



Department of
Environmental
Conservation

Brownfield Cleanup Program COC Process

April 16, 2024

Agenda

- ❖ COC Statistics
- ❖ COC Process & Milestones
- ❖ Do's and Don'ts
- ❖ BCA Amendments
- ❖ Environmental Easements
- ❖ 2024 COC Process

Milestones for Receipt of a Certificate of Completion by End of Calendar Year

Action	Last Date For Action
Environment Easement (EE) Package, to include: <ul style="list-style-type: none"> • Draft Easement • Title Report submitted • Site Survey 	<p>May 1: If changes to EE from the template are requested, they must be submitted with a letter detailing the changes and reasons.</p> <p>June 1: If EE follows the template.</p>
Draft Site Management Plan (SMP) submitted	August 1
<ul style="list-style-type: none"> - Construction completed - Approvable Final SMP * - Submittal of electronic data in EQUS format - Environment Easement executed - Draft Final Engineering Report (FER) submitted 	October 1
Environmental Easement recorded and Notices provided	November 1
FER submitted in final form	November 15

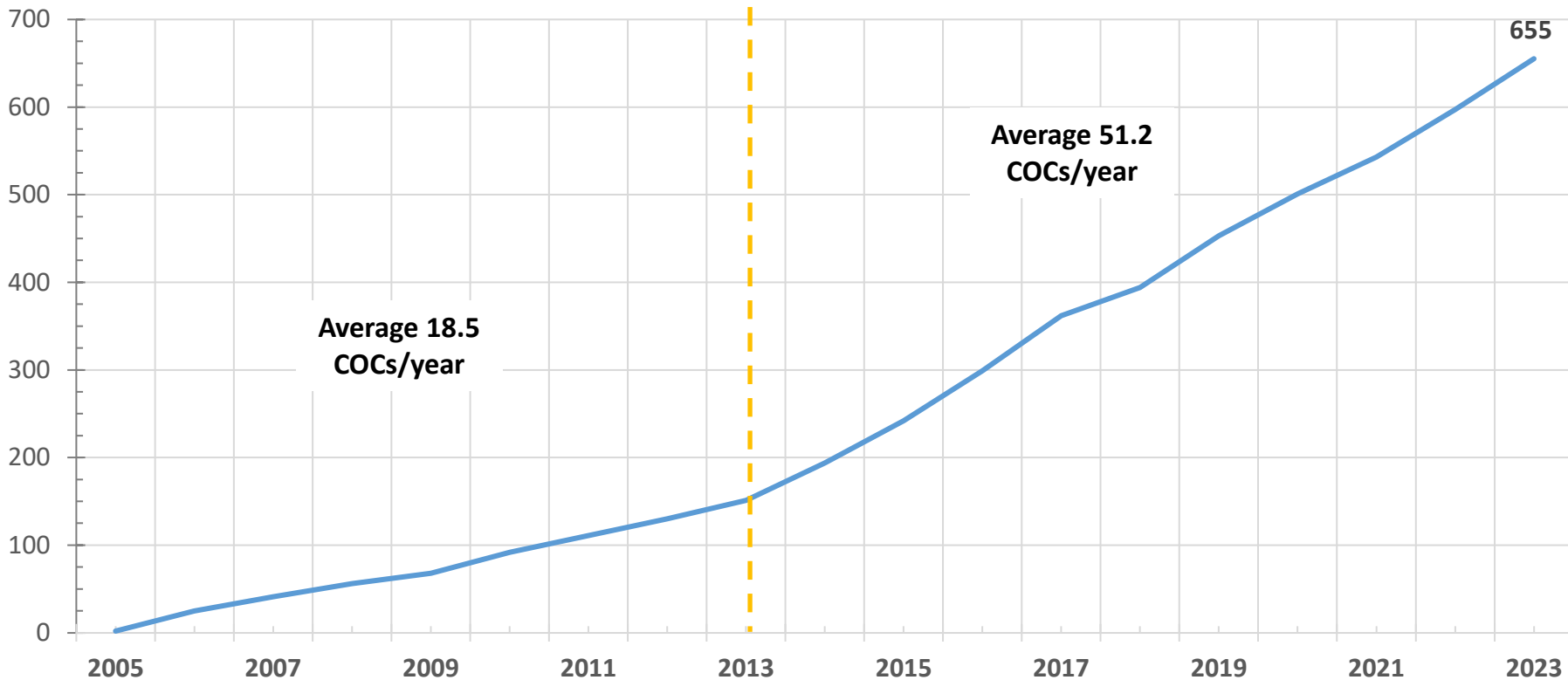
**SMP finalized and approved once recorded EE is appended to it*

COC Statistics

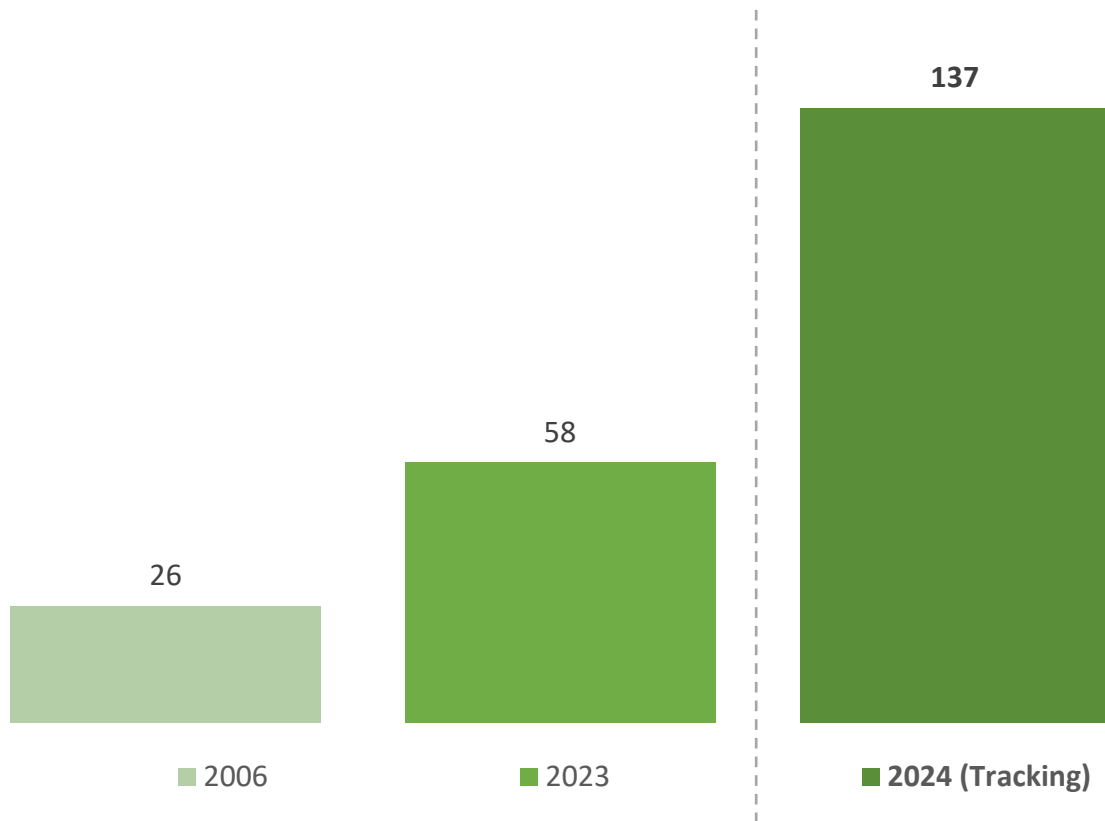
2023 COCs At a Glance

- ❖ 58 total COCs
- ❖ 30 planned Affordable Housing projects
- ❖ **1.6 years – average time from Remedial Action start to COC**
- ❖ 16 (31%) Easements recorded in December (*due Oct. 15*)
- ❖ 34 (61%) final FERs received in last two weeks of December (*due Nov. 15*)
- ❖ 36 (62%) COCs signed after Christmas

Total COCs Issued – 2005 to 2023

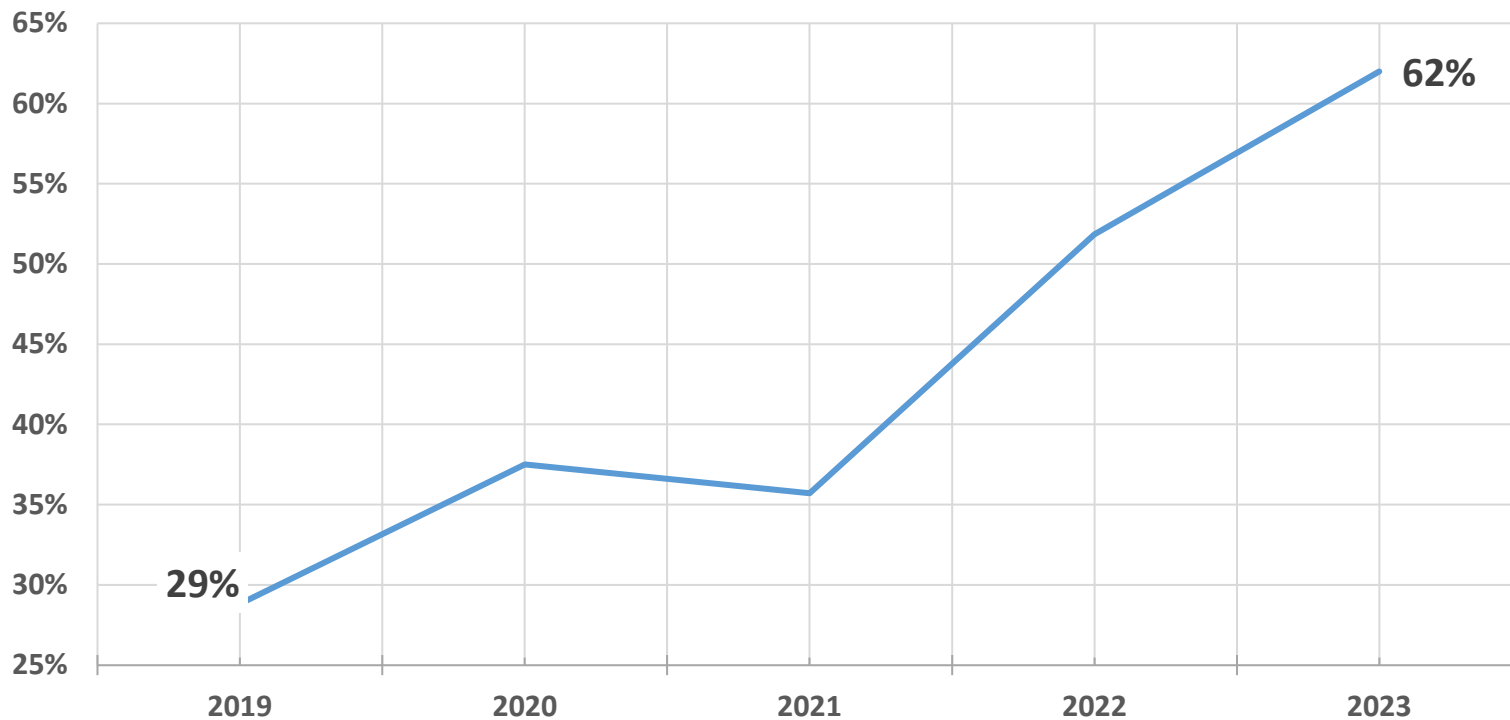


BCP Certificate of Completions (COCs)

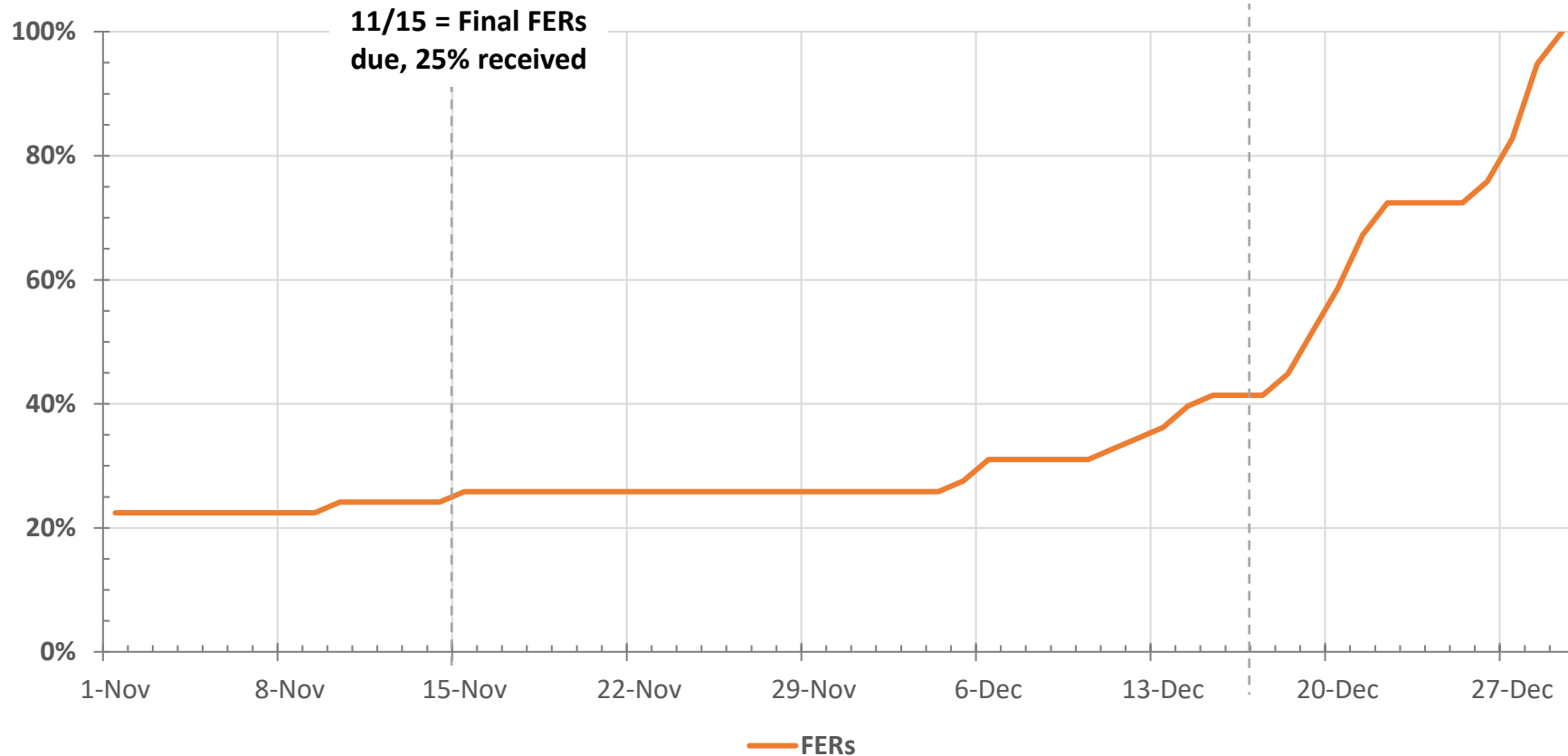


- ❖ Tracking **more than triple** from last year
- ❖ Bulk of workload (90%) happens in December
- ❖ **138 more BCAs signed than COCs in past 5 years**

% COCs Signed After Christmas, past 5 years



Submission of Final FERs



COC Process & Milestones

Guide to the COC Process

Critical path and schedule of deliverables. Submittals after the established dates:

- Will jeopardize the issuance of the COC by December 31st
- Will affect the timing of any tax credits

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Guide to the COC Process – Issues Identified in Recent Years

- Easement packages can be problematic
- Last minute amendments – changes are Applicant's responsibility!
- Extremely late SMP and FER submittals
- Incomplete SMP and FER submittals
- Electronic Data Deliverables – Don't Forget!
- Professional Engineering Issues



Electronic Data Deliverables (EDDs)

- EDDs should be submitted as the data becomes available
- Allow up to two weeks for processing of EDDs and correction of errors
 - Don't wait until the last minute!
- Verify that sample location coordinates are accurate
- FER data appropriate for EDDs
 - Post-excavation sampling data
 - Confirmation sampling – Confirms that goals have been met
 - Documentation sampling – Documents remaining contamination if excavation is limited
 - Baseline groundwater monitoring data
 - Soil vapor intrusion data



Professional Engineering Issues

- Individual currently licensed and registered in NYS
- Firm authorized by NYSED (except sole proprietorship)
- Direct contract with client
- Direct responsibility / supervision
- Review certification language early & carefully
- Details & links – Search “Professional Engineering”
<http://www.dec.ny.gov/regulations/90487.html>

Do's and Don'ts



- Hire competent and experienced consultants, contractors, legal representation.
- Submit good quality documents, using current templates
 - Always submit "tracked changes" (red line/strikeout) of revised documents
 - Allows for efficient review by DEC/DOH
 - Minimizes revision iterations and saves time
- Fully address DEC/DOH comments in a timely manner
- Treat staff professionally and respectfully

Don'ts



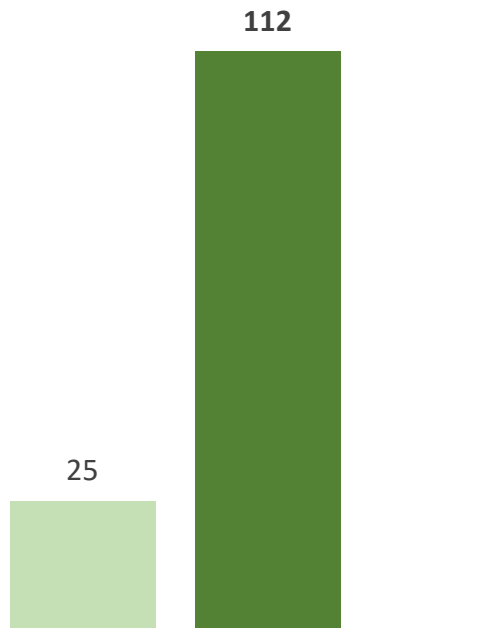
- Submit incomplete documents (missing appendices, sections, tables, figures)
 - Will NOT be considered as achieving milestone
 - Will NOT be reviewed by DEC/DOH. Complete submittals will be prioritized.
- Call staff to check on status days/hours after a submittal.
 - Per 6NYCRR Part 375-3.6(b) - Staff will use best efforts to complete review within 45 days
- Argue with staff on BCP requirements
- Inquire status with Executive, Governor's office, etc. Takes staff's time away from reviewing your documents.

Reminders

- **PMs and staff want you to receive your COC too!**
- DEC and DOH have a very prescriptive internal COC process and are keeping tabs on the status of your COC. We will NOT “forget” about it.
- We are not the Department of Tax and Finance (T&F)
- Only tax credit “bump ups” calculated at time of COC issuance: EnZone (5%) and Track 1 (5%). All others, including affordable housing, are determined by T&F.

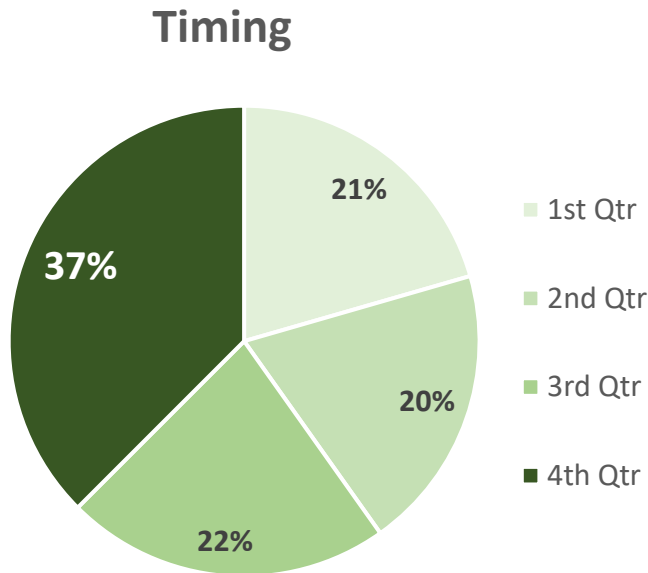
BCA Amendments

Amendments



Amendments

■ 2013 ■ 2023



Amendments take up many resources:

- ❖ Site Control
- ❖ DEC Counsel
- ❖ Project Manager
- ❖ Supervisor
- ❖ Bureau Director
- ❖ Asst. Division Director
- ❖ Division Director
- ❖ Admin Staff



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Most Common Last Minute Amendments

- **Ownership** – all beneficial owners and long-term lessees must appear as owners on the COC
- **Tax Lots** – mergers, subdivisions, re-numbering.
 - **Address** – Tax lot changes may also result in an **address change**, which also requires an amendment. Do both changes via one Amendment!
- **Size** – minor changes need an Amendment, major changes require a new application and will go through eligibility
- Table of every change that needs an Amendment:

https://extapps.dec.ny.gov/docs/remediation_hudson_pdf/bcaamendsum.pdf

**** Amendments should be identified as part of Easement process**

BCP COC Site Information Confirmation

- Verify Site Information
 - Site Name
 - Tax Parcel IDs
 - Site Address
 - Acreage
 - Applicant(s)
 - EnZone %
 - Owner(s)
 - TPC Eligibility
 - Contact Info
 - Representatives
- Check appropriate box, make corrections, return to email address provided on form.
- PRINT CORRECTIONS NEATLY!
- AVOID LAST MINUTE AMENDMENTS!

Environmental Easements

Environmental Easement

Needed for all:

- **Conditional Track 1 sites – even if it’s thought the “condition” can be removed prior to COC**
- Track 2 sites – not needed for Residential use unless there is a need for an SMP (e.g. indoor air sampling post-COC)
- Track 4 sites



Environmental Easement

ECL §71-3603. Definition.

- An interest in real property, which contains a use restriction and/or a prohibition on the use of the land in a manner inconsistent with engineering controls.

§71-3605. Environmental easements; certain common law rules not applicable. Granted by the title owners of the relevant real estate

- Title owner shall furnish abstracts of title and other documents sufficient to enable the department to determine that the easements shall be enforceable.

Environmental Easement: Common Issues

- Checklist – Read Carefully
- Title
 - Multiple Owners or Multiple Deeds to a Single Owner
 - Quitclaim Deed
- Survey
 - Missing Checklist Items – deed description that differs from EE area, missing meters scale, EE area not delineated on drawing, missing acreage, etc.
 - Missing signature/stamp/not original (No copies accepted)
 - Existing Easements that allow for disturbing the soil – sewer easements, underground utility easements, etc.

EE Common Issues Continued

- Deed Description does not match Survey measurements
- Easement Language
 - General small edits to standard language
 - Delineating obligations of owner/responsible party (RP)
 - Multiple Tracks on site

Easement Submittal

June 1, 2024* - Applicant Submits Complete Easement Package

- Survey which defines “Easement Area”
- Include Stub Search or Title Report
- Include Attorney Checklist

*Earlier if special circumstances (Quit Claim deed, multiple owners, paper streets, lands under water, etc.)



Easement Milestones

Applicant Executes Environmental Easement prepared by DEC

- October 1, 2024

DEC accepts easement

Environmental Easement Recorded and notices provided

- November 1, 2024

2024 COC Process

2024 COC Process

- **Currently tracking 137 COCs for 2024**
 - **In the past 5 years, 138 more BCAs signed than COCs**
- Christmas falls on a Wednesday
- Only 4 business days after Christmas
- Many staff, including DEC, DOH and Applicant's team, out of office
- Cannot process 100+ COCs in 4 days

2024 COC Process

Increased communication from DEC

- ✓ COC kickoff meeting with regulated community – 4/16/2024
- Missed milestones
- Incomplete submittals
- No longer tracking for 2024

Electronic References

- Milestones and Important Links: Finalizing Remedial Projects: Easements, Certificates Of Completion, And Templates - NYSDEC
- COC Process
 - Survey Requirements For Environmental Easements - NYSDEC
 - Title Requirements - NYSDEC
 - COCs and Post-COC Obligations (ny.gov)
- Summary of Changes that Require an Amendment to BCA
 - Brownfield Cleanup Agreement Amendments (ny.gov)
- Electronic Data Deliverables
 - Electronic Data Deliverable (EDD) Format Information (ny.gov)



Template Links

- ***SMP Template:** <https://extapps.dec.ny.gov/fs/programs/der/templates/smptemplate1.docx>
- **SMP, IC only Template:**
<https://extapps.dec.ny.gov/fs/programs/der/templates/smptemplate2.docx>
- ***FER Template:** <https://extapps.dec.ny.gov/fs/programs/der/templates/fertemplate.docx>

**Updated October 2023*

Thank You

Andrew Guglielmi
New York State Department of
Environmental Conservation
Division of Environmental
Remediation

625 Broadway, 12th Floor
Albany, NY 12233
andrew.guglielmi@dec.ny.gov
[\(518\)402-9706](tel:(518)402-9706)

** Call your project manager/project attorney with questions

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