

Assessment of Public Comment

Revisions to 6 NYCRR Part 375, Environmental Remediation Proposed on July 2, 2025

1. 2025 Statutory Amendments

A commenter noted that the State's Fiscal Year 2026 Enacted Budget included significant statutory changes (2025 Amendments) to provisions of the Environmental Conservation Law (ECL), which govern Part 375 and are not included in this proposed revision. (Commenter 1)

Response 1. *The statutory changes included in the 2025 Amendments are outside of the scope of this rulemaking but will be proposed in a future rulemaking.*

2. Elimination of Historic Fill Definition

Commenters objected to the removal of the "Historic Fill Material" definition from Part 375-1.2 because historic fill material is present on many brownfield sites. (Commenter 1)

Response 2. *The regulation removes the definition of historic fill material because the term will no longer be used in the regulation. The three instances where the term was previously used in the current regulation are:*

- *375-2.8(c)(3)(ii): The Department may approve a remedial program for soil that considers site specific background concentrations, including the location of a site in areas of historic fill, in the development of the remedy*
- *375-4.8(c)(3)(ii): The Department may approve a remedial program for soil that considers site specific background concentrations, including the location of a site in areas of historic fill, in the development of the remedy*
- *375-6.7(d)(3)(vi): The Department may issue a site-specific exemption for one or more of the requirements set forth in paragraph (1) above, based upon site specific conditions, including but not limited to the presence of historic fill in the vicinity of the site.*

The function of these three references to historic fill is to recognize historic fill as a "background" condition that may not require remediation, even though soil cleanup objectives are exceeded. Case law that developed during the early days of the Brownfield Cleanup Program (BCP) did not support this interpretation, and, in practice, historic fill has been evaluated with the same methods as other soil or fill material. Any fill that exceeds Soil Cleanup Objectives will be evaluated as part of site remediation.

The above regulatory citations in Part 375 that previously referred to historic fill and remedy determinations cited historic fill as an example of site-specific background. DEC's ability to consider site-specific background concentrations remains intact. In addition, the definition of historic fill is still included in Division of Environmental Remediation (DER)-10 / Technical Guidance for Site Investigation and Remediation. Changes to content regarding historic fill are not anticipated for DER-10.

3. 375-1.5(b)(6); Termination Clause

DEC received comments regarding the addition of a termination clause to the standard provisions of orders, agreements, and State assistance contracts. A commenter requested DEC add clarifying language “by which the regulated party unambiguously has a certain period of time to cure any alleged violations prior to termination.” The commenter also raised concerns that the addition of this provision could potentially impact existing orders and agreements. (Commenter 1)

Response 3. *This revision clarifies that DEC has the authority to terminate orders and agreements for cause in all remedial programs, not just the BCP. It is intended to encourage communication between DEC and remedial parties and remove parties that are obstructing remediation efforts or not performing their contractual obligations. Termination has and will remain a last resort for DEC, however, DEC requires the ability to terminate agreements for cause in order to protect public health and the environment.*

DEC is required to provide reasonable notice and an opportunity to cure the deficiency or seek dispute resolution prior to termination of orders, agreements, and State assistance contracts in other regulations—including, inter alia, 6 NYCRR § 375-1.9; 6 NYCRR § 375-2.5; and 6 NYCRR § 375-3.5— and this addition does not relieve DEC of its obligations to provide such notice. Contrary to the commenter's assertions, the new regulation does not create an opportunity to cure for “certain alleged violations,” but instead clarifies that “the failure to pay State costs... for a substantial period of time (not less than 30 days) and after an opportunity to cure has been provided,” is among the reasons for which DEC may terminate an order, agreement, or State assistance contract.

Regarding existing contracts between DEC and respondents, orders, agreements, and State assistance contracts are supported by general principles of contract law. This provision does nothing more than codify well-established contractual rights to terminate orders, agreements, or contracts for material breaches thereof. This does not require the re-opening or modification of such documents.

4. 375-1.6(a), 375-1.6(a)(3) Daily Reports

Commenters objected to the revision to include submission of daily reports on remedial activities to the Project Manager and asserted that it would be burdensome to the remedial party's field staff and DEC. (Commenter 1)

Response 4. *The submission of daily reports creates a record that work was performed according to approved work plans. Requirements for daily reports of field work activities have been included in the work plans approved by DER for several years. DER has not received negative feedback from stakeholders or consultants on this requirement. Furthermore, this requirement provides DEC and the New York State Department of Health (NYSDOH) with timely updates on issues such as community air monitoring plan (CAMP) exceedances, deviations from work plans, and other problems encountered as they arise rather than after a final engineering report has been submitted.*

5. 375-1.6(c)(4) Final Engineering Reports

Commenters proposed that the regulations should allow a Qualified Environmental Professional to sign the certification required under this section, as is the case in the DEC's guidance, DER-10. (Commenter 1)

Response 5. *DEC considered this comment and determined that no change is necessary. The language is consistent with State Education Law Article 145 and New York State Education Department (NYSED) guidance that a professional engineer may not delegate engineering work to non-licensed engineers. In February 2023, DEC requested that NYSED review this language for consistency, and NYSED approved the language. The response from NYSED included the following: "The term 'practitioner' is more commonly used within NYSED OP [Office of the Professions], rather than 'proprietor'." If the commentors believe that these revisions will affect their business, the commentor should engage NYSED.*

6. 375-1.8(a) Habitat Reconstruction

Commenters asserted that the new requirement to provide "reconstruction of habitat disturbed by the remedial program" was overly broad and that there should be a definition of habitat in Part 375 or there should be a cross-reference to other DEC regulations that define habitat. Commenters requested that any habitat restoration mandate be more specific and more targeted to specified categories of significant habitat. (Commenter 1)

Response 6. *Comment acknowledged. As noted in the definition, habitat is a component of ecological resources (375-1.2(n)) and is consistent with the concept as it appears throughout the ECL (e.g. ECL Section 11-0303) and supporting regulations. For the purposes of remedial programs, the types of habitats are further clarified in Appendix 3C, Fish and Wildlife Impact Analysis Decision Key of DER-10 / Technical Guidance for Site Investigation and Remediation (DER-10, Appendix 3C).*

7. 375-1.8(f) Climate Change in Remedial Design

A commenter stated that DEC's proposed regulations do not provide sufficient direction to address the effects of sea level rise in remedial selection. (Commenter 1)

Response 7. *DEC has department wide policies with respect to climate change, sea level rise, and sustainability that apply to all sites. These are applied on a site-by-site basis. More information is available here:*

[Climate Change Statutes, Regulations, And Policies - NYSDEC](#)

Specific to Environmental Remediation Programs, DER-31 / Green Remediation (DER-31), issued in August 2010, revised in January 2011, is the current program policy. Revisions to DER-31 were proposed on October 15, 2025, with a comment period ending on December 2, 2025. In the interim, DEC has provided additional guidance related to Green and Sustainable Remediation (GSR) and Climate Resiliency in Environmental Cleanups here:

[DEC's GSR and Climate Resiliency in Environmental Cleanups - NYSDEC](#)

Additionally, DEC is revising DER-10 to further incorporate these concepts into its remedial program decision making.

8. 375-2.8(f) Use of Institutional and Engineering Controls at Superfund Sites at Residential-Use Sites

The commenter supported inclusion of institutional or engineering controls to control potential human exposures at residential sites where complete remediation is not technically feasible. They noted that this is also a practice at industrial and commercial sites and suggested that DEC replace the phrase "at existing residential use properties" with "existing properties" in the proposed text. (Commenter 1)

Response 8. *This provision would be applied in very limited instances when it is infeasible to remediate existing single-family homes that contain contamination in environmental media. This exception has been applied at only one site in New York State to date, however, it is critical for DEC to have this discretion in limited circumstances in order to protect homeowners from significant disruptions.*

9. 375-3.2(e) Cover System or Site Cover Requirements

A commenter asserted that that the proposed definition of "cover system or site cover" under the BCP should be revised to focus on engineering controls that are intended to eliminate or mitigate exposure pathways. Depending on the intended use, it may not be appropriate or possible for a cover system to completely eliminate exposure pathways, but a cover system can certainly mitigate impacts to public health and the environment. (Commenter 1)

Response 9. *This language was reviewed with and found acceptable by New York State Department of Tax and Finance (NYSDTF). The language is appropriate and complies with current applicable statutes and cannot be altered further without changes to ECL or New York State Tax Law. DEC’s definition of “cover system” is not intended nor meant to supersede any other federal, state, or local building code requirements. This is why DEC did not include a formula for hardscape cover system thickness. DEC is willing to engage in further discussions with the NYSDTF and interested parties in order for DEC to give further guidance or specifics on how NYSDTF will be calculating tax credits under this scenario.*

10. 375-3.8(b)(2)(i) Off-Site Investigatory Obligations for Volunteers in the BCP

DEC received comments asserting that the proposed regulatory language would impose offsite remediation obligations upon BCP Volunteers which are not allowable by statute. (Commenter 1)

Response 10. *DEC considered the comments and determined that no changes to the language are necessary. Requiring Volunteers to conduct some off-site investigation has been in practice for many years and is supported by the statutory and regulatory framework. This does not impose offsite remediation obligations upon the Volunteer. A Volunteer must collect sufficient information on-site and off-site during the Remedial Investigation to complete the Qualitative Human Health Exposure Assessment (QHHEA). The QHHEA is used as a basis for the Significant Threat determination (see 375-3.7(a)) and must include an evaluation of potential for off-site exposure to site-related contaminants. If, during the review of the Remedial Investigation Report, DEC and/or NYSDOH determine that there is insufficient data to support the QHHEA or to complete the Significant Threat determination, DEC may request collection of additional data. This can include off-site soil, groundwater, and/or soil vapor. While off-site soil vapor intrusion sampling is unlikely to be requested, DEC reserves the right to request it from a Volunteer to fulfill the statutory requirement to complete the Significant Threat determination.*

11. Liability Status of BCP Volunteers

In reference to the 2025 Amendments, a commenter noted that volunteers under the BCP risk becoming potentially responsible parties if they engage in “bad faith” actions or are otherwise not in compliance with the ECL. The commenter recommend that the DEC clarify the role of a volunteer under the BCP consistent with the intent of the program. (Commenter 2)

Response 11. *Comment acknowledged. The statutory changes included in the 2025 Amendments are outside of the scope of this rulemaking. Changes to the ECL made in the 2025 Amendments will be addressed in a separate rulemaking.*

12. Scope of “Contaminant” for Superfund Sites

A commenter noted that the use of “contaminant” in the regulations could be interpreted to expand Superfund liability to substances (like petroleum) not covered by the statute. The commenter requested that, in Subpart 375-2, DEC clarify that “contaminant” for purposes of Superfund liability is limited to “hazardous waste” as defined in ECL Article 27, Title 13. They also recommended that DEC add a note in the definitions section to avoid confusion with broader uses of “contaminant” in other programs. (Commenter 2)

Response 12. *Comment acknowledged. The definition of “contaminant” in 375-2.2 already explicitly excludes petroleum to prevent confusion.*

13. Financial Assurance Requirements

A commenter noted that the 2025 Amendments require financial assurance but leave details to regulation. (Commenter 2)

Response 13. *Comment acknowledged. There were no changes to the language with regards to financial assurance in this rulemaking. Changes to the ECL made in the 2025 Amendments will be addressed in a separate rulemaking.*

14. Increase Civil and Criminal Penalties

A commenter requested that DEC update all penalty references in Part 375 to reflect the new statutory amounts for first and subsequent violations and for criminal penalties. (Commenter 2)

Response 14. *Comment acknowledged. The statutory changes included in the 2025 Amendments are outside of the scope of this rulemaking. Moreover, penalties are not included in Part 375.*

1. Environmental Energy Alliance of New York
2. New York City Brownfield Partnership

Summary of Assessment of Public Comment

6 NYCRR Part 375, Environmental Remediation Programs, revisions proposed on July 2 in Issue Number XLVII-26 of the New York State Register.

Introduction

This summary reflects the response of the New York State (NYS) Department of Environmental Conservation (DEC) to comments submitted by the public regarding the proposed revisions to 6 NYCRR Part 375, Environmental Remediation Programs (Part 375) proposed in the July 2, 2025, issue of the NYS Register (No. XLVII-26). Comments were received through October 7, 2025, and a public comment hearing were held on October 1, 2025, at 3:30 PM. Comments included concerns regarding the addition of a Termination Clause, Brownfield Cleanup Program (BCP) participant's obligation for off-site cleanup, and the addition of daily report submittals by remedial parties, among others. Additional comments were made regarding the 2025 Laws of New York State and changes to Superfund law, however, those statutory changes are outside the scope of this rulemaking. DEC considered all comments and did not identify any issues that required a change to the rulemaking. Part 375 has not received significant revisions since it was first established in 2006. Thus, the majority of revisions are intended to conform DEC practice into regulation, including changes required by the 2015 and 2022 Laws of New York State.

Main Comments and Responses

DEC received comments noting that the State's Fiscal Year 2026 Enacted Budget included significant statutory changes (2025 Amendments) to provisions of the Environmental Conservation Law. These changes are outside the scope of this rulemaking and will be addressed in a separate rulemaking.

DEC received an objection to the elimination of the definition of "Historic Fill." Because of litigation in the early years of DEC's remedial program, DEC does not allow the use of historic fill as a background condition, and the term is no longer used in regulation. Any fill that exceeds soil cleanup objectives (SCOs) will be evaluated as part of site remediation.

DEC received a comment on the addition of a termination clause, which allows DEC to terminate a BCP agreement if an applicant conducts work outside of a DEC-approved work plan. The revised language does not allow DEC to terminate a BCP agreement for minor deviation from work plans. Rather, the language allows termination of an agreement for significant deviations from work plans that cause adverse environmental impacts.

DEC received a comment on the added provision which requires submission of daily reports, asserting that it would be burdensome to the remedial party and to DEC staff. DEC has included provisions for daily reports on most work plans for several years. This

addition is important to provide timely updates to DEC and NYS Department of Health on issues, including community air monitoring plan exceedances and other problems.

DEC received a comment to the revision requiring that Final Engineering Reports (FER) be signed by a professional engineer as authorized by the NYS Education Department (NYSED). The language is consistent with State Education Law and NYSED Guidance and the language was developed in consultation with NYSED.

DEC received a comment stating that the reconstruction of habitat requirement is overly broad and that there should be a definition of habitat in Part 375. DER notes that the types of habitats are further clarified in Appendix 3C, Fish and Wildlife Impact Analysis Decision Key of DER-10 / Technical Guidance for Site Investigation and Remediation (DER-10, Appendix 3C).

DEC received a comment noting that the regulations do not provide sufficient direction to address the effects of sea level rise in remedial selection. DEC has department-wide policies with respect to climate change and DER-31 / Green Remediation, provides guidance for remedial sites.

DEC received a comment on the language regarding cover systems or site cover requirements and the language referencing NYS Tax Law. DEC and NYS Department of Taxation and Finance reviewed the language and determined that it complies with applicable statutes.

DEC received a comment regarding new off-site exposure assessment requirements for BCP volunteers. The requirements have been in practice for many years and are supported by the statutory and regulatory framework. Volunteers must collect sufficient on- and off-site data to complete a Qualitative Human Health Exposure Assessment, thus allowing DEC to complete the statutorily required Significant Threat determination.

DEC received a comment noting that the use of “contaminant” in regulations could expand Superfund liability to substances like petroleum not covered by the statute. DEC notes that the definition of “contaminant” in 375-2.2 explicitly excludes petroleum.