June 4, 2020

Nicholas S. Bollers
Assistant Environmental Engineer
NYSDEC by email
Shaun Surani
NYSDOH by email

Dear Mr. Bollers and Mr. Surani:

Let's start a new phase and put health first because the Bronx is last in health. Toward that end, we think your letter of May 20, 2020 in response to our April 25, 2020 comments concerning Bronx Point - NYS BCP Site No. C203117, are misguided. We request that the New York State Department of Environmental Conservation and the New York State Department of Health review and respond to our concerns presented herein.

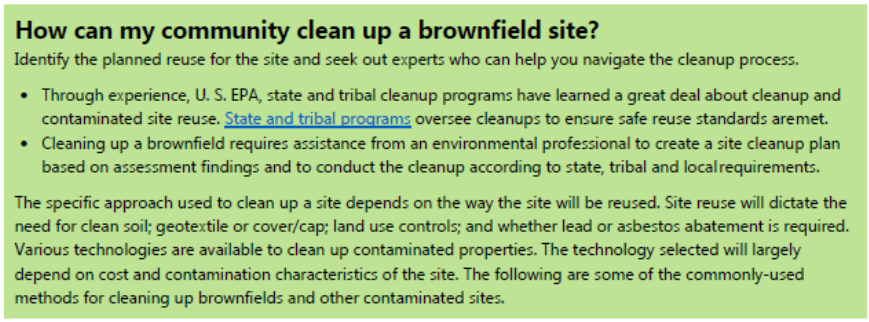
As you know, the Bronx Council for Environmental Quality (www.bceq.org) was responsible for the Designation of the Harlem River as a Brownfield Opportunity Area because we completed two Steps in the BOA Program. Our method to describe the problematic responses are below. We have listed your responses, or combination of responses indented and in blue with problems highlighted. Our new comments following.

> **Response 1**: Time is a major consideration for this project, since the objective of the redevelopment is to provide affordable housing in a timely manner.

Timely manner is not the concern for an affordable housing project that was approved in 2017. The State should be more interested in protecting the health of the people of the South Bronx who are unfairly treated to high density housing amidst high truck trafficked routes where asthma is the highest in the nation and where COVID19 highly infected complicated the health of this fragile population.

> **Response 3:** The restricted residential use soil cleanup objectives established in the RAWP are appropriate for apartments, condominiums, co-operative or other multi-family residential development, regardless of income level. A site cover system is an appropriate engineering control for a restricted residential use remedy. (Emphasis added)

> **Response 5:** In Situ Chemical Oxidation (ISCO) is well-established remedial technology for treating petroleum contaminated groundwater. The purpose of the ISCO treatment is to remediate contaminated groundwater before it migrates to the river. The ISCO design will be submitted under a separate technical memorandum as discussed in section 3.3 of the RAWP. (Emphasis added)



How can my community clean up a brownfield site?

Identify the planned reuse for the site and seek out experts who can help you navigate the cleanup process.

- Through experience, U. S. EPA, state and tribal cleanup programs have learned a great deal about cleanup and contaminated site reuse. State and tribal programs oversee cleanups to ensure safe reuse standards aremet.
- Cleaning up a brownfield requires assistance from an environmental professional to create a site cleanup plan based on assessment findings and to conduct the cleanup according to state, tribal and localrequirements.

The specific approach used to clean up a site depends on the way the site will be reused. Site reuse will dictate the need for clean soil; geotextile or cover/cap; land use controls; and whether lead or asbestos abatement is required. Various technologies are available to clean up contaminated properties. The technology selected will largely depend on cost and contamination characteristics of the site. The following are some of the commonly-used methods for cleaning up brownfields and other contaminated sites.

This is from the EPA handout on Brownfield Cleanups - **EPA 560F19181, September 2019,** they explain that *"The specific approach used to clean up a site depends on the way the site will be reused. Site reuse will dictate the need for clean soil; geotextile or cover/cap; land use controls; and whether lead or asbestos abatement is required. Various technologies are available to clean up contaminated properties."* That is, the way a site will be used specifies the approach to the cleanup.

Capping is only one of the choices the State can approve; and while it may reduce exposures and prevent the spread of contamination, it does not remove it. If the applicant insists it is the only choice, then the use should be so changed from residential to commercial or industrial which goes more to the specific approach chosen.

On the other hand, the State should urge the applicant to use other natural approaches that completely clean up the site. **Phytoremediation** uses plant root systems to release substances which help plants neutralize, stabilize or increase microbial degradation of contaminants in contaminated soil or water near roots. These plants mitigate contaminants through roots, reducing soil and water contamination over time, as well. **Bioremediation** that uses nature-like approaches (not chemical oxidation which is not naturally occurring) to cleansing pollutants (such as compost cleaning lead in soils) can work as well.

Response 7: The Environmental Easement (EE), which is described in section 7.3 of the RAWP, runs with the land in favor of the New York State. The EE contains the use restriction(s) and/or any prohibition(s) on the use of land in a manner inconsistent with engineering controls. The placement of an EE provides an effective and enforceable means of encouraging the reuse and redevelopment of a controlled property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements. For this site, the EE would restrict the use of the land to restricted residential uses (i.e., apartments, condominiums, co-operative or other multi-family residential development) which can also include commercial or industrial uses. The EE would prohibit a higher use of the site (such as single-family residential or unrestricted use) without additional remediation. The EE ensures that the Institutional Controls (ICs) are adhered to. ….The SMP will be developed following implementation of the remedy and will be submitted to the Department and NYSDOH for

review and approval. The Applicant and/or the site owner is/are jointly responsible for ensuring that all site management responsibilities identified in the SMP and EE are performed. (Emphasis added)

As you know, the Department's Division of Environmental Remediation (DER) promulgates guidance for the Brownfield Clean Up Program (III. Purpose and Background). "DER will, however, determine the acceptable minimum technical activities for a particular site upon consideration of all the facts and circumstances of such site under the authority of applicable laws and regulations. No provision of this guidance document should be construed to limit DER's authority to require additional investigation and/or remediation based upon site-specific conditions." (Emphasis added)

Guidance means it is not a rule or a law. The Department can determine the minimum technical activity, but could be more stringent, or higher level of use than proposed. The guidance should not "limit" additional remediation based on site-specific conditions. the way a site will be used specifies the approach to the cleanup. We question the reliance on the not requiring a higher use protection and eliminate the bother (and cost) of an EE on the applicant and the affordable housing project in an EJ area with the highest asthma rates in the country.

Response 8: Bronx Point Owner LLC (the Volunteer) is the selected developer of the Bronx Point development site and is in the process of acquiring a leasehold interest from the City.

After all this time since approval, the City still does not have the time to create a leasehold with the applicant in a timely manner. Maybe they want to see how much it will cost? If the Bronx Point pulls out, will you make the city responsible for the EE?

Response 9: A Track 1 Unrestricted Use cleanup was evaluated in the RAWP as alternative I. It was evaluated using the NYSDEC BCP threshold and balancing criteria in section 3.4 of the RAWP. Alternative II, which is the selected remedy, was found to be equally protective of human health and the environment. To achieve a Track I cleanup approximately 174,200 cubic yards of soil would have to be excavated and removed, compared to approximately 26,700 cubic yards for the selected remedy. The associated increase in truck traffic through the local community would be considerable and would result in additional air and noise pollution. The estimated cost for a Track I cleanup is $92.0 million versus $11.3 million for the selected remedy. (Emphasis added)

The State should urge the highest level of clean up for the use. Toward that end, we ask that your review your 2010 Guidance Document (DER-10, Technical Guidance for Site Investigation and Remediation Issued on May 3, 2010, with revisions) in this case. The original Guidance may not have considered New York City, which has more multi-family structures to single family homes. In the City, home ownership has demonstrated better compliance with

regulations than the multi-family private sector Landlord. In general, home owners are monitored by the Buildings Department, while Landlords are reviewed by HPD.

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Moreover, where health is concerned, cost should not be a consideration. The way a site will be used should specify the approach to the cleanup. If there is one thing New York City has learned from the Coronavirus, it is that at least the combined $9.5B shortfall over the next 2 fiscal years is a costly lesson. South Korea started out with COVID-19 at the same time we did in New York State. They were they able to conquer it, because 95% of the people have health care in South Korea. We were not as effective because health is not the highest goal in government or commerce.

What is the cost of providing Universal Health Care for everyone who lives and works in NYC, or even NYS? Most large employers pay about $15,000 in Health Care Insurance per employee. NYC government has a large group of employees who get health care insurance as part of the job. The seniors get Medicare. Will it cost more than a combined shortfall of $9.5 billion over the two fiscal years?

Once again, we request that the DEC review this RWP and update it to meet the criteria of the highest health use standard. **Let's start a new phase and put health first because the Bronx is last in health.**

Sincerely,

Karen Argenti
Secretary, BCEQ