# New York State Department of Environmental Conservation

**Division of Environmental Remediation** 

Office of the Director, 12th Floor

625 Broadway, Albany, New York 12233-7011 **Phone:** (518) 402-9706 • **Fax:** (518) 402-9020

Website: www.dec.ny.gov

NOV 0 6 2013



Keith Massa S & D Capex Program Manager Frito-Lay, Inc. 7701 Legacy Drive Plano, Texas 75024-4099

Re: Certificate of Completion

Site Name: Frito Lay Site No.: C224133 202-218 Morgan Avenue

Kings County, Brooklyn, New York

Dear Mr. Massa,

Congratulations on having satisfactorily completed the remedial program at the Frito Lay site. Enclosed please find an original, signed Certificate of Completion. The New York State Department of Environmental Conservation (DEC) is pleased to inform you that the Final Engineering Report is hereby approved, allowing the Certificate of Completion (COC) to be issued for the above-referenced site.

Please note that you are required to perform the following tasks:

- If you are the site owner, you must record a notice of the COC in the recording office for the County (or Counties) where any portion of the site is located within 30 days of issuance of the COC; or if you are a prospective purchaser of the site, you must record a notice of the COC within 30 days of the date that you acquire the site. If you are a non-owner, you must work with the owner to assure the notice of COC is recorded within the time frame specified. A standard notice form is attached to this letter;
- Provide the notice of the COC to the Document Repositories within 10 days of issuance of the COC. DEC will develop a fact sheet describing the institutional and engineering controls (IC/EC) that are required at the site and distribute it to the County Listserv within 10 days;
- Implement the DEC-approved Site Management Plan (SMP) which details the activities necessary to assure the performance, effectiveness, and protectiveness of the remedial program; and you must report the results of these activities to DEC in a Periodic Review Report (PRR) which also includes any required IC/EC Certifications. The site IC/ECs are identified on the attached Site Management Form. The first PRR including the certification of the IC/ECs is due to DEC in March 2015; and

 You and your lessees must submit an annual report to the New York State Department of Taxation and Finance within one year and for each of the following eleven years after the execution of the Brownfield Site Cleanup Agreement. The Report must provide the information required by Chapter 390 of the Laws of 2008, Tax Law Section 171-s.

If you have any questions regarding any of these items, please contact Kevin Sarnowicz, the DEC project manager for this site at (518) 402-9768.

Sincerely,

Robert W. Schick, P.E.

Director

Division of Environmental Remediation

### Enclosure

ec:

Keith Massa (keith.d.massa@fritolay.com)
Vincent Frisina (vfrisina@GFNET.com)
Michael Brady (mbrady@gfnet.com)
Krista Anders, DOH
Albert DeMarco, DOH
Michael Ryan, DEC
Robert Cozzy, DEC
George Heitzman, DEC
Janet Brown, DEC
Kevin Sarnowicz, DEC
Jane O'Connell, DEC
Benjamin Conlon, DEC
Andrew Guglielmi, DEC

Yvonne Ward, DEC

## NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)

# CERTIFICATE OF COMPLETION

### CERTIFICATE HOLDER(S):

Name

Rolling Frito-Lay Sales, LP

Address

7701 Legacy Drive, MD 4C-83, Plano, TX 75024-4099

### BROWNFIELD CLEANUP AGREEMENT:

Application Approval: 7/29/09 Agreement Execution: 8/21/09 Agreement Index No.:A2-0622-0709

Application Approval Amendment: none

Agreement Execution Amendment: none

SITE INFORMATION

Site No.: C224133 Site Name: Frito Lay Site Owner: Rolling Frito-Lay Sales, LP Street Address: 202-218 Morgan Avenue

Municipality: Brooklyn County: Kings DEC Region: 2

Site Size: 2.760 Acres

Tax Map Identification Number(s): 3-02942-0105, 3-02942-0111, 3-02942-0112

Percentage of site located in an EnZone: 0 - 49 %

A description of the property subject to this Certificate is attached as Exhibit A and a site survey is attached as Exhibit B.

### CERTIFICATE ISSUANCE

This Certificate of Completion, hereinafter referred to as the "Certificate," is issued pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law ("ECL").

This Certificate has been issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and data submitted pursuant to the Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the Site, that the applicable remediation requirements set forth in the ECL have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

The remedial program for the Site has achieved a cleanup level that would be consistent with the following categories of uses (actual site use is subject to local zoning requirements):

### Allowable Uses under the BCP: Industrial

Cleanup Track: Track 4: Restricted use with site-specific soil cleanup objectives

# Tax Credit Provisions for Entities Taxable Under Article 9, 9-A, 32, and 33:

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 22 %. Tangible Property Credit Component Rate is 12 %.

### Tax Credit Provisions for Entities Taxable Under Article 22 & S Corporations:

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 22 %. Tangible Property Credit Component Rate is 10 %.

The Remedial Program includes use restrictions or reliance on the long term employment of institutional or engineering controls which are contained in the approved Site Management Plan and an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Kings County as 2013000399904.

### LIABILITY LIMITATION

Upon issuance of this Certificate of Completion, and subject to the terms and conditions set forth herein, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

### CERTIFICATE TRANSFERABILITY

This Certificate may be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by ECL Section 27-1419.5 and 6NYCRR Part 375-1.9.

### CERTIFICATE MODIFICATION/REVOCATION

This Certificate of Completion may be modified or revoked by the Commissioner following notice and an opportunity for a hearing in accordance with ECL Section 27-1419 and 6NYCRR Part 375-1.9(e) upon a finding that:

- (1) either the Applicant or the Applicant's successors or assigns have failed to comply with the terms and conditions of the Brownfield Site Cleanup Agreement;
- (2) the Applicant made a misrepresentation of a material fact tending to demonstrate that it was qualified as a Volunteer;
- (3) either the Applicant or the Applicant's successors or assigns made a misrepresentation of a material fact tending to demonstrate that the cleanup levels identified in the Brownfield Site Cleanup Agreement were reached;
  - (4) there is good cause for such modification or revocation;
- (5) either the Applicant or the Applicant's successors or assigns failed to manage the controls or monitoring in full compliance with the terms of the remedial program;
- (6) the terms and conditions of the environmental easement have been intentionally violated or found to be not protective or enforceable.

The Certificate holder(s) (including its successors or assigns) shall have thirty (30) days within which to cure any deficiency or to seek a hearing. If the deficiency is not cured or a request for a hearing received within such 30-day period, the Certificate shall be deemed modified or vacated on the 31st day after the Department's notice.

Joseph J. Martens Commissioner

New York State Department of Environmental Conservation

Date: November 6.2013

By: Robert W. Schick, P.E., Director

Division of Environmental Remediation

# NOTICE OF CERTIFICATE OF COMPLETION Brownfield Cleanup Program 6 NYCRR Part 375-1.9(d)

Frito Lay, Site ID No. C224133
202-218 Morgan Ave., Brooklyn, NY
Brooklyn, Kings County, Tax Map Identification Number(s) Brooklyn (Borough 3),
Block 02942, Lots 0105, 0111and 0112

PLEASE TAKE NOTICE, the New York State Department of Environmental Conservation (Department) has issued a Certificate of Completion (Certificate) pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law (ECL) to Rolling Frito-Lay Sales, LP for a parcel approximately 2.76± acres located at 202-218 Morgan Avenue in Brooklyn, NY, Kings County.

PLEASE TAKE NOTICE, the Certificate was issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and data submitted pursuant to the Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the Site, that the remediation requirements set forth in ECL Article 27, Title 14 have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

PLEASE TAKE NOTICE, the remedial program for the Site has achieved a cleanup level that would be consistent with the following categories of uses (actual site use is subject to local zoning requirements):

- □ Residential Use, as set forth in 6 NYCRR 375-1.8(g)(2)i.
   □ Restricted Residential Use, as set forth in 6 NYCRR 375-1.8(g)(2)ii.
- □ Commercial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iii.
- Industrial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iv.

Further, the use of groundwater is restricted and may not be used, unless treated in accordance with the requirements provided by the New York State Department of Health, or a local County Health Department with jurisdiction in such matters and such is approved by the Department as not inconsistent with the remedy.

PLEASE TAKE NOTICE, since the remedial program relies upon use restrictions or the long term employment of institutional or engineering controls; such institutional or engineering controls are contained in an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office of the City Register of the City of New York, Brooklyn, Kings County as 2013000399904.

PLEASE TAKE NOTICE, the Environmental Easement requires that the approved site management plan (SMP) for this property be adhered to. The SMP, which may be amended from time to time, may include sampling, monitoring, and/or operating a treatment system on the property, providing certified reports to the NYSDEC, and generally provides for the management of any and all plans and limitations on the property. A copy of the SMP is available upon request by writing to the Department's Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, New York 12233.

PLEASE TAKE NOTICE, provided that the Environmental Easement, SMP and Certificate are complied with, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

### Frito-Lay Morgan Ave., Site No C224133, 202-218 Morgan Ave. Brooklyn, NY

PLEASE TAKE NOTICE, the Certificate may entitle the Certificate holder(s) to tax credits in accordance with Tax Law Sections 21, 22 and 23.

PLEASE TAKE NOTICE, any change of use of the site, as defined in 6 NYCRR 375, must be preceded by notice to the Department in accordance with 6 NYCRR 375-1.11(d). A transfer of any or all of the property constitutes a change of use.

PLEASE TAKE NOTICE, the Certificate may be only be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by ECL Section 27-1419.5 and 6 NYCRR Part 375-1.9. Failure to comply with the regulatory requirements for transfer WILL bar the successors and assigns from the benefits of the Certificate.

PLEASE TAKE NOTICE, the Certificate may be modified or revoked by the Commissioner as set forth in the applicable regulations.

PLEASE TAKE NOTICE, the Certificate may be revoked if the Environmental Easement as implemented, if applicable, is not protective or enforceable.

PLEASE TAKE NOTICE, a copy of the Certificate can be reviewed at the NYSDEC's Region 2 office located at 1 Hunters Point Plaza, 47-40 21<sup>st</sup> St, Long Island City, NY 11101, by contacting the Regional Environmental Remediation Engineer.

WHEREFORE, the undersigned has signed this Notice of Certificate

|   |   | Keith Massa, S & D Capex Program Manager   |
|---|---|--|
|   |   | By:  |
|   |   | Title:   |
|   |   | Date:  |
| STATE OF NEW Y                          | YORK ) SS:                                |  |
| he/she/they execute                     | whose name is (are<br>d the same in his/h | , in the year 20, before me, the undersigned, personally y known to me or proved to me on the basis of satisfactory evidence to subscribed to the within instrument and acknowledged to me that er/their capacity(ies), and that by his/her/their signature(s) on the erson upon behalf of which the individual(s) acted, executed the |
| Signature and Office taking acknowledge |   | Please record and return to:  Keith Massa S & D Capex Program Manager Frito-Lay, Inc. 7701 Legacy Drive  |

Plano, Texas 75024-4099



### NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION Site Management Form



SITE DESCRIPTION



SITE NO.

C224133

SITE NAME

Frito Lay

SITE ADDRESS: 202-218 Morgan Avenue

ZIP CODE: 11237

CITY/TOWN: Brooklyn

COUNTY: Kings

ALLOWABLE USE: Industrial

| CITE | BEABIA        | GEMEN | IT DEC |           | 00    |
|------|---------------|-------|--------|-----------|-------|
| 311  | INI AL INI AL |       |        | W PEIP II | 1 110 |
|      |               |       |        |           |       |

SITE MANAGEMENT PLAN INCLUDES:

YES NO

1

IC/EC Certification Plan

Monitoring Plan

Operation and Maintenance (O&M) Plan

. 

Periodic Review Frequency: once a year

Periodic Review Report Submitted Date: 01/14/2015

Description of Institutional Control

### Rolling Frito Lay Sales, LP

7701 Legacy Drive, MD 4C-83 204 Morgan Avenue Environmental Easement Block: 2942 Lot: 105 Sublot:

Section: 3

Subsection:

S\_B\_L Image: 3-02942-0105 Ground Water Use Restriction

IC/EC Plan

Landuse Restriction

Monitoring Plan

O&M Plan

Site Management Plan

Soil Management Plan

# 208 Morgan Avenue Environmental Easement Block: 2942 Lot: 111 Sublot: Section: 3 Subsection: S\_B\_L Image: 3-02942-0111 Ground Water Use Restriction IC/EC Plan Landuse Restriction Monitoring Plan O&M Plan Site Management Plan Soil Management Plan

# 212 Morgan Avenue Environmental Easement Block: 2942 Lot: 112 Sublot: Section: 3 Subsection: S\_B\_L Image: 3-02942-0112 Ground Water Use Restriction IC/EC Plan Landuse Restriction Monitoring Plan O&M Plan Site Management Plan

Soil Management Plan

```
Rolling Frito Lay Sales, LP
7701 Legacy Drive, MD 4C-83
  204 Morgan Avenue
     Environmental Easement
       Block: 2942
         Lot: 105
             Sublot:
                Section: 3
                    Subsection:
                        S_B_L Image: 3-02942-0105
                             Cover System
                             Fencing/Access Control
                             Subsurface Barriers
                             Vapor Mitigation
  208 Morgan Avenue
     Environmental Easement
       Block: 2942
         Lot: 111
             Sublot:
                Section: 3
                    Subsection:
                        S_B_L Image: 3-02942-0111
                             Cover System
                             Fencing/Access Control
                             Subsurface Barriers
                             Vapor Mitigation
  212 Morgan Avenue
    Environmental Easement
       Block: 2942
         Lot: 112
             Sublot:
                Section: 3
                    Subsection:
                        S_B_L Image: 3-02942-0112
                             Cover System
                             Fencing/Access Control
                             Subsurface Barriers
                             Vapor Mitigation
```

## **EXHIBIT A AND EXHIBIT B**

Exhibit A: Site Survey

Exhibit B: The Description of the property is included on the Site

Survey under "Environmental Easement Area Description

