



Department of  
Environmental  
Conservation

# **NYSDEC Remedial Programs and Regulatory Updates**

**November 7, 2019**

# Presentation Overview

- 6 NYCRR Part 375 Proposed Regulatory Revisions
- Environmental Restoration Program Updates
- Emerging Contaminants



# Proposed Part 375 Revisions

- Efforts are underway to complete the proposed Part 375 rule making package.
- DEC anticipates it will be released for public comment in 2020.
- Revisions are intended to increase consistency across all remedial programs:
  - State Superfund Program (SSF)
  - Brownfield Cleanup Program (BCP)
  - Environmental Restoration Program (ERP)
- Incorporate needed changes, clarifications, and modifications based on the experience developed during first decade of implementing the BCP.
- Incorporate Soil Cleanup Objective (SCO) changes resulting from the statutorily required five-year review.



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

- **Change of Use** – Definition will be consolidated and placed in the definitions section (375-1.2).

“Change of use” means the transfer of title to all or part of such site, any change to the tax lot as defined, 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.

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

- **Site Classification (All Remedial Programs)**
  - Definitions will be included at 375-1.7 for Class A, C, N and P and the definitions are very similar to the current definitions found on the public website.
- **Work Plans and Reports – Clarify engineer's responsibilities and specify:**
  - all work plans must include specified 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 375-2: 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.



# Subpart 375-3: Brownfield Cleanup Program

- **Eligibility**

- Changing 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).
- Class 2 sites may now be eligible if owned by a volunteer, unless a potentially responsible party (PRP) search reveals a viable PRP.
- Added tangible property tax credit (TPC) eligibility requirements.



# 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 demarcation barrier between clean soil and remaining contamination where possible/appropriate.
  - **PRP search** - sets expectations for a PRP search by Applicant.

# Subpart 375-3: Brownfield Cleanup Program

## Cleanup Tracks

- “Conditional Track 1”
  - Currently, volunteers are allowed to obtain a Track 1 COC through implementation of short-term (less than 5 years) Institutional Controls(IC)/ Engineering Controls (ECs) for soil vapor and/or groundwater.
  - In future, volunteers would use IC/ECs to address soil vapor or groundwater concerns, and would first receive a Track 2 COC. After 5 years, if soil vapor and/or groundwater Remedial Action Objectives (RAOs) are achieved, 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, building slabs on a commercial Track 4 site will be treated as the equivalent of 1 foot of soil cover.



# 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.

# Environmental Restoration Program

- 2019 ERP grant opportunity announced October 15, 2019.
- Eligibility criteria for projects (same as 2018):
  - Municipally-owned sites previously investigated in the ERP and have a DEC-issued Record of Decision (ROD) for the site.
- Number of eligible projects in 2019 universe:
  - 18 with ROD costs estimated at \$46M
- Expected Range of Awards: \$20K to \$3M



# Environmental Restoration Program

- ERP applicants must use the NYS Grants gateway rather than filling out a paper application.
- Single point of contact at DEC:
  - Larry Ennist, Program Manager for ERP Grant Opportunity
  - Email inquiries to Larry at [derweb@dec.ny.gov](mailto:derweb@dec.ny.gov)
- Grant applications will be accepted until December 13, 2019.



# Environmental Restoration Program

- Applicant may choose to perform the remediation or request that DEC undertake the remedial project. In either case, the applicant's share of on-site remedial costs will be approximately 10%.
- In 2018, DEC awarded four ERP remediation grants. Three applicants opted to perform the remediation and the fourth chose the DEC-lead option.



# Environmental Restoration Program

- Reimbursements will also follow the same guidelines as 2018:
  - On-site remediation costs are eligible for up to 90% reimbursement.
  - Demolition/Asbestos removal costs are eligible for up to 50% reimbursement.
  - Off-site remediation costs are eligible for up to 100% reimbursement.



## Subpart 375-6 Soil Cleanup Objectives

- Preparing SCOs for PFOA and PFOS contaminants.
- Most changes are less than a factor of 10
- 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
- Move dibenzofuran from Pesticides/PCBs to Semivolatile Organic Compounds (SVOCs) list.
- Move 1,4-dioxane from VOCs to SVOCs list.

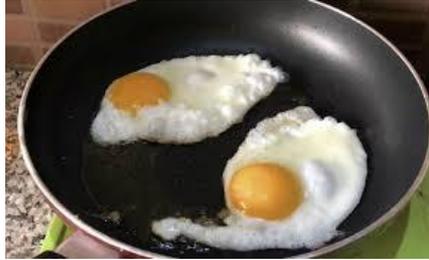


# Emerging Contaminants

- Emerging contaminants, such as per- and polyfluoroalkyl substances (PFAS) and 1,4-dioxane, have recently been found to be impacting groundwater and drinking water throughout the country.
- In New York State, these contaminants are impacting public water supply systems and private drinking wells in several communities.



# Emerging Contaminants



# New York State's Response

- In 2018 DEC initiated an Emerging Contaminant (EC) Sampling Initiative to evaluate groundwater at certain BCP and legacy SSF sites.
- For this initiative, ECs are PFAS (per- and polyfluoroalkyl substances) and 1,4-dioxane.
- EC groundwater sampling has been completed or is planned at more than 1,400 remedial sites under SSF, BCP and/or Resource Conservation and Recovery Act (RCRA) programs.



# Emerging Contaminant Sampling Initiative: New Guidance

- In February 2019, DEC issued new guidance which requires the sampling of all environmental media for ECs at all new sites entering any DER program.
- If an EC is identified as a contaminant of concern for a site, those compounds must be assessed as part of the remedy selection process and included as part of the monitoring program upon entering site management.
- All soil imported to a DEC remedial site for use in a soil cap, soil cover, or as backfill ECs must be added to the analyte list.



# Thank You

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