

Express Terms
Amendments to 6 NYCRR Part 375
Environmental Remediation Programs

6 NYCRR Part 375 Environmental Remediation Program Statutory Authority is revised to read as follows: Environmental Conservation Law (ECL) article 1, section 0101; ECL article 27, titles 13 and 14; ECL article 52, title 3; ECL article 56, title 5; ECL article 71, title 36; ECL article 3, section 0301; chapter 1, laws of 2003[,]; chapter [1]577, laws of 2004 [chapter 577]; chapter 56 of the laws of 2015; chapter 58 of the laws of 2022; and State Finance Law article 6, section 97-b

The Table of Contents for Part 375-1 is amended as follows:

Subpart 375-1 General Remedial Requirements Sec 375-1.1 through Sec. 375-1.6 remains unchanged.

Subpart 375-1.7 is amended to read as follows [Reserved]Site Classification and Administrative Designations.

Subpart 375-1 General Remedial Requirements Sec 375-1.8 through Sec. 375-1.12 remains unchanged.

Section 375-1.1 through Subdivision 375-1.1(b) remains unchanged

Paragraph 375-1.1(b)(1) is amended to read as follows:

(1) The development and implementation of remedial programs for inactive hazardous waste disposal sites, specifically under Subpart 375-2 of this Part, including, but not limited to, sites listed [in]on the Registry which are either on the national priorities list (NPL) or are being addressed by the Department of Defense or the Department of Energy.

Paragraph 375-1.1(b)(2) Subdivision 375-1.1(c) remains unchanged

Subdivision 375-1.1(d) is amended to read as follows:

(d) This Subpart sets forth the general requirements that are common to the implementation of remedial programs under Subparts 375-2, 375-3 and 375-4 of this Part. Specific requirements which apply in addition to these general requirements are set forth in Subparts 375-2, 375-3 and 375-4 of this Part. If there is a conflict,

this Subpart is [superceded]superseded by any inconsistent provision of Subparts 375-2, 375-3 and 375-4 of this Part.

Subdivision 375-1.1(e) through subparagraph 375-1.1(e)(1)(ix) remains unchanged

Subparagraph 375-1.1(e)(1)(x) through subparagraph 375-1.1(e)(1)(xiii) are renumbered subparagraph 375-1.1(e)(1)(xi) through subparagraph 375-1.1(e)(1)(xiv)

A new subparagraph 375-1.1(e)(1)(x) is adopted to read as follows:

(x) ‘RCRA’ means Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. Section 6901, ‘et seq’.

New Subparagraph 375-1.1(e)(1)(xi) through new Subparagraph 375-1.1(e)(1)(xiv) remain unchanged.

Paragraph 375-1.1(e)(2) through subdivision 375-1.1(f) remain unchanged.

Subdivision 375-1.1(g) through paragraph 375-1.1(g)(2) is amended to read as follows:

(g) The following documents have been incorporated by reference and filed with the Department of State. The documents are also available for inspection and copying at the Department of Environmental Conservation office at 625 Broadway, Albany, NY, 12233-[7010]7011:

(1) Standards E1527-21 (2021), E1527-13 (2013), E1527-05 (2005) and E1527-97 (1997), published by ASTM International, [Post Office Box C700]100 Barr Harbor Drive, West Conshohocken, PA, 19428[-2959]; and

(2) The [National Contingency Plan]National Oil and Hazardous Substances Pollution Contingency Plan (NCP), Title 40 of the *Code of Federal Regulations* (CFR) Part 300, which is available from the United States Environmental Protection Agency (EPA) on its website at <http://www.epa.gov>.

Subdivision 375-1.2(a) remains unchanged.

Subdivision (a) of section 375-1.2 is repealed and replaced as follows:

(a) “All appropriate inquiries” means, for purposes of ECL 27-1323(4)(c):

(1) compliance with the procedures of ASTM Standard 1527-21 for acquisitions completed on or after the

effective date of this rule; or

(2) compliance with the procedures of ASTM Standard 1527-13 for acquisitions completed on or after December 20, 2013, and before the effective date of this rule; or

(3) compliance with the procedures of ASTM Standard 1527-05 for acquisitions completed on or after December 14, 2006, and before December 20, 2013; or;

(4) compliance with the procedures of ASTM Standard 1527-97 for acquisitions after May 31, 1997, and before December 14, 2006; or

(5) compliance with the industry standards and guidance on or before May 31, 1997.

Subdivision 375-1.2(b) through Subdivision 375-1.2(d) are amended to read as follows:

(b) *Brownfield site* means any real property[,] where a contaminant is present at levels exceeding the soil cleanup objectives or other health-based or environmental standards, criteria or guidance adopted by the department that are applicable based on the reasonably anticipated use of the property, in accordance with applicable regulations. Such term shall not include real property identified in section 375-3.3(b) of this Part. remains unchanged.

(c) ‘Brownfield site remedial program’ means a remedial program, as defined in subdivision [(ap)]375-1.2(aq) of this section, at a brownfield site pursuant to a brownfield site cleanup agreement.

(d) ‘Certificate holder’ means the [remedial] party(ies) set forth in the certificate of completion issued by the department, as well as such party’s successors and assigns who have received a transfer of such certificate in accordance with [section]subdivision 375-1.9(f) of this Subpart.

Subdivision 375-1.2(x) is repealed.

Subdivision 375-1.2(e) through Subdivision 375-1.2(w) are renumbered as Subdivision 375-1.2(f) through renumbered Subdivision 375-1.2(x).

A new Subdivision 375-1.2(e) is adopted to read as follows:

(e) ‘Change of use’ means the transfer of title to all or part of the site, any change to the tax lot designation or boundary, the erection of any structure on such site, the creation of a park or other public or private recreational facility on such site, or any activity that is likely to disrupt or expose contamination or to increase direct human exposure; or any other conduct that will or may tend to significantly interfere with an ongoing or completed remedial program at such site or the continued ability to implement the engineering and institutional controls associated with such site. Change of use does not include work performed under a department approved work plan.

Renumbered Subdivisions 375-1.2(f) through 375-1.2(g) remain unchanged.

Renumbered Subdivision 375-1.2(h) is amended to read as follows:

(h) ‘Contaminant’ means hazardous waste and/or petroleum as such terms are defined in subdivisions ([w]x) and (ah) of this section.

Renumbered Subdivision 375-1.2(i) through Renumbered Subdivision 375-1.2(l) remain unchanged.

Renumbered Subdivision 375-1.2(m) is amended to read as follows:

(m) ‘Document repository’ means a repository of site remedial program documents approved by the department or released for public comment, which may be in electronic form, established in a publicly accessible building near the location of such site.

Renumbered Subdivision 375-1.2(n) through renumbered subdivisions 375-1.2(t) remain unchanged.

Renumbered Subdivision 375-1.2(u) through renumbered subdivisions 375-1.2(v) are amended to read as follows:

(u) ‘Financial assurance’ means financial mechanisms, which include, but are not limited to, surety bonds, trust funds, letters of credit, insurance, or a multiple of financial mechanisms, as determined to be adequate by the department, to ensure the long-term implementation, maintenance, monitoring and enforcement of the engineering and institutional controls at a remedial site.

(v) ‘Grossly contaminated media’ means soil, sediment, surface water or groundwater which contains sources or substantial quantities of [mobile] contamination in the form of NAPL, as defined in subdivision 375-1.2(ac) of this section, that is identifiable either visually, through strong odor, by elevated contaminant vapor levels or is otherwise readily detectable without laboratory analysis.

Newly renumbered Subdivision 375-1.2(w) remains unchanged.

. Paragraph 375-1.2(x)(1) through Paragraph 375-1.2(x)(2) of renumbered Subdivision 375-1.2(x) are amended to read as follows:

(1) natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of natural gas and such synthetic gas; [nor]

(2) the residue of emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; [nor]

Paragraph 375-1.2(x)(3) through Paragraph 375-1.2(x)(4) of renumbered Subdivision 375-1.2(x) remains unchanged.

Subdivision 375-1.2(y) is amended to read as follows:

(y) ‘Inactive hazardous waste disposal site’ means any area or structure used for the long-term storage or final placement of hazardous waste including, but not limited to, dumps, landfills, lagoons and artificial treatment ponds, as to which area or structure no permit or authorization issued by the department or a Federal agency for the disposal of hazardous waste was in effect after the effective date of [this]ECL article 27 Title 13 and any inactive area or structure on the NPL established under the authority of 42 USCA section 9605, *et seq.*

Subdivision 375-1.2(z) through Subdivision 375-1.2(ac) remain unchanged.

Subdivision 375-1.2(ad) is amended to read as follows:

(ad) ‘Off-site contamination’ means any contamination which has emanated from a remedial site beyond the real property boundaries of such site, via movement through air, indoor air, soil vapor, soil, sediment, surface

water or groundwater.

Subdivision 375-1.2(ae) through Subdivision 375-1.2(aj) remain unchanged.

Subdivisions 375-1.2(ak) through (aq) are renumbered to Subdivisions 375 – 1.2(al) through (ar).

New Subdivision 375-1.2(ak) is adopted to read as follows:

(ak) ‘Professional geologist’ means an individual or firm licensed or otherwise authorized under article 145 of the Education Law of the State of New York to practice geology.

Newly renumbered Subdivision 375-1.2(ao) is amended to read as follows:

(ao) ‘Remedial investigation’ means a process undertaken to determine the nature and extent of contamination at a site or operable unit of a site. The remedial investigation emphasizes data collection [and site characterization], and generally is performed in support of the selection of a remedy. The scope of a remedial investigation is more fully described in subdivision 375-1.8(e) of this Subpart.

Newly renumbered Subdivision 375-1.2(ap) through Subdivision 375-1.2(aq) remains unchanged.

Paragraph 375-1.2(aq)(1) through Paragraph 375-1.2(aq)(8) are renumbered to Paragraphs 375-1.2(aq)(2) through Paragraphs 375-1.2(aq)(9).

New Paragraph 375-1.2(aq)(1) is adopted to read as follows:

(1) site characterizations;

Renumbered Paragraphs 375-1.2(aq)(2) is amended to read as follows:

(2) [Site characterization and]remedial investigation activities needed to develop and evaluate remedial alternatives;

Renumbered Paragraphs 375-1.2(aq)(3) through renumbered Subdivision 375-1.2(ar) remain unchanged.

Paragraph 375-1.2(ar)(1) is amended to read as follows:

(1) an inactive hazardous waste disposal site or such area as described in paragraph 375- 2.7(b)(4) of this subpart;

Newly renumbered Paragraphs 375-1.2(ar)(2) through 375-1.2(ar)(3) remain unchanged

Subdivision 375-1.2(ar) is renumbered to new Subdivision 375-1.2(at).

Subdivision 375-1.2(as) through Subdivision 375-1.2(ax) are renumbered as Subdivision 375-1.2(av) through Subdivision 375-1.2(ba).

New Subdivision 375-1.2(ar) is adopted to read as follows:

(ar) ‘Responsible party’ means any of the following, subject to the defenses, exemptions, and/or limitations set forth at ECL 27-1323:

(1) any person who currently owns or operates a site or any portion thereof;

(2) any person who owned or operated a site or any portion thereof at the time of disposal of the contaminant;

(3) any person who generated any contaminants disposed at a site;

(4) any person who transported any contaminants to a site selected by such person or entity;

(5) any person who disposed of any contaminants at a site;

(6) any person who arranged for:

(i) the transportation of any contaminants to a site; or,

(ii) the disposal of any contaminants at a site; and

(7) any other person who is responsible according to the applicable principles of statutory or common-law liability pursuant to ECL 27-1313(4) or other State law.

Renumbered Subdivision 375-1.2(at) remains unchanged.

New Subdivision 375-1.2(au) is adopted to read as follows:

(au) ‘Site characterization’ means a preliminary investigation for the purpose of determining whether a potential site should be listed on the Registry.

Renumbered Subdivision 375-1.2(av) through Paragraph 375-1.5(a)(1) remain unchanged.

Subparagraph 375-1.5(a)(1)(i) is amended to read as follows:

(i) within 30 days of execution by the commissioner of the order, agreement (excluding Brownfield Cleanup Agreements) or State assistance contract, record a notice of such instrument in the office of the recording officer for the county or counties where the remedial site is situated in the manner prescribed by RPL article 9; and Subparagraph 375-1.5(a)(1)(ii) through Subparagraph 375-1.5(a)(2)(i) remain unchanged.

Subparagraph 375-1.5(a)(2)(ii) is amended to read as follows:

(ii) the owner of the remedial site shall, within 30 days of receipt of such notice from the remedial party, record a notice of such instrument (excluding Brownfield Cleanup Agreements) in the office of the recording officer for the county or counties where the remedial site is situated in the manner prescribed by RPL article 9; and Subparagraph 375-1.5(a)(2)(iii) through Subdivision 375-1.5(b) remain unchanged.

Paragraph 375-1.5(b)(1) is amended as follows:

(1) Emergencies. The remedial party shall notify the department's project manager by noon of the next business day, upon knowledge of any condition posing an emergency as set forth at subdivision 375-1.2([n]o) of this Subpart. In the event that any action or occurrence under the order, agreement or State assistance contract causes or threatens an emergency situation, the remedial party shall promptly take all appropriate action to prevent, abate, or minimize such emergency in accordance with applicable law. Nothing in this paragraph shall be deemed to limit the authority of the department to take, direct, or order all appropriate action to protect public health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release from the site.

Paragraph 375-1.5(b)(2) remains unchanged.

Subparagraph 375-1.5(b)(2)(i) through Subparagraph 375-1.5(b)(2)(ii) are amended to read as follows:

(i) The remedial party shall submit any dispute relating to the order, agreement or State assistance contract [to the designated individual in writing]no more than 15 days after it knew or should have known of the facts which are the basis of the dispute. Such dispute will be submitted in writing to the director of the division of

environmental remediation, who will assign the [The] designated individual [shall] to hear the dispute. The designated individual will communicate to the remedial party and department staff the submission deadlines and requests for additional information that the department deems necessary to render a written decision [and]. The designated individual will furnish a copy [thereof] of the written decision to the remedial party, which shall be the final agency determination, unless the remedial party files a written appeal of that decision with the designated appeal individual within 20 days of receipt of that decision.

(ii) Upon receipt of the written appeal pursuant to subparagraph (2)(i) of this paragraph, the [designated appeal] individual designated by the director of the division of the environmental remediation to hear the appeal, will review the record and decision. The designated appeal individual will take one of the following actions with written notice to the remedial party:

Clause 375-1.5(b)(2)(ii)(‘a’) through Clause 375-1.5(b)(2)(ii)(‘b’) remain unchanged.

Clause 375-1.5(b)(2)(ii)(‘c’) is renumbered to new Clause 375-1.5(b)(2)(ii)(‘d’).

New Clause 375-1.5(b)(2)(ii)(‘c’) is adopted to read as follows

(‘c’) request additional information or documentation; or

New Clause 375-1.5(b)(2)(ii)(‘d’) through Clause 375-1.5(b)(2)(iv)(‘b’) remain unchanged.

Subparagraph 375-1.5(b)(2)(v) is amended to read as follows:

(v) The invocation of dispute resolution shall not extend, postpone, or modify obligations of the remedial party with respect to any item not in dispute unless or until either:

Clause 375-1.5(b)(2)(v)(‘a’) through Paragraph 375-1.5(b)(3) remain unchanged.

Subparagraph 375-1.5(b)(3)(i) is amended to read as follows:

(i) Within 45 days after receipt of an itemized invoice from the department, (or the timeframe specified on the invoice or in the associated order or agreement), the remedial party shall pay to the department a sum of money which shall represent reimbursement for State costs, which shall include costs associated with negotiating the

order or agreement, and all costs associated with the order or agreement up to and including the date upon which the certificate of completion is issued, the department approves the final site management report, or the order or agreement is terminated, whichever is later. If the remedial party is also responsible for reimbursement of past State costs, associated with remedial activities conducted at the site such reimbursement must also be made within the timeframe specified in the associated order or agreement, or if not specified, within 45 days after the receipt of an itemized invoice from the department.

Subparagraph 375-1.5(b)(3)(ii) through Clause 375-1.5(b)(3)(ii)(b) remain unchanged.

Clause 375-1.5(b)(3)(ii)(c) is amended to read as follows:

(‘c’) non-personal service costs shall be [summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be]documented by expenditure reports; and

Clause 375-1.5(b)(3)(ii)(d) remains unchanged.

Subparagraph 375-1.5(b)(3)(iii) through Subparagraph 375-1.5(b)(3)(iv) are amended to read as follows:

(iii) Each such payment shall be made payable to the commissioner of the department and shall be sent to[:Bureau of Program Management, Division of Environmental Remediation, NYSDEC, 625 Broadway, Albany, NY 12233-7012] the address specified on the invoice or, if no invoice is sent, in the associated order or agreement.

(iv) The remedial party shall provide written notification within 90 days of any change in [its]the address of the invoice contact specified in the associated order or agreement. If the department is unable to deliver an invoice due to lack of such notification, enforcement action may be taken on the unpaid invoice.

Subparagraph 375-1.5(b)(3)(v) through Clause 375-1.5(b)(3)(v)(b) remain unchanged.

(vi) If a remedial party objects to an invoiced cost, such party shall pay all costs not objected to within the 45-day time frame (or the timeframe specified on the invoice or in the associated order or agreement), and shall, within 30 days of receipt of an invoice, identify in writing all costs objected to and identify the basis of the

objection. This objection shall be filed with the division of environmental remediation director or designee who shall have the authority to waive the obligation to pay disputed costs. Within 45 days of the department's determination of the objection, which determination shall constitute a final agency decision, the remedial party shall pay to the department the amount which the division of environmental remediation director determines is owed; provided, however, that such payment shall be stayed until 45 days after the final determination of any challenge which is brought pursuant to article 78 of the Civil Practice Law and Rules.

Paragraph 375-1.5(b)(4) through Subparagraph 375-1.6(b)(5)(iii) remain unchanged.

Paragraph 375-1.5(b)(6) is adopted to read as follows:

(6) Termination of orders, agreements and State assistance contracts. The department may terminate orders, agreements and State assistance contracts for cause including, but not limited to, if the remedial party fails to substantially comply with the order, agreement, or the contract terms and conditions, including, without limitation, the failure to initiate, proceed with, or complete the remedial program in accordance with the approved schedule prepared by the responsible party, volunteer, or participant in relation to a site that has been deemed a significant threat and provided that dispute resolution has not been commenced pursuant to section 375-1.5(b)(2) or 375-1.5(b)(3)(v) of this Subpart, or the failure to pay State costs described in paragraph (3) of this subdivision for a substantial period of time (not less than 30 days) and after an opportunity to cure has been provided.

Section 375-1.6 through Subdivision 375-1.6(a) are amended to read as follows:

375-1.6 Work plans and reports.

(a) Work plans. All [work]activities undertaken as part of a remedial program for a site shall be detailed in a department-approved work plan, unless determined otherwise by the department.

Paragraph 375-1.6(a)(1) through Paragraph 375-1.6(a)(2) remain unchanged.

Paragraph 375-1.6(a)(3) is amended to read as follows:

(3) During all field activities conducted under a department approved work plan, the remedial party shall have a qualified environmental professional, meeting the requirements set forth in [section]subdivision 375-1.2([ak]al) of this Subpart, or their properly trained representative on site to supervise the activities undertaken. [Such representative may]As part of the on-site supervisory responsibilities, a daily report of activities is to be [an employee or a consultant retained]generated and submitted to the department. The daily reports will be submitted to the department Project Manager by the [remedial party to perform such supervision.]end of the following day and will include:

Subparagraph 375-1.6(a)(3)(i) through Subparagraph 375-1.6(a) (3)(vii) are adopted to read as follows:

- (i) an update of progress made during the reporting day;
- (ii) the locations of work/site activities identified on a site map;
- (iii) quantities and descriptions of materials imported to and exported from the site;
- (iv) a summary of any and all complaints with relevant details (names, phone numbers);
- (v) a summary of Community Air Monitoring Plan findings, including exceedances;
- (vi) an explanation of notable site conditions; and
- (vii) any deviations from the approved work plan.

Paragraph 375-1.6(a)(4) through Subdivision 375-1.6(b) remain unchanged.

Paragraph 375-1.6(b)(1) are amended to read as follows:

(1) All reports including, but not limited to, [all reports,]design documents, plans or site management plans, with the exception of the final engineering report which is addressed in subdivision (c) of this section; which are submitted to the department in draft or final form pursuant to an order, agreement or State assistance contract for any phase of the remedial program are to be submitted in accordance with the schedule contained in an approved work plan, report or design document or any subsequent schedule agreed to and approved by the department.

Paragraph 375-1.6(b)(2) through Subparagraph 375-1.6(b)(3)(iii) remain unchanged.

Paragraph 375-1.6(b)(4) is adopted to read as follows:

(4) Each report submitted to the department shall include a schedule for the submission of any work plans required in the report.

Subdivision 375-1.6(c) through Paragraph 375-1.6(c)(1) remain unchanged.

Subparagraph 375-1.6(c)(1)(i) is amended to read as follows:

(i) a [description of] summary of any interim remedial measures and remedial actions taken at the site. The final engineering report must describe the activities completed [pursuant to]in accordance with the approved remedial design, remedial action work plan and/or [remedial design]interim remedial measure work plan, in addition to providing the data to document the completed remedial construction activities. This will include, but not be limited to:

Clause 375-1.6(c)(1)(i)(‘a’) through Clause 375-1.6(c)(1)(i)(‘c’) are adopted to read as follows:

(‘a’) a description of any changes made to the approved design and/or work plan and documentation as to why the changes were made, including the department’s approval of the change;

(‘b’) a listing of the waste streams, quantity of disposed materials and facility(ies) where such materials were disposed including documentation of associated manifests and bills of lading;

(‘c’) a listing of imported backfill and cover soils, including sources of material and analytical test results

Subparagraph 375-1.6(c)(1)(ii) through Subparagraph 375-1.6(c)(1)(iii) remain unchanged.

Subparagraph 375-1.6(c)(1)(iv) is amended to read as follows:

(iv) a site management plan, as set forth in [section]subdivision 375-1.2([at])aw) of this Subpart.

Paragraph 375-1.6(c)(2) through Subparagraph 375-1.6(c)(4)(i) remain unchanged.

Subparagraph 375-1.6(c)(4)(ii) is repealed and new Subparagraph 375-1.6(c)(4)(ii) and clauses (‘a’ – ‘b’) are adopted to read as follows:

(ii) such party is a professional engineer (sole practitioner) or is a professional engineer employed by an engineering firm with an appropriate Certificate of Authorization issued by the NYS Department of Education to practice engineering; and

(‘a) such certifying party either directly supervised all engineering work required for the implementation of the remedial program or completed the engineering work required for the implementation of the remedial program in accordance with State Education Law, Section 145; or

(‘b’) such party delegated or subcontracted the engineering work required for the implementation of the remedial program to another certifying professional engineer (sole practitioner) or engineering firm with a Certificate of Authorization in accordance with State Education Law, Section 145.

Subparagraph 375-1.6(c)(4)(iii) is amended to read as follows:

(iii) all requirements of the remedial program have been complied with and the remediation was conducted consistent with the department’s decision document, record of decision, or statement of basis, the approved remedial design, remedial action work plan, and/or interim remedial measure work plan, including the engineering review of all contractor submittals and field changes approved for the project;

Subparagraph 375-1.6(c)(4)(iv) through Subparagraph 375-1.6(c)(4)(v) remain unchanged.

Subparagraph 375-1.6(c)(4)(vi) through Subparagraph 375-1.6(c)(4)(vii) are amended to read as follows:

(vi) any use restrictions, institutional and/or engineering controls, and/or any site management plan requirements are contained in a duly recorded environmental easement and that every municipality in which the site is located has been notified of the environmental easement; [and]

(vii) any required financial assurance mechanisms required in accordance with subdivision 375-1.11(c) of this Subpart have been executed[.]; and

Subparagraph 375-1.6(c)(4)(viii) is adopted to read as follows:

(viii) uses certification language provided or approved by the department.

Paragraph 375-1.6(c)(5) through Subparagraph 375-1.6(d)(3)(ii) remain unchanged

Subparagraph 375-1.6(d)(3)(iii) is amended to read as follows:

(iii) in the case of a brownfield site remedial program, terminate the agreement in accordance with [subdivision]section 375-3.5 of this Part.

Paragraph 375-1.6(d)(4) through Subparagraph 375-1.6(d)(4)(iii) remain unchanged.

Section 375-1.7 is amended to read as follows:

375-1.7 [Reserved.]Site Classification and Administrative Designations.

(a) The department maintains an electronic database of inactive hazardous waste disposal sites in which sites are classified. Sites for which Registry classification is mandated by ECL 27-1305 are specifically addressed in section 375-2.7(b) of this Part; other inactive hazardous waste disposal sites contained in the database have been assigned administrative classifications applicable to one or more programs.

(1) Classification Code A (Active): The classification assigned to a non-Registry site in the Brownfield Cleanup Program or Environmental Restoration Program while work is underway and not yet completed. This classification may also be used for sites being remediated under a Cooperative Agreement with the USEPA or other federal entity. Certain sites assigned this administrative classification by the department prior to the effective date of this Part that do not fall within the preceding definition may, at the department's discretion, continue to be classified as class A sites.

(2) Classification Code C (Completed): The classification used for sites for which the department has determined that remediation has been satisfactorily completed under a remedial program (i.e., State Superfund, Brownfield Cleanup Program, or Environmental Restoration Program). For Registry sites, all active operation, maintenance, and monitoring requirements, including the creation of institutional controls, must be completed before they will be designated a class C. Non-Registry sites that have been fully remediated under a department remedial program may be made a class C after successful completion of all required construction or after a no

further action remedy has been selected by the department. Non-Registry sites that meet the criteria set forth in section 375-1.6(c)(6) of this Subpart may be made a class C site and issued a certificate of completion, but may require ongoing active operation, maintenance, and monitoring, and periodic certification of institutional and engineering controls.

(3) Classification Code N (No Further Action at this Time): Sites are given a classification of ‘N’ if:

(i) the site characterization and evaluation of a class P site results in a determination that contamination at the site does not warrant placing the site on the Registry;

(ii) a site, including a former brownfield site, was in a non-Registry program, remediation was not completed, and the site did not otherwise qualify for listing on the Registry;

(iii) a location at which a drum(s) or other discrete waste was formerly present and subsequently removed by the department or others where conditions presently indicate no need for additional work; or

(iv) a site for which an application was submitted to the Brownfield Cleanup Program or Environmental Restoration Program and then withdrawn or terminated prior to the commencement of investigation or remediation.

(4) Classification Code "P" (Potential): Sites are given a classification of “P” if preliminary information provides reason to believe that contaminants at the site may warrant the site’s inclusion on the Registry.

Additional information and/or investigation will be generated through a site characterization which will determine if a site qualifies for listing on the Registry. While designated a class P site, a site is not listed on the Registry and the requirements of this Part relating to notice, citizen participation, and change of use set forth respectively at sections 375-1.5(a), 375-1.10, and 375-1.11(d) of this Subpart are not applicable. If a site with class P status is subject to an existing order, agreement, or State assistance contract at the time it is classified as a Registry site or class A site, the time limits relating to notice, citizen participation, and change of use set forth respectively at sections 375-1.5(a), 375-1.10, and 375-1.11(d) of this Subpart shall apply effective upon the date

the site is listed on the Registry.

(b) The department may add other administrative designation categories, and nothing in this Part should be construed to limit that ability.

Section 375-1.8 through Subparagraph 375-1.8(a)(5)(iii) remain unchanged.

Paragraph 375-1.8(a)(6) is amended to read as follows:

(6) The remedial program at a site shall analyze the impact of contamination at a site on the following [environmental media], as applicable:

Subparagraph 375-1.8(a)(6)(i) through Subparagraph 375-1.8(a)(6)(v) remain unchanged.

Subparagraph 375-1.8(a)(6)(vi) is amended to read as follows:

(vi) [biota]ecological resources.

Paragraph 375-1.8(a)(7) remains unchanged.

Paragraph 375-1.8(a)(8) is adopted to read as follows:

(8) Reconstruction of habitat disturbed by the remedial program.

Subdivision 375-1.8(b) through Paragraph 375-1.8(c)(2) remain unchanged.

Paragraph 375-1.8(c)(3) through Paragraph 375-1.8(d)(1) are amended to read as follows:

(3) Elimination of exposure. Exposure to any [source] remaining contamination following removal, treatment and/or containment set forth in this subdivision shall be eliminated through additional measures, including but not limited to, as applicable, the timely and sustained provision of alternative water supplies and the elimination of volatilization into buildings; provided however, if such elimination is not feasible such exposure shall be eliminated to the greatest extent feasible.

(4) Treatment of source at the point of exposure. [Treatment]Abatement of the exposure resulting from a source of environmental contamination at the point of exposure, as applicable, including but not limited to, wellhead treatment or the management of volatile contamination within buildings, shall be considered as a measure of last

resort.

(d) Groundwater protection and control measures.

(1) On-site source of groundwater contamination. All remedial programs shall consider the protection of groundwater and will consider department guidance including, but not limited to, any groundwater remediation strategy issued as set forth in ECL 15-3109. The following are the measures to be considered:

Subparagraph 375-1.8(d)(1)(i) through Subparagraph 375-1.8(d)(1)(ii) remain unchanged.

Subparagraph 375-1.8(d)(1)(iii) is amended to read as follows:

(iii) plume containment/stabilization. All remedies shall, to the extent feasible, prevent the further migration of groundwater plumes, whether on-site or off-site[; provided, however that]. However, a volunteer in the Brownfield Cleanup Program shall [only be obligated]address, to [evaluate]the [feasibility of containing]extent feasible, the [plume]on-site[.] plume and prevent the further migration of any site-related plume off-site at the site boundary. The development of alternatives will include an evaluation of feasible remedial alternatives that can achieve groundwater plume containment/stabilization.

Paragraph 375-1.8(d)(2) through Subparagraph 375-1.8(d)(2)(ii) remain unchanged.

Clause 375-1.8(d)(2)(ii)(‘a’) through Clause 375-1.8(d)(2)(ii)(‘c’) are amended to read as follows:

(‘a’) have no remedial responsibilities with respect to such groundwater contamination migrating under the site if there are no on-site public health exposures;

(‘b’) continue to satisfy the conditions in subparagraph (2)(i) of this subdivision; and

(‘c’) [identify a]include in the remedy [for the site]actions which [eliminates]eliminate or [mitigates]mitigate on-site public health exposures, to the extent feasible, [the impact of]resulting from any off-site contamination entering the site.

Paragraph 375-1.8(d)(3) through Subparagraph 375-1.8(d)(4)(i) remain unchanged.

Subparagraph 375-1.8(d)(4)(ii) is amended to read as follows:

(ii) identification of the long-term groundwater remedial activities that are required to be taken by the State pursuant to this Part for sites which the department has determined pose a significant threat as set forth in section 375-2.7 of this Part; and

Subparagraph 375-1.8(d)(4)(iii) through Subparagraph 375-1.8(e)I(1)(i) remain unchanged.

Subparagraph 375-1.8(e)(1)(ii) is amended to read as follows:

(ii) characterization of the surface and subsurface characteristics of the site, including topography, surface drainage, ecological resources, stratigraphy, depth to groundwater, and any aquifers that have been impacted or have the potential to be impacted;

Subparagraph 375-1.8(e)(1)(iii) remains unchanged.

Subparagraph 375-1.8(e)(1)(iv) is amended to read as follows:

(iv) evaluation of actual and potential threats to public health and the environment; and

Subparagraph 375-1.8(e)(1)(v) through Paragraph 375-1.8(e)(2) remain unchanged.

Subparagraph 375-1.8(e)(2)(i) is amended to read as follows:

(i) characterization of site geologic and hydrogeologic conditions, including groundwater flow, contaminant movement, and the response of the groundwater system to [extraction]potential groundwater remedial alternatives;

Subparagraph 375-1.8(e)(2)(ii) through Clause 375-1.8(f)(2)(i)(‘b’) remain unchanged.

Clause 375-1.8(f)(2)(i)(‘c’) is amended to read as follows:

(‘c’) conformity to such standard or criterion is technically impracticable from an engineering perspective; or

Clause 375-1.8(f)(2)(i)(‘d’) through Subparagraph 375-1.8(f)(4)(ii) are remain unchanged.

Subparagraph 375-1.8(f)(4)(iii) is amended to read as follows:

(iii) solidification or chemical fixation, on-site or off-site; [and]or

Subparagraph 375-1.8(f)(4)(iv) through Paragraph 375-1.8(f)(6) remain unchanged.

Paragraph 375-1.8(f)(7) is amended to read as follows:

(7) Cost-effectiveness, including capital costs and annual site maintenance and monitoring plan costs.

Paragraph 375-1.8(f)(8) through Paragraph 375-1.8(f)(9) remain unchanged.

Subparagraph 375-1.8(f)(9)(i) through Subparagraph 375-1.8(f)(9)(ii) is amended to read as follows:

(i) the current, intended, and reasonably anticipated future land uses of the site and its surroundings in the selection of the remedy for soil remediation under the brownfield cleanup and environmental restoration programs, and may consider land use [in the State superfund]for sites in the inactive hazardous waste disposal site remedial program, where cleanup to pre-disposal conditions is determined not feasible;

(ii) the department's determination on the use of the site will be in accordance with subdivision 375-1.8(g) of this section; and

Subparagraph 375-1.8(f)(9)(iii) through Clause 375-1.8(f)(9)(iii)('k') remain unchanged.

Clause 375-1.8(f)(9)(iii)('l') is amended to read as follows:

('l') natural resources and potential recovery following restoration, including proximity of the site to important Federal, State or local natural resources, including waterways, aquatic connectivity, wildlife movement corridors, wildlife refuges, wetlands, or critical habitats of endangered or threatened species;

Clause 375-1.8(f)(9)(iii)('m') remain unchanged.

Clause 375-1.8(f)(9)(iii)('n') is amended to read as follows:

('n') proximity to flood plains, potential for sea level rise and increasing flood frequency and magnitude;

Clause 375-1.8(f)(9)(iii)('o') through Paragraph 375-1.8(g)(2) remain unchanged.

Subparagraph 375-1.8(g)(2)(i) is amended to read as follows:

(i) 'Residential use' which is the land use category which allows a site to be used for any use other than raising [live stock]livestock or producing animal products for human consumption. Restrictions on the use of groundwater are allowed, but no other institutional or engineering controls are allowed relative to the residential

use soil cleanup objectives, except as set forth in section 375-2.8(f) of this Part. This is the land use category which will be considered for single family housing;

Subparagraph 375-1.8(g)(2)(ii) through Clause 375-1.8(g)(2)(ii)(‘a’) remains unchanged.

Subclause 375-1.8(g)(2)(ii)(‘a’)(‘1’) through Subparagraph 375-1.8(g)(2)(iii) are amended to read as follows:

(‘1’) any vegetable gardens on a site, [although community vegetable]however, raised planters (using clean, imported soil) and roof-top gardens would not be subject to this prohibition. Community gardens may be considered with department approval; and

(‘2’) single family housing unless the land beneath the structures on the site remains commonly owned in perpetuity; and

(‘b’) includes active recreational uses, which are public uses with a reasonable potential for soil contact;

(iii) ‘Commercial use’ which is the land use category which shall only be considered for the primary purpose of buying, selling or trading of merchandise or services and the production of agricultural products grown indoors and not in contact with onsite soils. Commercial use includes passive recreational uses, which are public uses with limited potential for soil contact; and

Subparagraph 375-1.8(g)(2)(iv) remains unchanged.

Paragraph 375-1.8(g)(3) is amended to read as follows:

(3) The department may approve a remedial program which [relies upon no restrictions on use]meets [unrestricted use] or [on]a range of [restrictions on use (]restricted uses[)]. The following hierarchy represents the range from a less restrictive to a more restrictive land use:

Subparagraph 375-1.8(g)(3)(i) through Subparagraph 375-1.8(g)(4)(iii) remain unchanged.

Paragraph 375-1.8(g)(5) is amended to read as follows:

(5) Where the use of the site proposed for a remedial program does not conform with applicable zoning laws or maps or the reasonably anticipated future use of the site as determined by the department, the department shall

not approve a remedy based on such non-conforming use (e.g., the department cannot approve a cleanup to commercial uses for a property [with]which is solely zoned residential [zoning]), unless it:

Subparagraph 375-1.8(g)(5)(i) through Subparagraph 375-1.8(g)(5)(ii) remain unchanged.

Paragraph 375-1.8(g)(6) through Subparagraph 375-1.8(g)(6)(iii) is amended to read as follows:

(6) For purposes of determining the appropriate land use category, the [remedial party]department will consider the nature of the uses and the activities which are occurring, or may occur, at the site:

(i) on the [ground level of any structure]surrounding land;

(ii) [on the surrounding land;]in the subsurface to a depth of 15 feet below the surface of the site; and

(iii) [in the subsurface to a depth of 15 feet below the surface of the site.]when the ground floor use will differ from the upper floor use, the less restrictive use (e.g. residential rather than commercial) shall apply, unless otherwise approved by the department.

Subdivision 375-1.8(h) through Subparagraph 375-1.8(h)(2)(ii) remain unchanged.

Subparagraph 375-1.8(h)(2)(iii) is adopted to read as follows:

(iii) Environmental easement will not be required where the only restriction to be placed on a site is a prohibition on the use of groundwater and the local municipality has a groundwater use prohibition in statute or ordinance.

Paragraph 375-1.8(h)(3) through Subclause 375-1.8(h)(3)(ii)(‘b’)(‘3’) remain unchanged.

Clause 375-1.8(h)(3)(ii)(‘c’) is amended to read as follows:

(‘c’) the owner will continue to allow access to such real property to evaluate the continued maintenance, monitoring, and operation of such controls;

Clause 375-1.8(h)(3)(ii)(‘d’) and Clause 375-1.8(h)(3)(ii)(‘e’) remain unchanged.

Clause 375-1.8(h)(3)(ii)(‘f’) is amended to read as follows:

(‘f’) to the best of [his/her]their knowledge and belief, the work and conclusions described in this certification

are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

Clause 375-1.8(h)(3)(ii)(‘g’) through Subparagraph 375-1.8(h)(3)(vi) remain unchanged.

Section 375-1.9 (title) remains unchanged

Subdivision 375-1.9(a) is amended to read as follows:

(a) certificate shall be issued for the real property constituting the site, upon a determination that the final engineering report is approved. The date of the approval of the final engineering report by the department, as set forth in paragraph 375-1.6(c)(6) of this Subpart, shall be the same as the issuance date for the certificate of completion.

Subdivision 375-1.9(b) through Paragraph 375-1.9(c)(1) remain unchanged.

Paragraph 375-1.9(c)(2) is amended to read as follows:

(2) a description of the site by adequate legal description [or by reference to a plat showing the boundaries, or by other means sufficient to identify site location with particularity], which at a minimum includes metes and bounds;

Paragraph 375-1.9(c)(3) through Paragraph 375-1.9(d)(1) remains unchanged.

Paragraph 375-1.9(d)(2) is amended to read as follows:

(2) Pursuant to RPL 317, the notice of the certificate of completion is deemed recorded when [its]it is delivered to the recording officer.

Paragraph 375-1.9(d)(3) through Paragraph 375-1.9(e)(1) remains unchanged.

Subparagraph 375-1.9(e)(1)(i) is amended to read as follows:

(i) the remedial party has failed to manage the controls or monitoring in full compliance with the terms of the remedial program, as set forth in paragraph 375-1.9(c)(5) of this section;

Subparagraph 375-1.9(e)(1)(ii) remains unchanged.

Subparagraph 375-1.9(e)(1)(iii) is amended to read as follows and Clauses 375-1.9(e)(1)(iii)(‘a’) and 375-1.9(e)(1)(iii)(‘b’) are adopted:

(iii) there was a misrepresentation of a material fact tending to demonstrate that the [cleanup levels were reached];

(‘a’) cleanup levels were reached; and/or

(‘b’) applicant qualified as a volunteer in the brownfield cleanup program;

Subparagraph 375-1.9(e)(1)(iv) and Subparagraph 375-1.9(e)(1)(v) are renumbered to Subparagraph 375-1.9(e)(1)(v) and Subparagraph 375-1.9(e)(1)(vi), respectively.

New Subparagraph 375-1.9(e)(1)(iv) is adopted to read as follows:

(iv) there was a misrepresentation of material fact tending to demonstrate that the applicant or the site met the criteria set forth in subdivision one-a of section 27-1407 of the Environmental Conservation Law for the purpose of receiving the tangible property credit component of the brownfield redevelopment tax credit, and/or elements thereof of the brownfield redevelopment tax credit pursuant to section 21(a)(3) of the Tax Law;

1.9(e)(2) through Paragraph 375-1.9(e)(3) remains unchanged.

Subdivision 375-1.9(f) is amended to read as follows:

(f) Transfer of a certificate of completion. A certificate of completion may be transferred [to successors and assigns], by the applicant or subsequent holder of the [remedial party or parties named in the]certificate[.] of completion, to a successor to a real property interest, including legal title, equitable title or leasehold, in all or part of the site.

Paragraph 375-1.9(f)(1)(1) though Paragraph 375-1.9(f)(2) remain unchanged.

New Paragraph 375-1.9(f)(3) is adopted to read as follows:

(3) A certificate of completion shall not be transferred to a responsible party.

Subdivision 375-1.9(g) through Subdivision 375-1.10(a) remains unchanged.

Subdivision 375-1.10(b) is amended to read as follows:

(b) All remedial programs shall include citizen participation activities which, at a minimum, shall include, but are not limited to, the preparation of a citizen participation plan, establishment of a document repository, which may be electronic in form, and public notice with a prescribed comment period at select milestones. Program specific requirements for these and other citizen participation activities are set forth under each of the Subparts of this Part.

Subdivision 375-1.10(c) through Paragraph 375-1.10(g)(3) remain unchanged.

Subdivision 375-1.10(h) is amended to read as follows:

(h) Interim remedial measures (IRMs). For [interim remedial measures]IRMs, the department will not require citizen participation activities unless the scope of the IRM is likely to represent [the remedy or]a significant portion of the remedy, in which event the department will require a 30-day comment period.

Section 375-1.11 through Subparagraph 375-1.11(c)(2)(iv) remain unchanged.

Subparagraph 375-1.11(c)(2)(iv) is amended to read as follows:

(v) [documentation of a]other financial [capability test, as set forth in paragraph]assurance mechanisms approved by the department. [373-2.8(d)(5) of this Title.]

Paragraph 375-1.11(c)(3) through Paragraph 375-1.11(c)(4) remain unchanged.

Paragraph 375-1.11(c)(5) is amended to read as follows.

(5) Submittal of financial assurance. After approval of the financial assurance amount and prior to the department's issuance of a certificate of completion, the remedial party must submit [an originally]a signed financial assurance mechanism to the department. The mechanism must be in effect when submitted and such mechanism may be submitted in hard copy or electronically. A remedial party may satisfy this requirement by establishing one or more financial assurance mechanisms. If multiple financial assurances are used, the remedial party shall specify at least one such assurance as 'primary' coverage and shall specify the other assurance as

‘excess.’ Additionally, a remedial party with obligations for providing financial assurances for multiple sites can combine the required financial assurances for all sites into one or more financial assurance mechanisms.

Paragraph 375-1.11(c)(6) through Subdivision 375-1.11(d) remain unchanged.

Paragraph 375-1.11(d)(1) through Paragraph 375-1.11(d)(2) are amended to read as follows:

(1) At least 60 days before a change of use at a site, [as defined in sections 375-2.11, 375-3.11 and 375-4.11 of this Part,]the person proposing to make such change of use shall provide written notification to the department.

(2) The notice shall include a work plan to be approved by the department or identify the approved work plan or portion of the approved site management plan that covers this activity. If the change of use does not involve any physical alteration of the site, then the department may waive the requirement for a work plan. The notice shall advise the department of the contemplated change, including, but not limited to, explaining how such change may affect the site`s proposed, ongoing, or completed remedial program.

Paragraph 375-1.11(d)(3) is renumbered to Paragraph 375-1.11(d)(4).

New Paragraph 375-1.11(d)(3) is adopted to read as follows:

(3) Where such activity occurs after the Certificate of Completion is issued and is identified as work that is outlined in the Site Management Plan, a Change of Use notice is not required if the person complies with the notification requirements of the Site Management Plan.

Renumbered Paragraph 375-1.11(d)(4) through Subparagraph 375-1.11(d)(4)(i) remain unchanged.

Subparagraph 375-1.11(d)(4)(ii) is amended to read as follows:

(ii) within [15]30 days of the transfer of all or part of the site, an additional notice shall be submitted to the department which includes but is not limited to the name of the new owner and the new owner’s contact information, including a contact representative and the contact information for such representative.

Subdivision 375-1.11(e) through Paragraph 375-1.11(e)(2) remain unchanged.

Subparagraph 375-1.11(e)(2)(i) through Subparagraph 375-1.11(e)(2)(ii) are amended to read as follows:

- (i) if served in [hand]person, the date delivered to the remedial party or its designated representative;
- (ii) if mailed, five days after the mailing[.]; or

Subparagraph 375-1.11(e)(2)(iii – iv) are adopted to read as follows:

(iii) if electronically distributed, the next business day; or

(iv) if mailed via overnight delivery service, the date delivered to the remedial party or delivered to the department's office.

Paragraph 375-1.11(e)(3) remains unchanged.

Subparagraph 375-1.11(e)(3)(i) through Subparagraph 375-1.11(e)(3)(ii) are amended to read as follows:

(i) if served in [hand]person, the date delivered to the department's office at 625 Broadway, Albany, New York or to the appropriate regional office of the department;

(ii) if mailed, five days after the mailing[.]; or

Subparagraphs 375-1.11(e)(3)(iii – iv) are adopted to read as follows:

(iii) if electronically distributed, the next business day; or

(iv) if mailed via overnight delivery service, the date delivered to the remedial party or delivered to the department's office.

Subdivision 375-1.11(f) remains unchanged.

Section 375-1.12 title remains unchanged.

Subdivision 375-1.12(a) through Paragraph 375-1.12(a)(1) are amended to read as follows:

(a) When the department develops and implements a remedial program set forth in ECL 27-1313(1); ECL 27-1313(5); ECL 27-1411(5); or ECL 56-0509(4), the department shall be exempt from the requirement to obtain any department issued permits [for sites], and the department has the discretion to extend this exemption to other State and local permits, if:

(1) the activity is [conducted on the site or on premises that are under common control or are contiguous to or

physically connected with the site]needed for investigation and[the activity manages exclusively]/or remediation of contamination on or emanating from a site which the department is [handling]managing as part of the site remedial program;

Paragraph 375-1.12(a)(2) through Paragraph 375-1.12(b)(3) remains unchanged.

Subdivision 375-1.12(c) through Subdivision 375-1.12(d) remain unchanged.

Subdivision 375-1.12(e) through Paragraph 375-1.12(e)(2) are amended to read as follows:

(e) If, in the course of implementing a remedial program, any storage tank(s) subject to regulation under Parts 596 through 599 or [612 through 614]Part 613 of this Title, are discovered and found not to be registered or not being operated in accordance with the applicable regulatory requirements, such tank(s) shall be registered and either closed in accordance with regulatory requirements or brought into compliance with the applicable regulatory requirements. These requirements:

Paragraph 375-1.12(f)(1)

(1) apply in full to the remedial program at a site when a responsible party or a participant as defined in 375-3.2([b]c)(1) of this Part, implements a remedial program pursuant to ECL 27- 1313(1); ECL 27-1313(5); or ECL 27-1411(5); or

(2) apply in full except that payment of a registration fee shall not be required where the department funds all or part of a remedial program pursuant to ECL 27-1313(1); ECL 27-1313(5); or ECL 56- 0503, or a volunteer as defined in paragraph 375-3.2([b]c)(2) of this Part undertakes the remedial program, provided the tank(s) is to be closed as part of the remedial program for the site.

Subdivision 375-1.12(f) is renumbered to Subdivision 375-1.12(g). New Subdivision 375-1.12(g) remains unchanged.

New Subdivision 375-1.12(f) is adopted to read as follows:

(f) If, in the course of implementing a remedial program, disturbance to habitat occurs that is subject to

regulation pursuant to Part 182, Part 608, Part 661, and Part 663 of this Title and/or constitutes an important component of the environment as defined in section 375-6.6 of this Part, the remedial program shall include a reconstruction plan:

(1) specifying the action needed to replace the habitat with the goal of in-kind replacement of habitat structure and function as determined by the department;

(2) implementing reconstruction within a year of remedial disturbance or as determined by the department; and

(3) specifying the monitoring and maintenance actions needed to re-establish disturbed habitat following the remedial action for a period of 5 years or period of time determined by the department.

Section 375-2.1 title remains unchanged.

Subdivision 375-2.1(a) is amended to read as follows:

(a) This Subpart applies to the development and implementation of remedial programs at inactive hazardous waste disposal sites pursuant to ECL 27-1301, 'et seq'. This Subpart addresses requirements in addition to those requirements identified in Subpart 375-1 of this Part.

Section 375-2.2 title remains unchanged.

Subdivision 375-2.2(a) is repealed.

Subdivision 375-2.2(b) through Subdivisions 375-2.2(h) are renumbered to new Subdivisions 375-2.2(a) through Subdivisions 375-2.2(g)

Renumbered Subdivision 375-2.2(b) is amended to read as follows:

(b) 'Contaminated or contamination' means the presence of a contaminant, as defined in subdivision ([b]a) of this section, in any environmental media, including soil, surface water, sediment, groundwater, soil vapor, ambient air or indoor air.

Renumbered subdivisions 375-2.2(c) through 375-2.2(g) remain unchanged.

Subdivision 375-2.2(i) is repealed.

Subdivision 375-2.2(j) is renumbered to Subdivision 375-2.2(h) and amended to read as follows:

(h) For the purposes of this [s]Subpart, the terms ‘Non-aqueous phase liquid’ or ‘NAPL’, ‘Disposal’, ‘Emergency’, ‘Engineering control’, ‘Grossly contaminated media’, ‘Off-site contamination’, ‘On-site contamination’, ‘Operable unit’, ‘Presumptive remedy’, ‘Remedial investigation’, ‘Remedial program’, ‘Responsible party’ and ‘Source area’ found in section 375-1.2 of this Part shall have substituted in their definition the terms ‘contaminant’, ‘contamination’ and ‘contaminated’ as defined [above] in subdivisions 375-2.2 (a) and (b) [and (c)] of this section.

Section 375-2.3 title remains unchanged.

Subdivision 375-2.3(a) through Paragraph 375-2.3(f)(7) remain unchanged.

Section 375-2.4 title remains unchanged.

Subdivision 375-2.4(a) is amended to read as follows:

(a) An application by a municipality to implement a remedial program with State assistance shall be submitted to the department in such form and manner, and containing such information, as the department may require. [One copy of the] The signed application [form and any], including attachments, shall be submitted [in an electronic format acceptable to the department] electronically.

Subdivision 375-2.4(b) through Subparagraph 375-2.5(a)(3)(i) remain unchanged.

Subparagraph 375-2.5(a)(3)(i) remains unchanged.

Paragraph 375-2.5(a)(4) is adopted to read as follows:

(4) The commissioner may order a responsible party or a potentially responsible party to finance in whole or in part a department or State-led remedial program for a site upon the consent of such responsible party without providing notice and an opportunity for hearing.

Subdivision 375-2.5(b) through Subparagraph 375-2.5(b)(4)(ii) remain unchanged.

Numbering on Subparagraph 375-2.5(b)(1)(iii) is corrected from 375-2.5(b)(1)(iiii) to 375-2.5(b)(1)(iii).

Subparagraph 375-2.5(b)(4)(iv) through Paragraph 375-2.5(c)(1) remain unchanged.

Paragraph 375-2.5(c)(2) is amended to read as follows:

(2) The terms and conditions set forth in subdivision 375-1.5(b) of this Part and subdivision 375-2.5(b) of this section will not apply to a State assistance contract for technical assistance grants.

Section 375-2.6 through Paragraph 375-2.7(a)(1) remain unchanged.

Subparagraph 375-2.7(a)(1)(i) through Subparagraph 375-2.7(a)(1)(iv) are amended to read as follows:

(i) a significant adverse impact upon endangered species, threatened species, or species of special concern, as defined in section 182.2 of this Title; [or]

(ii) a significant adverse impact upon protected streams and navigable waters as defined in section 608.1 of this Title, or tidal wetlands as defined in subdivision 661.4(hh) of this Title, or freshwater wetlands as defined in subdivision 663.2(p) of this Title or significant fish and wildlife habitat areas as defined in subdivision 602.5(a) of 19 NYCRR; [or]

(iii) a bioaccumulation of contaminants in flora or fauna to a level that causes, or that materially contributes to, significant adverse ecotoxicological effects in flora or fauna or leads, or materially contributes, to the need to recommend that human consumption be limited; [or]

(iv) contaminant levels that cause significant adverse acute or chronic effects to fish, shellfish, crustacea, and wildlife; [or]

Subparagraph 375-2.7(a)(1)(v) through Paragraph 375-2.7(a)(3) remain unchanged.

Subparagraph 375-2.7(a)(3)(i) is amended to read as follows:

(i) all data and information related to the factors, individually or in combination, set forth in paragraph (a)(1) of this subdivision;

Subparagraph 375-2.7(a)(3)(ii) through Paragraph 375-2.7(b)(1) remains unchanged.

Paragraph 375-2.7(b)(2) is amended to read as follows:

(2) The Registry maintained by the department must include all sites, except as provided in subdivision (c) of this section, known to the department at which contaminants, as defined in subdivision 375-2.2([b]a) of this Subpart have been confirmed to have been disposed in an amount that:

Subparagraph 375-2.7(b)(2)(i) through Clause 375-2.7(b)(3)(i)(‘a’) remain unchanged

Clause 375-2.7(b)(3)(i)(‘b’) is amended to add punctuation as follows:

(‘b’) the significant threat to public health or environment is causing, or presents an imminent danger of causing, either irreversible or irreparable damage to the environment;

Subparagraph 375-2.7(b)(3)(ii) through Subparagraph 375-2.7(b)(3)(iii) remain unchanged.

375-2.7(b)(3)(iv) is amended to read as follows:

(iv) a class ‘4’ site is one that has been properly closed but that requires continued site management, consisting of operation, maintenance, and monitoring; or

Subparagraph 375-2.7(b)(3)(v) remains unchanged

Paragraph 375-2.7(b)(4) is amended to read as follows:

The department will investigate such areas or structures which it has reason to believe may need to be included [in] on the Registry and may establish an administrative category for such areas or structures.

Paragraph 375-2.7(b)(5) through Paragraph 375-2.7(b)(6) remain unchanged.

Subparagraph 375-2.7(b)(6)(i) through Subparagraph 375-2.7(b)(6)(ii) are amended to read as follows:

(i) to the owner of the site or an area of the site by certified mail, 15 days prior to public noticing such listing decision; [and]

(ii) [to the site contact list, in a timely manner, after the listing decision is complete or, if a site contact list has not been developed, by publication in a local newspaper, as well as notice] to the adjacent property owners, the chief executive officer of the city, town or village and the public water supplier, if any, in which the site is located[.]; and

Subparagraph 375-2.7(b)(6)(iii) is adopted to read as follows:

(iii) to the site contact list, in a timely manner, after the listing decision is complete. If a site contact list has not been developed, by publication in a local newspaper.

Paragraph 375-2.7(b)(7) through subparagraph 375-2.7(b)(8)(ii) are amended to read as follows:

(7) Any person may provide to the department, and the department shall consider, information relevant to a site listed [in]on the Registry or to an area or structure which may need to be included [in]on the Registry.

(8) In classifying the site, the department may:

(i) disregard any amelioration of conditions at such site accomplished by the interim remedial measure unless the interim remedial measure achieves the goal of the remedial program for such site as described in subdivisions 375-2.8(a) and (b) of this [section]Title; and

(ii) base its determination upon facts and circumstances known to the department to have existed at any time since the date upon which such site was first listed [in]on the Registry that demonstrate the highest relative priority of the need for action at such site; and

Paragraph 375-2.7(b)(9) remains unchanged.

Subparagraph 375-2.7(b)(9)(i) is adopted to read as follows:

(i) A site is designated on the Registry 20 days after the date the director of the division of environmental remediation or their designee enters their approval of the reclassification in the electronic database.

Subdivision 375-2.7(c) remains unchanged.

Paragraph 375-2.7(c)(1) is amended to read as follows:

(1) The department will defer the assessment or reassessment of sites for inclusion on the Registry which are the subject of [an]a complete application for, negotiations [for]over, or implementation of:

Subparagraph 375-2.7(c)(1)(i) through Subdivision 375-2.7(d) remain unchanged.

Paragraph 375-2.7(d)(1) through Paragraph 375-2.7(d)(2) is amended to read as follows:

(1) Site reclassification. The department may review the classification of any site on the Registry at any time, but must review the classification of each site on the Registry at least annually not later than March 31st of each year. [Notification of the reclassification of a site will be provided in accordance with paragraph 375-2.7(b)(6).]

(2) Site modification. The site boundary description [in]on the Registry will be revised by the department as appropriate based upon:

Subparagraph 375-2.7(d)(2)(i) through Subparagraph 375-2.7(d)(2)(ii) remain unchanged.

Paragraph 375-2.7(d)(3) is adopted to read as follows:

(3) The local governments of jurisdiction should be notified of changes within 10 days.

Subdivision 375-2.7(e) through Subparagraph 375-2.7(e)(1)(i) remain unchanged.

Subparagraph 375-2.7(e)(1)(ii) through Subparagraph 375-2.7(e)(1)(iii) are amended to read as follows:

(ii) the public by publication of a notice in the ‘Environmental Notice Bulletin’ and newspaper of general circulation in the county in which the site is located; [and]

(iii) the site contact list[. If a site contact list has not been developed, the Department will provide notice in accordance with subparagraph 375-2.7(b)(6)(ii).]which shall include the local governments of jurisdiction.

Paragraph 375-2.7(e)(2) through Paragraph 375-2.7(e)(4) remains unchanged.

Subparagraph 375-2.7(e)(4)(i) is amended to read as follows:

(i) the [site characterization or]remedial investigation does not confirm that the requirements of paragraph 375-2.7(b)(2) of this section are satisfied;

Subparagraph 375-2.7(e)(4)(ii) through Clause 375-2.7(e)(4)(ii)(‘a’) remain the same.

Clause 375-2.7(e)(4)(ii)(‘b’) is amended to read as follows and Subclause 375-2.7(e)(4)(ii)(‘b’)(‘1’) and Subclause 375-2.7(e)(4)(ii)(‘b’)(‘2’) are adopted.

(‘b’) an environmental easement and site management plan are required; and such documents only require [institutional controls, with periodic certification, in the form of land use or groundwater use restrictions.];

(‘1’) institutional controls, with periodic certification, in the form of land use or groundwater use restrictions;
and/or

(‘2’) engineering controls to address potential soil vapor intrusion.

Paragraph 375-2.7(e)(5) is amended to read as follows:

(5) Sites which are delisted with institutional controls, as set forth in subparagraph (4)(ii) of this subdivision, remain subject to the change of use provisions as set forth in section 375-1.11(d) of this Part.

Subdivision 375-2.7(f) through subparagraph 375-2.7(f)(3) remain unchanged.

Subparagraph 2.7(f)(3)(i) through Subparagraph 2.7(f)(3)(ii) are amended to read as follows:

(i) To be complete, a petition must be submitted by a person identified in paragraph (f)(1) of this subdivision and must seek only relief identified in paragraph (f)(2) of this subdivision upon the basis of material factual allegations supported by proof that tends to establish the right to the relief sought.

(ii) If the relief being sought is identified in subparagraph (f)(2)(i) or (ii) of this subdivision, the proof must be in the form of an affidavit made by a person having direct knowledge of, or who is an expert with regard to, the subject of the matters covered by the petition.

Paragraph 375-2.7(f)(4) through Subparagraph 275-2.8(b)(1)(iii) remain unchanged.

Paragraph 375-2.8(b)(2) is amended as follows:

(2) The soil component of the remedial program will consider the soil cleanup objectives for unrestricted use, as set forth in Table 375-6.8(a) of this Part, as representative of pre-disposal conditions for remedial programs proceeding as set forth in subparagraphs (1)(i) or (1)(ii) of this subdivision, unless an impact to ecological resources has been identified.

Paragraph 375-2.8(b)(3) through Subparagraph 375-2.8(c)(3)(i) remain unchanged.

Subparagraph 375-2.8(c)(3)(ii) is amended to read as follows:

(ii) considers site specific background concentrations[, including the location of a site in areas of historic fill,] in

the development of the remedy; and/or

Subparagraph 375-2.8(c)(3)(iii) through Paragraph 375-2.9(e)(9) remain unchanged.

Subdivision 375-2.8(f) is adopted to read as follows:

(f) Nothing in this Part shall restrict the department's approval of the use of institutional or engineering controls to address actual or potential exposure at existing residential use properties, in limited instances where the department determines the remediation is not technically feasible or the remedial benefit is substantially outweighed by other factors described in section 375-1.8(f) of this Part.

Section 375-2.10 (title) remains unchanged.

Subdivision 375-2.10(a) is amended to read as follows:

(a)The department will require that opportunities for public involvement be included in the development and implementation of an inactive hazardous waste disposal site remedial program, as set forth in this [section]subdivision and section 375-1.10 of this Part.

Subdivision 375-2.10(b) through Subdivision 375-2.10(c) remains unchanged.

Paragraph 375-2.10(c)(1) is amended to read as follows:

(1) [Mail]Provide to those on the site contact list a notice and brief [analysis of the proposed remedy, which includes sufficient information to provide a reasonable explanation of that proposed remedy, including but not limited to, a]summary of the [department's reasons for preferring it over other remedial alternatives considered and the construction and site management requirements of the]proposed remedy.

Paragraph 375-2.10(c)(2) through Paragraph 375-2.10(c)(3) remains unchanged.

Subdivision 375-2.10(d) is amended to read as follows:

(d) The department may require the [mailing]sending of additional notices and/or fact sheets to those on the site contact list.

Subdivision 375-2.10(e) through Paragraph 375-2.10(g)(7) remains unchanged.

Section 375-2.11 (title) through Subdivision 375-2.11(a) remains unchanged.

Paragraph 375-2.11(a)(1) is amended to read as follows:

(1) Except in the event of an emergency, in which event the remedial party shall comply with subdivision 375-1.5(b)(1) of this Part, no person shall undertake at a site listed [in]on the Registry any physical alteration that constitutes storage, treatment, or disposal of any contaminant which served as the basis for such listing, unless such conduct:

Subparagraph 375-2.11(a)(1)(i) through Paragraph 375-2.11(a)(4) remains unchanged.

Subdivision 375-2.11(b) is amended to read as follows:

(b) State environmental quality review act applicability. Remedy selection and implementation of remedial actions under department approved work plans pursuant to ECL article 27, title 13 are not subject to review pursuant to ECL article 8 and its implementing regulation (6 NYCRR Part 617), as it is an exempt action pursuant to the enforcement exemption provision.

Subdivision 375-2.11(c) through Clause 375-2.11(c)(1)(i)(‘b’) remains unchanged.

Clause 375-2.11(c)(1)(i)(‘c’) is amended to read as follows:

(‘c’) when [circumstances exist that substantiate the making either the findings of]the commissioner makes findings set forth at [ECL 37-1313(b)(3)(b)]ECL 27 1313(3)(b)(iii), or [the findings of]the Commissioner of Health makes findings set forth in section [1389-b.3.b]1389-b(3)(b) of the Public Health Law [but only]to the extent necessary to address those [circumstances]findings, unless the department, in the exercise of discretion, determines that it would be cost-effective to develop and implement the complete program; or

Clause 375-2.11(c)(1)(i)(‘d’) through Subparagraph 375-2.11(c)(1)(iii) remain unchanged.

Subparagraph 375-2.11(c)(1)(iv) is amended to read as follows:

(iv) to pay for all other activities to develop and regularly update the plan required by ECL 27-1305[(5) and ECL-27-1305(6)](3);

Subparagraph 375-2.11(c)(1)(v) through Section 375-2.12 remain unchanged.

Subpart 375-3 (contents) through Subdivision 375-3.2(a) remain unchanged.

Paragraphs 375-3.2(a)(1) through 375-3.2(a)(2) are amended to read as follows:

(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 [:]a percentage of the residential rental units in the affordable housing project to be dedicated to tenants at a defined maximum percentage of the area median income based on annual household gross income of the occupants.

[(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]homeowners at a defined maximum percentage of the area median income.

Paragraph 375-3.2(a)(3) is renumbered to 375-3.2(a)(4) and remains unchanged. New paragraph 3.2(a)(3) is adopted as follows:

(3) Affordable Housing Project under this subdivision also means, a project that demonstrates the project is the subject of a determination by a federal, state or local government housing agency that all or a portion of the project or site will qualify for benefits, including but not limited to real property taxation exemptions, is or will be eligible under an affordable housing program which requires that a percentage of residential rental or home ownership dwelling units be dedicated to tenants or homeowners at a defined maximum percentage or percentages of area median income based on the occupants' households annual gross income. Such federal, state

or local affordable housing program shall confer a benefit to the project. For the purposes of this subdivision, the term “benefit” shall be broadly construed, and shall include, but not be limited to, tax benefits, including real estate tax benefits, tax credits, bond financing, subsidy financing, and zoning variances or waivers. To demonstrate eligibility under this subdivision, the project must present a certification of compliance or other evidence of eligibility by a federal, state, or local government affordable housing agency that such project is an affordable housing project.

Subdivision 375-3.2(b) through 375-3.2(c)1) remain unchanged.

Subparagraph 375-3.2(c)(1)(i) is amended to read as follows:

(i) was the owner of the site at the time of the disposal or discharge of contaminants; or

Subparagraph 375-3.2(c)(1)(ii) through Subdivision 375-3.2(d) remain unchanged.

Subdivision 375-3.2(e) ‘Change of Use’ is repealed.

Subdivision 375-3.2(f) through 375-3.2(i) are renumbered to 3.2(g) through (j)

New Subdivisions 375-3.2(e) through 3.2(f) are adopted to read as follows:

(e) ‘Cover system or site cover’ shall mean an engineering control comprised of physical barriers employed to eliminate exposure pathways to soil contamination by containment of soil, and may be comprised of:

(1) soil cover systems in landscaped or exposed soil areas, which must:

(i) be comprised of soil or other unregulated material as set forth in Part 360 of this Title and otherwise complies with applicable regulations; and

(ii) not exceed the applicable soil cleanup objectives for intended use of the site; or

(2) hardscape cover systems consisting of other materials and components where such component already exists or are a component of the redevelopment. Such components may include, but are not limited to; pavement, concrete, paved surface parking areas, sidewalks, building foundations, and building slabs. The required thickness of hardscaped areas (including sub-base, if applicable) must otherwise meet the requirements of the

New York State Uniform Fire Prevention and Building Code or local building code, whichever is applicable for the site. These components are subject to the provisions of section 21 of the Tax Law.

(3) For areas where ecological resources are identified, consistent with section 375-6.6 of this Part, the soil cover in those areas shall be adequate to support those ecological resources, as determined by the department regardless of the land use. The soil cover in these areas shall be a minimum of 2 feet thick.

(4) For commercial and industrial use, the soil cover shall be one foot of soil meeting the commercial soil cleanup objectives (SCOs) or industrial SCOs, respectively, found in section 375-6.8(b) of this Part and, as applicable, the protection of groundwater SCOs and protection of ecological resources SCOs, found in section 375-6.8(b) of this Part; or

(5) For restricted residential use, the soil cover shall be two feet of soil meeting the restricted residential SCOs found in section 375-6.8(b) of this Part and, as applicable, the protection of groundwater SCOs and protection of ecological resources SCOs, found in section 375-6.8(b) of this Part.

Subdivisions 375-3.2(f) through 375-3.2(i) are renumbered to subdivisions 375-3.2(g) through (j).

(f) *Disadvantaged community* shall mean a community that is identified pursuant to section 75-0111 of the ECL.

Renumbered Subdivisions 375-3.2(g) through Subdivision 375-3.2(j) remain unchanged.

Subdivisions 375-3.2(j) through 3.2(l) are renumbered to 3.2(m) through 3.2(o).

New Subdivisions 375-3.2(k) and 375-3.2(l) are adopted to read as follows:

(k) ‘PRP Search’ means a search to identify potentially responsible parties (PRP) who may be legally liable for contamination at a particular property, including, but not limited to the current owner/operator, the owner/operator at the time of disposal of hazardous waste/substances, persons who arranged for the disposal or treatment of hazardous waste/substances, and persons who transported and chose the disposal location of hazardous waste/substances.

(1) ‘Renewable energy facility’ site shall mean real property that has a primary use for:

(1) a renewable energy system, as defined in section sixty-six-p of the Public Service Law; or

(2) any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission, sub-transmission, or distribution system. Such facility shall be used primarily for energy generation. “Renewable energy facility site” shall not include real property that has a primary use for the production of fossil fuel-based energy.

Renumbered Subdivision 375-3.2(m) and (n) remain unchanged.

Renumbered Subdivision 375-3.2(o) is amended to read as follows:

(o) ‘Underutilized’ means, as of the date of application to the Brownfield Cleanup Program, real property on which no more than 50 percent of the permissible floor area of the building or buildings is certified by the applicant to have been used under the applicable base zoning for at least three years prior to the application, which zoning has been in effect for at least three years; and

(1) the proposed use is at least 75 percent for industrial uses; or

(2) at which:

(i) the proposed use is at least 75 percent for commercial or commercial and industrial uses;

(ii) the proposed development could not take place without substantial government assistance, as certified by the municipality in which the site is located[; and], where ‘substantial government assistance’ means a substantial loan, grant, land purchase subsidy, land purchase cost exemption or waiver, or tax credit, or some combination thereof, from a governmental entity; and

Subparagraph 375-3.2(o)(iii) remains unchanged.

The phrase [‘Substantial government assistance’ shall mean a substantial loan, grant, land purchase subsidy, land purchase cost exemption or waiver, or tax credit, or some combination thereof, from a governmental entity.’] which is unnumbered and occurs after Clause 375-3.2(o)(iii)(‘c’), is removed.

New Subdivision 375-3.2(p) is adopted as follows:

(p) ‘Upside down’ means, as of the date of application to the Brownfield Cleanup Program, a property where the projected and incurred cost of the investigation and remediation protective for the anticipated use of the property equals or exceeds 75 percent of its independent appraised value, appraised under the hypothetical condition that the property is not contaminated.

Subdivision 375-3.3(a) is amended to read as follows:

(a) Eligible sites. Any real property that meets the requirements of a brownfield site as defined in [ECL article 27, title 14]section 375-1.2(b) of this Part.

Paragraph 375-3.3(a)(1) is repealed.

New Paragraph 375-3(a)(1) is adopted to read as follows:

(1) A brownfield site must have contamination on-site at levels exceeding the soil cleanup objectives, or other health-based or environmental standards, criteria or guidance adopted by the department that are applicable based on the reasonably anticipated use of the property.

Paragraph 375-3.3(a)(2) is amended to read as follows:

2) In determining [eligibility]whether a site is contaminated, the department shall not consider:

Subparagraph 375-3.3(a)(2)(i) remains unchanged.

Subparagraph 375-3.3(a)(2)(ii) is amended to read as follows:

(ii) material not constituting a “contaminant” as defined in section 375-1.2([g]h) of this Part (*e.g.*, construction and demolition debris, abandoned consumer goods or other solid waste present on the site).

Paragraph 375-3.3(a)(3) is renumbered to Paragraph 375-3.3(a)(4)

New Paragraph 375-3.3(a)(3) is adopted to read as follows:

(3) An investigation report submitted with the application must demonstrate that the site requires remediation in order to meet the requirements for the reasonably anticipated end use of the site.

Renumbered Paragraph 375-3.3(a)(4) is amended to read as follows:

(4) In determining [eligibility]whether the site requires remediation, the department may consider:

Subparagraph 375-3.3(a)(4)(i) through Subparagraph 375-3.3(a)(4)(ii) are repealed.

New Subparagraph 375-3.3(a)(4)(i) through Subparagraph 375-3.3(a)(5) are adopted to read as follows:

(i) the number of samples that exceed applicable standards, criteria or guidance, as presented in the investigation report;

(ii) the magnitude by which the concentrations exceed the applicable standards, criteria or guidance;

(iii) the magnitude by which the concentrations exceed the site-specific background concentrations;

(iv) the potential for human or ecological exposure to contaminants present in any media; and/or

(v) the potential for a contaminant to migrate within or off of the site, or to partition into other media.

(5) In determining the reasonably anticipated use of the site, the department shall consider, without limitation:

(i) current use and historical and/or recent development patterns;

(ii) applicable zoning laws and maps, including whether such zoning anticipates single family housing structures or agricultural uses;

(iii) applicable comprehensive community master plans, local waterfront revitalization plans as provided for in ECL article 42, or any other applicable land use plan formally adopted by a municipality;

(iv) any approved redevelopment plan;

(v) natural resources, including proximity of the site to important federal, State or local natural resources, including waterways, wildlife refuges, wetlands, or critical habitats of endangered or threatened species; or

(vi) or any other factor set forth in ECL-1415.

Subdivision 375-3.3(b) remains unchanged.

Paragraph 375-3.3(b)(1) is amended to read as follows:

(1) on the Registry as a class 1 [or class 2]; or

Paragraph 375-3.3(b)(2) to Paragraph 375-3.3(b)(3) are renumbered as Paragraph 375-3.3(b)(3) to Paragraph 375-3.3(b)(4).

Paragraph 375-3.3(b)(4) to Paragraph 375-3.3(b)(5) are renumbered to Paragraph 375-3.3(b)(6) to Paragraph 375-3.3(b)(7).

New Paragraph 375-3.3(b)(2) is adopted to read as follows:

(2) on the Registry as class 2, unless:

(i) the property is owned by a volunteer as defined in section 375-3.2(c)(2) of this Subpart or under contract to be transferred to a volunteer; and

(ii) the department, utilizing the PRP search submitted by the requestor in addition to other available information, has not identified any responsible party for that property that has the ability to pay for the remedial program.

Renumbered Paragraph 375-3.3(b)(3) remain unchanged.

Renumbered Paragraph 375-3.3(b)(4) is amended to read as follows:

(4) the subject of an ongoing enforcement action pursuant to ECL article 27, title 7 or title 9 involving solid or hazardous waste or permitted or required to be permitted as a treatment, storage or disposal facility;

New Paragraph 375-3.3(b)(5) is adopted to read as follows:

(5) a hazardous waste treatment, storage or disposal facility having interim status, unless:

(i) the property is owned by a volunteer as defined in section 375-3.2(c)(2) of this Subpart or under contract to be transferred to a volunteer; and

(ii) the department, utilizing the PRP search submitted by the requestor in addition to other available

information, has not identified any responsible party for that property that has the ability to pay for the remedial program.

Renumbered Paragraph 375-3.3(b)(6) to Renumbered Paragraph 375-3.3(b)(7) remain unchanged.

Subdivision 375-3.3(c) through Paragraph 375-3.3(c)(3) remain unchanged.

Subdivision 375-3.3(d) through Subdivision 375-3.3(f) are adopted to read as follows:

(d) Sites are not eligible for tangible property credits if the:

(1) contamination at the site is solely in groundwater and/or soil vapor, and the contamination in such ground water and/or soil vapor is solely emanating from property other than the site subject to the present application;

or

(2) property has previously been remediated under one of the department's remedial programs so that it may be developed for its then intended use. These programs include the Industrial Hazardous Waste (RCRA) Site Program (ECL article 27, title 9), the Inactive Hazardous Waste Disposal Site Program (ECL article 27, title 13), the Brownfield Cleanup Program (ECL article 27, title 14), Environmental Restoration Program (ECL article 56, title 5), or Spill Response Program (article 12 of the Navigation Law).

(e) Eligibility for tangible property credit component of brownfield redevelopment tax credits for sites in a city with a population of one million or more.

(1) In determining eligibility for the tangible property credit component of brownfield redevelopment tax credits for a site in a city with a population of one million or more, pursuant to section 21 of the Tax Law, the department shall determine whether the site meets at least one of the following required criteria:

(i) at least half of the site area is located in an environmental zone, as defined in section 21 of the Tax Law;

(ii) the property is underutilized or upside down, as defined by sections 375-3.2(o) and (p) of this Subpart;

(iii) the project is an affordable housing project, as defined by section 375-3.2(a) of this Subpart;

(iv) the project is within a disadvantaged community as defined in section 375 -3.2(f) of this Subpart, within a

designated brownfield opportunity area, and meets the conformance determinations pursuant to subdivision ten of section nine hundred seventy-r of the general municipal law; or

(v) the project is being developed as a renewable energy facility site as defined in section 375 – 3.2(l) of this Subpart.

(f) An applicant may request an eligibility determination for tangible property credits at any time before the site receives a certificate of completion, except for sites seeking eligibility under the ‘underutilized’ definition, which must be requested at the time of application to the program. The applicant is responsible for providing sufficient documentation to allow an eligibility determination to be made by the department or the government entity making the affordable housing or underutilized determinations.

Section 375-3.4 through Paragraph 375-3.4(a)(1) remain unchanged.

Paragraph 375-3.4(a)(2) is amended to read as follows:

(2) [Applications]The signed application, including attachments, [~~must~~shall] be submitted [both] in hard copy [~~and~~or] electronically.

Subdivision 375-3.4(b) remains unchanged.

Paragraph 375-3.4(b)(1) is amended to read as follows:

(1) An application will be deemed complete when the department determines that it contains sufficient information to allow the department to determine eligibility and the current, intended and reasonably anticipated future land use of the site. For an application seeking a determination that real property either on the Registry as a class 2, or a hazardous waste treatment, storage or disposal facility having interim status, is an eligible site, such application will not be deemed complete until the requestor submits a PRP search and the department determines there are no responsible parties that have the ability to pay for the investigation and remediation of the site.

Paragraph 375-3.4(b)(2) is amended to read as follows:

(2) The department shall notify the requestor in writing within [10]30 days after the receipt of an application whether such application is complete. Such notification shall advise that the application is either:

Subparagraph 375-3.4(b)(2)(i) through Paragraph 375-3.4(b)(5) remain unchanged.

Subparagraph 375-3.4(b)(5)(i) is amended to read as follows:

(i) newspaper notice of the application and any associated work plans or reports submitted with the application, as set forth in subdivision 375-3.2([f]h) of this Subpart; and

Subparagraph 375-3.4(b)(5)(ii) through Subdivision 375-3.4(c) remain unchanged.

Paragraph 375-3.4(c)(1) is amended to read as follows:

(1) For an application, or an application which includes a remedial investigation work plan. The department will use all best efforts to reply within 45 days after receipt of [an]a complete application, or five days after the close of the public comment period, whichever is later.

Paragraph 375-3.4(c)(2) remains unchanged.

Paragraph 375-3.4(c)(3) is adopted to read as follows:

(3) For an application seeking a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit, the department will notify the applicant of its determination concurrently with its notification regarding site eligibility.

Subdivision 375-3.4(d) remains unchanged.

Section 375-3.5 (title) remains is amended to read as follows:

375-3.5 [Brownsfield]Brownfield site cleanup agreements.

Subdivision 375-3.5(a) through Paragraph 375-3.5(b)(3) remain unchanged.

Paragraph 375-3.5(b)(4) is adopted to read as follows:

(4) if paragraphs (1), (2), and (3) of this subdivision are satisfied, the brownfield site cleanup agreement shall be terminated 15 days following receipt of notification of same.

Subdivision 375-3.5(c) through Paragraph 375-3.5(c)(1) remain unchanged.

Subparagraph 375-3.5(c)(1)(i) through Paragraph 375-3.5(c)(2) are amended to read as follows:

(i) [notify]provide notice to the applicant in writing of its intention to terminate the agreement and the reasons for the intended termination;

(ii) [provide]if the termination is based on a curable item or deficiency the applicant shall be provided with a reasonable opportunity of not less than 30 days to correct deficiencies[.];

(2) The brownfield site cleanup agreement shall be terminated 31 days after the effective date, as set forth in subdivision 375-1.11(e) of this Part, of the department's notice of intent to terminate, unless the remedial party:

Subparagraph 375-3.5(c)(2)(i) through Subparagraph 375-3.5(c)(2)(ii) remain unchanged.

Paragraph 375-3.5(c)(3) is amended to read as follows:

(3) Nothing herein shall preclude the department from terminating an agreement in less than 30 days' notice if the department determines that information provided or certifications made by the applicant are materially inaccurate or incomplete. Prior to terminating an agreement pursuant to this paragraph, the department shall give the applicant written notice, indicating the reason for the termination, and an opportunity to demonstrate that [such] information or certifications referenced above were materially accurate and complete.

Paragraph 375-3.5(c)(4) is adopted to read as follows:

(4) Nothing herein shall preclude the department from terminating an agreement in less than 30 days' notice if the department determines that the applicant performed work as part of a remedial program that was not detailed in a department-approved work plan. Prior to terminating an agreement pursuant to this paragraph, the department shall give the applicant written notice, indicating the reason for the termination, and an opportunity to demonstrate that the work performed as part of the remedial program was detailed in a department-approved work plan.

Subdivision 375-3.5(d) through Subdivision 375-3.5(f) remain unchanged.

New Subdivision 375-3.5(g) is adopted to read as follows:

(g) The applicant shall submit with every brownfield cleanup agreement a non-refundable program fee of \$50,000 unless the applicant is eligible for a program fee waiver. An applicant will only be eligible for a program fee waiver if:

(1) The applicant and department agree to a provision in the brownfield cleanup agreement which states that the applicant will develop the brownfield site with the dedication of 100 percent of the residential rental or home ownership units in an affordable housing project to tenants or homeowners at a defined maximum percentage of area median income based on the occupants' household annual income;

(2) The applicant and department agree to a provision in the brownfield cleanup agreement which states that the applicant, which is otherwise eligible for tangible property tax credits, waives its eligibility for tangible property tax credits under section 21 of the Tax Law;

(3) The applicant is exempted from taxes under articles nine, nine-a, twenty-two or thirty-three of the Tax Law;
or

(4) More than half of the brownfield site is within a disadvantaged community and the applicant demonstrates, through submittal of third-party attestations or certifications that, but for the program fee, the remediation and redevelopment of the brownfield site would not be financially viable for the applicant and economically viable in the disadvantaged community.

Subdivisions 375-3.6(a) – (c) remain unchanged.

New Subdivision 375-3.6(d) through new Subdivision 375-3.6(e) are adopted as follows:

(d) Each work plan submitted to the department shall include a schedule for implementation of the activities contained therein.

(e) Each report submitted to the department shall include a schedule for the submission of any subsequently required work plans.

Section 375-3.7 (title) through Subdivision 375-3.7(b) remain unchanged.

Paragraph 375-3.7(b)(1) is amended to read as follows:

The department will, upon approval of an application as set forth in subdivision 375-3.4(c) of this Subpart, defer its assessment or reassessment of a brownfield site's classification [in]on the Registry in accordance with subdivision 375-2.7(c) of this Part.

Paragraph 375-3.7(b)(2) through Paragraph 375-3.8(a)(3) remain unchanged.

Subparagraph 375-3.8(a)(3)(i) through Subparagraph 375-3.8(a)(3)(ii) are amended to read as follows:

(i) for remedies developed in accordance with paragraph (e)(4) of this section, with a cleanup level which exceeds the parameters in [this] paragraph (a)(3) of this section, the remedial party must demonstrate that such level would be protective of public health and the environment. This demonstration must be included in the alternatives analysis developed in accordance with subdivision 375-3.8(f) of this section; and

(ii) a cleanup level which exceeds the parameters in [this] paragraph (a)(3) of this section, may be approved by the department under paragraph (e)(4) of this section, without requiring the use of institutional or engineering controls to eliminate exposure only upon a site-specific finding by the commissioner, in consultation with the State Commissioner of Health, that such level shall be protective of public health and the environment.

Subdivision 375-3.8(b) through Paragraph 375-3.8(b)(2) remain unchanged.

Subparagraph 375-3.8(b)(2)(i) is amended to read as follows:

(i) a volunteer shall perform a qualitative exposure assessment of the contamination that has migrated from the site in accordance with ECL 27-1415(2)(b) and department guidance. [For sites being addressed by a volunteer, the volunteer has no obligation to implement a remedy to address an off-site exposure identified by this assessment. The Department will:] Off-site field investigation and sampling may be required to identify and sample any potential areas of contamination to complete the qualitative exposure assessment, which may include:

Clause 375-3.8(b)(2)(i)(a) through Clause 375-3.8(b)(2)(i)(b) are renumbered to Clause 375-3.8(b)(2)(ii)(a) Clause 375-3.8(b)(2)(ii)(b).

New Clause 375-3.8(b)(2)(i)(a) through New Clause 375-3.8(b)(2)(i)(d) are adopted to read as follows:

(‘a’) evaluation and sampling of nearby structures for soil vapor intrusion;

(‘b’) sampling of off-site soil vapor;

(‘c’) sampling of off-site groundwater if there is a potential off-site exposure pathway; and

(‘d’) sampling of off-site soil if there is a potential off-site exposure pathway.

Subparagraph 375-3.8(b)(2)(ii) is renumbered to new Subparagraph 375-3.8(b)(2)(iii).

New Subparagraph 375-3.8(b)(2)(ii) is adopted to read as follows:

(ii) For sites being addressed by a volunteer, the volunteer has no obligation to implement a remedy to address an off-site exposure identified by this assessment. The department will:

New Subparagraph 375-3.8(b)(2)(iii) through Paragraph 375-3.8(c)(1) remain unchanged:

Paragraph 375-3.8(c)(2) through Paragraph 375-3.8(c)(3) are amended to read as follows:

(2) Participants must also, based upon the characterization of the nature and extent of contamination that has migrated from the site, propose or select a remedy which addresses the off-site contamination. The off-site remedy must, at a minimum, address exposures related to site contamination to allow for residential use of the property unless the use of the property is limited to a more restrictive use (e.g. commercial or industrial).

Paragraph 375-3.8(c)(3) through Subparagraph 375-3.8(c)(4)(ii) remain unchanged.

Paragraph 375-3.8(c)(5) through Subparagraph 375-3.8(c)(5)(ii) are adopted to read as follows:

(5) For class 2 sites admitted to the Brownfield Cleanup Program where:

(i) a Record of Decision has been issued, the Brownfield Cleanup Program applicant will implement the on-site elements of the selected remedy, subject to department approval of what constitutes the on-site elements of the remedy; or

(ii) the site remedy is to be developed under the Brownfield Cleanup Program, a feasibility study pursuant to section 375-2.8(c) of this Part will be required in place of the alternatives analysis and the remedy will be selected by the department in accordance with section 375-2.8(e) of this Part.

Subdivision 375-3.8(d) through Paragraph 375-3.8(d)(1) remain unchanged.

Paragraph 375-3.8(d)(2) through Subdivision 375-3.8(e) are amended to read as follows:

(2) Cleanup objectives for other media. The exposure to public health and the environment resulting from contamination in all other environmental media shall be evaluated and cleanup objectives to eliminate or mitigate the exposure shall be proposed by the remedial party and any cleanup objectives approved by the department for other media will be included in the alternatives analysis to ensure that the remedial program meets the requirements of this [subdivision]section and [subdivision]section 375-1.8 of this Part.

(e) Cleanup tracks. For sites or portions of sites where the department has determined that remediation is needed to meet the remedial program requirements, each remedial alternative that is developed and evaluated shall, in addition to all other requirements in this section and [section]subdivision 375-1.8(c) of this Title, conform to the requirements of one of the following cleanup tracks.

Paragraph 375-3.8(e)(1) remains unchanged.

Subparagraph 375-3.8(e)(1)(i) is amended to read as follows:

(i) the remedial program shall achieve a cleanup level that will allow the site to be used for any purpose without any restrictions on the use of the site as described in subparagraph 375- 1.8(g)(1)(i) of this Part, except as noted in subparagraph (iii) of this paragraph.

Subparagraph 375-3.8(e)(1)(ii) remains unchanged.

Subparagraph 375-3.8(e)(1)(iii) through Clause 375-3.8(e)(1)(iv)('c') are repealed and replaced with New

Subparagraph 375-3.8(e)(1)(iii) through New Subparagraph 375-3.8(e)(1)(iv).

(iii) if the remedial program is being implemented by a volunteer:

(‘a’) The remedial program can include the use of long-term institutional or engineering controls to achieve remedial objectives for groundwater, so long as the volunteer has demonstrated to the department’s satisfaction that there has been a bulk reduction in groundwater contamination to asymptotic levels at the time the certificate of completion is issued. In such instances, the volunteer shall receive a Track 1 certificate of completion.

(‘b’) When the volunteer has not demonstrated to the department’s satisfaction that there has been a bulk reduction in groundwater contamination to asymptotic levels at the time the certificate of completion is issued, the volunteer shall receive a Track 2 certificate of completion, as described in paragraph (2) of this subdivision.

The volunteer may petition the department for a modification of the certificate of completion at any time up until five years after issuance of a certificate of completion. If the volunteer demonstrates that there has been bulk reduction in groundwater contamination to asymptotic levels, a modified Track 1 certificate of completion will be issued.

(‘1’) The department will consider the site to have achieved a Track 2 cleanup from the date the certificate of completion is issued until such time as a modified Track 1 certificate of completion is issued.

(‘2’) The department will consider the site to have achieved a Track 1 cleanup from the date that the modified Track 1 certificate of completion is issued and not from any date prior.

(‘c’) The remedial program can include the use of institutional or engineering controls to achieve remedial objectives for soil vapor. In such instances, the volunteer shall receive a Track 2 certificate of completion, as described in paragraph (2) of this subdivision. The volunteer may petition the department for a modification to the certificate of completion at any time up until five years after issuance of a certificate of completion. If the volunteer demonstrates that the remedial objectives for soil vapor have been achieved and the institutional or engineering controls are no longer necessary, a modified Track 1 certificate of completion will be issued to the volunteer.

(‘1’) The department will consider the site to have achieved a Track 2 cleanup from the date the certificate of completion is issued until such time as a modified Track 1 certificate of completion is issued.

(‘2’) The department will consider the site to have achieved a Track 1 cleanup from the date that the modified Track 1 certificate of completion is issued.

(iv) if the remedial program is being implemented by a participant, it shall not include the use of long-term institutional or engineering controls to achieve remedial objectives for any media, either on-site or off-site.

Subparagraph 375-3.8(e)(1)(v) is amended to read as follows:

(v) the department may require the applicant, or the applicant may request, to develop a soil cleanup objective for a contaminant not included in Table 375-6.8(a) of this Part as set forth in section 375-6.9 of this Part.

Paragraph 375-3.8(e)(2) remains unchanged.

Subparagraph 375-3.8(e)(2)(i) through Subparagraph 375-3.8(e)(2)(ii) are amended to read as follows:

(i) the remedial program may provide for the restriction of the use of the site as described in [section] paragraph 375-1.8(g)(2)(i) of this Part;

(ii) the soil component of the remedial program shall achieve the lowest of the [three] applicable contaminant-specific SCOs found in Table 375-6.8(b) of this Part for the upper 15 feet of soil, [soil cleanup objectives for all soils above bedrock, as set forth in sections 375-6.4, 375-6.5 and 375-6.6, except as provided in subparagraph

(iii) below;] or to the top of bedrock, whichever is shallower. To determine which SCOs are applicable, refer

to:

New Clause 375-3.8(e)(2)(ii)(‘a) through New Clause 375-3.8(e)(2)(ii)(‘c) are adopted to read as follows:

(‘a’) section 375-6.4 of this Part for the Protection of Public Health SCO;

(‘b’) section 375-6.5 of this Part for the Protection of Groundwater SCO, and;

(‘c’) section 375-6.6 of this Part for the Protection of Ecological Resources SCO.

Subparagraph 375-3.8(e)(2)(iii) through Paragraph 375-3.8(e)(2)(vi) are repealed and New 375-3.8(e)(2)(iii)

through New Paragraph 375-3.8(e)(2)(v) are adopted.

(iii) soil below 15 feet cannot represent a source of contamination. At the department’s discretion, however, for all Track 2 cleanups other than Residential, soils below 15 feet which are also at or below the water table, may contain contamination at levels exceeding the groundwater protection SCO if that contamination is being addressed by an on-going groundwater remedy. In determining whether to exercise such discretion, the department may consider, without limitation, the:

(‘a’) degree to which contamination is in excess of the Protection of Groundwater SCO;

(‘b’) areal extent of contamination in excess of the Protection of Groundwater SCO;

(‘c’) practicability of removing or permanently treating the remaining soil contamination; and,

(‘d’) degree to which contamination has migrated from the site or has the potential to migrate from the site.

(iv) except as noted in subparagraph 375-3.8(e)(2)(iii) of this section the remedial program shall not use engineering controls to achieve the restricted soil cleanup objectives. The use of institutional or engineering controls to achieve the remedial action objectives for other environmental media is allowed; and,

(v) the environmental easement for the site must require that any contaminated soils remaining at depths greater than 15 feet will be managed along with other site soils, pursuant to a site management plan, unless the department waives that requirement.

Paragraph 375-3.8(e)(3) through Paragraph 375-3.8(e)(4) remains unchanged.

Subparagraph 375-3.8(e)(4)(i) is amended to read as follows:

(i) in developing the site-specific soil cleanup objectives, the applicant [may,] must address all sources per section 375-1.8(c) of this Part, and may solely or in combination:

Clause 375-3.8(e)(4)(i)(‘b’) through Subparagraph 375-3.8(e)(4)(ii) remain unchanged.

Subparagraph 375-3.8(e)(4)(iii) through Subclause 375-3.8(e)(4)(iii)(‘c’)(2) is repealed and New Subparagraph 375-3.8(e)(4)(iii) is adopted to read as follows:

(iii) track 4 remedies must also meet the Cover System Requirements in subdivision 375-3.2(e) of this Subpart as appropriate. If offsite soil is brought to the site to meet the Cover System Requirements, the soil must satisfy the requirements of subdivision 375-6.7(d) of this Part.

Paragraph 375-3.8(e)(5) is amended to read as follows:

(5) All Tracks. For remedial programs under all Tracks, the threat to public health and the environment resulting from contamination in environmental media other than soil shall be evaluated in the development of remedial alternatives and addressed in the alternatives analysis to ensure that the remedial program meets the requirements of ECL 27-1415(1), subdivisions 375-3.8(a) and (f) of this section, and section 375-6.7 of this Part.

Subdivision 275-3.8(e)(5) through Clause 375-3.8(f)(3)(ii)(‘c’) remain unchanged.

Clause 375-3.8(f)(3)(ii)(‘d’) is amended to read as follows:

(‘d’) for sites determined by the department not to constitute a significant threat, the department may require a Track 2 evaluation if one has not already been considered pursuant to subparagraph (i) [or subclauses ‘(2)-(4)’ of this paragraph or subclauses (ii)(‘d’)(‘2’) through (‘4’) of this clause after considering the following factors:

Subclause 375-3.8(f)(3)(ii)(‘d’)(‘1’) through Subparagraph 375-3.8(f)(4)(i) remains unchanged.

Subparagraph 375-3.8(f)(4)(ii) is amended as follows:

(ii) To the extent feasible, a[A] volunteer shall address[, to the extent feasible,] the on-site plume and prevent [the further]migration of any plume off-site at the site boundary. This requirement includes [such]actions to maintain and monitor any stabilization of the plume.

Subdivision 375-3.8(g) through Paragraph 375-3.8(g)(1) remain unchanged.

Paragraph 375-3.8(g)(2) is amended to read as follows:

(2) A remedial work plan must be prepared in accordance with ECL 27-1411 and 27-1415 and must provide for

the development and implementation of the remedy, selected as set forth in paragraph 375- 3.8(c)(4) of this section, for:

Subparagraph 375-3.8(g)(2)(i) through Subparagraph 375-3.8(g)(3)(vi) remain unchanged.

Subparagraph 375-3.8(g)(3)(vii) is renumbered to Subparagraph 375-3.8(g)(3)(viii) and remains unchanged.

New Subparagraph 375-3.8(g)(3)(vii) is adopted to read as follows:

(vii) a schedule for the submission of any subsequent work plans necessary to meet cleanup requirements; and

Paragraph 375-3.8(g)(4) through Clause 375-3.8(g)(4)(‘d’) remain unchanged.

Subparagraph 375-3.8(g)(4)(iii) is amended to read as follows:

(iii) an outline for a site management plan, if the remedy includes any institutional or engineering controls.

Subdivision 375-3.8(h) Paragraph 375-3.8(h)(2)(iii) remains unchanged.

New 375-3.8(h)(3) is adopted to read as follows:

(3) For sites where institutional controls are required, an environmental easement shall be executed within 180 days of commencement of the remedial design, or at least three months prior to the date of the anticipated issuance of the certificate of completion, and subsequently recorded by the owner or remedial party pursuant to ECL article 71, title 36.

Section 375-3.9 (title) through Paragraph 375-3.10(c)(6) remain unchanged.

Paragraph 375-3.10(c)(7) is amended to read as follows:

(7) The department may require a responsible party, as defined in subdivision 375- 2.2 ([i]h) of this Part, to provide a technical assistance grant directly to a qualifying community group. Such responsible party shall provide for a grant consistent with the requirements of this section within a time frame directed by the department.

Section 375-3.11 (title) through Paragraph 375-3.11(b)(2) remain unchanged.

Paragraph 375-3.11(b)(3) is amended to read as follows:

(3) The exemption set forth in this subdivision is in addition to, and not in place of, other exemptions [to] that apply pursuant to Parts 617 or 618 of this Title (e.g., the enforcement exemption).

Subdivision 375-3.11(b) remain unchanged.

Paragraph 375-3.11(b)(1) is amended as follows:

Remedy selection and implementation of remedial actions under department-approved work plans pursuant to ECL article 27, title 14 are not subject to review pursuant to ECL article 8 and its implementing regulation (6 NYCRR Part 617)[, provided that design and implementation of the remedy do not:].

Subparagraph 375-3.11(b)(1)(i) through Paragraph 375-3.11(b)(2) are repealed.

New Paragraph 375-3.11(b)(2) is adopted to read as follows:

(2) Any aspect of site redevelopment or reuse may be subject to review under the State Environmental Quality Review Act.

Paragraph 375-3.11(b)(3) is amended to read as follows:

(3) The exemption set forth in this subdivision is in addition to, and not in place of, other exemptions to that apply pursuant to [Part]Parts 617 or 618 of this Title ('e.g', the enforcement exemption).

Subdivision 375-3.11(c) through Subparagraph 375-3.11(c)(1)(ii) remain unchanged.

Paragraph 375-3.11(c)(2) is amended to read as follows:

(2) All State costs incurred pursuant to paragraph (c)(1) of this subdivision may be recovered from any person responsible according to applicable principles of statutory or common law liability other than the volunteer.

Section 375-3.12 through Subdivision 375-4.2(a) remains unchanged.

Subdivision 375-4.2(b) is repealed.

Subdivision 375-4.2(c) through Subdivision 375-4.2(j) are renumbered to new Subdivision 375-4.2(b) through new Subdivision 375-4.2(i).

New Subdivision 375-4.2(b) through new Subdivision 375-4.2(h) remain unchanged.

New Subdivision 375-4.2(i) is amended to read as follows:

(i) ‘State assistance’ means in the case of a State assistance contract authorized by ECL 56- 0503(1) or 56-0503(3) and section 375-4.5[, payments made to a municipality to reimburse the municipality for the State share of the costs incurred by the municipality to undertake an environmental restoration project.] of this Subpart:

New Paragraph 375-4.2(i)(1) through Paragraph 375-4.2(i)(2) are adopted to read as follows:

(1) payments made to a municipality to reimburse the municipality for the State share of the costs incurred by the municipality to undertake an environmental restoration project; or

(2) costs incurred by the State to undertake an environmental restoration project on behalf of a municipality, which are not subject to reimbursement by the municipality.

Section 375-4.3 (title) through Subdivision 375-4.3(a) remain unchanged.

Paragraph 375-4.3(a)(1) is amended to read as follows:

(1) It is not listed [in]on the Registry as a class ‘1’ or ‘2’ site at the time of application.

Paragraph 375-4.3(a)(2) through Subparagraph 375-4.3(a)(2)(i) remain unchanged.

Subparagraph 375-4.3(a)(2)(ii) is amended to read as follows:

(ii) the municipality jointly owns a site with a [not-for-profit corporation]community-based organization as defined [at NPCL 102.a(5) or an authorized foreign not-for-profit corporation as defined at NPCL 102(a)(7)]in ECL 56-0502; or

Subparagraph 375-4.3(a)(2)(iii) through Paragraph 4.3(a)(3) remains unchanged

Subdivision 375-4.3(b) through Paragraph 375-4.3(c)(4) are amended to read as follows:

(b) Eligible municipality. A municipality is eligible if it did not:

(1) [Did not]generate, transport or dispose of, nor arranged for nor caused the generation, transportation or disposal of, any contaminant on the site. For these purposes, a municipality is not considered a generator, transporter, or arranger for having:

(i) [for having]rendered care, assistance, or advice in the course of an incident creating a danger to public health or welfare or to the environment as a result of any release of a contaminant or the threat of same; or

(ii) [for having]leased a site to another party that generated, transported or disposed of, or that arranged for or caused the generation, transportation or disposal of, any contaminant on such site unless such municipality knew that such other party generated, transported or disposed of, or arranged for or caused the generation, transportation or disposal of, such contaminant and failed to take any action to remediate, or cause the remediation of such contaminant[;].

(2) [Did not]take title to a site from a municipality not eligible to apply for State assistance under ECL article 56, title 5 by reason of its having generated, transported or disposed of, or having arranged for or caused the generation, transportation or disposal of, any contaminant on the site, and either municipality is a local public authority or public benefit corporation, or improvement district and title was acquired on or after June 6, 1996.

(c) Eligible project. The department will determine the eligibility of [an investigation]the property proposed to be subject to an environmental restoration project based upon the following criteria set forth in ECL 56-0505(1):

(1) benefit to the environment realized by the expeditious remediation of the property [proposed to be subject to such project];

(2) economic benefit to the State by the expeditious remediation of the property [proposed to be subject to such project];

(3) potential opportunity of the property [proposed to be subject to such project]to be used for public recreational purposes;

(4) [Real]whether the property is located in a designated brownfield opportunity area set forth in section GML 970-r; and

Paragraph 375-4.3(c)(5) is repealed and new 4.3(c)(5) is adopted as follows:

(5) highest priority shall be granted to projects for which other such funding sources are not available. Such funding sources to be considered may include, but are not limited to:

(i) enforcement actions against responsible parties (other than the municipality to which State assistance was provided under this title; or a successor in title, lender, or lessee who was not otherwise a responsible party prior to such municipality taking title to the property);

(ii) state assistance payments set forth in ECL article 27, title 13; and

(iii) the existence of private parties willing to remediate such property using private funding sources.

Subdivision 375-4.3(d) is amended to read as follows:

(d) Eligible costs. The costs set forth in paragraphs (1) through (7) of this subdivision, within the limits of the SFL, are eligible for being considered in the calculation of State assistance under ECL article 56, title 5. The reimbursement rates for these eligible costs are set forth [below] in paragraphs (1) through (7) of this subdivision.

Paragraph 375-4.3(d)(1) through Subparagraph 375-4.3(d)(1)(iii) remain unchanged.

Subparagraph 375-4.3(d)(1)(iv) is amended to read as follows:

(iv) incurred [pursuant], with the department's approval, to implement activities identified by the record of decision [with the department's approval]that would, in a cost-effective manner, address an off-site source of contamination to the site in order to prevent further contamination of the site, rather than mitigate the effect of that off-site contamination on the use of the site;

Subparagraph 375-4.3(d)(1)(v) remains unchanged.

Subparagraph 375-4.3(d)(1)(vi) is amended to read as follows:

(vi) operational costs incurred for the implementation of an active treatment remedy for up to five years after commencement of the remedy.

Paragraph 375-4.3(d)(2) is amended to read as follows:

(2) The eligible costs identified in [paragraph]paragraphs (1) or (7) of this subdivision incurred to investigate or remediate off-site contamination attributable to the environmental restoration project may be reimbursed at a rate of up to 100 percent.

Paragraph 375-4.3(d)(3) remains unchanged.

Paragraph 375-4.3(d)(4) is amended to read as follows:

(4) Costs associated with the disposal of any demolition debris from paragraph (3) of this subdivision that must be disposed in a disposal facility subject to Part 373 of this Title may be reimbursed at a rate of up to 90 percent.

Paragraph 375-4.3(d)(5) through Subparagraph 375-4.3(d)(5)(ii) remain unchanged.

Paragraph 375-4.3(d)(6) through subparagraph 4.3(d)(6)(i) is amended to read as follows:

(6) Costs associated with the disposal of any asbestos as set forth in paragraph (5) of this subdivision [above] may be reimbursed at a rate of up to 90 percent provided that the asbestos:

(i) must be disposed in a disposal facility subject to Part 373 of this Title[;], or

Subparagraph 375-4.3(d)(6)(ii) through Subparagraph 375-4.3(d)(7)(i) remain unchanged.

Subparagraph 375-4.3(d)(7)(ii) through Subparagraph 375-4.3(d)(7)(iii) are amended to read as follows:

(ii) it is a reasonable cost that was incurred under a contract or by a municipal force account pre-approved by the department, provided, however, that costs incurred for legal services are eligible only to the extent that they are necessary for actual project implementation; and

(iii) [it]the cost is properly documented.

Subdivision 375-4.3(e) through Subdivision 375-4.4(a) remain unchanged.

Paragraph 375-4.4(a)(1) through Paragraph 375-4.4(a)(1)(ii) is amended to read as follows:

(1) [Applications]An application shall be submitted to the department in such form and manner, and containing such information as the department may require. [An application:]

(i) an application may be submitted for either an investigation or a remediation project; and

(ii) the [form]signed application, including [all]attachments, [must]shall be submitted [both in hard copy and in an electronic format acceptable to the Department]electronically.

Paragraph 375-4.4(a)(2) remains unchanged.

Paragraph 375-4.4(a)(3) is amended to read as follows:

(3) The application must demonstrate that the project is intended to result in a benefit to the environment and in either, an economic benefit to the State, or a public recreational use as described in paragraphs 375-4.3(c)(1) through (4) of this Subpart.

Paragraph 375-4.4(a)(4) through Subparagraph 375-4.4(b)(1)(ii) remain unchanged.

Paragraph 375-4.4(b)(2) is repealed.

Paragraph 375-4.4(b)(3) through Paragraph 375-4.4(b)(4) are renumbered new Paragraph 375-4.4(b)(2) through new Paragraph 375-4.4(b)(3).

New Paragraph 375-4.4(b)(2) is amended to read as follows:

(2) For investigation and remediation projects, the department may enter into State assistance contracts to the extent monies are available. The department will prioritize complete applications according to a priority ranking score. The department will assign a priority ranking score to each complete application based upon the total points assigned as set forth in paragraph ([4]3) of this subdivision.

New Paragraph 375-4.4(b)(3) through New Subparagraph 375-4.4(b)(3)(v) are amended to read as follows:

(3) The department will assign priority ranking [score]points to the criteria applicable to scoring [a]an investigation or remediation project, with the final priority ranking score being determined by adding the [totals]points described in subparagraphs (i) through (iv) of this paragraph and then subtracting from that total the total from subparagraph (v) of this paragraph. The criteria [and their associated scoring points]are as follows:

(i) benefit to the environment; the department will assess [a maximum of 50]points based on the proximity of a

public water supply, surface water bodies and other protected natural resources to the site, the nature and extent of contamination found in, on, or under, or emanating from, the site and the environmental and public health benefits associated with the site's expeditious remediation;

(ii) economic benefit to the State; the department will assess [a maximum of 50]points based on the site's expeditious remediation to enhance its marketability, on its location in an economically distressed area, and on its potential for State and local tax revenue generating activities;

(iii) potential opportunity for public recreational use; the department will assess [a maximum of 50]points where the municipality has legally committed itself to implement a specific public recreational use of the site;

(iv) location in a brownfield opportunity area designated as set forth in GML 970-r; the department will assess [a maximum of 25]points if the site is located in a designated brownfield opportunity area; and

(v) opportunity for [other]private sources to fund the project, where available; the department will assess [a maximum of 15]points under this criterion.

Subdivision 375-4.4(c) through Paragraph 375-4.4(c)(2) remain unchanged.

Paragraph 375-4.4(c)(3) is amended to read as follows:

(3) Approval of the application entitles the municipality to the liability protections and benefits as set forth in ECL 56-0509; subject to the conditions set forth at subdivision 375-4.9(a) of this Subpart.

Section 375-4.5 (title) remains unchanged.

Subdivision 375-4.5(a) is amended to read as follows:

(a) In addition to such further terms and conditions as the department may require in the State assistance contract, the State assistance contract shall be deemed to include, and the municipality shall comply with, all of the provisions set forth in [sections]paragraphs 375-1.5(b)(1) and (4) of this Part.

Subdivision 375-4.5(b) through Paragraph 375-4.5(b)(7) remain unchanged.

Paragraph 375-4.5(b)(8) is amended to read as follows:

(8) The municipality shall assist the department or other State agencies in identifying a responsible party or parties by searching the property tax rolls and municipals records for building permits, zoning approvals, or any other approvals that may have been issued by the municipality. The municipality [must]shall also assist the department or other State agencies in compelling responsible parties to contribute to the cost of the project at the site, such assistance [encompassing]from the municipality shall encompass, at a minimum, [the provision of]providing all information which the municipality has or acquires during the course of project implementation, and thereafter, related to the identification of the responsible parties for the contaminants disposed at, or released from, the site. Further, the municipality shall not perform any act or omission which compromises the cost recovery efforts of the department or other State agencies.

Paragraph 375-4.5(b)(9) remains unchanged.

New paragraph 375-4.5(b)(10) is adopted to read as follows:

(10) The department may decide to undertake an environmental restoration project on behalf of the municipality at the municipality's request. In such instance, the municipality is required to pay the State for its share of costs incurred per ECL 56-0503(1).

Section 375-4.6 through Subdivision 375-4.6(a) remain unchanged.

Paragraph 375-4.6(a)(1) is amended to read as follows:

In accordance with subdivision 375-2.7(c) of this Part, the department may defer its assessment or reassessment of a site's classification or reclassification [in]on the Registry if good faith negotiations are ongoing to enter into a State assistance contract and, following its execution, the municipality is in compliance with the terms of such contract.

Paragraph 375-4.6(a)(2) through Section 375-4.8 (title) remain unchanged.

Subdivision 375-4.8(a) is amended to read as follows:

(a) [A]An environmental restoration investigation project includes the remedial investigation, the alternatives

analysis report and the department record of decision. The municipality must implement the department-approved remedial investigation work plan, and any revisions thereto.

Subdivision 375-4.8(b) through Paragraph 375-4.8(c)(1)(i) remain unchanged.

Subparagraph 375-4.8(c)(1)(ii) is amended to read as follows:

(ii) develop or [modification of]modify site specific soil cleanup objectives, as set forth in section 375-6.9 of this Part; or

Subparagraph 375-4.8(c)(1)(iii) remains unchanged.

Paragraph 375-4.8(c)(2) is amended to read as follows:

(2) The soil component of the remedial program will consider the soil cleanup objectives for unrestricted use, as set forth in Table 375-6.8(a) of this Part, as representative of pre-disposal conditions for remedial programs proceeding as set forth in subparagraph (c)(1)(i) or (ii) [, unless an impact to ecological resources has been identified]of this subdivision.

Paragraph 375-4.8(c)(3) and Subparagraph 375-4.8(c)(3)(i) are combine into new Paragraph 375-3.8(c)(3) to read as follows:

(3) Cleanup objectives for other media. The threat to public health and the environment resulting from contamination in all other environmental media shall be[:] evaluated in the development of remedial alternatives in the alternatives analysis to ensure that the remedial program meets the requirements of this section and section 375-1.8 of this Part.

Subdivision 375-4.8(d) (title) is amended to read as follows:

(d) [~~Alternative~~]Alternatives analysis.

Paragraph 375-4.8(d)(1) through Subparagraph 375-4.8(d)(2)(i) remain unchanged.

Subparagraph 375-4.8(d)(2)(ii) through Clause 375-4.8(d)(2)(ii)(‘b’) are amended to read as follows:

(ii) may evaluate one or more alternatives that achieve a restricted use of the site [which may be proposed by the

municipality]. Where a restricted use is proposed in the alternatives analysis, the municipality shall:

(‘a’) develop and evaluate alternatives, to achieve the restricted use [proposed by the municipality]; and

(‘b’) develop and evaluate other alternatives, if directed by the department, which will achieve the same use or a less restricted use of the site [than that proposed by the municipality].

Paragraph 375-4.8(d)(3) through Subparagraph 375-4.8(d)(3)(i) remain unchanged.

Subparagraph 375-4.8(d)(3)(ii) is amended to read as follows:

(ii) considers site specific background concentrations [or the location of a site in areas of historic fill]in the development of the remedy; or

Subparagraph 375-4.8(d)(3)(iii) through Subparagraph 375-4.8(d)(4)(ii) remain unchanged.

Subdivision 375-4.8(e) through Paragraph 375-4.8(e)(9) are amended to read as follows:

(e) Remedy selection. The process of selecting a remedy shall be consistent with the requirements of subdivision 375-1.8(f) of this Part and shall be documented in a record of decision, which includes the following information [identified below]:

(1) [T]the location and description of the site[.];

(2) [A]a history of the operation of the site[.];

(3) [T]the current environmental and public health status of the site[.];

(4) [A]an enforcement history of the site[.];

(5) [T]the specific goals and objectives of the remedy selected for the site[.];

(6) [A]a description and evaluation of the alternatives considered, except in the case of no further action remedies[.];

(7) [A]a summary of the basis for the department’s decision[.];

(8) [A]a description of the selected remedy, including the site management requirements and an identification of any necessary institutional and engineering controls[.];

(9) [A]a list of the documents the Department used in its decision-making[.]; and

(10) [A]a responsiveness summary.

Subdivision 375-4.8(f) remains unchanged

New Subdivision 375-4.8(g) is adopted to read as follows:

(g) Nothing in this Part shall restrict the department’s approval of the use of institutional or engineering controls to address actual or potential exposure to existing residential use, in limited instances where the department determines the remediation is not technically feasible or the remedial benefit is substantially outweighed by other factors described in subdivision 375-1.8(f) of this Part.

Section 375-4.9 (title) through Paragraph 375-4.9(a)(3) remain unchanged.

Subdivision 375-4.9(b) is amended to read as follows:

(b) Modification [of]or revocation of a certificate of completion.

Paragraph 375-4.9(b)(1) through Subdivision 375-4.11(b) remain unchanged.

Paragraph 375-4.11(b)(1) is amended to read as follows:

(1) Remedy selection and implementation of remedial actions under department approved work plans set forth in ECL article 56, title 5 are not subject to review set forth in ECL article 8 and its implementing regulation (6 NYCRR Part 617)[, provided that design and implementation of the remedy do not:].

Subparagraph 375-4.11(b)(1)(i) through Paragraph 375-4.11(b)(2) are repealed.

New Paragraph 375-4.11(b)(2) is adopted to read as follows:

(2) Any aspect of site redevelopment or reuse may be subject to review under the State Environmental Quality Review Act.

Paragraph 375-4.11(b)(3) remains unchanged

Section 375-4.12 remains unchanged.

Subpart 375-6 (contents) remains unchanged.

Section 375-6.1 (title) remains unchanged through Section 375-6.2 (title) remain unchanged.

Subdivision 375-6.2(a) through Subdivision 375-6.2(b) are amended to read as follows:

(a) ‘Contract required quantitation limit’ or ‘CRQL’ means the minimum level of quantitation acceptable for Department analytical services contracts. The value represents minimum quantitation limits, not absolute detection limits. The minimum quantitation limit is the lowest level at which the analytical instrument can determine the concentration of a chemical that exists in the sample. The detection limit is the minimum level at which the analytical instrument can confirm the presence of the chemical in the sample. At the detection limit, the analytical instrument can confirm that there is some amount of the chemical in the sample but [can not]cannot determine the concentration that exists with certainty.

(b) ‘Technical Support Document’ means the ‘New York State Brownfield Cleanup Program Development of Soil Cleanup Objectives Technical Support Document’ dated September 2006, as amended by the ‘2019 Soil Cleanup Objective Technical Support Document Update’ which is the document that presents the assumptions, rationale, algorithms and calculations utilized by the Department and the New York State Department of Health to develop the soil cleanup objectives in ECL 27-1415(6)

Section 375-6.3 (title) through Paragraph 375- 6.4(b)(3) remain unchanged.

Paragraph 375- 6.4(b)(4) is amended to read as follows:

(4) Industrial use, as set forth in subparagraph 375-1.8(g)(2)(iv) of this [Subpart] Part. The industrial use soil cleanup objectives are presented in the protection of public health-industrial use column of Table 375-6.8(b) of this Subpart.

Subdivision 375-6.4(c) remains unchanged.

Paragraph 375-6.4(c)(1) is amended to read as follows:

(1) The protection of groundwater soil cleanup objectives in Table 375-6.8(b) of this Subpart will be applicable to the site and evaluated in determining the soil cleanup objectives for a site as set forth in section 375-6.5 of

this [Subpart]Title.

Paragraph 375-6.4(c)(2) remains unchanged.

Paragraph 375-6.4(c)(3) is amended to removed punctuation as follows:

(3) The protection of public health soil cleanup objective for the current, intended and reasonably anticipated future use of the site in Table 375-6.8(b) of this Subpart will[,] be applicable and evaluated in determining the soil cleanup objectives for every site, unless a site-specific soil cleanup objective is proposed.

Section 375-6.5 (title) through Paragraph 375-6.5(a)(1)(iv) remains unchanged

Paragraph 375-6.5(a)(2) is amended to read as follows:

(2) The protection of groundwater soil cleanup objectives are not applicable if the contravention of groundwater standards at the site is determined to be solely the result of an off-site source, as set forth in section 375-1.8(d)(2) of this Part.

Subdivision 375-6.5(b) remains unchanged.

Section 375-6.6 (title) through Paragraph 375-6.6(a)(1) remain unchanged.

Clause 375-6.6(a)(1)(i)(‘a’) through Clause 375-6.6(a)(1)(i)(‘b’) are repealed.

Subparagraph 375-6.6(a)(1)(i) through Subparagraph 375-6.6(a)(1)(iii) are amended as follows:

(i) ecological resources are present at or adjacent to the site, or will be present under the reasonably anticipated future use of the site, as set forth in subdivision 375-6.6(b) of this section which constitute an important component of the environment.[:]

(ii) an impact or threat to the ecological resource has been identified as set forth in subdivision 375-6.6(c) of this section; and

(iii) soil contaminant concentrations exceed the protection of ecological resources soil cleanup objectives, as set forth in subdivision 375-6.6(d) of this section.

Paragraph 375-6.6(a)(2) through Subparagraph 375-6.6(b)(3)(ii) remain unchanged.

Subdivision 375-6.6(c) is amended to read as follows:

(c) Consideration of impact or threat of impact. If ecological resources that constitute an important component of the environment at, or adjacent to, the site are determined to be present the protection of ecological resources soil cleanup objectives must be considered in the remedial program for the site. [1]An impact or threat of impact exists when:

Subparagraph 375-6.6(c)(1)(i) and Subparagraph 375-6.6(c)(1)(ii) are renumbered to new Paragraph 375-6.6(c)(1) and new Paragraph 375-6.6(c)(2).

New Paragraph 375-6.6(c)(1) is amended to read as follows:

(1) a threat to the environment exists, as set forth in [section]subparagraphs 375-2.7(a)(1)(i) to (iv) of this Part, as a result of contaminants in the soil of the site, unless the department determines that a more stringent cleanup is necessary to [met]meet the requirements of [section]subdivision 375-2.8(a) and paragraph 375-2.8(b)(1) of this Part; or

New Paragraph 375-6.6(c)(2) through Subdivision 375-6.7(d) remain unchanged.

Paragraph 375-6.7(d)(1) through Subparagraph 375-6.7(d)(1)(ii) are repealed and replaced with New Paragraph 375-6.7(d)(1).

1) Soil brought to the site for use as a soil cover or backfill must not exceed the applicable soil cleanup objectives for the use of the site, as set forth in Table 375-6.8(a) or (b) of this Subpart, as follows:

Clause 375-6.7(d)(1)(ii)(‘a’) through Clause 375-6.7(d)(1)(ii)(‘e’) are renumbered to Subparagraph 375-6.7(d)(1)(i) through Subparagraph 375-6.7(d)(1)(v).

New Subparagraph 375-6.7(d)(1)(i) through New Subparagraph 375-6.7(d)(1)(iv) remains unchanged.

New Subparagraph 375-6.7(d)(1)(v) is amended to read as follows:

(v) a site-specific modification to a soil cleanup objective, as set forth in subdivision 375-6.9([c]e) of this Subpart, may also be utilized in compliance with [clauses (ii)(a) through (d) of this subparagraph]subparagraphs

(i) through (iv) of this paragraph.

Paragraph 375-6.7(d)(2) through Subparagraph 375-6.7(d)(3)(v) remain unchanged.

Subparagraph 375-6.7(d)(3)(vi) is repealed.

Subparagraph 375-6.7(d)(3)(vii) through Subparagraph 375-6.7(d)(3)(viii) are renumbered to Subparagraph 375-6.7(d)(3)(vi) through Subparagraph 375-6.7(d)(3)(vii).

Tables 375 6.8(a) is amended to read as follows:

- 375-6.8 Soil cleanup objective tables.
- (a) Unrestricted use soil cleanup objectives.

Table 375-6.8(a): Unrestricted Use Soil Cleanup Objectives

Contaminant	CAS Number	Unrestricted Use
Metals		
Arsenic	7440-38-2	13 ^c
Barium	7440-39-3	[350]410 ^c
Beryllium	7440-41-7	[7.2]4.4
Cadmium	7440-43-9	2.5 ^c
Chromium, hexavalent ^e	18540-29-9	1 ^b
Chromium, trivalent ^e	16065-83-1	30 ^c
Copper	7440-50-8	50
Total Cyanide ^{e, f}		[27]2.3 ^c
Lead	7439-92-1	63 ^c
Manganese	7439-96-5	1600 ^c
Mercury (Total)		0.18 ^c
Nickel	7440-02-0	30
Selenium	7782-49-2	3.9 ^c
Silver	7440-22-4	2
Zinc	7440-66-6	109 ^c
PCBs/Pesticides		

Table 375-6.8(a): Unrestricted Use Soil Cleanup Objectives

Contaminant	CAS Number	Unrestricted Use
[2,4,5-TP Acid (Silvex) ^f]	[93-72-1]	[3.8]
4,4'-DDE	72-55-9	0.0033 ^b
4,4'-DDT	50-29-3	0.0033 ^b
4,4'-DDD	72-54-8	0.0033 ^b
Aldrin	309-00-2	[.005] <u>0.0048</u> ^c
alpha-BHC	319-84-6	0.02
beta-BHC	319-85-7	[.036] <u>0.021</u>
Chlordane (alpha)	5103-71-9	[0.094] <u>0.014</u>
delta-BHC ^g	319-86-8	0.04
<u>Dibenzofuran</u> ^f	<u>132-64-9</u>	<u>2.1</u>
Dieldrin	60-57-1	0.005 ^c
Endosulfan I ^{d, f}	959-98-8	[2.4] <u>4.3</u>
Endosulfan II ^{d, f}	33213-65-9	[2.4] <u>4.3</u>
Endosulfan sulfate ^{d, f}	1031-07-8	[2.4] <u>4.3</u>
Endrin	72-20-8	0.014
Heptachlor	76-44-8	[0.042] <u>0.013</u>
Lindane	58-89-9	[0.1] <u>0.025</u>
Polychlorinated biphenyls	1336-36-3	0.1
Semivolatile organic compounds		
<u>1,4 Dioxane</u>	<u>123-91-1</u>	<u>0.1</u> ^b
Acenaphthene	83-32-9	20
Acenaphthylene ^f	208-96-8	100 ^a
Anthracene ^f	120-12-7	100 ^a
Benz(a)anthracene ^f	56-55-3	1 ^c
Benzo(a)pyrene	50-32-8	1 ^c

Table 375-6.8(a): Unrestricted Use Soil Cleanup Objectives

Contaminant	CAS Number	Unrestricted Use
Benzo(b)fluoranthene ^f	205-99-2	1 ^c
Benzo(g,h,i)perylene ^f	191-24-2	[100]0.64
Benzo(k)fluoranthene ^f	207-08-9	0.8 ^c
Chrysene ^f	218-01-9	1 ^c
Dibenz(a,h)anthracene ^f	53-70-3	0.33 ^b
<u>Dibenzofuran</u> ^f	<u>132-64-9</u>	<u>2.1</u>
Fluoranthene ^f	206-44-0	[100 ^a]85
Fluorene	86-73-7	30
Indeno(1,2,3-cd)pyrene ^f	193-39-5	0.5 ^c
m-Cresol ^f	108-39-4	0.33 ^b
Naphthalene ^f	91-20-3	12
o-Cresol ^f	95-48-7	0.33 ^b
p-Cresol ^f	106-44-5	0.33 ^b
Pentachlorophenol	87-86-5	0.8 ^b
Phenanthrene ^f	85-01-8	[100]1.1 ^c
Phenol	108-95-2	0.33 ^b
Pyrene ^f	129-00-0	[100]64
Volatile organic compounds		
1,1,1-Trichloroethane ^f	71-55-6	0.68
1,1-Dichloroethane ^f	75-34-3	0.27
1,1-Dichloroethene ^f	75-35-4	[0.33]0.24
1,2-Dichlorobenzene ^f	95-50-1	1.1
1,2-Dichloroethane	107-06-2	0.02 ^c
cis -1,2-Dichloroethene ^f	156-59-2	[0.25]0.19
trans-1,2-Dichloroethene ^f	156-60-5	0.19
1,3-Dichlorobenzene ^f		

Table 375-6.8(a): Unrestricted Use Soil Cleanup Objectives

Contaminant	CAS Number	Unrestricted Use
	541-73-1	[2.4] <u>2.6</u>
1,4-Dichlorobenzene	106-46-7	1.8
[1,4 Dioxane]	[123-91-1]	[0.1 ^b]
Acetone	67-64-1	[0.05] <u>0.03</u>
<u>Aniline</u>	<u>62-53-3</u>	<u>0.04</u>
Benzene	71-43-2	0.06
n-Butylbenzene ^f	104-51-8	[12] <u>18</u>
Carbon tetrachloride ^f	56-23-5	0.76
Chlorobenzene	108-90-7	[1.1] <u>4.5</u>
Chloroform	67-66-3	0.37
Ethylbenzene ^f	100-41-4	1
Hexachlorobenzene ^f	118-74-1	0.33 ^b
Methyl ethyl ketone	78-93-3	[0.12] <u>0.10</u>
Methyl tert-butyl ether ^f	1634-04-4	[0.93] <u>0.1</u>
Methylene chloride	75-09-2	0.05
<u>Nitrobenzene</u>	<u>98-95-3</u>	<u>0.08^c</u>
n – Propylbenzene ^f	103-65-1	[3.9] <u>5</u>
sec-Butylbenzene ^f	135-98-8	[11] <u>25</u>
tert-Butylbenzene ^f	98-06-6	[5.9] <u>11</u>
Tetrachloroethene	127-18-4	1.3
Toluene	108-88-3	0.7
Trichloroethene	79-01-6	0.47
1,2,4-Trimethylbenzene ^f	95-63-6	[3.6] <u>5.9</u>
1,3,5-Trimethylbenzene ^f	108-67-8	[8.4] <u>3.1</u>
Vinyl chloride ^f	75-01-4	[0.02] <u>0.03</u>
Xylene (mixed)	1330-20-7	0.26

Table 375-6.8(a): Unrestricted Use Soil Cleanup Objectives

Contaminant	CAS Number	Unrestricted Use
All [SCOs]soil cleanup objectives are in parts per million (ppm).		

Tables 375 6.8(a) footnotes (a) through (f) are repealed and replaced with footnotes (a) through (g)

^a The soil cleanup objectives for unrestricted use were capped at a maximum value of 100 ppm. See the New York State Department of Environmental Conservation Technical Support Document (2006), section 9.3.

^b For constituents where the calculated soil cleanup objective was lower than the contract required quantitation limit, the contract required quantitation limit is used as the Track 1 soil cleanup objective value.

^c For constituents where the calculated soil cleanup objective was lower than the rural soil background concentration, the rural soil background concentration is used as the Track 1 soil cleanup objective value for this use of the site. See the New York State Department of Environmental Conservation Technical Support Document (2006), Section 9 and Appendix D.

^d The soil cleanup objective is the sum of endosulfan I, endosulfan II, and endosulfan sulfate.

^e The soil cleanup objective for this specific compound (or family of compounds) is met if the analysis for the total species of this contaminant is below the specific soil cleanup objective.

^f Protection of ecological resources soil cleanup objectives were not developed for contaminants identified in Table 375-6.8(b) with “NS”. Where such contaminants appear in Table 375-6.8(a), the applicant may be required by the department to calculate a protection of ecological resources soil cleanup objective according to the New York State Department of Environmental Conservation Technical Support Document (2006).

^g This soil cleanup objective is derived from data on mixed isomers of BHC.

Table 375 6.8(b) is repealed and replaced as follows:

Contaminant	CAS Number	Protection of Public Health				Protection of Ecological Resources	Protection of Groundwater
		Residential	Restricted-Residential	Commercial	Industrial		
Metals							
Arsenic	7440-38-2	16 ^f	16 ^f	16 ^f	16 ^f	13 ^f	16 ^f
Barium	7440-39-3	410	410	410	10,000 ^d	433	820
Beryllium	7440-41-7	8.8	43	670	750	10	47
Cadmium	7440-43-9	2.5 ^f	2.5 ^f	3.7	4.4	4	7.5

Contaminant	CAS Number	Protection of Public Health				Protection of Ecological Resources	Protection of Groundwater
		Residential	Restricted-Residential	Commercial	Industrial		
Chromium, hexavalent ^h	18540-29-9	1 ^e	1 ^e	11	11	20	19
Chromium, trivalent ^h	16065-83-1	30 ^f	110	1,700	2,000	160	NS
Copper	7440-50-8	280	280	280	10,000 ^d	50	1720
Total Cyanide ^h		2.6	13	28	240	NS	40
Lead	7439-92-1	400	400	1,000	3,900	63 ^f	450
Manganese	7439-96-5	2,000 ^f	2,000 ^f	10,000 ^d	10,000 ^d	1600 ^f	2,000 ^f
Mercury (Total)		0.30 ^j	0.30 ^j	1.1 ^j	1.1 ^j	0.18 ^f	0.73
Nickel	7440-02-0	87	320	320	5,900	30	130
Selenium	7782-49-2	22	110	1,700	2,000	3.9 ^f	4 ^f
Silver	7440-22-4	22	110	1,700	2,000	2	8.3
Zinc	7440-66-6	1,300	6,600	10,000 ^d	10,000 ^d	109 ^f	2,480
PCBs/Pesticides							
4,4'-DDE	72-55-9	0.78	3.4	22	22	0.0033 ^e	9.3
4,4'-DDT	50-29-3	0.78	3.8	27	27	0.0033 ^e	135
4,4'-DDD	72-54-8	1.2	5	33	33	0.0033 ^e	14
Aldrin	309-00-2	0.0088	0.044	0.33	0.33	0.14	0.19
alpha-BHC	319-84-6	0.042	0.18	1.2	1.2	0.04 ^g	0.02
beta-BHC	319-85-7	0.042	0.18	1.8	2.9	0.6	0.09
Chlordane (alpha)	5103-71-9	0.14	0.65	8.2	11	1.3	4.5
delta-BHC	319-86-8	100	100 ^a	500 ^b	1,000 ^c	0.04 ^g	0.1
Dieldrin	60-57-1	0.017	0.075	0.48	0.48	0.006	0.1
Endosulfan I	959-98-8	8.4 ⁱ	35 ⁱ	360 ⁱ	580 ⁱ	NS	65
Endosulfan II	33213-65-9	8.4 ⁱ	35 ⁱ	360 ⁱ	580 ⁱ	NS	44

Contaminant	CAS Number	Protection of Public Health				Protection of Ecological Resources	Protection of Groundwater
		Residential	Restricted-Residential	Commercial	Industrial		
Endosulfan sulfate	1031-07-8	8.4 ⁱ	35 ⁱ	360 ⁱ	580 ⁱ	NS	47 ^c
Endrin	72-20-8	1.2	5.3	55	87	0.014	0.06
Heptachlor	76-44-8	0.12	0.53	5.1	5.1	0.14	0.38
Lindane	58-89-9	0.05	0.21	0.21	3.4	6	0.05
Polychlorinated biphenyls	1336-36-3	1	1	1	25	1	3.2
Semivolatiles							
1,4-Dioxane	123-91-1	1.4	5.7	36	36	0.1 ^e	0.1 ^e
Acenaphthene	83-32-9	100 ^a	100 ^a	500 ^b	1,000 ^c	20	98
Acenaphthylene	208-96-8	100 ^a	100 ^a	500 ^b	1,000 ^c	NS	365
Anthracene	120-12-7	100 ^a	100 ^a	500 ^b	1,000 ^c	NS	1,000 ^c
Benz(a)anthracene	56-55-3	1 ^f	1.4	37	37	NS	1 ^f
Benzo(a)pyrene	50-32-8	1 ^f	1 ^f	3.7	3.7	2.6	22
Benzo(b)fluoranthene	205-99-2	1 ^f	1.4	37	37	NS	2.1
Benzo(g,h,i)perylene	191-24-2	1.2	4.9	47	78	NS	1,000 ^c
Benzo(k)fluoranthene	207-08-9	1.2	4.9	47	78	NS	2
Chrysene	218-01-9	1.2	4.9	47	78	NS	1 ^f
Dibenz(a,h)anthracene	53-70-3	0.33 ^e	0.33 ^e	3.7	3.7	NS	1,000 ^c
Dibenzofuran	132-64-9	4.2	18	180	290	NS	110
Fluoranthene	206-44-0	100 ^a	100 ^a	500 ^b	1,000 ^c	NS	1,000 ^c
Fluorene	86-73-7	100 ^a	100 ^a	500 ^b	1,000 ^c	30	386
Indeno(1,2,3-cd)pyrene	193-39-5	0.5 ^f	1.4	37	37	NS	6.6
m-Cresol	108-39-4	100 ^a	100 ^a	500 ^b	1,000 ^c	NS	0.33 ^e

Contaminant	CAS Number	Protection of Public Health				Protection of Ecological Resources	Protection of Groundwater
		Residential	Restricted-Residential	Commercial	Industrial		
Naphthalene	91-20-3	84 ^a	100 ^a	500 ^b	1,000 ^c	NS	12
o-Cresol	95-48-7	100 ^a	100 ^a	500 ^b	1,000 ^c	NS	0.33 ^e
p-Cresol	106-44-5	100 ^a	100 ^a	500 ^b	1,000 ^c	NS	0.33 ^e
Pentachlorophenol	87-86-5	0.8 ^e	1.3	6.9	7	0.8 ^e	0.8 ^e
Phenanthrene	85-01-8	1.2	4.9	47	78	NS	1,000 ^c
Phenol	108-95-2	100 ^a	100 ^a	500 ^b	1,000 ^c	30	0.33 ^e
Pyrene	129-00-0	100 ^a	100 ^a	500 ^b	1,000 ^c	NS	1,000 ^c
Volatiles							
1,1,1-Trichloroethane	71-55-6	100 ^a	100 ^a	500 ^b	1,000 ^c	NS	0.68
1,1-Dichloroethane	75-34-3	19	47	240	240	NS	0.27
1,1-Dichloroethene	75-35-4	0.41	0.98	5.1	5.1	NS	0.33
1,2-Dichlorobenzene	95-50-1	100 ^a	100 ^a	500 ^b	1,000 ^c	NS	1.1
1,2-Dichloroethane	107-06-2	2.4	5.8	30	30	10	0.02
cis-1,2-Dichloroethene	156-59-2	8.7	41	500 ^b	590	NS	0.19
trans-1,2-Dichloroethene	156-60-5	75	100 ^a	500 ^b	1,000 ^c	NS	0.19
1,3-Dichlorobenzene	541-73-1	11	38	280	280	NS	2.6
1,4-Dichlorobenzene	106-46-7	10	24	130	130	20	1.8
Acetone	67-64-1	100 ^a	100 ^b	500 ^b	1,000 ^c	2.2	0.03
Aniline	62-53-3	6.7	8.1	36	36	32	0.04
Benzene	71-43-2	1.2	3.7	20	20	70	0.06
n-Butylbenzene	104-51-8	100 ^a	100 ^a	500 ^b	1,000 ^c	NS	18
Carbon tetrachloride	56-23-5	1.9	7.1	41	41	NS	0.76

Contaminant	CAS Number	Protection of Public Health				Protection of Ecological Resources	Protection of Groundwater
		Residential	Restricted-Residential	Commercial	Industrial		
Chlorobenzene	108-90-7	73	100 ^a	500 ^b	1,000 ^c	40	4.5
Chloroform	67-66-3	4.8	24	180	180	12	0.37
Ethylbenzene	100-41-4	32	76	390	390	NS	1
Hexachlorobenzene	118-74-1	0.33 ^e	0.33 ^e	1.8	2.9	NS	3.2
Methyl ethyl ketone	78-93-3	100 ^a	100 ^a	500 ^b	1,000 ^c	100 ^a	0.10
Methyl tert-butyl ether	1634-04-4	40	100 ^a	500 ^b	890	NS	0.1
Methylene chloride	75-09-2	17	81	500 ^b	1,000 ^c	12	0.05
Nitrobenzene	98-95-3	0.77	1.8	8.9	8.9	2	0.08 ^f
n-Propylbenzene	103-65-1	100 ^a	100 ^a	500 ^b	1,000 ^c	NS	5
sec-Butylbenzene	135-98-8	100 ^a	100 ^a	500 ^b	1,000 ^c	NS	25
tert-Butylbenzene	98-06-6	100 ^a	100 ^a	500 ^b	1,000 ^c	NS	11
Tetrachloroethene	127-18-4	15	18	81	81	2	1.3
Toluene	108-88-3	100 ^a	100 ^a	500 ^b	1,000 ^c	36	0.7
Trichloroethene	79-01-6	1.7	6.4	54	54	2	0.47
1,2,4-Trimethylbenzene	95-63-6	41	100 ^a	500 ^b	1,000 ^c	NS	5.9
1,3,5-Trimethylbenzene	108-67-8	41	100 ^a	500 ^b	1,000 ^c	NS	3.1
Vinyl chloride	75-01-4	0.099	0.48	7.1	7.1	NS	0.03
Xylene (mixed)	1330-20-7	100 ^a	100 ^a	500 ^b	1,000 ^c	0.26	1.2
All soil cleanup objectives are in parts per million (ppm).							
NS = Not specified. See New York State Department of Environmental Conservation Technical Support Document (2006).							

Table 375 6.8(b) footnotes (a) through (j) are repealed and replaced as follows:

^a The soil cleanup objectives for residential, restricted-residential, and ecological resources use were capped at a maximum value of 100 ppm. See New York State Department of Environmental Conservation Technical Support Document (2006) section 9.3.

^b The soil cleanup objectives for commercial use were capped at a maximum value of 500 ppm. See New York State Department of Environmental Conservation Technical Support Document (2006) section 9.3.

^c The soil cleanup objectives for industrial use and the protection of groundwater were capped at a maximum value of 1000 ppm. See New York State Department of Environmental Conservation Technical Support Document (2006) section 9.3.

^d The soil cleanup objectives for metals were capped at a maximum value of 10,000 ppm. See New York State Department of Environmental Conservation Technical Support Document (2006) section 9.3.

^e For constituents where the calculated soil cleanup objective was lower than the contract required quantitation limit, the contract required quantitation limit is used as the soil cleanup objective value.

^f For constituents where the calculated soil cleanup objective was lower than the rural soil background concentration, the rural soil background concentration is used as the Track 2 soil cleanup objective value for this use of the site. See the New York State Department of Environmental Conservation Technical Support Document (2006), Section 9 and Appendix D.

^g This soil cleanup objective is derived from data on mixed isomers of BHC.

^h The soil cleanup objective for this specific compound (or family of compounds) is considered to be met if the analysis for the total species of this contaminant is below the specific soil cleanup objective.

ⁱ This soil cleanup objective is for the sum of endosulfan I, endosulfan II, and endosulfan sulfate.

^j Protection of public health soil cleanup objectives for total mercury are based on either the rural soil background concentration for total mercury (0.3 ppm or 0.18 ppm for habitat) or the most toxic mercury form that may be present in soil samples. If total mercury is found in soil above the published soil cleanup objective,

then subsequent analysis of the separate species of mercury can be taken into consideration during the remedy selection process

Subdivision 375-6.9 through Subparagraph 375-6.9(b)(2)(iii) remain unchanged.

Paragraph 375-6.9(b)(3) is amended to read as follows:

(3) Apply a cap for metals at a maximum value of 10,000 ppm. This cap does not apply to metals which may naturally occur in some areas above that level including aluminum, calcium, iron, magnesium and potassium.

Subdivision 375-6.9(c) through Paragraph 375-6.9(c)(3) remain unchanged.

Subdivision 375-6.9(e) is corrected to read as follows:

(e) Modification of soil cleanup objectives. The contaminant-specific soil cleanup objectives set forth at Tables [675]375-6.8(a) and (b) of this Subpart may be modified by site-specific data as set forth in this subdivision.

Paragraph 375 6.9(e)(1) through Paragraph 375 6.9 (f)(2) remain unchanged.