



Department of
Environmental
Conservation

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

PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

1. Check the appropriate box(es) below based on the nature of the amendment modification requested:

☒ Amendment to modify the existing BCA: [check one or more boxes below]

- ☒ Add applicant(s)
- ☐ Substitute applicant(s)
- ☐ Remove applicant(s)
- ☐ Change in Name of applicant(s)

☐ Amendment to reflect a transfer of title to all or part of the brownfield site

1a. A copy of the recorded deed must be provided. Is this attached? ☐ Yes ☐ No

1b. ☐ Change in ownership ☐ Additional owner (such as a beneficial owner)

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)

2. Required: Please provide a brief narrative on the nature of the amendment:

356 Hertel Ave, LLC is purchasing the real property and is requesting to be added to the BCA as an additional BCP Volunteer. A Change of Use form is being submitted concurrent to this BCA amendment. NYSDEC will be notified upon transfer of the property to 356 Hertel Ave, LLC.

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

Submission of a full BCP application will be required should this application be determined to be a major amendment. If the amendment involves more than an insignificant change in acreage, applicants are encouraged to consult with the DEC project team prior to submitting this application.

Section I. Current Agreement Information		
BCP SITE NAME: Hertel and Foundry		BCP SITE NUMBER: C915359
NAME OF CURRENT APPLICANT(S): Kam Cleanup LLC		
INDEX NUMBER OF AGREEMENT: Index No. C915359-12-20		DATE OF ORIGINAL AGREEMENT: 1/19/2021
Section II. New Requestor Information (complete only if adding new requestor or name has changed)		
NAME 356 Hertel Ave, LLC		
ADDRESS 295 Main Street, #700		
CITY/TOWN Buffalo		ZIP CODE 14203
PHONE 7168704878	FAX	E-MAIL lofasofred@yahoo.com
1. Is the requestor authorized to conduct business in New York State (NYS)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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 Fred LoFaso		
ADDRESS (same as above)		
CITY/TOWN		ZIP CODE
PHONE	FAX	E-MAIL
NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) Benchmark Civil/Environmental Engineering and Geology		
ADDRESS 2558 Hamburg Turnpike		
CITY/TOWN Buffalo, NY		ZIP CODE 14218
PHONE 716-856-0599	FAX	E-MAIL mlesakowski@benchmarkturnkey.com
NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) Peter Sorgi		
ADDRESS 726 Main Street, Suite B		
CITY/TOWN East Aurora, NY		ZIP CODE 14052
PHONE 716-908-3289	FAX	E-MAIL psorgi@hsmlegal.com
2. 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? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
3. Describe Requestor's Relationship to Existing Applicant: The Requestor is comprised of the same Members of the Existing Applicant (see Organizational Chart attached).		

Section III. Current Property Owner/Operator Information (only include if new owner/operator)
Owner below is: ☐ Existing Applicant ☐ New Applicant ☐ Non-Applicant

OWNER'S NAME (if different from requestor)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

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.

12. Requestor's Relationship to Property (check one):

☐ Prior Owner ☐ Current Owner ☒ Potential /Future Purchaser ☐ Other _____

13. 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)

1. Property information on current agreement:

ADDRESS

CITY/TOWN

ZIP CODE

TAX BLOCK AND LOT (SBL)

TOTAL ACREAGE OF CURRENT SITE: _____

Parcel Address

Section No. Block No. Lot No. Acreage

2. Check appropriate boxes below:

☐

Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

2a. PARCELS ADDED:

Acreage
Added by
Parcel

Parcel Address

Section No. Block No. Lot No.

Total acreage to be added: _____

☐

Reduction of property

2b. PARCELS REMOVED:

Acreage
Removed
by Parcel

Parcel Address

Section No. Block No. Lot No.

Total acreage to be removed: _____

☐

Change to SBL (e.g. merge, subdivision, address change)

2c. NEW SBL INFORMATION:

Parcel Address

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.

3. TOTAL REVISED SITE ACREAGE: _____

Supplement to the Application To Amend Brownfield Cleanup Agreement And Amendment - Questions for Sites Seeking Tangible Property Credits in New York City ONLY.

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please answer questions below and provide documentation necessary to support answers.	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see DEC's website for more information.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
From ECL 27-1405(31): "Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.	
3. Is the project an affordable housing project as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
From 6 NYCRR 375- 3.2(a) as of August 12, 2016: (a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units. (1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' households annual gross income. (2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which sets affordable units aside for home owners at a defined maximum percentage of the area median income. (3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.	

PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: Hertel and Foundry	BCP SITE NUMBER: C915359
NAME OF CURRENT APPLICANT(S): Kam Cleanup LLC	
INDEX NUMBER OF AGREEMENT: Index No. C915359-12-20	
EFFECTIVE DATE OF ORIGINAL AGREEMENT: 1/19/2021	

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)
<p>(Individual)</p> <p>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.</p> <p>Date: _____ Signature: _____</p> <p>Print Name: _____</p>
<p>(Entity)</p> <p>I hereby affirm that I am (title <u>Managing Member</u>) of (entity <u>356 Hertel Ave, 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.</p> <p><u>Fred LoFaso's</u> signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.</p> <p>Date: <u>7/12/2021</u> Signature: _____</p> <p>Print Name: <u>Fred LoFaso</u></p>

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: Fred

(Entity)

I hereby affirm that I am Managing Member (title) of Kam Cleanup 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. Fred LoFaso's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 7/12/2021

Signature: _____

Print Name: Fred LoFaso

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Please see the following page for submittal instructions.

NOTE: Applications submitted in fillable format will be rejected.

Status of Agreement:

☐

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 contamination.

Effective Date of the Original Agreement: 1/19/2021

Signature by the Department:

DATED: 9/9/2022

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: Andrew Guglielmi

Andrew O. Guglielmi, Director
Division of Environmental Remediation

SUBMITTAL REQUIREMENTS:

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in final, non-fillable 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

- **NOTE: Applications submitted in fillable format will be rejected.**

FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE: _____ **LEAD OFFICE:** _____ Region 9, DER

PROJECT MANAGER: _____ Dave Locey

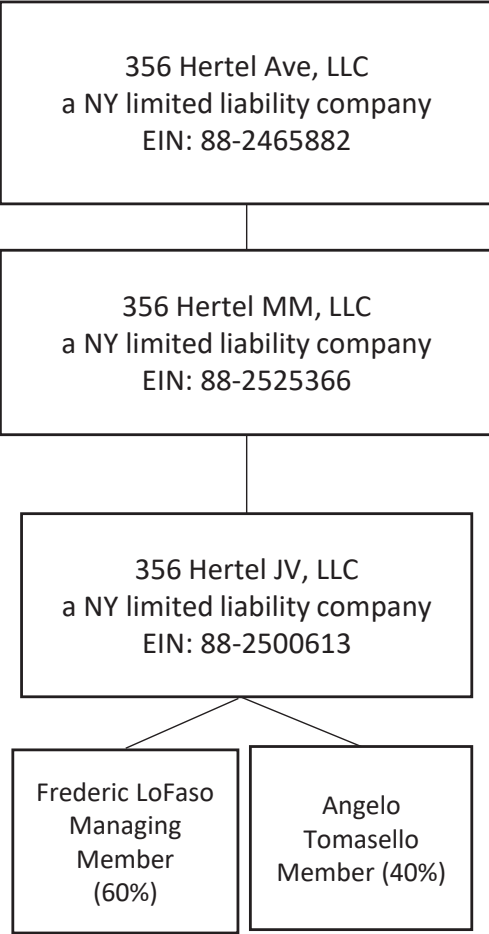
356 HERTEL AVE LLC- STATEMENT OF VOLUNTEER STATUS

SECTION VII – REQUESTOR ELIGIBILITY INFORMATION

The Applicant, 356 Hertel Ave, LLC, qualifies as a “Volunteer” in accordance with NY ECL 27-1405(1)(b) and 6NYCRR 375-3.2(b)(2).

356 Hertel Ave, LLC is owned by the same members (Fred LoFaso and Angelo Tomasello) as the current Applicant on the BCA, Kam Cleanup LLC, which is a Volunteer on the existing BCA. 356 Hertel Ave, LLC is a potential purchaser of the Site. Since the Applicant and their associated members became involved with the property after disposal or discharge of contaminants and has no relationship with the previous owners/operators of the Site, and because Kam Cleanup LLC is a Volunteer with the same ownership as 356 Hertel Ave, LLC, 356 Hertel Ave, LLC is entitled to Volunteer status under NY ECL27-1405(1)(b).

Hertel and Foundry Site – Organizational Chart



Department of State

Division of Corporations

Entity Information

Return to Results

Return to Search

Entity Details



ENTITY NAME: 356 HERTEL AVE, LLC	DOS ID: 6464042
FOREIGN LEGAL NAME:	FICTITIOUS NAME:
ENTITY TYPE: DOMESTIC LIMITED LIABILITY COMPANY	DURATION DATE/LATEST DATE OF DISSOLUTION:
SECTIONOF LAW: LIMITED LIABILITY COMPANY LAW - 203 LIMITED LIABILITY COMPANY LAW - LIMITED LIABILITY COMPANY LAW	ENTITY STATUS: Active
DATE OF INITIAL DOS FILING: 04/21/2022	REASON FOR STATUS:
EFFECTIVE DATE INITIAL FILING: 04/21/2022	INACTIVE DATE:
FOREIGN FORMATION DATE:	STATEMENT STATUS: CURRENT
COUNTY: Erie	NEXT STATEMENT DUE DATE: 04/30/2024
JURISDICTION: New York, United States	NFP CATEGORY:

- ENTITY DISPLAY
- NAME HISTORY
- FILING HISTORY
- MERGER HISTORY
- ASSUMED NAME HISTORY

Service of Process Name and Address

Name: 356 Hertel Ave, LLC

Address: 295 Main Street, #700, Buffalo, NY, United States, 14203

Chief Executive Officer's Name and Address

Name:

Address:

Principal Executive Office or Owner Name and Address

Name:

Address:

Registered Agent Name and Address

Name:

Address:

July 12, 2022

Ms. Kelly Lewandowski
Chief, Site Control Section
NYSDEC - Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7020

Re: BCP Site Access Authorization
Hertel and Foundry Site
BCP Site No. C915359
356 Hertel Avenue and 42 Foundry Street, Buffalo, NY

Dear Ms. Lewandowski:

Please be advised that I am the owner of the above-referenced property (the "Site"), which is currently in the Brownfield Cleanup Program ("BCP"). I am also the Managing Member of a new Requestor, 356 Hertel Ave, LLC, which is purchasing the Site and which has submitted a Brownfield Cleanup Agreement Amendment Application to be added to the existing Brownfield Cleanup Agreement, whereby Kam Cleanup LLC is the current Applicant.

As current owner of the Site and as Managing Member of the future owner of the Site, I authorize 356 Hertel Ave, LLC (and any of its designated contractors and consultants) unlimited access to the Site to perform the required work related to and necessary to secure a Certificate of Completion under the BCP, including placing an Environmental Easement on the Site.

Please contact me if you have any questions or require additional information.

Sincerely,



Fred LoFaso
Shylo Group Inc.
Kam Cleanup LLC
356 Hertel Ave, LLC

356 HERTEL AVE, LLC

WRITTEN CONSENT OF THE MANAGING MEMBER

July 12, 2022

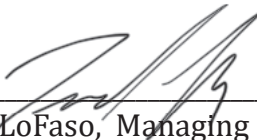
The undersigned being the managing member of **356 Hertel Ave LLC, 356 Hertel MM and 356 Hertel JV** which are New York limited liability companies (the "Company"), hereby consents to the adoption of the following resolutions without a meeting and directs that this Consent be filed with the minutes of the Company:

RESOLVED, that Frederic LoFaso (an "Authorized Person") be, and hereby is, authorized, directed, and empowered, acting alone, in the name or on behalf of the Corporation, to execute the Brownfield Cleanup Program ("BCP") Application, the BCP Agreement, or any other documents or agreements necessary to enter and participate in the New York State Department of Environmental Conservation's Brownfield Cleanup Program (Environmental Conservation Law Article 27, Title 14) for property owned by the Company located at 356 Hertel Avenue and 42 Foundry St, Buffalo, NY; and be it further

RESOLVED, that the Authorized Person is hereby authorized, empowered and directed to take all such action on behalf of the Corporation as they may deem necessary, appropriate or advisable to carry out the intent and purposes of the foregoing resolutions; and be it further

RESOLVED, that any acts of any officer of the Corporation and of any persons designated and authorized to act by any such officer of the Corporation, which acts would have been authorized by the foregoing resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as acts of the Corporation.

IN WITNESS WHEREOF, the undersigned have executed this Written Consent of Managing Member as of the date first set forth above.



Mr. Frederic LoFaso, Managing Member