



Phillips Lytle LLP

Via UPS Next Day Air

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

February 3, 2017

Re: Application to Amend Brownfield Cleanup Agreement and Amendment
BCP Site No. C915281

Dear Sir or Madam:

Enclosed please find an executed original and electronic pdf version of a Brownfield Cleanup Program Application to Amend Brownfield Cleanup Agreement for the above-referenced Site. In addition to the executed Application, enclosed please find:

1. A print-out of entity information from the DOS database to document that the Applicant, a New York LLC, is existing as of the date thereof;
2. A letter from the owner of the Site regarding the Applicant's rights of Site access under existing agreements; and
3. Written Consent of the Sole Member of 791 Washington Street, LLC evidencing that Peter L. Krog is authorized to execute this Application on its behalf.

If you have any questions regarding this matter, please contact the undersigned.

Very truly yours,

Phillips Lytle LLP

By 

David P. Flynn

WAKr/Doc #01-3014723.1/Enclosures

ATTORNEYS AT LAW

DAVID P. FLYNN, PARTNER DIRECT 716 847 5473 DFLYNN@PHILLIPSLYTLLE.COM

ONE CANALSIDE 125 MAIN STREET BUFFALO, NY 14203-2887 PHONE 716 847 8400 FAX 716 852 6100

NEW YORK: ALBANY, BUFFALO, CHAUTAUGUA, GARDEN CITY, NEW YORK, ROCHESTER | WASHINGTON, DC | CANADA: WATERLOO REGION | PHILLIPSLYTLLE.COM



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cc (via email w/attachment): Paul Neureuter
cc (via email w/attachment): Thomas Renauto



Department of
Environmental
Conservation

BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

Check the appropriate box below based on the nature of the amendment modification requested:

Amendment to [check one or more boxes below]

- Add
- Substitute
- Remove
- Change in Name

applicant(s) to the existing Brownfield Cleanup Agreement [*Complete Section I-IV below and Part II*]

Does this proposed amendment involve a transfer of title to all or part of the brownfield site? Yes No

If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See <http://www.dec.ny.gov/chemical/76250.html>

Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]

Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]

Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY: Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment:

Please refer to the attached instructions for guidance on filling out this application

Section I: Existing Application Information

BCP SITE NAME: Former Trico Plant

BCP SITE NUMBER: C915281

NAME OF CURRENT APPLICANT(S): 847 Main Street, LLC

INDEX NUMBER OF EXISTING AGREEMENT: C915281-10-13 DATE OF EXISTING AGREEMENT: 10/24/13

Section II: New Requestor Information (if no change to Current Applicant, skip to Section V)

NAME 791 Washington Street, LLC

ADDRESS 4 Centre Drive

CITY/TOWN Orchard Park

ZIP CODE 14127

PHONE 716-667-1234

FAX 716-667-1258

E-MAIL pneureuter@kroggrp.com

Is the requestor authorized to conduct business in New York State (NYS)?

Yes

No

- If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation & Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

NAME OF NEW REQUESTOR'S REPRESENTATIVE Paul Neureuter

ADDRESS 4 Centre Drive

CITY/TOWN Orchard Park

ZIP CODE 14127

PHONE 716-667-1234

FAX 716-667-1258

E-MAIL pneureuter@kroggrp.com

NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) Benchmark Environmental Engineering

ADDRESS 2558 Hamburg Turnpike, Suite 300

CITY/TOWN Lackawanna

ZIP CODE 14218

PHONE 716-856-0599

FAX 716-856-0583

E-MAIL mlesakowski@benchmarkturnkey.com

NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) David P. Flynn

ADDRESS 125 Main Street

CITY/TOWN Buffalo

ZIP CODE 14203

PHONE 716-847-5473

FAX 716-852-6100

E-MAIL dflynn@phillipslytle.com

Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached?

Yes

No

Describe Requestor's Relationship to Existing Applicant:

Affiliate

Section III. Current Property Owner/Operator Information (only include if new owner/operator or new existing owner/operator information is provided, and highlight new information)

OWNER'S NAME (if different from requestor) Buffalo Brownfield Restoration Corp.

ADDRESS 95 Perry Street

CITY/TOWN Buffalo

ZIP CODE 14203

PHONE 716-856-6525

FAX 716-856-6754

E-MAIL pcamarata@buffalourbandevelopment.com

OPERATOR'S NAME (if different from requestor or owner)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Section IV. Eligibility Information for New Requestor (Please refer to ECL § 27-1407 for more detail)

If answering "yes" to any of the following questions, please provide an explanation as an attachment.

1. Are any enforcement actions pending against the requestor regarding this site? Yes No
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site? Yes No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? Yes No
Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the subject law; ii) any order or determination; iii) any regulation implementing ECL Article 27 Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment. Yes No
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, Department assigned site number, the reason for denial, and other relevant information. Yes No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants? Yes No
7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state? Yes No
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department? Yes No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application? Yes No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order? Yes No
11. Are there any unregistered bulk storage tanks on-site which require registration? Yes No

THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL §27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

PARTICIPANT
 A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.

VOLUNTEER
 A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.

Requestor's Relationship to Property (check one):

Prior Owner Current Owner Potential /Future Purchaser Other _____

If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted.** Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site Is this proof attached? Yes No

Note: a purchase contract does not suffice as proof of access.

Section V: Property description and description of changes/additions/reductions (if applicable)

ADDRESS 791 Washington Street

CITY/TOWN Buffalo

ZIP CODE 14203

TAX BLOCK AND LOT (TBL) (in existing agreement)

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
791 Washington Street	111.31-1-1.11				2.110

Check appropriate boxes below:

- Changes to metes and bounds description or TBL correction
- Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

Approximate acreage added: _____

ADDITIONAL PARCELS:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

- Reduction of property

Approximate acreage removed: _____

PARCELS REMOVED:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, or acceptable site map to this application.


PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: Former Trico Plant	BCP SITE NUMBER: C915281
NAME OF CURRENT APPLICANT(S): 847 Main Street, LLC	
INDEX NUMBER OF EXISTING AGREEMENT: C915281-10-13	
EFFECTIVE DATE OF EXISTING AGREEMENT: 10/24/2013	

Declaration of Amendment:

By the Requestor(s) and/or Applicant(s) signatures below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from any obligations held under the Agreement or those same laws.

Statement of Certification and Signatures: New Requestor(s) (if applicable)
(Individual)
I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.
Date: _____ Signature: _____
Print Name: _____
(Entity)
I hereby affirm that I am (title <u>MEMBER</u>) of (entity <u>791 Washington Street, LLC</u>); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.
<u>Peter Krog's</u> signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.
Date: <u>1/30/17</u> Signature: 
Print Name: <u>Peter Krog</u>

Statement of Certification and Signatures Existing Applicant(s) (an authorized representative of each applicant must sign)

(Individual)

I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am MANAGER (title) of 847 Main Street, LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. Peter Krog's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 6/30/17 Signature: 

Print Name: Peter Krog

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Status of Agreement:

<input type="checkbox"/> PARTICIPANT A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input type="checkbox"/> VOLUNTEER A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
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Effective Date of the Original Agreement:

Signature by the Department:

DATED:

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By:

Robert W. Schick, P.E., Director
Division of Environmental Remediation

SUBMITTAL INFORMATION:

- **Two (2) copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) must be sent to:**

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

FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE: _____ **LEAD OFFICE:** _____

PROJECT MANAGER: _____

State of New York
Department of State } **ss:**

I hereby certify, that 791 WASHINGTON STREET, LLC a NEW YORK Limited Liability Company filed Articles of Organization pursuant to the Limited Liability Company Law on 06/02/2016, and that the Limited Liability Company is existing so far as shown by the records of the Department.



*Witness my hand and the official seal
of the Department of State at the City
of Albany, this 27th day of January
two thousand and seventeen.*

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan W. Fitzgerald
Executive Deputy Secretary of State

201701300061 * 89

Buffalo Brownfield Restoration Corporation

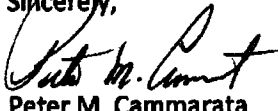
February 2, 2017

To Whom It May Concern:

Buffalo Brownfield Restoration Corporation (BBRC) is the current owner of the former TRICO property at 791 Washington Street in Buffalo, New York. BBRC has signed a Real Estate Purchase Agreement with The Krog Group, LLC (Krog), which intends on closing on the property at the completion of a due diligence period in the near future. Krog has assigned its interest in the Purchase Agreement to 791 Washington Street LLC.

Krog has made us aware that they are now planning to add the 791 Washington Street LLC entity to their Brownfield Cleanup Program application. BBRC has no objection to this taking place.

Sincerely,



Peter M. Cammarata
Executive Vice President

**WRITTEN CONSENT
OF THE SOLE MEMBER OF
791 WASHINGTON STREET, LLC**

THE UNDERSIGNED, being the sole member of 791 Washington Street, LLC, (791) a New York limited liability company, does hereby consent to the following action and adopt the following resolutions without a formal meeting:

WHEREAS, 791 desires to authorize Peter L. Krog to execute any and all agreements, contracts and documents on behalf of 791;

NOW THEREFORE BE IT

RESOLVED, that Peter L. Krog is hereby authorized to execute any and all agreements, contracts and documents.

IN WITNESS WHEREOF, the undersigned has signed this Consent.

791 Washington Street, LLC

By:



Peter L. Krog, Sole Member