

PART D

1.

24 Section 1. Subdivision 1 of section 27-1407 of the environmental
25 conservation law, as amended by section 3 of part A of chapter 577 of
26 the laws of 2004, is amended to read as follows:

27 1. A person who seeks to participate in this program shall submit a
28 request to the department on a form provided by the department. Such
29 form shall include information to be determined by the department suffi-
30 cient to allow the department to determine eligibility and the current,
31 intended and reasonably anticipated future land use of the site pursuant
32 to section 27-1415 of this title. In the event that the site which is
33 the subject of the request is associated with one or more other brown-
34 field cleanup program sites for purposes of reuse or redevelopment, the
35 applicant shall identify those sites associated with such reuse or rede-
36 velopment, considering, among any other material factors that may be
37 required by the department, the history of use and ownership of the
38 sites.

39 § 2. Subdivision 6 of section 27-1407 of the environmental conserva-
40 tion law, as added by section 1 of part A of chapter 1 of the laws of
41 2003, is amended to read as follows:

42 6. The department shall use all best efforts to expeditiously notify
43 the applicant within forty-five days after receiving [~~their~~] a request
44 for participation that such request is either accepted or rejected. If
45 the department determines that multiple sites are associated with a
46 singular reuse or redevelopment project, it shall notify the applicant
47 of such determination and such sites shall be treated as one qualified
48 site for purposes of sections twenty-one, twenty-two and twenty-three of
49 the tax law. In determining whether multiple sites are associated with
50 one reuse or redevelopment project, the department, in consultation with
51 the department of economic development and the urban development corpo-
52 ration, shall consider, among any other material factors, the history of
53 the sites, the ownership of the sites, any verifiable planning purpose
54 justifying treating the sites as separate reuse and redevelopment

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1 projects, and any intent to evade the limitations provided for under
2 paragraph five of subdivision (a) of section twenty-one of the tax law.

3 § 3. Subdivision 8 of section 27-1407 of the environmental conserva-
4 tion law, as amended by section 3 of part A of chapter 577 of the laws
5 of 2004, is amended to read as follows:

6 8. The department shall reject such request if:

7 (a) the department determines that the request is for real property
8 which does not meet the requirements of a brownfield site as defined in
9 this title; or

10 (b) there is an action or proceeding relating to the brownfield site
11 against the person who is requesting participation that is pending in
12 any civil or criminal court in any jurisdiction, or before any state or
13 federal administrative agency or body, wherein the state or federal
14 government seeks the investigation, removal, or remediation of contam-
15 ination or penalties; or

16 (c) there is an order providing for the investigation, removal, or
17 remediation of contamination relating to the brownfield site against the

18 person who is requesting participation; or
19 (d) ~~[The]~~ the person requesting participation is subject to an
20 outstanding claim as provided in subdivision four of this section; or

21 (e) the department determines that reuse or redevelopment of the site
22 for which the applicant is requesting participation would likely occur
23 in the absence of the tax credits allowed under sections twenty-one,
24 twenty-two and twenty-three of the tax law. In determining whether reuse
25 or redevelopment of the site, which shall be clearly delineated, is
26 likely without such tax credits, the department shall, in consultation
27 with the commissioner of economic development and the chairperson of the
28 urban development corporation, consider such factors as the extent and
29 difficulty of remediating on-site contamination, the anticipated cost of
30 on-site remediation, the anticipated impact of remediation on the value
31 of the real property, and the economic circumstances of the community
32 and municipality in which the real property is located.

33 § 4. Subdivision (a) of section 21 of the tax law, as amended by
34 section 1 of part H of chapter 577 of the laws of 2004, is amended to
35 read as follows:

36 (a) Allowance of credit. (1) General. A taxpayer subject to tax under
37 article nine, nine-A, twenty-two, thirty-two or thirty-three of this
38 chapter shall be allowed a credit against such tax, pursuant to the
39 provisions referenced in subdivision (f) of this section. Such credit
40 shall be allowed with respect to a qualified site, as such term is
41 defined in paragraph one of subdivision (b) of this section. The amount
42 of the credit in a taxable year shall be the sum of the credit compo-
43 nents specified in paragraphs two, three and four of this subdivision
44 applicable in such year, except as otherwise provided in paragraph five
45 of this subdivision.

46 (2) Site preparation credit component. The site preparation credit
47 component shall be equal to the applicable percentage of the site prepa-
48 ration costs paid or incurred by the taxpayer with respect to a quali-
49 fied site. The credit component amount so determined with respect to a
50 site's qualification for a certificate of completion shall be allowed
51 for the taxable year in which the effective date of the certificate of
52 completion occurs. The credit component amount determined other than
53 with respect to such qualification shall be allowed for the taxable year
54 in which the improvement to which the applicable costs apply is placed
55 in service for up to five taxable years after the issuance of such
56 certificate of completion.

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1 (3) Tangible property credit component. The tangible property credit
2 component shall be equal to the applicable percentage of the cost or
3 other basis for federal income tax purposes of tangible personal proper-
4 ty and other tangible property, including buildings and structural
5 components of buildings, which constitute qualified tangible property,
6 subject to the limitations provided for under paragraph five of this
7 subdivision. The credit component amount so determined shall be allowed
8 for the taxable year in which such qualified tangible property is placed
9 in service on a qualified site with respect to which a certificate of
10 completion has been issued to the taxpayer for up to ten taxable years
11 after the date of the issuance of such certificate of completion. The
12 tangible property credit component shall be allowed with respect to
13 property leased to a second party only if such second party is either
14 (i) not a party responsible for the disposal of hazardous waste or the
15 discharge of petroleum at the site according to applicable principles of
16 statutory or common law liability, or (ii) a party responsible according

17 to applicable principles of statutory or common law liability if such
18 party's liability arises solely from operation of the site subsequent to
19 the disposal of hazardous waste or the discharge of petroleum, and is so
20 certified by the commissioner of environmental conservation at the
21 request of the taxpayer, pursuant to section 27-1419 of the environ-
22 mental conservation law. Notwithstanding any other provision of law to
23 the contrary, in the case of allowance of credit under this section to
24 such a lessor, the commissioner shall have the authority to reveal to
25 such lessor any information, with respect to the issue of qualified use
26 of property by the lessee, which is the basis for the denial in whole or
27 in part, or for the recapture, of the credit claimed by such lessor.

28 (4) On-site groundwater remediation credit component. The on-site
29 groundwater remediation credit component shall be equal to the applica-
30 ble percentage of the on-site groundwater remediation costs paid or
31 incurred by the taxpayer with respect to a qualified site (to the extent
32 that such groundwater remediation costs are not included in the determi-
33 nation of the site preparation credit or the cost or other basis
34 included in the determination of the tangible property credit). The
35 credit component so determined for costs incurred and paid with respect
36 to and prior to the issuance of a certificate of completion shall be
37 allowed for the taxable year in which the effective date of the issuance
38 of a certificate of completion occurs. The credit component amount
39 determined in taxable years after the effective date of the issuance of
40 a certificate of completion shall be allowed in the taxable year such
41 qualified costs are incurred and paid for up to five taxable years after
42 the issuance of such certificate of completion.

43 (5) Applicable percentage. For purposes of paragraphs two, three and
44 four of this subdivision, the applicable percentage shall be twelve
45 percent in the case of credits claimed under article nine, nine-A, thir-
46 ty-two or thirty-three of this chapter, and ten percent in the case of
47 credits claimed under article twenty-two of this chapter, except that
48 where at least fifty percent of the area of the qualified site relating
49 to the credit provided for in this section is located in an environ-
50 mental zone as defined in paragraph six of subdivision (b) of this
51 section, the applicable percentage shall be increased by an additional
52 eight percent. Provided, however, as afforded in section 27-1419 of the
53 environmental conservation law, if the certificate of completion indi-
54 cates that the qualified site has been remediated to Track 1 as that
55 term is described in subdivision four of section 27-1415 of the environ-
56 mental conservation law, the applicable percentage set forth in the
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1 first sentence of this paragraph shall be increased by an additional two
2 percent. However, in any case where the department of environmental
3 conservation has issued a notice of acceptance to an applicant for
4 participation in the brownfield cleanup program under subdivision six of
5 section 27-1407 of the environmental conservation law on or after July
6 first, two thousand seven, or where the taxpayer receives a certificate
7 of completion from another taxpayer under section 27-1419 of the envi-
8 ronmental conservation law on or after July first, two thousand seven,
9 the total amount of the tangible property credit component that is
10 allowed with respect to that qualified site shall not exceed ten million
11 dollars.

12 (6) Site preparation costs and on-site groundwater remediation costs
13 paid or incurred by the taxpayer with respect to a qualified site and
14 the cost or other basis for federal income tax purposes of tangible
15 personal property and other tangible property, including buildings and

16 structural components of buildings, which constitute qualified tangible
17 property shall only include costs paid or incurred by the taxpayer on or
18 after the date of the brownfield site cleanup agreement executed by the
19 taxpayer and the department of environmental conservation pursuant to
20 section 27-1409 of the environmental conservation law.

21 (7) The amount of any grant received from the federal, state or a
22 local government or an instrumentality or public benefit corporation
23 thereof received by the taxpayer and used to pay for any of the costs
24 described in paragraphs two, three and four of this subdivision, which
25 was not included in the federal gross income of the taxpayer, shall be
26 subtracted in computing the credit components under this section.

27 § 5. Paragraph 5 of subdivision (b) of section 21 of the tax law, as
28 amended by section 1 of part H of chapter 577 of the laws of 2004, is
29 amended to read as follows:

30 (5) Certificate of completion. A "certificate of completion" issued by
31 the commissioner of environmental conservation pursuant to section
32 27-1419 of the environmental conservation law. For taxable years begin-
33 ning on or after January first, two thousand eight, a certificate of
34 completion may be transferred for purposes of the tangible property
35 credit component allowed under this section, as provided for under
36 subdivision five of section 27-1419 of the environmental conservation
37 law, only by a taxpayer who is eligible to claim the site preparation
38 credit component, the on-site groundwater remediation credit component
39 or both but who does not incur costs with respect to qualified tangible
40 property in order to be eligible to claim the tangible property credit
41 component. That taxpayer may transfer the certificate of completion only
42 if: (i) no other taxpayer was issued a certificate of completion with
43 respect to the same qualified site or (ii) where more than one taxpayer
44 is issued a certificate of completion with respect to the same qualified
45 site, none of those taxpayers incur costs with respect to qualified
46 tangible property in order to be eligible to claim the tangible property
47 credit component. The taxpayer to whom the certificate of completion is
48 transferred is entitled to claim the tangible property credit component
49 with regard to the qualified site relating to the certificate, if the
50 taxpayer satisfies the requirements in this section for that credit
51 component. The taxpayer who claims the tangible property credit compo-
52 nent, under the circumstances described in this paragraph, may not
53 subsequently transfer the certificate of completion for purposes of the
54 tax credit allowed under paragraph three of subdivision (a) of this
55 section.

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1 § 6. Severability clause. If any clause, sentence, paragraph, subdivi-
2 sion, section or part of this act shall be adjudged by any court of
3 competent jurisdiction to be invalid, such judgment shall not affect,
4 impair, or invalidate the remainder thereof, but shall be confined in
5 its operation to the clause, sentence, paragraph, subdivision, section
6 or part thereof directly involved in the controversy in which such judg-
7 ment shall have been rendered. It is hereby declared to be the intent of
8 the legislature that this act would have been enacted even if such
9 invalid provisions had not been included herein.

10 § 7. This act shall take effect immediately, provided, however, that
11 this act shall expire and be deemed repealed on the same date part E of
12 the chapter of the laws of 2008 which added this part, takes effect.

13

PART E

14 Section 1. Subdivision 2 of section 27-1405 of the environmental
15 conservation law, as amended by section 2 of part A of chapter 577 of
16 the laws of 2004, is amended to read as follows:

17 2. "Brownfield site" or "site" shall mean any real property[~~, the~~
18 ~~redevelopment or reuse of which may be complicated by the presence or~~
19 ~~potential presence of]~~ where a contaminant is known to be present at
20 levels exceeding applicable health-based or environmental standards, or
21 reasonably expected to be present at such levels based on assessment of
22 available information about the property and surrounding area. Such term
23 shall not include real property:

24 (a) listed in the registry of inactive hazardous waste disposal sites
25 under section 27-1305 of this article at the time of application to this
26 program and given a classification as described in subparagraph one or
27 two of paragraph b of subdivision two of section 27-1305 of this arti-
28 cle; provided, however except until July first, two thousand five, real
29 property listed in the registry of inactive hazardous waste disposal
30 sites under subparagraph two of paragraph b of subdivision two of
31 section 27-1305 of this article prior to the effective date of this
32 article, where such real property is owned by a volunteer shall not be
33 deemed ineligible to participate and further provided that the status of
34 any such site as listed in the registry shall not be altered prior to
35 the issuance of a certificate of completion pursuant to section 27-1419
36 of this title;

37 (b) listed on the national priorities list established under authority
38 of 42 U.S.C. section 9605;

39 (c) [~~subject to an enforcement action under title seven or nine of~~
40 ~~this article, except~~] permitted as a treatment, storage or disposal
41 facility [~~subject to a permit~~]; provided, that nothing herein contained
42 shall be deemed otherwise to exclude from the scope of the term "brown-
43 field site" a hazardous waste treatment, storage or disposal facility
44 having interim status according to regulations promulgated by the
45 commissioner;

46 (d) subject to an order for cleanup pursuant to article twelve of the
47 navigation law or pursuant to title ten of article seventeen of this
48 chapter except such property shall not be deemed ineligible if it is
49 subject to a stipulation agreement; or

50 (e) subject to any other on-going state or federal environmental
51 enforcement action related to the contamination which is at or emanating
52 from the site subject to the present application.

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1 § 2. Subdivision 1 of section 27-1407 of the environmental conserva-
2 tion law, as amended by section 3 of part A of chapter 577 of the laws
3 of 2004, is amended to read as follows:

4 1. A person who seeks to participate in this program shall submit a
5 request to the department on a form provided by the department. Such
6 form shall include (a) such information [~~to be determined by the depart-~~
7 ~~ment sufficient to allow]~~ which the department determines is necessary
8 to enable the department to determine eligibility and the current,
9 intended and reasonably anticipated future land use of the site pursuant
10 to section 27-1415 of this title; (b) whether such person is seeking tax
11 credits pursuant to sections twenty-one, twenty-two and twenty-three of
12 the tax law; and (c) if such tax credits are sought, the financial
13 disclosure information required pursuant to section 27-1432 of this
14 title in such form as the department may prescribe.

15 § 3. Subdivision 6 of section 27-1407 of the environmental conserva-
16 tion law, as added by section 1 of part A of chapter 1 of the laws of

17 2003, is amended to read as follows:

18 6. (a) The department shall use all best efforts to expeditiously
19 notify the applicant within forty-five days after receiving [~~their~~] a
20 request for participation that such request is either accepted or
21 rejected and whether the applicant is deemed by the department to be
22 either a participant or a volunteer.

23 (b) When an applicant is seeking tax credits allowed under sections
24 twenty-one, twenty-two and twenty-three of the tax law, such notifica-
25 tion shall include a determination whether the applicant is eligible for
26 tax credits because (i) the applicant is a volunteer and (ii) reuse or
27 redevelopment of the site for which the applicant is requesting partic-
28 ipation is unlikely without such tax credits.

29 (c) In determining whether reuse or redevelopment of that site, which
30 shall be clearly delineated, is unlikely without tax credits, the
31 department shall, in consultation with the department of economic devel-
32 opment and the urban development corporation, consider, among any other
33 material factors, the extent and difficulty of remediating on-site
34 contamination, the anticipated cost of on-site remediation, the antic-
35 ipated impact of remediation on the value of the real property, and the
36 economic circumstances of the community and municipality in which the
37 real property is located.

38 (d) In the event the department determines that the site is associated
39 with one or more other sites for purposes of reuse or redevelopment, the
40 department shall identify those sites associated with such reuse or
41 redevelopment, considering, among any other material factors, the histo-
42 ry of use and ownership of the sites.

43 § 4. Subdivisions 11 and 12 of section 27-1409 of the environmental
44 conservation law are renumbered subdivisions 12 and 13 and a new subdivi-
45 sion 11 is added to read as follows:

46 11. One stating the department's determination as to whether or not
47 the site qualifies for tax credits allowed under sections twenty-one,
48 twenty-two and twenty-three of the tax law and that the applicant has
49 accepted that determination;

50 § 5. Subdivision 2 of section 27-1411 of the environmental conserva-
51 tion law, as amended by section 5 of part A of chapter 577 of the laws
52 of 2004, is amended to read as follows:

53 2. A remedial work plan shall provide for the development and imple-
54 mentation of a remedial program for such contamination within the bound-
55 aries of such brownfield site; provided, however, that a participant
56 shall also be required to provide in such work plan for the development
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1 and implementation of a remedial program for contamination that has
2 emanated from such site. If the applicant is eligible for the tax cred-
3 its allowed under sections twenty-one, twenty-two and twenty-three of
4 the tax law, the remedial work plan must be accompanied by a statement
5 prepared by the applicant which sets forth the financial disclosure
6 information required pursuant to section 27-1432 of this title in such
7 form as the department may prescribe.

8 § 6. Paragraphs (f) and (g) of subdivision 2 of section 27-1419 of the
9 environmental conservation law, as added by section 1 of part A of chap-
10 ter 1 of the laws of 2003, are amended and a new paragraph (h) is added
11 to read as follows:

12 (f) a certification that an operation and maintenance plan has been
13 submitted by the applicant for the continual and proper operation, main-
14 tenance, and monitoring of any engineering controls employed at the site
15 including the proper maintenance of any remaining monitoring wells, and

16 that such plan has been approved by the department; ~~[and]~~
17 (g) a certification that any financial assurance mechanisms required
18 by the department pursuant to this title have been executed~~[.]; and~~

19 (h) if the applicant is eligible for tax credits allowed under
20 sections twenty-one, twenty-two and twenty-three of the tax law, a
21 statement prepared by the applicant which sets forth the financial
22 disclosure information required pursuant to section 27-1432 of this
23 title in such form as the department may prescribe.

24 § 7. Subdivision 3 of section 27-1419 of the environmental conserva-
25 tion law, as amended by section 9 of part A of chapter 577 of the laws
26 of 2004, is amended to read as follows:

27 3. Upon receipt of the final engineering report, the department shall
28 review such report and the data submitted pursuant to the brownfield
29 site cleanup agreement as well as any other relevant information regard-
30 ing the brownfield site. Upon satisfaction of the commissioner that the
31 remediation requirements set forth in this title have been or will be
32 achieved in accordance with the timeframes, if any, established in the
33 remedial work plan, the commissioner shall issue a written certificate
34 of completion, which includes a statement of whether the reuse or rede-
35 velopment of the site has been determined, pursuant to subdivision six
36 of section 27-1407 of this title, to be unlikely without tax credits.
37 For those sites having received such a determination such certificate
38 shall also include such information as determined by the department of
39 taxation and finance, including but not limited to the brownfield site
40 boundaries included in the final engineering report, ~~[and]~~ the date of
41 the brownfield site agreement pursuant to section 27-1409 of this title,
42 and the applicable percentages available for that site for purposes of
43 section twenty-one of the tax law, with such percentages to be deter-
44 mined as follows:

45 (a) For the purposes of calculating the site preparation credit compo-
46 nent pursuant to paragraph two of subdivision (a) of section twenty-one
47 of the tax law, the applicable percentage shall be based on the level of
48 cleanup achieved pursuant to subdivision four of section 27-1415 of this
49 title and the level of cleanup of soils to contaminant-specific soil
50 cleanup objectives promulgated pursuant to subdivision six of section
51 27-1415 of this title, up to a maximum of seventy-five percent, as
52 follows:

53 (i) soil cleanup for unrestricted use, the protection of groundwater
54 or the protection of ecological resources, the applicable percentage
55 shall be seventy-five percent;

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1 (ii) soil cleanup for residential use, the applicable percentage shall
2 be sixty percent, except for Track 4 which shall be thirty-five percent;

3 (iii) soil cleanup for commercial use, the applicable percentage shall
4 be fifty percent, except for Track 4 which shall be thirty percent;

5 (iv) soil cleanup for industrial use, the applicable percentage shall
6 be forty percent, except for Track 4 which shall be twenty-five percent;

7 (v) provided, however, that the applicable percentage for subpara-
8 graphs (ii), (iii) and (iv) of this paragraph for all cleanup tracks
9 shall be increased by ten percent where the department determines that
10 the approved remedial program for a site addresses the considerations
11 for selection of a remedial program established in subdivision three of
12 section 27-1415 of this title to the greatest extent feasible.

13 (b) For the purposes of calculating the on-site groundwater remedi-
14 ation credit component pursuant to paragraph four of subdivision (a) of
15 section twenty-one of the tax law, the applicable percentage shall be

16 fifty percent, provided however that such percentage shall be (i)
17 increased by ten percent where the department determines that the
18 approved remedial program for a site addresses the considerations for
19 selection of a remedial program established in subdivision three of
20 section 27-1415 of this title to the greatest extent feasible, or (ii)
21 increased by twenty-five percent where groundwater is remediated to a
22 level that will allow such groundwater to be used for any purpose with-
23 out restriction.

24 (c) For the purposes of calculating the tangible property credit
25 component pursuant to paragraph three of subdivision (a) of section
26 twenty-one of the tax law, the applicable percentage shall be fifteen
27 percent plus the sum of the following:

28 (i) ten percent for a site that is located in an environmental zone;
29 and

30 (ii) five percent for a site that is located in a qualified census
31 tract as that term is defined in section 42(d)(5)(C) of the internal
32 revenue code; and

33 (iii) ten percent where the site is located in a brownfield opportu-
34 nity area and is developed in conformance with the goals and priorities
35 established for that applicable brownfield opportunity area as desig-
36 nated pursuant to section nine hundred seventy-r of the general municip-
37 al law, or the site is developed in conformance with one or more of the
38 following plans adopted no more than ten years before the effective date
39 of this paragraph:

40 (A) a comprehensive plan pursuant to section two hundred seventy-two-a
41 of the town law, section 7-722 of the village law, or section twenty-
42 eight-a of the general city law; or

43 (B) a local waterfront revitalization plan adopted pursuant to the
44 federal coastal zone management act, 16 United States code sections
45 1451-1465 or section nine hundred ten of the executive law; and

46 (iv) up to ten percent as follows: two and one-half percent for build-
47 ings that are constructed in conformance with green building regulations
48 promulgated pursuant to section nineteen of the tax law; two and one-
49 half percent for buildings that utilize existing water, sewer or energy
50 delivery systems; two and one-half percent for use or generation of
51 renewable energy sources; and two and one-half percent for development
52 that is located within a quarter mile of a route served by a public
53 transit system funded pursuant to section eighteen-b of the transporta-
54 tion law; provided, however, that

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1 (v) the amount of the tax credit allowed under paragraph three of
2 subdivision (a) of section twenty-one of the tax law cannot exceed the
3 dollar amount in that section; and

4 (vi) in the event that more than one site is associated with a singu-
5 lar reuse or redevelopment project, the department shall identify for
6 the departments of taxation and finance and economic development and the
7 urban development corporation those certificates of completion associ-
8 ated with such project and such project shall be treated as one quali-
9 fied site for purposes of sections twenty-one, twenty-two and twenty-
10 three of the tax law. For purposes of determining whether multiple sites
11 are associated with one reuse or redevelopment project, the department,
12 in consultation with the department of economic development and the
13 urban development corporation, shall consider, among any other material
14 factors, the history of the sites, the ownership of the sites, any veri-
15 fiable planning purpose justifying treating the sites as separate reuse
16 or redevelopment projects, and any intent to evade the limitations set

17 forth in this subparagraph and section twenty-one of the tax law.

18 § 8. Subdivision 5 of section 27-1419 of the environmental conserva-
19 tion law, as amended by section 9 of part A of chapter 577 of the laws
20 of 2004, is amended to read as follows:

21 5. A certificate of completion issued pursuant to this section may be
22 transferred to the applicant's successors or assigns upon transfer or
23 sale of the brownfield site. The department shall issue a modified
24 certificate of completion reflecting such transfer and indicating wheth-
25 er the transferee is eligible for tax credits pursuant to sections twen-
26 ty-one, twenty-two and twenty-three of the tax law. Further, a certifi-
27 cate of completion may be modified or revoked by the commissioner upon
28 a finding that:

29 (a) Either the applicant, or the applicant's successors or assigns,
30 has failed to comply with the terms and conditions of the brownfield
31 site cleanup agreement;

32 (b) The applicant made a misrepresentation of a material fact tending
33 to demonstrate that it was qualified as a volunteer or that the reuse or
34 redevelopment of a site was unlikely without tax credits;

35 (c) Either the applicant, or the applicant's successors or assigns
36 made a misrepresentation of a material fact tending to demonstrate that
37 the cleanup levels identified in the brownfield site cleanup agreement
38 were reached; ~~[ex]~~

39 (d) There is good cause for such modification or revocation; or

40 (e) Within five years of the issuance of the certificate of
41 completion, new information supports a recalculation of the applicable
42 percentages for available tax credits pursuant to subdivision three of
43 this section; provided however that any change in applicable percentages
44 shall be prospective only and in the case of percentages set forth in
45 subparagraphs (i) and (ii) of paragraph (c) of subdivision three of this
46 section, such modification shall be in accordance with direction from
47 the department of economic development and the urban development corpo-
48 ration.

49 § 9. The environmental conservation law is amended by adding a new
50 section 27-1432 to read as follows:

51 § 27-1432. Financial disclosure.

52 The department may require any applicant to furnish the department
53 with the following information, in a form and manner as prescribed by
54 the department in consultation with the department of taxation and
55 finance; provided however, that this information shall not be required

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1 of any applicant who is not eligible for tax credits allowed under
2 sections twenty-one, twenty-two and twenty-three of the tax law:

3 1. a description of the reuse or redevelopment project associated with
4 the site;

5 2. whether or not the site is associated with one or more other sites
6 for purposes of reuse or redevelopment;

7 3. total costs incurred, if any, on or after the effective date of the
8 brownfield site cleanup agreement, which may qualify for the site prepa-
9 ration component of the brownfield redevelopment tax credit, tangible
10 property component of the brownfield redevelopment tax credit, on-site
11 groundwater component of the brownfield redevelopment credit, and the
12 environmental remediation insurance credit;

13 4. the estimated future costs to be incurred after the effective date
14 of the brownfield site cleanup agreement which may qualify for the site
15 preparation component of the brownfield redevelopment tax credit, tangi-
16 ble property component of the brownfield redevelopment tax credit,

17 on-site groundwater component of the brownfield redevelopment credit,
18 and the environmental remediation insurance credit;

19 5. the estimated average number of full-time employees to be employed
20 by the applicant, plus the average number of full-time employees to be
21 employed by a lessee or lessees of a portion of the site during the
22 first taxable year following issuance of the certificate of completion;

23 6. the eligible real property taxes projected to be imposed upon the
24 site in the first calendar year following issuance of the certificate of
25 completion;

26 7. the estimated remediated brownfield credit for real property taxes
27 which can be claimed in the first taxable year following issuance of the
28 certificate of completion;

29 8. the estimated credits for the site preparation component of a
30 brownfield redevelopment tax credit, the tangible property component of
31 the brownfield redevelopment tax credit, the on-site groundwater compo-
32 nent of the brownfield redevelopment credit, and the environmental reme-
33 diation insurance credit that may be claimed in each year following
34 issuance of the certificate of completion; and

35 9. any other information the department may deem necessary and appro-
36 priate to carry out the purposes of this title.

37 § 10. Paragraphs 1 and 3 of subdivision (a) of section 21 of the tax
38 law, as amended by section 1 of part H of chapter 577 of the laws of
39 2004, are amended to read as follows:

40 (1) General. A taxpayer subject to tax under article nine, nine-A,
41 twenty-two, thirty-two or thirty-three of this chapter shall be allowed
42 a credit against such tax, pursuant to the provisions referenced in
43 subdivision (f) of this section. Such credit shall be allowed with
44 respect to a qualified site, as such term is defined in paragraph one of
45 subdivision (b) of this section. The amount of the credit in a taxable
46 year shall be the sum of the credit components specified in paragraphs
47 two, three and four of this subdivision applicable in such year, **except**
48 **as otherwise provided in this section.**

49 (3) Tangible property credit component. The tangible property credit
50 component shall be equal to the applicable percentage of the cost or
51 other basis for federal income tax purposes of tangible personal proper-
52 ty and other tangible property, including buildings and structural
53 components of buildings, which constitute qualified tangible property.
54 The credit component amount so determined shall be allowed for the taxa-
55 ble year in which such qualified tangible property is placed in service
56 on a qualified site with respect to which a certificate of completion
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1 has been issued to the taxpayer, **or for the taxable year in which the**
2 **certificate of completion is issued if the qualified tangible property**
3 **is placed in service prior to the issuance of the certificate of**
4 **completion,** for up to ten taxable years after the date of the issuance
5 of such certificate of completion. The tangible property credit compo-
6 nent shall be allowed with respect to property leased to a second party
7 only if such second party is either (i) not a party responsible for the
8 disposal of hazardous waste or the discharge of petroleum at the site
9 according to applicable principles of statutory or common law liability,
10 or (ii) a party responsible according to applicable principles of statu-
11 tory or common law liability if such party's liability arises solely
12 from operation of the site subsequent to the disposal of hazardous waste
13 or the discharge of petroleum, and is so certified by the commissioner
14 of environmental conservation at the request of the taxpayer, pursuant
15 to section 27-1419 of the environmental conservation law. Notwithstand-

16 ing any other provision of law to the contrary, in the case of allowance
17 of credit under this section to such a lessor, the commissioner shall
18 have the authority to reveal to such lessor any information, with
19 respect to the issue of qualified use of property by the lessee, which
20 is the basis for the denial in whole or in part, or for the recapture,
21 of the credit claimed by such lessor.

22 § 11. Paragraphs 5 and 6 of subdivision (a) of section 21 of the tax
23 law, as amended by section 1 of part H of chapter 577 of the laws of
24 2004, are amended to read as follows:

25 (5) Applicable percentage. ~~[For]~~ (A) With respect to any qualified
26 site for which the department of environmental conservation has issued a
27 notice to the taxpayer before July first, two thousand seven that its
28 request for participation has been accepted under subdivision six of
29 section 27-1407 of the environmental conservation law, or where the
30 taxpayer has either been issued or received a certificate of completion
31 from another taxpayer under section 27-1419 of the environmental conser-
32 vation law before July first, two thousand seven, the applicable
33 percentage for purposes of paragraphs two, three and four of this subdivi-
34 sion, ~~[the applicable percentage]~~ shall be twelve percent in the case
35 of credits claimed under article nine, nine-A, thirty-two or thirty-
36 three of this chapter, and ten percent in the case of credits claimed
37 under article twenty-two of this chapter, except that where at least
38 fifty percent of the area of the qualified site relating to the credit
39 provided for in this section is located in an environmental zone as
40 defined in paragraph six of subdivision (b) of this section, the appli-
41 cable percentage shall be increased by an additional eight percent.
42 Provided, however, as afforded in section 27-1419 of the environmental
43 conservation law, if the certificate of completion indicates that the
44 qualified site has been remediated to Track 1 as that term is described
45 in subdivision four of section 27-1415 of the environmental conservation
46 law, the applicable percentage set forth in the first sentence of this
47 ~~[paragraph]~~ subparagraph shall be increased by an additional two
48 percent.

49 (B) With respect to any qualified site where the department of envi-
50 ronmental conservation has issued notice to the taxpayer on or after
51 July first, two thousand seven that its request for participation has
52 been accepted under subdivision six of section 27-1407 of the environ-
53 mental conservation law, or where the taxpayer has either been issued or
54 received a certificate of completion from another taxpayer under section
55 27-1419 of the environmental conservation law on or after July first,
56 two thousand seven, the applicable percentage shall be as determined by

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1 the department of environmental conservation in consultation with the
2 department of economic development and the urban development corporation
3 pursuant to section 27-1419 of the environmental conservation law and
4 incorporated into the taxpayer's certificate of completion, provided
5 that, for purposes of paragraph three of this subdivision, the total
6 amount of the tangible property credit component that is allowed with
7 respect to that qualified site shall not exceed fifteen million dollars.

8 (6) Site preparation costs and on-site groundwater remediation costs
9 paid or incurred by the taxpayer with respect to a qualified site and
10 the cost or other basis for federal income tax purposes of tangible
11 personal property and other tangible property, including buildings and
12 structural components of buildings, which constitute qualified tangible
13 property shall only include costs ~~[paid or]~~ incurred by the taxpayer on
14 or after the date of the brownfield site cleanup agreement executed by

15 the taxpayer and the department of environmental conservation pursuant
16 to section 27-1409 of the environmental conservation law.

17 § 12. Subdivision (b) of section 21 of the tax law, as amended by
18 section 1 of part H of chapter 577 of the laws of 2004, paragraph 3 as
19 amended by chapter 420 of the laws of 2006 and subparagraph (B) and the
20 closing paragraph of paragraph 6 as amended by section 1 of part G of
21 chapter 62 of the laws of 2006, is amended to read as follows:

22 (b) Definitions. As used in this section, the following terms shall
23 have the following meanings:

24 (1) Qualified site. A "qualified site" is a [~~site~~] **"brownfield site"**
25 **as defined in section 27-1405 of the environmental conservation law, the**
26 **redevelopment or reuse of which has been determined by the department of**
27 **environmental conservation, pursuant to section 27-1407 of the environ-**
28 **mental conservation law, to be unlikely without tax credits, and** with
29 respect to which a certificate of completion has been issued to the
30 taxpayer by the commissioner of environmental conservation pursuant to
31 section 27-1419 of the environmental conservation law.

32 (2) Site preparation costs. The term "site preparation costs" shall
33 mean all amounts properly chargeable to a capital account, (i) which are
34 paid or incurred in connection with a site's qualification for a certif-
35 icate of completion **and are costs incurred in connection with activities**
36 **specified in a remedial work plan approved by the commissioner of envi-**
37 **ronmental conservation under section 27-1411 of the environmental**
38 **conservation law, and (ii) with respect to any qualified site where the**
39 **taxpayer has received notification that its request for participation**
40 **has been accepted by the commissioner of environmental conservation**
41 **under section 27-1411 of the environmental conservation law before July**
42 **first, two thousand seven, or where the taxpayer received a certificate**
43 **of completion from another taxpayer under section 27-1419 of the envi-**
44 **ronmental conservation law before July first, two thousand seven, all**
45 other site preparation costs paid or incurred in connection with prepar-
46 ing a site for the erection of a building or a component of a building,
47 or otherwise to establish a site as usable for its industrial, commer-
48 cial (including the commercial development of residential housing),
49 recreational or conservation purposes. [~~Site~~] **For purposes of subpara-**
50 **graph (ii) of this paragraph, site** preparation costs shall include, but
51 not be limited to, the costs of excavation, temporary electric wiring,
52 scaffolding, demolition costs, and the costs of fencing and security
53 facilities. Site preparation costs shall not include the cost of acquir-
54 ing the site and shall not include amounts included in the cost or other
55 basis for federal income tax purposes of qualified tangible property, as
56 described in paragraph three of this subdivision.

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1 (3) Qualified tangible property. "Qualified tangible property" is
2 property described in either subparagraph (A) or (B) of this paragraph
3 which:

4 (A) (i) is depreciable pursuant to section one hundred sixty-seven of
5 the internal revenue code,

6 (ii) has a useful life of four years or more,

7 (iii) has been acquired by purchase as defined in section one hundred
8 seventy-nine (d) of the internal revenue code,

9 (iv) has a situs on a qualified site in this state, and

10 (v) is principally used by the taxpayer for industrial, commercial,
11 recreational or environmental conservation purposes (including the
12 commercial development of residential housing); or

13 (B)(i) is, or when occupied becomes, part of a dwelling whose primary

14 ownership structure is covered under either article nine-B of the real
15 property law or meets the requirements of section 216 (b)(1) of the
16 Internal Revenue Code;

17 (ii) has been acquired by purchase (as defined in section one hundred
18 seventy-nine (d) of the Internal Revenue Code);

19 (iii) has a situs on a qualified site in this state; ~~[and]~~

20 (iv) is principally used by the taxpayer for the commercial develop-
21 ment of residential housing as described in clause (i) of this subpara-
22 graph; and

23 (v) for purposes of this subparagraph only, and notwithstanding any
24 other section of law to the contrary, qualified tangible property [~~qual-~~
25 ~~ifying~~] under this subparagraph shall be deemed to be [~~qualified tangi-~~
26 ~~ble property~~] depreciable for the purposes of [~~paragraph one of~~] subdivi-
27 sion (d) of this section; and in addition, for the purposes of this
28 subdivision only, property qualifying under this subparagraph shall be
29 deemed to have been placed in service for the purposes of paragraph
30 three of subdivision (a) of this section when a certificate of occupancy
31 is issued for such property.

32 (4) On-site groundwater remediation costs. The term "on-site groundwa-
33 ter remediation costs" shall mean all amounts properly chargeable to a
34 capital account, (i) which are paid or incurred in connection with a
35 site's qualification for a certificate of completion, and (ii) include
36 costs which are paid or incurred in connection with the remediation of
37 on-site groundwater contamination and incurred to implement a require-
38 ment of the remedial work plan or an interim remedial measure work plan
39 for a qualified site which are imposed pursuant to subdivisions two and
40 three of section 27-1411 of the environmental conservation law.

41 (5) Certificate of completion. A "certificate of completion" issued by
42 the commissioner of environmental conservation pursuant to section
43 27-1419 of the environmental conservation law. For taxable years begin-
44 ning on or after January first, two thousand eight, a certificate of
45 completion may be transferred for purposes of the tangible property
46 credit component allowed under paragraph three of subdivision (a) of
47 this section, as provided for under subdivision five of section 27-1419
48 of the environmental conservation law, only by a taxpayer who is eligi-
49 ble to claim the site preparation credit component, the on-site ground-
50 water remediation credit component or both but who does not incur costs
51 with respect to qualified tangible property in order to be eligible to
52 claim the tangible property credit component. That taxpayer may transfer
53 the certificate of completion only if: (i) no other taxpayer was issued
54 a certificate of completion with respect to the same qualified site or
55 (ii) if more than one taxpayer is issued a certificate of completion
56 with respect to a qualified site, none of those taxpayers incur costs

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1 with respect to qualified tangible property in order to be eligible to
2 claim the tangible property credit component. In the event that a
3 certificate of completion is transferred to more than one taxpayer for a
4 qualified site, only one taxpayer to whom the certificate of completion
5 is transferred is entitled to claim the tangible property credit compo-
6 nent with regard to the qualified site relating to the certificate, and
7 only if the taxpayer satisfies the requirements in this section for that
8 credit component. The taxpayer who claims the tangible property credit
9 component, under the circumstances described in this paragraph, may not
10 subsequently transfer the certificate of completion for purposes of the
11 tax credit allowed under this section.

12 (6) Environmental zones (EN-Zones). An "environmental zone" shall mean

13 an area designated as such by the commissioner of economic development.
14 Such areas so designated are areas which are census tracts and block
15 numbering areas which, as of the two thousand census, satisfy either of
16 the following criteria:

17 (A) areas that have both:

18 (i) a poverty rate of at least twenty percent for the year to which
19 the data relate; and

20 (ii) an unemployment rate of at least one and one-quarter times the
21 statewide unemployment rate for the year to which the data relate, or;

22 (B) areas that have a poverty rate of at least two times the poverty
23 rate for the county in which the areas are located for the year to which
24 the data relate provided, however, that a qualified site shall only be
25 deemed to be located in an environmental zone under this subparagraph
26 ~~[(B)]~~ if such site was the subject of a brownfield site cleanup agree-
27 ment pursuant to section 27-1409 of the environmental conservation law
28 that was entered into prior to September first, two thousand ten.

29 Such designation shall be made and a list of all such environmental
30 zones shall be established by the commissioner of economic development
31 no later than December thirty-first, two thousand four provided, howev-
32 er, that a qualified site shall only be deemed to be located in an envi-
33 ronmental zone under this subparagraph ~~[(B) of this paragraph]~~ if such
34 site was the subject of a brownfield site cleanup agreement pursuant to
35 section 27-1409 of the environmental conservation law that was entered
36 into prior to September first, two thousand ten.

37 § 13. Paragraph 2 of subdivision (a) of section 22 of the tax law, as
38 amended by section 4 of part H of chapter 577 of the laws of 2004, is
39 amended to read as follows:

40 (2) Qualified site. For purposes of this section, a "qualified site"
41 is a ~~[site]~~ "brownfield site" as defined in section 27-1405 of the envi-
42 ronmental conservation law, the redevelopment or reuse of which has been
43 determined by the department of environmental conservation pursuant to
44 section 27-1407 of the environmental conservation law to be unlikely
45 without tax credits, and with respect to which a certificate of
46 completion has been issued by the commissioner of environmental conser-
47 vation pursuant to section 27-1419 of the environmental conservation
48 law.

49 § 14. Paragraph 1 of subdivision (b) of section 23 of the tax law, as
50 amended by section 10 of part H of chapter 577 of the laws of 2004, is
51 amended to read as follows:

52 (1) Qualified site. A "qualified site" is a ~~[site]~~ "brownfield site"
53 as defined in section 27-1405 of the environmental conservation law, the
54 redevelopment or reuse of which has been determined by the department of
55 environmental conservation pursuant to section 27-1407 of the environ-
56 mental conservation law to be unlikely without tax credits, and with

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1 respect to which a certificate of completion has been issued to the
2 taxpayer by the commissioner of environmental conservation pursuant to
3 section 27-1419 of the environmental conservation law ~~[to an "applicant"~~
4 ~~as that term is defined in subdivision one of section 27-1405 of the~~
5 ~~environmental conservation law]~~.

6 § 15. The tax law is amended by adding a new section 171-p to read as
7 follows:

8 § 171-p. Brownfield credit report. (a) The department must publish a
9 brownfield credit report annually by January thirty-first. The first
10 report must be published by January thirty-first, two thousand nine.

11 (b) (1) The brownfield credit report must contain the following infor-

12 mation about the credits claimed under sections twenty-one, twenty-two
13 and twenty-three of this chapter during the previous calendar year:

14 (A) the name of each taxpayer claiming a credit;

15 (B) the amount of each credit earned by each taxpayer;

16 (C) the taxpayer's tax liability before the application of any credits
17 and the taxpayer's tax liability after the application of any credits;
18 and

19 (D) information identifying the project for which a certificate of
20 completion was issued and the credit claimed under section twenty-one,
21 twenty-two or twenty-three of this chapter.

22 (2) If the taxpayer claims a credit under section twenty-one, twenty-
23 two or twenty-three of this chapter because the taxpayer is a member of
24 a limited liability company, a partner in a partnership or a shareholder
25 in a subchapter S corporation, the name of each limited liability compa-
26 ny, partnership or subchapter S corporation earning any of those credits
27 and the amount of credit earned by each entity must be included in the
28 report instead of information about the taxpayer claiming the credit. In
29 that instance, information regarding the taxpayer's tax liability will
30 not be included in the report.

31 (c) The information included in the brownfield credit report will be
32 based on the information filed with the department during the previous
33 calendar year, to the extent that it is practicable to use that informa-
34 tion.

35 (d) The brownfield credit report will not include any information
36 regarding any credit claimed under section twenty-one, twenty-two or
37 twenty-three of this chapter with respect to any qualified site where
38 the taxpayer has received approval of a remedial work plan by the
39 commissioner of environmental conservation under section 27-1411 of the
40 environmental conservation law before July first, two thousand seven, or
41 where the taxpayer received a certificate of completion from another
42 taxpayer under section 27-1419 of the environmental conservation law
43 before July first, two thousand seven.

44 § 16. Severability clause. If any clause, sentence, paragraph, subdi-
45 vision, section or part of this act shall be adjudged by any court of
46 competent jurisdiction to be invalid, such judgment shall not affect,
47 impair or invalidate the remainder thereof, but shall be confined in its
48 operation to the clause, sentence, paragraph, subdivision, section or
49 part thereof directly involved in the controversy in which such judgment
50 shall have been rendered. It is hereby declared to be the intent of the
51 legislature that this act would have been enacted even if such invalid
52 provisions had not been included herein.

53 § 17. This act shall take effect immediately and shall be deemed to
54 have been in full force and effect on and after April 1, 2008; provided,
55 however that the amendments to paragraph 3 of subdivision (a) of section
56 21 of the tax law made by section ten of this act shall apply to all
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1 taxable years for which the statute of limitations is open on the date
2 this act becomes a law; and the amendments to paragraph 1 of subdivision
3 (b) of section 21 of the tax law made by section twelve of this act, the
4 amendments to paragraph 2 of subdivision (a) of section 22 of the tax
5 law and the amendments to paragraph 1 of subdivision (b) of section 23
6 of the tax law made by sections thirteen and fourteen of this act,
7 respectively, shall apply only with respect to taxpayers with whom the
8 department of environmental conservation executes a brownfield clean-up
9 agreement on or after the date this act becomes a law.

