



NOV 19 2014

**Certified Mail, Return Receipt Requested**

Upstate Brownfield Partners LLC  
Attn: Michael Spoleta  
7 Van Auker Street  
Rochester, New York 14608

Southpoint Cove LLC  
Attn: Robert Morgan  
1170 Pittsford Victor Road  
Pittsford, New York 14534

RE: Certificate of Completion Modification  
Site Name: 1440 Empire Boulevard  
Site No. : C828135

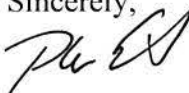
Dear Applicants:

Enclosed is the re-issued Certificate of Completion (COC) for the 1440 Empire Boulevard site. The Brownfield Cleanup Agreement ("BCA" or "Agreement") for the 1440 Empire Boulevard Site was amended on April 19, 2013 to add an additional party, Southpoint Cove LLC. By oversight, the COC was drafted to include the additional party, but not the original party to the BCA, Upstate Brownfield Partners LLC. The New York State Department of Environmental Conservation (DEC) agrees that this party should be added to the COC. This re-issued COC accurately reflects the parties as per the amended BCA.

Also enclosed is a Notice of Modification of COC, which must be executed by Upstate Brownfield Partners LLC, and filed with the Monroe County Clerk's office within 30 days of issuance of the COC. The proof of such filing should be provided to DEC. This Notice provides the facts and basis for DEC's Modification of the COC for this site.

Nothing contained herein constitutes a waiver by DEC or the State of New York of any rights held in accordance with any applicable state and/or federal law or a release for any party from any obligations held under those laws. If there are questions regarding any of these items, please contact Matthew Gillette, the Project Manager for this site, at 585-226-5308, or by email at [matthew.gillette@dec.ny.gov](mailto:matthew.gillette@dec.ny.gov)

Sincerely,



Robert W. Schick, P.E.

Director

Division of Environmental Remediation

Enclosures

cc: Michael Ryan, DEC  
Bart Putzig, DEC  
Matthew Gillette, DEC  
Kelly Lewandowski, DEC  
Benjamin Conlon, DEC  
Andrew Guglielmi, DEC  
James Mahoney, DEC  
Alan Knauf ([aknauf@nyenvlaw.com](mailto:aknauf@nyenvlaw.com))

NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)  
*CERTIFICATE OF COMPLETION*

**CERTIFICATE HOLDER(S):**

Name	Address
Southpoint Cove LLC	1080 Pittsford Victor Road, Pittsford, NY 14534
Upstate Brownfield Partners LLC	7 Van Auker Street, Rochester, NY 14608

**BROWNFIELD CLEANUP AGREEMENT:**

**Application Approval:** 8/8/06    **Agreement Execution:** 8/31/06    **Agreement Index No.:** B8-0721-06-06

**Application Approval Amendment:** 2/4/11                      **Agreement Execution Amendment:** 2/17/11

**Application Approval Amendment:** 1/22/13                      **Agreement Execution Amendment:** 4/19/13

**SITE INFORMATION**

**Site No.:** C828135    **Site Name:** 1440 Empire Boulevard  
**Site Owner:** Southpoint Cove LLC  
**Street Address:** 1440 Empire Boulevard  
**Municipality:** Penfield    **County:** Monroe **DEC Region:** 8  
**Site Size:** 4.738 Acres  
**Tax Map Identification Number(s):** 108.06-1-8.2  
**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:** Restricted-Residential, Commercial, and 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 12 %.  
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 10 %.  
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 Monroe County as Book 11334 Page 392.

#### **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

By:  Date: November 19, 2014  
Robert W. Schick, P.E., Director  
Division of Environmental Remediation

**NOTICE OF MODIFICATION OF CERTIFICATE OF COMPLETION**

**Brownfield Cleanup Program**

**6 NYCRR Part 375-1.9(e)**

1440 Empire Boulevard, Site ID No. C828135  
1440 Empire Boulevard, Monroe County, New York  
Tax Map Identification Number(s) 108.06-1-8.2

**PLEASE TAKE NOTICE**, the New York State Department of Environmental Conservation (Department) previously issued a Certificate of Completion (COC) pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law (ECL) on June 30, 2014 to 315 Southpoint Cove LLC for a parcel approximately 4.738 acres in size located at 1440 Empire Boulevard, Penfield, Monroe County, referred to as the 1440 Empire Boulevard site, number C828135.

**PLEASE TAKE NOTICE**, that Southpoint Cove LLC and Upstate Brownfield Partners LLC were both parties to Brownfield Cleanup Agreement No. B8-0721-06-06.

**PLEASE TAKE NOTICE**, that, based on the Department having issued a COC to Southpoint Cove LLC, the Department hereby finds that good cause exists under 6 NYCRR § 371-1.9(e)(v) to modify the COC to add Upstate Brownfield Partners LLC as a holder of the COC.

**PLEASE TAKE NOTICE**, that there is an Environmental Easement (EE) for this Site, and that Upstate Brownfield Partners LLC and Southpoint Cove LLC recognize(s) and agree(s) to implement the Department-approved Site Management Plan (SMP), and any amendments thereto. 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 EE, SMP and COC are complied with, Upstate Brownfield Partners LLC and Southpoint Cove LLC, as the updated COC 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 COC holders' 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.

**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 COC may be only be transferred to the COC holders' 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 COC.

1440 Empire Boulevard, Site #C828135, 1440 Empire Boulevard, Penfield, NY

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

**PLEASE TAKE NOTICE**, the COC may be revoked if the EE as implemented, if applicable, is not protective or enforceable.

**PLEASE TAKE FURTHER NOTICE**, that Upstate Brownfield Partners LLC shall file this Notice of Modification of COC, attaching the June 30, 2014 COC, in the Monroe County Clerk's Office within thirty days of its signature below.

**WHEREFORE**, the undersigned has signed this Notice of Modification of COC

Upstate Brownfield Partners LLC

By: \_\_\_\_\_

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

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

STATE OF NEW YORK     ) SS:  
COUNTY OF                )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2014, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

**Please record and return to:**  
Upstate Brownfield Partners LLC  
7 Van Auker Street  
Rochester, New York 14608