



**Department of  
Environmental  
Conservation**

# **Preview of Potential Revisions to 6 NYCRR Part 375**

**December 2018**

# 2016 Regulatory Changes

- DEC completed a first rule making as required by 2015 legislation.
- Defined “affordable housing” and “underutilized” at 375-3.2.
- Used to determine eligibility for tangible property tax credits in New York City. Sites must be:
  - located in designated En-Zone; or
  - an affordable housing project; or
  - upside down/underutilized.
- Amended “brownfield site” definition - Exceed Soil Cleanup Objectives (SCOs) instead of complicating development.
- Final regulations: Adopted July 13, 2016; Effective August 12, 2016.



# Overview: 2018-19 Proposed Changes

## Second rule making would amend Part 375 to:

- Incorporate provisions as specified in Chapter 56 of the Laws of 2015 as they pertain to the Environmental Remediation Programs in Part 375.
- Increase consistency across all remedial programs administered by the Division of Environmental Remediation (DER).
- Incorporate needed changes, clarifications, and modifications based on the experience developed during first decade of implementing the BCP.
- Incorporate SCO changes resulting from the statutorily required five-year review.



# Subpart 375-1

## General Remedial Program Requirements



## Subpart 375-1: General Remedial Program Req'ts

- **Change of Use** – Definition will be consolidated and placed in the definitions section (375-1.2). This currently is defined in the different subparts.
- **Responsible Party** – Definition will be moved from Subpart 375-2 to Subpart 375-1.
- **Historic Fill** – Definition will be deleted since it is not used in Part 375. It has already been deleted from Part 360.

## Subpart 375-1: General Remedial Program Req'ts

- **Payment of State Costs** – Clarify several areas related to timelines, addressees and contact information.
- **Termination of Agreements** – Clarify that DEC has the authority to terminate agreements/orders. Under current regulations this is not specified.
- **Dispute Resolution (Order/Agreement)** – Clarify that requests for a dispute resolution should be sent to DER Division Director who will then designate the individual to hear the dispute.

## Subpart 375-1: General Remedial Program Req'ts

- **Ground floor use** – When ground floor use will differ from upper floor use, the less restrictive use (e.g., residential rather than commercial) shall apply, unless otherwise approved by DEC.
- **Environmental Easement (EE)** – An EE 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.



# Subpart 375-1: General Remedial Program Req'ts

- **Site Classification (All Remedial Programs)**
  - DEC has always had the authority to create administrative classes.
  - Definitions will be included at 375-1.7 for Class A, C, N and P.
- **Work Plans and Reports** – Clarify certifying engineer's responsibilities and specify:
  - all work plans must include specific schedules, and
  - daily reports are required for all work completed under a work plan.



## Subpart 375-1: General Remedial Program Req'ts

- **Final Engineering Report (FER)** - Specify that the FER must include:
  - a summary of all Interim Remedial Measures (IRMs);
  - a description of the work completed in accordance with the work plan and any work that did not comply with the work plan;
  - list of the wastes and documentation of disposal/manifests, etc.; and
  - clarify who the certifying party is and the level of oversight required to be the certifying party.



## Subpart 375-1: General Remedial Program Req'ts

- **Certificate of Completion (COC)**

- Specify that DEC may revoke a COC if there is a misrepresentation of material fact demonstrating that the applicant was a volunteer or that the site met the criteria for the tangible property credit.
- Clarify that the COC may be transferred to a successor to a real property interest, including legal, equitable or leasehold in all or part of the site.
- Expressly state that the COC may not be transferred to a responsible party.



## Subpart 375-1: General Remedial Program Req'ts

- **Plume Containment/Stabilization** - Clarify that while a BCP volunteer does not need to remediate off-site, if there is a plume migrating off-site, the volunteer must prevent further migration off-site (to the extent feasible).
- **Permits** - The 2006 Part 375 regulations intended to provide DEC the discretionary authority to exempt other entities from permit requirements when completing a cleanup under DEC oversight. Revisions clarify and state that DEC can waive permit requirements for projects led by DEC.



# Subpart 375-2

## Inactive Hazardous Waste Disposal Site Remedial Program (State Superfund)



# Subpart 375-2: Inactive Hazardous Waste Disposal Site Remedial Program

- **Cash Out Authority** - Revisions clarify that DEC has the authority to enter into a “cash out” consent order in circumstances where it is implementing a remedy.
- Allow the State to use institutional controls on existing residential properties.

# Subpart 375-3

## Brownfield Cleanup Program



# Subpart 375-3: Brownfield Cleanup Program

- **Eligibility**

- Revise the description of eligible sites to harmonize with the changes to the statute (e.g., removed “presence of contamination” and replaced it with SCO exceedances). Further defines the information required to demonstrate “contamination” for eligibility purposes.
- Class 2 sites may now be eligible if owned by a volunteer, unless a potentially responsible party (PRP) search reveals a viable PRP.



# Subpart 375-3: Brownfield Cleanup Program

- **Applications**

- Requirements being revised to make clear that a Volunteer applicant must provide information relative to the PRP search for Class 2 sites.
- TPC and application approval - For sites seeking a Tangible Property Tax Credit (TPC) determination, the notification for TPC eligibility would be made at the same time as BCP eligibility.
- Public Interest Consideration - Include the factors that DEC may use to evaluate whether an application will serve the public interest (e.g., Consent Order already in place).





# Subpart 375-3: Brownfield Cleanup Program

- **Definitions:** DEC is defining the following terms to align with the intent of 2015 legislation.
  - **Cover system requirements** - clean soil cover 1-2 feet thick based on intended use with a clear demarcation layer as a visual cue defining clean soil from remaining contamination where possible/appropriate.
  - **PRP search** - outline expectations for a potentially responsible parties (PRP) search.
  - **Site preparation costs** - while this definition is revised and pertinent, it will not be included in 375-3 because Part BB of Chapter 56 of the Laws of 2015 specifically defined site preparation costs in the Tax Law, where this definition can be found.



# Subpart 375-3: Brownfield Cleanup Program

- **(NEW) Tangible Property Tax Credits (TPCs)**
  - Formalize the requirements related to TPCs from the statute related to the source of contamination.
  - Include the additional requirements for TPCs (for sites in a city with a population of million or more) to demonstrate need for substantial government assistance when applying for TPCs under the “underutilized” gateway.



# Changes to Tangible Property Tax Credits

Tangible Property Tax Credits	Accepted prior to June 23, 2008	Accepted after June 23, 2008	Accepted after July 1, 2015
<b>Baseline</b>	10-12%	10-12%	10%
<b>Plus the sum of the following:</b>			
<b>Environmental Zone</b>	8%	8%	5%
<b>Track 1 Cleanup</b>	2%	2%	5%
<b>BOA</b>	N/A	2%	5%
<b>Affordable Housing</b>	N/A	N/A	5%
<b>Manufacturing</b>	N/A	N/A	5%
<b>Maximum Percentage</b>	22%	24%	24%
<b>Cap - Manufacturing</b>	N/A	\$35M or 3X Site Prep	\$35M or 3X Site Prep
<b>Non-Manufacturing</b>	N/A	\$45M or 6X Site Prep	\$45M or 6X Site Prep



# Subpart 375-3: Brownfield Cleanup Program

- **Remedy Selection Class 2 Sites** - For Class 2 sites admitted to the BCP where:
  - Record of Decision has been issued, the BCP applicant would implement the on-site elements of the selected remedy, subject to DEC approval of what constitutes the on-site elements of the remedy; or
  - Site remedy is to be developed under the BCP, a feasibility study would be required in place of the alternatives analysis, and remedy selection would be made by DEC.



# Subpart 375-3: Brownfield Cleanup Program

## Cleanup Tracks

- “Conditional Track 1”
  - Currently, volunteers are allowed to achieve a Track 1 cleanup through implementation of short term IC/ECs for groundwater and/or soil vapor.
  - In future, volunteers would first receive a Track 2 COC. After 5 years, if groundwater contamination is reduced to asymptotic levels, then a Track 1 COC would be issued.



# Subpart 375-3: Brownfield Cleanup Program

## Cleanup Tracks [continued]

- **IC/ECs for Track 2**
  - Specify that site cover cannot be used as a long term EC to achieve applicable SCOs, but ICs (e.g., Environmental Easement) may be used to address contamination below 15 feet.
  - Remedial program may use long term IC/ECs to address groundwater or soil vapor contamination.

# Subpart 375-3: Brownfield Cleanup Program

## Cleanup Tracks [continued]

- **Track 4 Cover system and Tax Credits**
  - Clarify how exposed soils on a Track 4 site would be addressed.
  - For example, building slabs used to meet the cover system requirements for restricted residential uses would be deemed to be equivalent to 2 feet of soil cover.
  - Similarly, buildings on a commercial Track 4 site will be treated as the equivalent of 1 foot of soil cover for tax credit purposes.



# Subpart 375-3: Brownfield Cleanup Program

- **IC/ECs (NEW)**
  - For sites with required IC/ECs, the Environmental Easement shall be executed within 180 days of the commencement of the remedial design or at least 3 months prior to the anticipated date of the COC.
- **Off-site investigation:** Clarify that a volunteer may be required to perform off-site investigation to complete the exposure assessment.
- **375-3.11 Miscellaneous:** Clarify that remediation not subject to SEQRA, but redevelopment is.





# Subpart 375-4

## Environmental Restoration Program



# Subpart 375-4 Environmental Restoration Program

- **Definition:** Revise the definition of “State Assistance” to clarify that the State (specifically DEC) can:
  - undertake the cleanup using ERP funds,
  - complete the remediation,
  - incur the costs on behalf of the municipality, and
  - be paid by the municipality through the ERP.
- **Other:** Allow DEC the authority to prioritize ERP applications based on need and environmental benefit.



# Subpart 375-6

## Soil Cleanup Objectives



# Soil Cleanup Objectives

- Most changes are less than a factor of 10
- Ready for PFOA, PFOS if MCL is announced
- Hexavalent chromium:
  - Ecological increased from 1 to 20.
  - Calculated residential 0.033
- 1,1-DCE: Residential lowered from 100 to 0.41
- Trimethylbenzene: Residential lowered from 47 to 0.51



# Thank You

## Jane H. O'Connell

Chief, Superfund and Brownfield Cleanup  
Section

Division of Environmental Remediation  
New York State Department of  
Environmental Conservation

47-40 21<sup>st</sup> Street  
Long Island City, NY 11101

[jane.oconnell@dec.ny.gov](mailto:jane.oconnell@dec.ny.gov)

718-482-4599

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