact List;

- c. identify the need for a certification of mailing form to be returned to DEC along with proof of publication documentation; and
- d. specify the deadline for publication of the newspaper notice, which must coincide with, or occur before, the date of publication in the Environmental Notice Bulletin (ENB).
  - DEC will send a notice of the application to the ENB. As the ENB is only published on Wednesdays, DEC must submit the notice by the Wednesday before it must appear in the ENB.
  - The mailing to parties on the Contact List must be completed no later than the Tuesday prior to ENB publication. If the mailings, newspaper notice and ENB notice are not completed within the time-frames established, the public comment period on the application will be extended to insure that there will be an adequate comment period.
  - Marketing literature or brochures are prohibited from being included in mailings to the Contact List.

### **C. Submittal of Reports and Draft Work Plans with the Application**

1. When a potential requestor is considering submitting draft work plans and/or reports with the application, it is strongly recommended that this be discussed with DEC at the pre-application meeting. In preparing documents, [\*DER-10 Technical Guidance for Site Investigation and Remediation\*](#) must be used by the requestor to guide preparation of work plans and/or reports.

2. If reports and/or work plans are submitted with the application, these documents must be placed in the document repository along with the application. A fact sheet must be sent to the Contact List to announce the availability of any draft work plans/reports for public comment along with notice of the application. All required mailings may be combined by the requestor. DEC and public review of work plans/reports run concurrently. This expedites the review process and can shorten the time required to complete the BCP project.

3. If a draft remedial investigation work plan is submitted with the application, the public comment period for the application package will be 30 days. If a final investigation report or draft remedial action work plan is submitted with the application, the public comment period for the application package will be 45 days.

4. If the draft work plan is changed significantly such that the final proposed work plan is not generally consistent with the draft that was publicly noticed, a second public comment period may be needed. See DER-23 for more details on fact sheets and preparation of a citizen participation plan.

## **D. Application Approval/Disapproval**

1. DEC will use best efforts to notify the requestor whether the application has been accepted or rejected within 45 days of receipt of a complete application (60 days if a final investigation report or draft remedial action work plan is included with the application) or 5 days after the close of the public comment period, whichever is later. Items which could require additional submittals or could result in the disapproval of an application include, but are not limited to, the following.

- a. If the application does not contain a clear and sufficient definition of the “brownfield site,” DEC may request the following additional information:
  - The tax map identifiers, site latitude and longitude, a site location map, and a site plan drawing required by the application (note that these items were required in the application).
  - A survey which includes metes and bounds may be needed in cases where the boundaries of the site cannot be clearly defined with the above information.
- b. If DEC determines the site or the requestor is subject to any enforcement action that would disqualify it from the program.
- c. The site is identified as not a “brownfield site.”

2. DEC will consider all the public comments on the application. No formal response to the public comments will be prepared.

3. DEC will send an approval/disapproval letter to the requestor in the time frame described above. If the application is:

- a. approved, in whole or in part (pursuant to 6 NYCRR 375-3.3), three originals of a Brownfield Cleanup Agreement (BCA) will be enclosed with the approval letter for execution on behalf of the requestor. If more than one requestor is subject to the BCA, additional originals may be executed. “Applicant” herein refers to any party to the BCA; or
- b. denied, DEC will include the disapproval letter sufficient explanation relative to DEC’s rationale for denying the application.

## **E. BCA Overview**

1. The BCA will provide for the investigation and cleanup of the site. To the extent that one or more Applicants under the BCA meet the definition of a Participant (see ECL 27-1405(1)(a)), then the BCA will also provide for the investigation and cleanup of contamination which has emanated from the site to off-site locations.

2. The BCA will provide for the terms and conditions set forth in ECL 27-1409, 6 NYCRR 375-1.5 and 6 NYCRR 375-3.5, and such other terms and conditions as DEC determines appropriate.
3. DEC will issue one Certificate of Completion (COC) for the property identified in the BCA.
4. Where two or more Applicants enter into the BCA, one of which is a Participant, the BCA:
  - a. will not be drafted to distinguish between the roles and responsibilities of the individual Applicant;
  - b. will require on-site and off-site remedial work;
  - c. will provide for a COC to be issued only upon completion of all on-site and off-site remedial work (only one COC per BCA); and
  - d. will not assign state costs to one party.
5. The effective date of the BCA is the date signed by the Director of the Division of Environmental Remediation. Project costs, for which tax credits may be claimed, start to accrue from this day forward.

#### **F. Entering into a BCA**

1. The model BCA, attached as Attachment “A” to this guidance, will be used by DEC to satisfy the statutory (ECL 27-1409) and regulatory (6 NYCRR 375-1.5 and 375-3.5) requirements.
2. The BCA, executed in accordance with this Program Policy, shall contain a provision incorporating the general terms and conditions in this policy. Specifically, the following provision will be included in the BCA:

**Applicant acknowledges that it has read, understands, and agrees to abide by all the terms set forth in Appendix A - Standard Clauses for All New York State Brownfield Site Cleanup Agreements. This Appendix is attached to, and part of, the Division of Environmental Remediation Guidance document labeled DER-32 - Brownfield Cleanup Program Applications and Agreements. The terms and conditions set forth in such Appendix “A” are made a part of this Agreement as if set forth fully herein.**

3. The signed BCA is returned by the Applicant to the Director of the Division of Environmental Remediation and must be received no later than 60 days after the date of DEC’s approval letter (an example of an approval letter is attached as Attachment “B”). In the event the BCA is not signed and returned to DEC within this timeframe, DEC will consider the Applicant withdrawn without prejudice and the offer to enter the BCP will be deemed rescinded.

4. DEC will use best efforts to execute the BCA within 5 business days of receipt. DEC returns one fully executed agreement to each Applicant.

#### **G. Modification to the BCA to change Applicants**

**1. Corrections relative to name.** DEC will not require an application to make corrective changes to the name of an Applicant (e.g., if the name of the Applicant is incorrect on an Agreement; the name of Applicant changes but the ownership of the entity remains unchanged). An Applicant can submit a letter to the DEC project manager with a copy to the DEC project attorney containing a request to make the change and explaining the basis for such change. DEC will not unreasonably withhold its consent to such conforming change. DEC will send the Applicant an amendment to the BCA, which amendment may be in the form of a letter.

**2. Adding or Substituting an Applicant.** A request to add or substitute a party to the BCA shall be submitted on a BCP Amendment Application for Change in Party. A copy of this application is available on DEC's [website](#). The application shall be submitted to DEC in the same manner as the original application to participate. The Application to add or substitute a party is reviewed for completeness and typically a public notice or comment period is not required. DEC will not unreasonably withhold its consent to add a party. If approved, DEC will send the Applicant an amendment to the BCA, which amendment may be in the form of a letter. Where the Applicant under the BCA is a Participant and it is proposed to substitute that Applicant with a party meeting the definition of a Volunteer, DEC may require that the Participant sign an order to address off-site conditions, where appropriate, as a condition of agreeing to amend the existing BCA.

#### **H. Modification to the BCA to Modify the Property Description**

**1. Conforming modifications or property reductions.** DEC will not require an application to request corrective changes to the description of the property set forth in the BCA (e.g., if the boundaries were not sufficiently defined in the BCA, or an erroneous description of the property is included in the BCA). Further, an Applicant can request to reduce the footprint of a site without submitting an application. An Applicant shall submit a letter to the DEC project manager with a copy to the DEC project attorney containing a request to make the change and explaining the basis for such change. DEC will strive to notify the parties of its decision within 45 days of receipt of the request, and will not unreasonably withhold its consent to such change. DEC will send the Applicant an amendment to the BCA, which amendment may be in the form of a letter.

**2. Minor modifications adding property.** DEC will not require an application to request minor changes to the description of the property set forth in the BCA (i.e., the addition of a minimal amount of property which doesn't change the scope of the original application). An Applicant can submit a letter to the DEC project manager with a copy to the DEC project attorney containing a request to make the change and explaining the basis for such change. DEC will strive to notify the parties of its decision within 15 days of receipt of the request, and will not unreasonably withhold its consent to such change. DEC will send the Applicant an amendment to the BCA, which amendment may be in the form of a letter.

**3. Major modifications.** DEC will require an 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). A copy of the standard BCP application is available on DEC's [website](#). The application shall be submitted to DEC in the same manner as the original application to participate. The application is noticed in the same manner as the original application. DEC will strive to notify the parties of its decision on the application within 5 days after the close of the public comment period. DEC will not unreasonably withhold its consent to such conforming change. DEC will send the Applicant an amendment to the BCA, which amendment may be in the form of a letter.

## **I. Termination of BCA**

1. Applicant or DEC may terminate the BCA consistent with the provisions of 6 NYCRR 375-3.5(b), (c), and (d) by providing written notification to the parties listed in Paragraph IV of the BCA.

- a. If the BCA is terminated by either party, the Applicant remains responsible for payment of the remaining costs due to the State pursuant to the BCA.
- b. Once the BCA for a site is terminated, any deferral of Registry listing ends and an appropriate site classification may be assigned by DEC.

2. DEC may terminate the BCA for cause. Failure to substantially comply with the BCA's terms and conditions constitutes cause to terminate. The terms and conditions of the BCA include the schedule(s) in approved work plans. Accordingly, the failure to initiate, proceed with, or complete the remedial program in accordance with its schedule is cause to terminate the BCA. [see 6 NYCRR 375-3.5(c)].

3. Prior to DEC terminating a BCA, DEC will:

- a. notify the Applicant in writing of its intention to terminate the agreement and the reasons for the intended termination; and
- b. provide the Applicant with a reasonable opportunity of not less than 30 days from the date of the notification letter to correct deficiencies.

## **VI. Related References**

- ◆ ECL Article 27, Title 14
- ◆ New York State Tax Law, Sections 21-23
- ◆ 6 NYCRR Part 375, Environmental Remediation Programs. December 14, 2006
- ◆ ECL Section 71-4003
- ◆ [BCP Application and Instructions](#)
- ◆ [BCP Amendment Application for Change in Party](#)

**Attachments:**

**ATTACHMENT “A” - MODEL BROWNFIELD SITE CLEANUP AGREEMENT**

**Contains: Exhibit A (Map); Exhibit B (Cost Summary); Appendix A (Standard Clauses)**

**ATTACHMENT “B” - BROWNFIELD CLEANUP PROGRAM APPLICATION APPROVAL LETTER**

**ATTACHMENT “A”**

**MODEL BROWNFIELD SITE CLEANUP AGREEMENT**

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
BROWNFIELD CLEANUP PROGRAM  
ECL 27-1401 *et seq.*

**BROWNFIELD SITE CLEANUP AGREEMENT**

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In the Matter of a Remedial Program for

**BROWNFIELD SITE  
CLEANUP AGREEMENT**

Site Name:

**Index #:**

DEC Site #:

Site Address:

Hereinafter referred to as "Site"

by

Applicant's Name

Applicant's Address

Hereinafter referred to as "Applicant"

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**WHEREAS**, the New York State Department of Environmental Conservation (the "Department") is authorized to administer the Brownfield Cleanup Program (BCP) contained in Article 27, Title 14 of the Environmental Conservation Law ("ECL");

**WHEREAS**, the Applicant submitted an application received by the Department on [Date]; and

**WHEREAS**, the Department has determined that the above referenced real property and Applicant are eligible to participate in the BCP.

**NOW, THEREFORE**, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Applicant Status

The Applicant has been accepted into the BCP as a [Participant as defined in ECL 27-1405(1)(a)] or [Volunteer as defined in ECL 27-1405(1)(b)].

II. Real Property

The Site subject to this agreement is as follows:

<b>Subject Property Description (A Map of the Site is attached as Exhibit "A")</b>		
<b>Tax Map/Parcel#</b>	<b>Street Number</b>	<b>Owner</b>
<hr/>		
<hr/>		
<b>Approximate Total Acreage:</b>		

III. Payment of State Costs

Invoices shall be sent to Applicant at the following address:

**[Applicant's name, Contact name, post office address, phone number, e-mail address]**

**ADD IF PARTICIPANT** In addition to the requirement to pay state costs as set forth in Appendix "A", within forty-five (45) days after the effective date of this Agreement, Applicant shall pay to the Department the sum set forth on Exhibit "B", which shall represent reimbursement for past State Costs incurred prior to the effective date of this Agreement. See Appendix A, Paragraph V.C for payment instructions. Applicant acknowledges that all State Costs incurred prior to the effective date of this Agreement are not included on the cost summary and that additional charges may be billed at a later date.

IV. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Applicant shall be sent to:

a. **DER Project Manager - name, post office address, phone number, e-mail address**

Note: Two (2) hard copies (one unbound) of work plans are required, as well as one electronic copy.

b. **Director's Name (electronic copy only)**

Bureau of Environmental Exposure Investigation  
New York State Department of Health  
Flanigan Square 547 River Street  
Troy, New York 12180-2216  
[gal09@health.state.ny.us](mailto:gal09@health.state.ny.us)

c. **OGC Project Attorney- name, post office address, phone number, e-mail address**

Correspondence only

2. Communication from the Department to Applicant shall be sent to:

**[Applicant's name, post office address, phone number, email address]**

B. The Department and Applicant reserve the right to designate additional or different addressees for communication on written notice to the other.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph III.

V. Miscellaneous

A. Applicant acknowledges that it has read, understands, and agrees to abide by all the terms set forth in Appendix A - Standard Clauses for All New York State Brownfield Site Cleanup Agreements. This Appendix is attached to, and part of, the Division of Environmental Remediation Guidance document labeled DER-32: Brownfield Cleanup Program Applications and Agreements. The terms and conditions set forth in such Appendix "A" are made a part of this Agreement as if set forth fully herein.

B. In the event of a conflict between the terms of this BCA (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this BCA shall control.

C. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED:

[Name]  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

\_\_\_\_\_  
[Name], Director  
Division of Environmental Remediation

CONSENT BY APPLICANT [for Applicants in New York State]

Applicant hereby consents to the issuing and entering of this Agreement, waives Applicant's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

**Applicant's Name**

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

*Acknowledgment by an individual in New York State:*

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_, before me, the undersigned, personally appeared \_\_\_\_\_ (full name) 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 acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

*Acknowledgment by a corporation, in New York State:*

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_, before me, the undersigned, personally appeared \_\_\_\_\_ (full name) personally known to me who, being duly sworn, did depose and say that he/she/they reside at \_\_\_\_\_ (full mailing address) and that he/she/they is (are) the \_\_\_\_\_ (president or other officer or director or attorney in fact duly appointed) of the \_\_\_\_\_ (full legal name of corporation), the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

\_\_\_\_\_  
Notary Public, State of New York

CONSENT BY APPLICANT [for Applicants outside New York State]

Applicant hereby consents to the issuing and entering of this Agreement, waives Applicant's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

Applicant's Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\* )  
 ) ss:  
 )

Acknowledgment by an individual outside of New York State:

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_ (full name) 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 acknowledged to me that he/she executed the same in his/her capacity, that by his/her 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 \_\_\_\_\*\*\_\_\_\_\_.

Acknowledgment by a corporation outside of New York State:

On the \_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_ (full name) personally known to me who, being duly sworn, did depose and say that he/she/they reside at \_\_\_\_\_ (full mailing address) and that he/she/they is (are) the \_\_\_\_\_ (President or other officer or director or attorney in fact duly appointed) of the \_\_\_\_\_ (full legal name of corporation), the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation and that such individual made such appearance before the undersigned in the \_\_\_\_\*\*\_\_\_\_\_.

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\_\_\_\_\_  
Notary Public

\* Insert the State [& County], District of Columbia, Territory, Possession or Foreign Country the acknowledgment was taken

\*\* Insert the city or other political subdivision and the state or country or other place the acknowledgement was taken

\*\*\* Signature and office of individual taking acknowledgment

## **EXHIBIT “A”**

### **Map**

The map(s) should be of sufficient detail, clarity and accuracy to show the following:

- 1) a distance of at least 1,000 feet around the proposed brownfield property at a scale no smaller than one inch equal to 200 feet;
- 2) map scale, north arrow orientation, date, and location of the property with respect to adjacent streets and roadways;
- 3) proposed brownfield property boundary lines, with adjacent property owners clearly identified;
- 4) surrounding land uses; and
- 5) existing easements or rights-of-way currently in effect for the property(ies) comprising the site.

**EXHIBIT “B”**

**Cost Summary**

**Provided by:  
Division of Environmental Remediation**

**APPENDIX “A”**

**STANDARD CLAUSES FOR ALL NEW YORK STATE  
BROWNFIELD SITE CLEANUP AGREEMENTS**

## APPENDIX A

### STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

The parties to the Brownfield Site Cleanup Agreement (hereinafter "the BCA" or "the Agreement" or "this Agreement") agree to be bound by the following clauses which are hereby made a part of the BCA. The word "Applicant" herein refers to any party to the Agreement, other than the New York State Department of Environmental Conservation (hereinafter "Department").

#### I. Citizen Participation Plan

Within twenty (20) days after the effective date of this Agreement, Applicant shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of ECL 27-1417 and 6 NYCRR 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Agreement.

#### II. Development, Performance, and Reporting of Work Plans

##### A. Work Plan Requirements

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be prepared and implemented in accordance with the requirements of ECL Article 27, Title 14, 6 NYCRR 375-1.6(a), 375-3.6, and 375-6, and all applicable laws, rules, regulations, and guidance documents. The Work Plans shall be captioned as follows:

1. "Remedial Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination within the boundaries of the Site and, if the Applicant is a "Participant", the extent of contamination emanating from such Site. If the Applicant is a "Volunteer" it shall perform a qualitative exposure assessment of the contamination emanating from the site in accordance with ECL 27-1415(2)(b) and Department guidance;

2. "Remedial Work Plan" if the Work Plan provides for the development and implementation of a Remedial Program for contamination within the boundaries of the Site and, if the Applicant is a "Participant", the contamination that has emanated from such Site;

3. "IRM Work Plan" if the Work Plan provides for an interim remedial measure; or

4. "Site Management Plan" if the Work Plan

provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy.

5. "Supplemental" if additional work plans other than those set forth in II.A.1-4 are required to be prepared and implemented.

##### B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted no later than thirty (30) days after the effective date of this Agreement. Thereafter, the Applicant shall submit such other and additional work plans as determined in a schedule to be approved by the Department.

2. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities to be conducted in accordance with current guidance, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. The Department shall use best efforts in accordance with 6 NYCRR 375-3.6(b) to approve, modify, or reject a proposed Work Plan within forty-five (45) days from its receipt or within fifteen (15) days from the close of the public comment period, if applicable, whichever is later.

i) Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Agreement and shall be implemented in accordance with the schedule contained therein.

ii) If the Department requires modification of a Work Plan, the reason for such modification shall be provided in writing and the provisions of 6 NYCRR 375-1.6(d)(3) shall apply.

iii) If the Department disapproves a Work Plan, the reason for such disapproval shall be provided in writing and the provisions of 6 NYCRR 375-1.6(d)(4) shall apply.

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

### C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Report for an Investigation Work Plan prepared in accordance with ECL 27-1411(1) and 6 NYCRR 375-1.6. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track 1, Applicant shall submit an Alternatives Analysis prepared in accordance with ECL 27-1413 and 6 NYCRR 375-3.8(f) that supports such determination.

2. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Engineering Report certifying that remediation of the Site has been performed in accordance with the requirements of ECL 27-1419(1) and (2) and 6 NYCRR 375-1.6. The Department shall review such Report, the submittals made pursuant to this Agreement, and any other relevant information regarding the Site and make a determination as to whether the goals of the remedial program have been or will be achieved in accordance with established timeframes; if so, a written Certificate of Completion will be issued in accordance with ECL 27-1419, 6 NYCRR 375-1.9 and 375-3.9.

3. Within sixty (60) days of the Department's approval of a Final Report, Applicant shall submit such additional Work Plans as it proposes to implement. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicant, result in the termination of this Agreement pursuant to Paragraph XII.

### D. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicant in writing of its approval or disapproval of each submittal other than a Work Plan in accordance with 6 NYCRR 375-1.6. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reason for its disapproval and may request Applicant to modify or expand the submittal. Within fifteen (15) days after receiving written notice that Applicant's submittal has been disapproved, Applicant shall elect in writing to either (i) modify or expand it within thirty (30) days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to Paragraph XII. If Applicant submits a revised submittal and it is disapproved, the Department and Applicant may pursue whatever remedies may be available under this Agreement or under law.

### E. Department's Determination of Need for Remediation

The Department shall determine upon its approval of each Final Report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed for protection of public health and the environment.

1. If the Department makes a preliminary determination that remediation, or additional remediation, is not needed for protection of public health and the environment, the Department shall notify the public of such determination and seek public comment in accordance with ECL 27-1417(3)(f). The Department shall provide timely notification to the Applicant of its final determination following the close of the public comment period.

2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Applicant shall cause to be recorded an Environmental Easement in accordance with 6 NYCRR 375-1.8(h).

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL 27-1415(3) and 6 NYCRR 375-1.8(f). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to this Agreement. If the Department determines following the close of the public comment period that modifications to the proposed Remedial Work Plan are needed, Applicant agrees to negotiate appropriate modifications to such Work Plan. If Applicant elects not to develop a Work Plan under this Subparagraph then this Agreement shall terminate in accordance with Paragraph XII. If the Applicant elects to develop a Work Plan, then it will be reviewed in accordance with Paragraph II.D above.

### F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Applicant shall submit a written certification in accordance with 6 NYCRR 375-1.8(h)(3) and 375-3.8(h)(2).

### III. Enforcement

Except as provided in Paragraph V, this Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer

any penalty except as provided in Paragraph V, or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event as described at 6 NYCRR 375-1.5(b)(4) provided Applicant complies with the requirements set forth therein.

#### IV. Entry upon Site

A. Applicant hereby agrees to provide access to the Site and to all relevant information regarding activities at the Site in accordance with the provisions of ECL 27-1431. Applicant agrees to provide the Department upon request with proof of access if it is not the owner of the site.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Agreement. The Department will generally conduct such inspections during business hours, but retains the right to inspect at anytime.

C. Failure to provide access as provided for under this Paragraph may result in termination of this Agreement pursuant to Paragraph XII.

#### V. Payment of State Costs

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Applicant shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR 375-1.5 (b)(3)(i).

B. Costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

Director, Bureau of Program Management  
Division of Environmental Remediation  
New York State Department of Environmental  
Conservation  
625 Broadway  
Albany, New York 12233-7012

D. Each party shall provide written notification to the other within ninety (90) days of any change in the foregoing addresses.

E. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR 375-1.5

(b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph V.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance with ECL 27-1423 and ECL 71-4003.

#### VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant shall be entitled to the Liability Limitation set forth at ECL 27-1421, subject to the terms and conditions stated therein and to the provisions of 6 NYCRR 375-1.9 and 375-3.9.

#### VII. Reservation of Rights

A. Except as provided in Subparagraph VII.B, Applicant reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Department, including any assertion of remedial liability by the Department against Applicant, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Applicant's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Applicant, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Notwithstanding the foregoing, Applicant hereby waives any right it may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site and releases the State and the New York Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that Applicant may have as a result of Applicant's entering into or fulfilling the terms of this Agreement.

#### VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York,

and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. In the event that the Applicant is a Participant, this provision shall also include the Trustee of the State's Natural Resources. The Department shall provide Applicant with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

#### IX. Change of Use

Applicant shall notify the Department at least sixty (60) days in advance of any change of use, as defined in ECL 27-1425, which is proposed for the Site, in accordance with the provisions of 6 NYCRR 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

#### X. Environmental Easement

A. Within sixty (60) days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within sixty (60) days after the Department's determination pursuant to Subparagraph II.E.2 that additional remediation is not needed based upon use restrictions, Applicant shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36 and 6 NYCRR 375-1.8(h)(2). Applicant shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) days after the Department's approval of such instrument. Applicant shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within thirty (30) days of such recording (or such longer period of time as may be required to obtain a certified copy provided Applicant advises the Department of the status of its efforts to obtain same within such thirty (30) day period), which shall be deemed to be incorporated into this Agreement .

B. Applicant or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can certify that the Site is protective of public health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or Qualified Environmental Professional as defined at 6 NYCRR 375-1.2(ak) approved by the Department. The Department will not unreasonably withhold its consent.

#### XI. Progress Reports

Applicant shall submit a written progress report of its

actions under this Agreement to the parties identified in Subparagraph III.A.1 of the Agreement by the 10<sup>th</sup> day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Applicant in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

#### XII. Termination of Agreement

Applicant or the Department may terminate this Agreement consistent with the provisions of 6 NYCRR 375-3.5(b), (c), and (d) by providing written notification to the parties listed in Paragraph III of the Agreement.

#### XIII. Dispute Resolution

A. In the event disputes arise under this Agreement, Applicant may, within fifteen (15) days after Applicant knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to this Agreement.

C. Notwithstanding any other rights otherwise authorized in law or equity, any disputes pursuant to this Agreement shall be limited to Departmental decisions on remedial activities. In no event shall such dispute authorize a challenge to the applicable statute or regulation.

#### XIV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, VII.B, and VIII, shall be null and void *ab initio* fifteen (15) days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) days after

issuance of a final decision resolving a dispute pursuant to Paragraph XIII, whichever is later, unless Applicant submits information within that fifteen (15) day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void *ab initio*, and the Department shall reserve all rights that it may have under law.

B. By entering into this Agreement, Applicant agrees to comply with and be bound by the provisions of 6 NYCRR 375-1, 375-3 and 375-6; the provisions of such subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Agreement to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Agreement.

C. The Department may exempt Applicant from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Agreement in accordance with 6 NYCRR 375-1.12(b), (c), and (d).

D. 1. Applicant shall use “best efforts” to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Applicant’s obligations under this Agreement, including all Department-approved Work Plans and the schedules contained therein. If, despite Applicant’s best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Applicant shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Applicant in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Applicant to modify the Work Plan pursuant to 6 NYCRR 375-1.6(d)(3) to reflect changes necessitated by Applicant’s inability to obtain such interest.

E. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Agreement.

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be

binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Applicant of its obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s). Applicant consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. i. Except as set forth herein, if Applicant desires that any provision of this Agreement be changed, Applicant shall make timely written application to the Commissioner with copies to the parties in Subparagraph III.A.1 of the Agreement.

ii. If Applicant seeks to modify an approved Work Plan, a written request shall be made to the Department’s project manager, with copies to the parties listed in Subparagraph III.A.1 of the Agreement.

iii. Requests for a change to a time frame set forth in this Agreement shall be made in writing to the Department’s project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Applicant promptly.

G. 1. If there are multiple parties signing this Agreement, the term “Applicant” shall be read in the plural, the obligations of each such party under this Agreement are joint and several, and the insolvency of or failure by any Applicant to implement any obligations under this Agreement shall not affect the obligations of the remaining Applicant(s) under this Agreement.

2. If Applicant is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Agreement are joint and several and the insolvency or failure of any general partner to implement any obligations under this Agreement shall not affect the obligations of the remaining partner(s) under this Agreement.

3. Notwithstanding the foregoing Subparagraphs XIV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no

obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

and all of which shall together constitute one and the same.

4. Any change to parties pursuant to this Agreement, including successors and assigns through acquisition of title, is subject to approval by the Department, after submittal of an application acceptable to the Department.

H. Applicant shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL 27-1421(6) and 6 NYCRR 375-1.5(b)(5).

I. Applicant shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

J. Applicant and Applicant's agents, grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Applicant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Applicant's responsibilities under this Agreement.

K. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

L. Applicant's obligations under this Agreement represent payment for or reimbursement of State costs, and shall not be deemed to constitute any type of fine or penalty.

M. In accordance with 6 NYCRR 375-1.6(a)(4), the Department shall be notified at least 7 days in advance of, and be allowed to attend, any field activities to be conducted under a Department approved work plan, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however that the Department may be excluded from portions of meetings where privileged matters are discussed.

N. In accordance with 6 NYCRR 375-1.11(a), all work plans; reports, including all attachments and appendices, and certifications, submitted by a remedial party shall be submitted in print, as well as in an electronic format acceptable to the Department.

O. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original

**ATTACHMENT “B”**

**BROWNFIELD CLEANUP PROGRAM  
APPLICATION APPROVAL LETTER**

**New York State Department of Environmental Conservation**  
**Division of Environmental Remediation, 12th Floor**  
625 Broadway, Albany, New York 12233-7011  
**Phone:** (518) 402-9706 - **Fax:** (518) 402-9020  
**Website:** www.dec.ny.gov



Alexander B. Grannis  
Commissioner

***Certified Mail, Return Receipt Requested***

Applicant  
Address  
City, State and Zip

**Re:**               **Site Name**  
                      Tax Map ID No.:  
                      Property County:  
                      Site No.:

Dear Applicant:

Your application for the above-referenced Brownfield Cleanup Program (BCP) project has been reviewed by the New York State Department of Environmental Conservation ("Department"). On behalf of Commissioner Grannis, I am pleased to inform you that your request is accepted. The acceptance is based upon your participation as follows:

Applicant is a *Participant [or Volunteer]* as defined in ECL 27-1405(1)(a)[or( b)].

The Department's project manager will assist you in completing your project. You can arrange a meeting to discuss the program's requirements and work plan. The work plan will determine the scope of work to be conducted and completed.

For purposes of the tax credits under Sections 21, 22 and 23 of the Tax Law, only those costs incurred on or after the effective date of the Brownfield Site Cleanup Agreement ("BCA") are eligible for consideration for credits. Based upon the facts and information in the application, information contained in the Department's records, and a timely return of signed copies of the BCA, the Department is prepared to execute a BCA for the above-described property.

Enclosed are three copies of the proposed BCA. Please have an authorized representative sign all three copies where indicated and return them to the project attorney's attention along with proof that the party executing the BCA is authorized to bind the Requestor. The BCA shall not be effective until it is fully executed by the parties. A reassessment of eligibility may result in a denial of the application if there are any changes to material facts and information before the BCA is fully executed. **Please note, if the BCA is not signed and received by the Department within 60 days of the date of this letter, the Department will consider the Application withdrawn and the offer to enter the BCP will be deemed rescinded.**

The Department looks forward to working with you on this project. You may contact the Department's project team as set forth in Paragraph IV of the attached draft BCA to discuss the next steps.

Sincerely,

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[Name], Director  
Division of Environmental Remediation

Enclosures

Department's Copies:  
ec:

Applicant's Copies:  
ec: