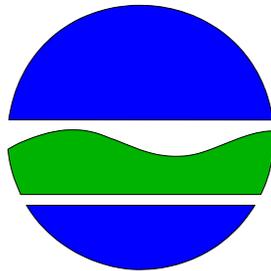


**FINAL GENERIC
ENVIRONMENTAL IMPACT STATEMENT
FOR REVISIONS/ENHANCEMENTS TO
6 NYCRR PART 375
ENVIRONMENTAL REMEDIATION PROGRAMS**

**New York State
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Division of Environmental Remediation
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October 2006

George E. Pataki, Governor

Denise M. Sheehan, Commissioner

PREFACE

On October 25, 2006, the New York State Department of Environmental Conservation, as lead agency, completed and accepted this Final Generic Environmental Impact Statement for 6 NYCRR Part 375. This is pursuant to Article 8 (State Environmental Quality Review Act, SEQRA) of the Environmental Conservation Law and 6 NYCRR Part 617.

This action is the repeal of Part 375 and the addition of new Part 375 to Title 6 of NYCRR, Environmental Remediation Programs. It pertains to a rulemaking that implements environmental remediation programs statewide.

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EXECUTIVE SUMMARY

This Final Generic Environmental Impact Statement (FGEIS) has been prepared by the New York State Department of Environmental Conservation (Department) in compliance with the State Environmental Quality Review Act (SEQRA) for a comprehensive rulemaking. It is amending 6 NYCRR 375, the statewide regulation that implements the State Superfund Program, Article 27, Title 13 of the Environmental Conservation Law. The revisions are aimed at incorporating recent statutory changes, clarifying and streamlining the current regulations and addressing issues raised by State and local agencies, the public, and project sponsors since the last regulatory update of Part 375 in 1996. The Department has not identified any significant adverse environmental impacts from the proposed amendments. However, the Department has chosen to use a generic environmental impact statement (GEIS) as the means for describing the changes. Through the GEIS, the Department: 1) discusses the objectives and the rationale for the proposed amendments; 2) presents why alternative measures were not considered; and 3) provides the maximum opportunity for public participation.

New York State, in furtherance of its commitment to environmental protection and economic revitalization and growth in the State, has created an array of programs and resources to help clean up and reuse contaminated sites. New York State offers programs that provide for financial assistance, as well as technical assistance and liability protection, for the investigation, remediation and redevelopment of contaminated sites. This rulemaking ensures the continued protection of public health and the environment. It will also assure the most efficient utilization of public and private funding sources for the investigation and remediation of sites under such remedial programs and will ensure remediation efforts are completed as quickly as possible.

Specific to this rulemaking, the State administers the State Superfund Program (SSF), created in 1979; the Brownfield Cleanup Program (BCP), created in 2003; and the Environmental Restoration Program (ERP), created in 1996.

Chapter 1 of the Laws of 2003 added a new ECL Article 27 Title 14 (the BCP); made extensive amendments to existing ECL Article 27 Title 13 (the SSF) and to existing ECL Article 56 Title 5 (the ERP); and made other related amendments. As a result of these statutory changes, it is necessary and desirable to revise the New York State Department of Environmental Conservation's (Department's) regulations to conform to Chapter 1. Additionally, it is also necessary and desirable to revise the Department's regulations, both to conform to previous legislation and to make adjustments to conform to experience acquired, and in the interest of administrative efficiency.

Accordingly, the Department is:

1. Incorporating requirements of New York State's Chapter 1, Laws of 2003;
2. Revising/enhancing the Inactive Hazardous Waste Disposal Site Remedial Program and Environmental Restoration Program regulations to address necessary legal, technical, and policy developments, as well as to reflect our extensive experience in remediating sites, which have occurred since the last major revisions to Part 375 in 1992 and 1996, respectively; and
3. Establishing regulations for the Brownfield Cleanup Program.

The Department's current regulations governing the SSF and ERP are contained in 6 NYCRR Parts 375. Revising, reorganizing, and restructuring existing Part 375, including the provision of regulations for the BCP, is necessitated to cover the requirements provided by, and to provide for the implementation of, the 2003 and 2004 statutory changes. These laws were enacted subsequent to the previous Part 375 rulemaking. Further, they will incorporate statutory changes that occurred after the current Part 375 was finalized and improve the readability of the regulations and decrease confusion.

This FGEIS addresses the environmental significance of the action by discussing and evaluating the specific matters, which have been modified in the action from the existing regulations. The organization of this document is described below.

Section I serves as its introductions, which describes the action; outlines the legal authority for the revisions; describes the environmental setting in which the action is undertaken; and describes the reorganization of Part 375.

Section II evaluates the alternatives to the action.

Section III discusses the general environmental, coastal, economic, and other impacts of the action.

Section IV provides the Department's response to comments received on the draft GEIS during the public comment period.

Appendices to this document contain the revised Regulatory Impact Statement (RIS), the revised Regulatory Flexibility Analysis (RFA), the revised Job Impact Exemption Statement (JIS) and the revised Rural Area Flexibility Analysis (RAFA) for the action, and fact sheets and background documents for the soil cleanup objectives that describe the process undertaken in developing the soil cleanup objectives.

I. INTRODUCTION

A. Description of Action

The New York State Department of Environmental Conservation (Department) is amending the regulations that implement the Inactive Hazardous Waste Disposal Site Remedial Program (State Superfund Program or SSF) and the Environmental Restoration Program (ERP) and incorporating new regulations to implement the Brownfield Cleanup Program (BCP).

This rulemaking:

1. Incorporates the requirements of New York State's Chapter 1, Laws of 2003;
2. Revises/enhances the Inactive Hazardous Waste Disposal Site Remedial Program and Environmental Restoration Program regulations to address necessary legal, technical, and policy developments that have occurred since the last major revisions to Part 375 in 1992 and 1996, respectively; and
3. Establishes regulations for the Brownfield Cleanup Program.

The Department's current regulations governing the SSF and ERP are contained in 6 NYCRR Parts 375. Revising, reorganizing, and restructuring existing Part 375, including the provision of regulations for the BCP, is necessitated to cover the requirements provided by, and to provide for the implementation of, the 2003 and 2004 statutory changes. These laws were enacted subsequent to the previous Part 375 rulemaking. Further, they will incorporate statutory changes that occurred after the current Part 375 was finalized and will improve the readability of the regulations and decrease confusion.

This FGEIS addresses the environmental significance of the action by discussing and evaluating the specific matters that have modified in the action from the existing regulations. The goals of this action are to incorporate recent statutory changes, and streamline and simplify the remedial process to clarify certain provisions of the regulations. These changes will improve the substance of environmental cleanups, make the regulations easier to use and understand, and improve agency administration of the remedial programs. The Department has not identified any significant adverse impacts from the proposed amendments; however, the Department has chosen to use a generic environmental impact statement (GEIS) as the means of describing these changes. Through the GEIS, the Department: 1) discusses the objectives and the rationale for the proposed amendments; 2) presents why alternative measures were not considered; and 3) provides the maximum opportunity for public participation.

B. Organization of Document

This document is intended to address the environmental significance of the action by means of a discussion and evaluation of the changes made to the existing regulations, most of which are governed by statute. Section I serves as its introductions, which describes the action and outlines the legal authority for the revisions. Section II evaluates the alternatives to the action. Section III discusses the general environmental, coastal, economic, and other impacts of the action. Section IV provides the Department's response to comments received on the draft

GEIS during the public comment period. Appendices to this document contain the revised Regulatory Impact Statement (RIS), the revised Regulatory Flexibility Analysis (RFA), the revised Job Impact Exemption Statement (JIS), and the revised Rural Area Flexibility Analysis (RAFA) for the action, and fact sheets and background documents for the soil cleanup objectives.

C. Legal Authority

The Department has the authority to adopt and promulgate, amend and repeal rules and regulations governing the SSF, BCP, and ERP. The statutory authority for such undertaking is varied.

ECL section 27-1315 states “The Commissioner shall have the power to promulgate rules and regulations necessary and appropriate to carry out the purposes of this title.”

Various sections of Article 27, Title 14 specifically require the Department to promulgate regulations. For example, 27-1407(9)(f)(3) states “...substantial interest shall be defined in regulations promulgated by the Commissioner.” Similarly, 27-1415(4) states the Commissioner shall propose regulations, which create a multi-track approach for remediation of contamination and shall include soil cleanup objectives.

ECL section 71-3605(2) requires that the environmental easement form be in regulation.

The Department’s authority to undertake this action is also found in ECL sections 1-0101 and 3-0301.

D. Environmental Setting

This action is being undertaken in the wake of historic legislation, which refinanced, reformed and enhanced the State Superfund, enhanced the Environmental Restoration Program, and created the Brownfield Cleanup Program. Since the legislation’s passage, the Department has implemented the reformed, enhanced, and/or new programs. Additionally, in 2002 the federal government enacted amendments to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). These federal amendments were intended to promote and encourage the cleanup and redevelopment of brownfields. New York’s new and enhanced programs, coupled with the federal programs, have created significant interest in addressing contaminated sites in New York.

Also, many contaminated sites have been addressed since the last major revision of the Part 375 regulations in 1996. This has provided the Department with extensive experience in applying those regulations. This experience has demonstrated that many areas of the regulations would benefit from revision, clarification or modification.

E. Revisions and Reorganization of Part 375

This action is not intended to mandate any specific remedial technology or approach. However, it defines the remedial process; and provides use-based soil cleanup objectives.

Following is a discussion of the changes and reorganization of this Part.

Subpart 375-1: GENERAL REMEDIAL PROGRAM REQUIREMENTS

Section 375-1.1: contains a description of the general purpose, applicability, construction and abbreviations discussed throughout Part 375 and applied to the three remedial programs covered by this rulemaking. The purpose of subpart 375-1 is to ensure the orderly, efficient and consistent administration of ECL 27-1301 et seq. (Inactive Hazardous Waste Disposal Site Remedial Program), ECL 27-1401 et seq. (Brownfield Cleanup Program), ECL 52-0301 et seq. (Hazardous Waste Site Remediation Projects), ECL 56-0501 et seq. (Environmental Restoration Program), and ECL 71-3601 et seq. (Environmental Easements).

Section 375-1.2: sets forth definitions from the three remedial statutes, which have been grouped under this section and will apply to all the remedial programs. This will enhance the consistency and predictability of the remedial programs. Further, the definitions are generally consistent with current law, regulations or guidance.

Section 375-1.3: reserved to promote consistency across the remedial programs contained in Part 375.

Section 375-1.4: reserved to promote consistency across the remedial programs contained in Part 375.

Section 375-1.5: sets forth provisions regarding standard requirements of orders, agreements and state assistance contracts. These provisions have been in use for many years to implement the remedial programs.

Section 375-1.6: sets forth the requirements relative to work plans and reports.

Section 375-1.7: reserved to promote consistency across the remedial programs contained in Part 375.

Section 375-1.8: sets forth the remedial program requirements, including the requirements for institutional controls, environmental easements, and annual certifications. Generally, these provisions are required by law, current regulations or guidance.

Section 375-1.9: sets forth the provisions for a certificate of completion, which will apply to all three remedial programs. These provisions are generally required by the BCP. While not statutorily required for the SSF or ERP, similar documents are presently issued under both such programs. Therefore, in the interest of consistency and predictability, the same form will be used subject to the same reopeners in all three programs.

Section 375-1.10: sets forth the citizen participation requirements. These requirements are presently in statute, regulation and/or guidance and reflect the minimum citizen participation elements. Additional requirements specific to each remedial program are found in subparts 375-2, 375-3 and 375-4.

Section 375-1.11: sets forth miscellaneous provisions, including a requirement for electronic submittals, general prohibitions similar to existing Part 375 prohibitions, and financial assurance provisions that were authorized under recent statutory changes.

Section 375-1.12: sets forth permit exemptions provisions that are substantially similar to existing regulations, but will allow the waiver of local permits, registration fees for tanks being closed, authorizations and approvals. This expansion is authorized by the recent statutory changes.

Subpart 375-2: INACTIVE HAZARDOUS WASTE DISPOSAL SITE REMEDIAL PROGRAM

This rule maintains, but reorganizes and restructures, much of the existing Part 375. Additionally, it incorporates the statutory changes since the previous Part 375 rulemaking, and makes adjustments to conform to experience acquired, and in the interest of administrative efficiency.

Section 375-2.1: contains a description of the general purpose and applicability of this subpart. This is generally consistent with the current rule.

Section 375-2.2: sets forth definitions that are unique to the State Superfund Program. The definitions are generally consistent with current law, regulations and/or guidance.

Section 375-2.3: sets forth the criteria for municipal eligibility for State assistance at select municipally owned inactive hazardous waste disposal sites. These provisions are generally consistent with current Part 375 and represent an amalgam of relevant requirements from current subparts 375-3 and 375-4.

Section 375-2.4: sets forth the applications process for municipalities seeking State assistance at select municipally owned inactive hazardous waste disposal sites. These provisions are generally consistent with current Part 375 and represent an amalgam of relevant requirements from current subparts 375-3 and 375-4.

Section 375-2.5: sets forth provisions regarding standard requirements of orders on consent and State assistance contracts. These provisions have been in use for many years in implementing the remedial program.

Section 375-2.6: reserved to promote consistency across the remedial programs contained in Part 375.

Section 375-2.7: sets forth the significant threat and classification process as set forth in statute, which remains substantially unchanged from existing regulations except for the simplification of the listing, reclassification and delisting process.

Section 375-2.8: sets forth the goal of the remedial program (“pre-disposal conditions”, including the elimination of the significant threat to public health and the

environment posed by the disposal of hazardous “substance”), as well as the record of decision documentation process. Both of these provisions are substantially similar to existing regulations.

Section 375-2.9: the provisions for a certificate of completion will apply to the Superfund Program. These provisions are generally required by the BCP. While not statutorily required for the SSF, similar documents are presently issued to parties cleaning up such sites. In the interest of consistency and predictability, the same form will be used subject to the same reopeners in all three remedial programs. Additionally, the certificate will entitle the parties to liability protections.

Section 375-2.10: sets forth the citizen participation requirements. These requirements are presently in statute, regulation and/or guidance; and they reflect the citizen participation elements, in addition to the minimum requirements set forth in section 375-1.10 that have been employed at Superfund sites for many years. The proposed regulations will provide for the recent statutory changes, which add technical assistance grants (TAGs) for eligible community based corporations that wish to become involved in the decision process for an inactive hazardous waste disposal site, which presents a significant threat.

Section 375-2.11: sets forth miscellaneous provisions, including general prohibitions similar to existing Part 375 prohibitions.

Section 375-2.12: reserved to promote consistency across the remedial programs contained in Part 375.

These rule changes primarily conform to the recent statutory changes and provide for greater consistency with the other remedial programs. Further, the proposed rule will provide a positive impact on public health and the environment.

Subpart 375-3: BROWNFIELD CLEANUP PROGRAM (BCP)

This rule is new and implements recent changes to the law, which create the BCP. There are no substantive requirements that are not required by statute.

Section 375-3.1: contains a description of the general purpose, applicability and construction of this subpart.

Section 375-3.2: sets forth definitions that are unique to the Brownfield Cleanup Program (e.g., “Applicant”, “Participant” and “Volunteer”). The definitions are consistent with current law.

Section 375-3.3: sets forth the criteria for program eligibility. The criteria are consistent with guidance recently finalized by the Department after public notice and comment.

Section 375-3.4: sets forth the applications process for parties seeking to participate in the BCP. The statute provides for applications to be submitted on a form acceptable to the Department. This rule provides for the content of the applications. Given the statutory

requirement for review and a completeness determination within ten (10) days, it is important that the Department be clear on what constitutes a complete application. This rule will assist in the timely and appropriate consideration of an application.

Section 375-3.5: sets forth provisions regarding standard requirements of brownfield site cleanup agreements. The law requires that the brownfield site cleanup agreement contain specific terms and conditions. The standard provisions in this rule are consistent with the statutory mandate and have been in use for many years in implementing the voluntary cleanup program and for over a year in the brownfield cleanup program.

Section 375-3.6: reserved to promote consistency across the remedial programs contained in Part 375.

Section 375-3.7: sets forth the process of determining significant threat at a brownfield site. This process is consistent with the statutory requirement. Additionally, the rule provides for the deferral of listing on the Registry of Inactive Hazardous Waste Disposal Sites, as provided by statute.

Section 375-3.8: sets forth the goal of the remedial program (protection of public health and the environment), the requirements of a remedial program including cleanup tracks, the requirements of an alternatives analysis, and the requirements of a remedial work plans. These provisions are consistent with, and required by, statute.

Section 375-3.9: sets forth the provisions for a certificate of completion. These provisions are consistent with current changes in the law.

Section 375-3.10: sets forth the citizen participation requirements. These requirements are in statute. These requirements are, in addition to the minimum requirements set forth in section 375-1.10. Collectively, sections 375-1.10 and 375-3.10 provide for the recent statutory changes, including technical assistance grants (TAGs) for eligible community based corporations that wish to become involved in the decision process for a brownfield site, which presents a significant threat.

Section 375-3.11: sets forth miscellaneous provisions, including general prohibitions similar to existing Part 375 prohibitions, and State Environmental Quality Review Act (SEQRA) applicability.

Section 375-3.12: reserved to promote consistency across the remedial programs contained in Part 375.

These rule changes conform to the recent statutory changes and provide for greater consistency with the other remedial programs. Further, the proposed rule will provide a positive impact on public health and the environment. With regard to SEQRA, the rule (section 375-3.11) sets forth the ability for the Department to waive the requirements of Article 8 of the ECL, and its implementing regulations (6 NYCRR Part 617), for remedy selection and implementation

of remedial actions under Department approved workplans pursuant to Title 14 of Article 27 of the ECL.

The basis for this SEQRA provision is experience and the filed records which have shown that remedial projects under the State Superfund Program (ECL Article 27, Title 13), the Environmental Restoration Program (ECL Article 56, Title 5), and the Department's administrative Voluntary Cleanup Program have generally been: i) exempted from SEQR review as a result of the enforcement rubric under which those programs are administered; or ii) resulted in the preparation of negative declarations because they do not result in significant adverse environmental impacts.

In fact, the Department has extensive experience in the supervision and implementation of remedial actions, and thus is in a unique position to assess the environmental significance of such activities. Specifically, the Department has more than 25 years of experience in administering cleanups under the State Superfund Program; has been administering the Environmental Restoration Program since its inception in 1996; has more than 10 years experience in implementing the Department's administrative Voluntary Cleanup Program; and most recently has administered the Brownfield Cleanup Program (ECL Article 27, Title 14) since its inception in 2003. Under these programs, the Department has overseen the site cleanups at thousands of contaminated sites.

Therefore, the Department believes its remedial approaches, informed by over 25 years of remedial experience, provide a realistic approach. Such approach is soundly based upon the protection of public health and the environment, including the elimination or mitigation of short and long term impacts. Further, community involvement has been the hallmark of the Department's remedial programs. Community involvement is founded on the belief that people should know about remedial activities in their community and be able to have input into the decision making process. The Department's remedial programs, while varying from program to program, provide extensive opportunities for public notice, public comment and, in some circumstances, public meetings. These opportunities generally mirror similar opportunities under SEQRA, and would be duplicative if applied under SEQRA and the remedial programs. Further, delays attendant to the SEQRA process for remedial actions could lead to significant adverse impacts that could be ameliorated by quicker cleanups. For the foregoing reasons, it is appropriate to provide for these remedial actions to be considered Type II actions, and this is reflected in the rule.

Subpart 375-4: ENVIRONMENTAL RESTORATION PROGRAM (ERP)

This rule conforms the existing subpart 375-4 to recent changes in the law and provides for some modest changes to increase consistency between the remedial programs.

This rule maintains, but reorganizes and restructures, much of the existing subpart 375-4. Additionally, it incorporates the statutory changes since the previous Part 375 rulemaking, and makes adjustments to conform to experience acquired, and in the interest of administrative efficiency.

Section 375-4.1: contains a description of the general purpose and applicability of this section. This is generally consistent with the current rule.

Section 375-4.2: sets forth definitions that are unique to the Environmental Restoration Program. The definitions are consistent with current regulations, law and/or guidance.

Section 375-4.3: sets forth the criteria for municipal eligibility for State assistance at municipally owned brownfield sites. These provisions are generally consistent with current subpart 375-4.

Section 375-4.4: sets forth the applications process for municipalities seeking State assistance at municipally owned brownfield sites. The statute provides for applications to be submitted on a form acceptable to the Department. This rule provides for the content of the applications. It is important that the Department be clear on what constitutes a complete application. This rule will assist in the timely and appropriate consideration of an application. These provisions are generally consistent with current subpart 375-4.

Section 375-4.5: sets forth provisions regarding standard requirements of State assistance contracts. The law requires that the contract contain specific terms and conditions. The standard provisions in this rule are consistent with the statutory mandate and have been in use for many years in implementing the Environmental Restoration Program.

Section 375-4.6: reserved to promote consistency across the remedial programs contained in Part 375.

Section 375-4.7: sets forth the deferral of listing of sites in the ERP on the Registry of Inactive Hazardous Waste Disposal Sites. This is new to the rule but consistent with current practice and the approach to sites in the BCP.

Section 375-4.8: sets forth the goal of remedial program (protective of public health and the environment), which is consistent with the law and current regulations. Further, it provides the requirements for an investigation work plan, the requirements for the record of decision documentation process and the remediation work plan requirements. These provisions are substantially similar to existing regulations.

Section 375-4.9: sets forth the provisions for a certificate of completion. These provisions are generally required by the BCP. While not statutorily required for the ERP, similar documents are presently issued pursuant to the present rule to parties cleaning up such sites. In the interest of consistency and predictability, the same form will be used subject to the same reopeners in all three remedial programs.

Section 375-4.10: sets forth the citizen participation requirements. These requirements are presently in statute, regulation and/or guidance and reflect the citizen participation elements, in addition to the minimum requirements set forth in section 375-1.10, which have been employed at brownfield sites under this program for many years.

Section 375-4.11: sets forth miscellaneous provisions, including general prohibitions similar to existing Part 375 prohibitions, and SEQRA applicability.

Section 375-4.12: reserved to promote consistency across the remedial programs contained in Part 375.

These rule changes primarily conform to the recent statutory changes and provide for greater consistency among the various remedial programs. With regard to SEQRA, the rule (section 375-4.11) sets forth the ability for the Department to waive the requirements of Article 8 of the ECL, and its implementing regulation (6 NYCRR Part 617), for investigation, remedy selection and implementation of remedial actions under Department approved workplans pursuant to Title 5 Article 56 of the ECL. For the reasons detailed in the discussion under subpart 375-3 of this Statement (see pages 5-7), it is appropriate to provide for these remedial actions to be considered Type II actions, and this is reflected in the rule.

Subpart 375-6: REMEDIAL PROGRAM SOIL CLEANUP OBJECTIVES

This rule is new and presents soil cleanup objectives applicable to the remedial programs set forth in subparts 375-2 through 375-4.

Section 375-6.1: contains a description of the general purpose, applicability and construction of this subpart.

Section 375-6.2 sets forth definitions for “Contract required quantitation limit” and “Technical Support Document”.

Section 375-6.3 sets forth the applicability of the unrestricted use soil cleanup objectives.

Section 375-6.4 sets forth the applicability of the restricted use soil cleanup objectives for the protection of public health.

Section 375-6.5 sets forth the applicability of the soil cleanup objective for the protection of groundwater.

Section 375-6.6 sets forth the applicability of the soil cleanup objective for the protection of ecological resources.

Section 375-6.7 sets forth the applicability of the other considerations and media relative to the soil cleanup objectives.

Section 375-6.8 presents, in tabular form, the soil cleanup objectives.

Section 375-6.9 sets forth the procedures for development of soil cleanup objectives for compounds not included in the soil cleanup objective tables.

II. EVALUATION OF ALTERNATIVES TO THE ACTION

In order to implement the recent statutory changes, there are no other viable alternatives available other than to revise the existing Part 375.

Certain revisions included in this rulemaking action are mandatory. Specifically, i) ECL § 27-1407(9)(f) mandates a regulation defining the term “substantial interest” for purposes of this Department’s discretionary authority to reject a request for participation in the Brownfield Cleanup Program, if the person submitting is an individual or other person who had a “substantial interest” in an entity which engaged in conduct justifying denial of a permit; ii) ECL § 27-1415(4) and (6) mandates a regulation, with input from the Department of Health, creating a multi-track approach to remediation, including tables of remedial action objectives for soil based on use; iii) ECL § 71-3605(2) mandates a regulation prescribing the form of an environmental easement; and, iv) ECL § 27-1323(4)(c)(2) mandates a regulation establishing standards and practices for satisfying the inquiry requirement for purposes of the third-party affirmative defense.

Moreover, various regulatory provisions under the current Part 375 addressing the SSF or ERP are in conflict with current law, and need to be revised to reflect the 2003 and 2004 statutory enactments.

Additionally, the centerpiece of Chapter 1 of the Laws of 2003 is the Brownfield Cleanup Program, and the legislative purpose of the new ECL § 27-1403 is to encourage voluntary remediation and redevelopment. It is to be anticipated that uncertainties inevitably associated with implementation of the statute alone would tend to be a disincentive to participation in the programs.

If the State were to follow the “no action” alternative, we would be disregarding a statutory mandate to develop regulations, would have outdated and inaccurate regulations, and would jeopardize the consistency and predictability that all stakeholders sought in advocating for the recent reforms; especially as it relates to soil cleanup numbers and cleanup tracks.

III. IMPACTS OF THE ACTION

A. Environmental Impacts

1. Positive Impacts

The remedial programs covered by this rulemaking all provide for a comprehensive site investigation to be performed for all sites being addressed under the respective programs. An investigation would be conducted prior to a determination of a remedy to be implemented and prior to any construction being commenced at a site. The investigation would identify whether any further action, or remedial action, would be necessary for the proposed redevelopment. Investigations do not commit the Department or local municipalities to a course of action or redevelopment. Actions, investigation or remedial actions beyond the initial remediation of the site, must be conducted in accordance with all applicable laws and regulatory requirements.

Implementation of a particular project's remedy would not result in significant adverse impacts. The appropriate site investigations would have been conducted and would have identified the further actions, investigations or remedial actions required for the proposed project elements to proceed. Contamination would be managed, treated, isolated, or removed, or a combination of these procedures would be used to manage the contamination at the site during the implementation of the remedial program, allowing the project to proceed without significant adverse impacts. The various remedial plans at a particular site must also identify measures to be taken to prevent or minimize contaminant exposures to workers and the general public, as well as define the handling, storage, transportation, and disposal of the various forms of contamination. Remedial plans must also identify measures to be taken to address contaminated material that would not be removed from the site as part of the remedial program, and therefore would remain in place. Such measures may include the implementation of impermeable barriers to achieve isolation from contaminants, such as semi-volatile organic compounds (SVOCs) that might permeate through the soils on site. Elements of such remedial plans may include but are not limited to Worker Health and Safety Plans, Community Health and Safety Plans, and Soil Management Plans.

The proposed regulation serves to ensure that no particular racial, ethnic or socioeconomic group will be compelled to bear a disproportionate share of any negative environmental consequences resulting from the execution of State programs that the proposed regulation implements. The Department will identify whether a site is within an environmental justice area for purposes of determining the appropriate land use, and employ extensive public participation and public notification mechanisms during the remedial process, as it works toward the goal to ameliorate environmental insults in the community.

2. Negative Impacts

No negative impacts upon the environment are anticipated from this action.

B. Coastal Impacts

1. Development Policies

Five development policies are listed in 19 NYCRR 600 pertaining to restoration and revitalization of existing waterfront facilities, siting of water-dependent uses and facilities, development and strengthening of both major and small ports, and locating development near adequate services. This action will allow cleanup and redevelopment upon coastal flood plains, providing adequate environmental protection measures have been taken. This does not represent a change from existing regulations or statutes. Accordingly, this rulemaking will have no major impact. Redevelopment projects in coastal areas will be subject to all applicable laws and regulations including the State Environmental Review Act (SEQRA).

2. Fish and Wildlife Policies

Four fish and wildlife policies are discussed in 19 NYCRR Part 600 that deal with protection of habitat, expansion of recreational use of the resource, and development of commercial fisheries. This action will increase the level of environmental protection since cleanups under the regulated programs would consider the level of cleanup that is needed to protect fish and wildlife resources whereas, such sites left in their current contaminated state would be less protective of fish and wildlife.

3. Agricultural Lands Policy

The intent of this policy is to help protect important agricultural lands in coastal areas. This rulemaking leaves unchanged any restrictions to development on agricultural lands. Therefore, there is no impact.

4. Scenic Quality Policies

Two policies address preventing degradation to, or enhancing, the scenic quality of coastal areas. This rulemaking neither encourages nor discourages development in scenic coastal areas. However, by addressing the contamination under one of the regulatory programs, the further degradation of the scenic quality of coastal areas will be prevented. Therefore, there is a positive impact.

5. Public Access Policies

Two policies are listed to enhance or increase access to water-related recreation resources or facilities. While this action does not, in and of itself, enhance or increase access to water-related recreational resources or facilities, experience reflects that waterfront properties remediated by one of the programs, increases the likelihood of access to water-related recreational resources or facilities. Accordingly, there is a positive impact.

6. Recreation Policies

Three policies address encouraging water-related recreation providing for multiple use in other coastal developments, and enhancing cultural facilities. The discussions in No. 4 and 5 above also apply to Recreation Policies.

7. Flooding and Erosion Hazard Policies

Six specific policies address flood and erosion control: Non-structural measures are encouraged. Excavation or mining in coastal waters should not cause erosion. Erosion control structures should be long term. Development should not negatively affect the flood and erosion control features of coastal areas (e.g., dunes), nor should it cause an increase in flooding or erosion. Thus, there will be no overall impact.

8. Water Resources Policies

Five policies are presented to protect water quality through alternate discharge of chemical or sanitary wastes. Since the action has a goal of reducing the amount of contamination in the environment through the implementation of remedial programs, it is consistent with these policies. The overall impact, therefore, will be positive.

C. Unavoidable Adverse Environmental Effects

None are known.

D. Mitigation Measures

Since no direct adverse environmental impacts have been identified, no mitigation measures are given.

E. Growth Inducement

This action will provide a regulation for the environmentally sound cleanup of contaminated sites. While this rule is intended to provide opportunities for redevelopment, job creation, and overall economic growth, this program is designed to advance the policy of the State of New York to conserve, improve, and protect its natural resources and environment and control water, land and air pollution in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being. The goal of the brownfield cleanup program is to enhance private-sector cleanups of brownfields and to reduce development pressure on "greenfields". As redevelopment and growth are specifically being targeted for abandoned, idled or underutilized properties, the Department has not identified any potential for significant or negative growth inducement as a result of this action.

F. Irreversible and Irretrievable Commitment of Resources

None are known.

G. Use and Conservation of Energy

None are known.

IV. RESPONSE TO COMMENTS

The Department received written comments from November 16, 2005 through March 27, 2006 on the proposed regulations and the Draft Generic Environmental Impact Statement (DGEIS). The following comments were received and included as Section F.5 of the document entitled “Proposed Part 375 Response to Comments” dated June 2006. The entire document can be accessed on the Department’s website at <http://www.dec.state.ny.us/website/der/superfund/>. The revised proposed regulation and a revised DGEIS were issued for a second public comment period on July 12, 2006 with comments received through August 25, 2006. No additional comments were received relative to the revised DGEIS.

F.5 Draft Generic Environmental Impact Statement

F.5.1 Comment: Evaluation of Alternatives. A comment received on the DGEIS indicates that the document only addresses the “no action” alternative, but indicates that many choices were made in the development of the draft regulations that should have been evaluated in the DGEIS. These included such issues as (i) development of separate soil cleanup objectives for protection of human health, ecological resources, and groundwater - the commenter argues that each of the SCOs must be protective of human health and the environment, including groundwater and ecological resources; (ii) in developing the SCOs, the commenter indicates that the DGEIS should evaluate the alternative of developing SCOs that consider such factors as protection of surface water; protection of air (including indoor air, via vapor intrusion); protection of fish and aquatic organisms; protection of adjacent residential uses; additivity and synergy; and the feasibility of achieving more stringent SCOs; and (iii) the cleanup tracks and proposed land uses do not meet the law’s preference for permanence.

Response to F.5.1: See responses to D.8.2, D.8.10, D.8.26, D.8.27, D.8.86, D.8.87 and D.8.94 in the “Proposed Part 375 Response to Comments” dated June 2006.

F.5.2 Comment: Environmental Impacts. A comment received on the DGEIS takes issue with the DGEIS statement that “no negative impacts upon the environment are anticipated from this action” they cite their belief that the draft regulations, as proposed, could have potential adverse environmental impacts from increased paved surface areas and increased public exposure to contaminated soils.

Response to F.5.2: See responses to D.8.26 and D.8.144 in the “Proposed Part 375 Response to Comments” dated June 2006.

F.5.3 Comment: Growth Inducement. The DGEIS states that “the Department has not identified any potential for growth inducement as a result of this action.” The express purpose of the Brownfields Cleanup Program is to “encourage cleanup and redevelopment of brownfield sites.” (ECL 27-1403). Encouraging growth, in particular in blighted urban areas rather than in greenfields, was a major goal of the BCP. The DGEIS should acknowledge that the BCP will induce growth.

Response to F.5.3: The DGEIS has been revised to address the issue of growth inducement in greater detail. While the rule is intended to provide opportunities for redevelopment, job creation, and overall economic growth, this program is designed to advance the policy of the State of New York to conserve, improve, and protect its natural resources and environment and control water, land and air pollution in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being. The goal of the brownfield cleanup program is to enhance private-sector cleanups of brownfields and to reduce development pressure on "greenfields". As redevelopment/growth is specifically being targeted for abandoned, idled or underutilized properties, the Department has not identified any potential for significant or negative growth inducement as a result of this action.

F.5.4 Comment: Impact on Rural Areas. One commenter notes Appendix D of the DGEIS ("Rural Area Flexibility Analysis") states that "The Department has determined that there is a positive impact in that the cleaned up areas will result from these remedial programs." While this may be true in most cases, the draft regulations will have an adverse impact on future uses of rural sites for farming. The proposed Track 1 soil cleanup objectives, which by law must be safe enough for any future use, would not be safe enough for farming. Further, there is no way to ensure that such a restriction can be enforced, since Track 1 cleanups do not require an environmental easement. It is impossible to see into perpetuity what future uses a rural brownfield site may have. It is not inconceivable that farming might take place on a site that is cleaned up under "Track 1" standards and that, unknown to the farmer, food grown on such site will not be safe for human consumption. The DGEIS should acknowledge that excluding farms from the Track 1 unrestricted cleanup standards could have an adverse impact on agricultural use of sites in rural areas.

Response to F.5.4: See response to B.8.45, B.8.49 and D.8.10 in the "Proposed Part 375 Response to Comments" dated June 2006.

F.5.5 Comment: One commenter indicates the Draft Generic Environmental Impact Statement prepared in support of the proposed brownfield regulations fails to comply with the State Environmental Quality Review Act as it does not address the potential adverse environmental impacts to the environmental justice community. The Department ignores its own internal policies requiring a consideration of environmental justice issues when implementing the Environmental Conservation Law. (See Department policy CP-29, Environmental Justice and Permitting, (3/19/03).) The Draft GEIS should be revised to include a detailed analysis of the environmental justice concerns and impacts that would result from implementation of the proposed regulations, particularly in the areas described below where disparate impacts on environmental justice communities could occur.

Response to F.5.5: The DGEIS has been revised to address the issue of environmental justice areas noting that the proposed regulation serves to ensure that no particular racial or ethnic or socioeconomic group will be compelled to bear a disproportionate share of any negative environmental consequences resulting from the execution of State programs that the proposed regulation implements. Also, see response to A.12 in the "Proposed Part 375 Response to Comments" dated June 2006.

APPENDIX A
REVISED REGULATORY IMPACT STATEMENT

REVISED REGULATORY IMPACT STATEMENT

1. Statutory Authority

Chapter 1 of the Laws of 2003, as amended by Chapter 577 of the Laws of 2004, added a new ECL Article 27 Title 14 (the Brownfield Cleanup Program); a new ECL Article 71 Title 36 (Environmental Easements); made extensive amendments to existing ECL Article 27 Title 13 (the State Superfund Program) and to existing ECL Article 56 Title 5 (the Environmental Restoration Program); and made other related amendments.

The Department's general authority to adopt any necessary, convenient or desirable rules to carry out the environmental policy of the State is provided by ECL Article 3 Title 3 Section 1(2), (a), (m); additionally, the Department's specific authority to adopt rules of procedure for adjudicatory proceedings is provided by SAPA § 301(3).

2. Legislative Objective

New York State, in furtherance of its commitment to environmental protection and economic revitalization and growth in the State, has created an array of programs and resources to help clean up and reuse contaminated sites. New York State offers programs that provide for financial assistance, as well as technical assistance and liability protection, for the investigation, remediation and redevelopment of brownfield sites. This rulemaking ensures the continued protection of public health and the environment. It will also assure the most efficient utilization of public and private funding sources for the investigation and remediation of sites under such remedial programs and will ensure remediation efforts are completed as quickly as possible.

Specific to this rulemaking, the State administers the State Superfund Program (SSF), created in 1979; the Brownfield Cleanup Program (BCP), created in 2003; and the Environmental Restoration Program (ERP), created in 1996.

The SSF, created in response to the Love Canal environmental disaster, identifies and characterizes suspected inactive hazardous waste disposal sites. Once identified, the program provides for the investigation and remediation of those inactive hazardous waste disposal sites that have consequential amounts of hazardous waste, which pose a significant threat to public health or the environment. Current Department regulations, Part 375-1, 375-2 and 375-3 govern cleanups under this program.

The BCP, successor to the Voluntary Cleanup Program, enhances private-sector remediation of brownfields and reduces development pressure on "greenfields." This program encourages a cooperative approach among the Department, current property owners, lenders, developers and prospective purchasers to investigate and/or remediate contaminated sites and return these sites to productive use. The BCP addresses the environmental, legal liability and financial barriers that often hinder the redevelopment and reuse of contaminated properties. This program provides brownfield investment incentives, including business and personal tax credits for remediation and development, real property taxes and environmental insurance tax credit.

The ERP was created as one (1) of seventeen (17) programs under the 1996 Clean Water/Clear Air Bond Act. It was amended to provide increased financial assistance and incentives to municipalities for investigation and cleanup at eligible brownfield sites as well as more favorable terms of participation. Under the ERP, New York State provides grants to municipalities for reimbursement of a portion (up to 90 percent on-site and 100 percent off-site) of eligible costs for site investigation and remediation. A municipal cost share is required. Remediation may include cleanup of contamination in environmental media, such as soil and groundwater, and may also include building demolition and asbestos removal for which reimbursement up to 50 percent of eligible costs is available. In addition, the ERP provides liability protection, including an indemnification for any claims and defense by New York State for claims made against the funding recipient. Current Part 375-4 governs the investigation and cleanup of projects under this program.

In 2003, the Legislature passed and the Governor signed into law historic legislation, which created the BCP, enhanced the ERP and refinanced and reformed the SSF. Again, in 2004, the Legislature passed, and the Governor enacted, laws affecting these three remedial programs. The goal of the 2003 and 2004 statutory changes was to refinance the State Superfund Program, and to create new and enhance existing programs to encourage private sector cleanups of contaminated properties known as brownfields and to reduce development pressure on greenfields. By cleaning up abandoned, idled or underutilized brownfield sites and restoring these properties to productive use in the community, local economies across the State can be revitalized.

3. Needs and Benefits

The Department's current regulations governing the SSF and ERP are contained in 6 NYCRR Part 375. Revising, reorganizing, and restructuring existing Part 375, including the provision of regulations for the BCP, is necessitated to cover the requirements provided by, and to provide for the implementation of, the 2003 and 2004 Superfund/Brownfield Acts. These laws were enacted subsequent to the previous Part 375 rulemaking. Further, they will improve the readability of the regulations and decrease confusion. These regulations are needed to provide for the orderly and efficient administration of the SSF, BCP and ERP, including the oversight and implementation of remedial programs; provision of grants; granting of liability protections; and the certificates of completion.

Additionally, the regulations will facilitate disbursement of monies to municipalities and the providing of tax credits to private parties; all of which will enhance public health and the environment by ridding the environment of undesirable contaminants and promoting the use of previously contaminated properties.

The major needs and benefits result from the following:

a. Subpart 375-1 is the compilation of common information for subsequent subparts of 375 including a description of the general purpose, applicability, construction and abbreviations, and definitions, permit exemptions, institutional controls, environmental easements, annual certifications and citizen participation, to ensure orderly and efficient administration of ECL 27-

13 (State Superfund Program), ECL 27-14 (Brownfield Cleanup Program), ECL 52-3 (Hazardous Waste Site Remediation Projects), ECL 56-5 (Environmental Restoration Program), and ECL 71-36 (Environmental Easements).

b. Subpart 375-2 is a reorganization and restructuring of the existing Part 375 in order to enhance understanding and readability. Additionally, some provisions from other remedial programs (e.g., certificate of completion, liability protections, etc.) have been added for consistency and to facilitate the reuse and redevelopment of remediated superfund sites.

c. Subpart 375-3 is a new regulation. This subpart implements the codified BCP. Some of the new provisions are specifically required to be included in this rulemaking (e.g., cleanup tracks).

d. Subpart 375-4 reorganizes, restructures and revises the existing 375-4 to eliminate conflicts with the 2003 and 2004 laws (e.g., the reimbursement amounts have been increased to 90 percent on-site and 100 percent off-site of eligible costs) as well as to increase consistency with the other remedial programs. This will enhance the understandability of the rule.

e. Subpart 375-6 contains soil cleanup objectives applicable to the remedial programs set forth in subparts 375-2 through 375-4. Additionally, it sets forth the procedures for development of soil cleanup objectives for compounds not included in the soil cleanup objective tables.

4. Costs

This rulemaking implements the statutorily created remedial programs without substantive changes, and as such should not result in substantial additional costs to the regulated community or other branches of local or State government. Further, for purposes of the BCP and ERP, the programs are not regulatory programs, i.e., participation in ECL Article 27 Title 14 and ECL Article 56 Title 5 is voluntary.

Costs to state government, local government, private regulated parties and the Department are discussed below.

a. Costs to regulated community

Promulgation of these regulations will have no fiscal effect on private regulated parties beyond what they already experience under existing law. Additionally, to the extent these parties elect to participate in the BCP, costs associated with the program are subject to various tax credits. These tax credits offset costs that the parties may otherwise be liable to incur to address the sites' contamination.

b. Costs to the Department, State, and Local Government

The costs to the Department for implementing these proposed regulations should not be substantial. The proposed rulemaking requires no additional statutory authority, does not create

new regulatory programs other than ones created by statute, does not expand existing regulatory programs and does not increase the universe of the regulated community beyond that which is already required by State statutes.

Further, promulgation of these regulations is required by statute and the proposal will allow the State to implement the program in a more efficient, more uniform manner. Also, there are no new costs for other State agencies.

Promulgation of these regulations will have no fiscal effect on local government beyond what they already experience under existing law. For example, if they are the owner of contaminated property or are otherwise responsible for the contamination at the site; or costs that may be related to the environmental easement provisions in the statute. Moreover, the cost to remediate municipally owned contaminated properties could be substantial. Under the ERP, the fiscal burden to municipalities associated with contaminated property investigation and remediation will be reduced by State assistance grants of up to 90 percent of the eligible on-site and 100 percent of the eligible off-site costs. The remaining portion can be covered through additional federal, State or non-responsible party private party monies.

5. Local Government Mandates

No substantive recordkeeping, reporting, or other requirements will be imposed on local governments by this rulemaking, which are not otherwise created by statute. Also, participation in the BCP and ERP is voluntary, therefore, any obligations under the BCP or ERP are either required by statute or imposed as a result of a party's voluntary and considered action to apply for and participate in those programs.

6. Paperwork

No substantive paperwork is proposed other than that which is either required by statute, or provided for consistency across the various remedial programs. Further, any additional paper requirements are minimal in the scope of the overall remedial programs covered by the rulemaking. For instance, application forms are required for the BCP and ERP, as required by statute. If a person wishes to apply for a brownfield cleanup project, an application must be completed and submitted with requested information/documentation. The regulations discuss the minimal amount of information needed to consider such an application. Reporting obligations are also included in the rulemaking, consistent with the BCP statutory requirements, as well as present practice in the SSF and the ERP (e.g., final engineering reports, feasibility studies or alternatives analyses, etc.). These reporting obligations are consistent with the legislative intent for the Department to oversee remedial programs being implemented in New York State and do not cause any undue costs or burdens.

7. Duplication

The proposed new regulations and amendments to existing regulations will not result in a duplication of State regulations.

8. Alternatives

In order to implement the recent statutory changes, there are no other viable alternatives available other than to revise the existing Part 375.

Certain revisions included in this rulemaking action are mandatory. Specifically, i) ECL 27-1407(9)(f), as enacted by Laws of 2003 Chapter 1, Part A, Section 1, as amended by Laws of 2004 Chapter 577, Part A, Section 3 mandates a regulation defining the term “substantial interest” for purposes of the Department’s discretionary authority to reject a request for participation in the Brownfield Cleanup Program if the person submitting is an individual or other person who had a “substantial interest” in an entity which engaged in conduct justifying denial of a permit; ii) ECL 27-1415, (4), (6), as enacted by Laws of 2003 Chapter 1, Part A, Section 1, as amended by Laws of 2004 Chapter 577, Part A, Section 7, mandate a regulation, with input from the Department of Health, creating a multi-track approach to remediation, including tables of remedial action objectives for soil based on use; and iii) ECL 27-1323(4)(c)(2), as enacted by Laws of 2003 Chapter 1, Part E, Section 9, as amended by Laws of 2004 Chapter 577, Part E, Section 3, mandates a regulation establishing standards and practices for satisfying the inquiry requirement for purposes of the third-party affirmative defense.

Moreover, various regulatory provisions under Part 375 addressing the SSF or ERP are in conflict with current law, and need to be revised to reflect the 2003 and 2004 Acts. Additionally, the centerpiece of Chapter 1 of the Laws of 2003 is the Brownfield Cleanup Program; the legislative purpose of the new ECL 27-1403 is to encourage voluntary remediation and redevelopment. It is to be anticipated that uncertainties inevitably associated with implementation of the statute alone would tend to be a disincentive to participation in the programs.

If the State were to follow the “no action” alternative, we would be disregarding a statutory mandate to develop regulations, would have outdated and inaccurate regulations, and would jeopardize the consistency and predictability that all stakeholders sought in advocating for the recent reforms; especially as it relates to soil cleanup numbers and cleanup tracks.

9. Federal Standards

The proposed changes will make the State Superfund Program’s remedy selection criteria consistent with federal standards, namely through the inclusion of land use as a remedy selection criterion. Other than that aspect of this proposed rulemaking, there are no federal standards applicable to this rulemaking.

10. Compliance Schedule

There is no need for a compliance schedule. The remedial programs covered by this rulemaking are currently being administered per existing regulations (SSF and ERP) or the statutory framework.

June 8, 2006

APPENDIX B
REVISED REGULATORY FLEXIBILITY ANALYSIS

REVISED REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Proposed Amendments to 6 NYCRR Part 375, relating to regulations governing the State Superfund Program (SSF), the Brownfield Cleanup Program (BCP), and the Environmental Restoration Program (ERP).

1. Effect of rule

The proposed rulemaking does not place any additional burdens on small business or local governments, create new regulatory programs, expand existing regulatory programs or increase the universe of regulatory requirements applicable to the regulated community beyond that which is required by State statutes.

Accordingly, the number of small businesses and local governments affected by the rulemaking will not be more than those already affected by State statute or existing regulations.

Further, the BCP and ERP are voluntary programs, which means only those eligible entities that elect to participate will be affected. Under the ERP, grants are not available to any businesses or individuals. Therefore, the amended regulations to subpart 375-4, by definition, will have no direct impact on small businesses.

2. Compliance Requirements

There are no new substantive reporting or record keeping requirements for small businesses or local governments as a result of the proposed rulemaking. The proposed rulemaking either restructures existing regulations or implements recent statutory changes of the Environmental Conservation Law. The reporting obligations contained in the regulations are derived either from the Environmental Conservation Law, existing regulations or were included to provide consistency among the three remedial programs. These obligations are consistent with the legislative intent for the Department to oversee the implementation of remedial programs in New York State and will allow the Department to timely issue Certificates of Completion after the successful implementation of the remedial programs.

3. Professional Services

The quantity and types of service needed will remain close to the present level. The proposed rulemaking does not involve any major program changes, with regard to the scope of the program, which are not already mandated by State statute or existing regulation. The Department has, and will continue to, conduct a variety of education and outreach activities directed at a diverse audience, including small businesses. One such activity is making information available on the agency's web page to explain the recent changes in the law and to answer questions about the law, our remedial programs and the proposed regulations.

4. Compliance Costs

Small businesses and local governments should not incur any additional costs, neither initial capital costs nor annual compliance costs, to comply with the proposed rulemaking other than those incurred as a result of the statutory provisions. This is particularly true since the BCP and ERP are voluntary programs.

5. Economic and Technological Feasibility

The proposed rulemaking, for the most part, clarifies existing requirements, makes revisions to existing regulations for programmatic consistency, or implements into regulation recent State statutory enactments and amendments. The proposed rulemaking causes no added economic burdens or requires any additional sophisticated environmental control technology, other than that which may be required by statute. Accordingly, implementation of these rules will be economically and technologically feasible for small businesses and local governments.

6. Minimizing Adverse Impact

It is the Department's belief that the proposed regulations will not cause a significant economic burden to the small business community or local governments. To the contrary, there is a positive impact in that the cleaned up areas will result in alternative uses. Further, there are financial incentives and liability protections that afford all parties, including small businesses and local governments, incentives to participate in the programs covered by the proposed rulemaking.

The proposed rulemaking is also intended to be less complex and easier to understand than existing regulations.

7. Small Business and Local Government Participation

The Department has an ongoing statewide outreach program to regulated communities and interested parties including small businesses and local governments. This includes a Teleconference broadcast to 17 locations across the State, held in November and December 2003, public workshops which were held in different parts of the State in May and June 2004; over 25 seminars around the State; public meetings on the proposed rulemaking at 7 locations across the State in November and December 2005; public hearings on the proposed rulemaking at 3 locations across the State in March 2006; and opportunities through the Department's website to ask questions and/or obtain answers about the new regulations. These outreach efforts have included mailings to environmental groups, citizen advisory committees, environmental management councils, statewide organizations, regulated community and other interested parties, including small businesses and local governments.

June 8, 2006

APPENDIX C
REVISED JOB IMPACT EXEMPTION STATEMENT

REVISED JOB IMPACT EXEMPTION STATEMENT

In accordance with Section 201-a(2)(a) of the State Administrative Procedures Act (SAPA), a Job Impact Statement has not been prepared for this rule as it is not expected to create a substantial adverse impact on jobs and employment opportunities in New York. To the contrary, it is expected to create, as set forth below, a positive impact on employment opportunities.

New York State, in furtherance of its commitment to environmental protection and economic revitalization and growth in the State, has created an array of programs and resources to help clean up and reuse contaminated sites. New York State offers programs that provide for financial assistance, as well as technical assistance and liability protection, for the investigation, remediation and redevelopment of sites. Specific to this rulemaking, the State has the State Superfund Program (SSF), created in 1979; the Brownfield Cleanup Program (BCP), created in 2003; and the Environmental Restoration Program (ERP), created in 1996. This rulemaking consists of Part 375, which is subdivided into the following parts. The subparts of Part 375 are: subpart 375-1, containing general provisions relating to the implementation of the foregoing programs; subpart 375-2, addressing the SSF; subpart 375-3, addressing the BCP; subpart 375-4, addressing the ERP, and subpart 375-6, containing the remedial program soil cleanup objectives.

The New York State Department of Environmental Conservation (Department) has determined that the nature and purpose of the proposed regulations will have a positive impact on jobs and employment opportunities throughout the State. Projects are in their initial stages, therefore exact data regarding job creation and industry growth are unavailable. However, presently over 200 applications have been submitted for the BCP and ERP, and new sites have been recognized as potential sites under the SSF.

Subpart 375-1 contains a description of the general purpose, applicability, construction, abbreviations and definitions discussed throughout 375. The purpose of this section is to ensure the orderly and efficient administration of ECL 27-1301 et seq. (SSF), ECL 27-1401 et seq. (BCP), ECL 52-0301 et seq. (Hazardous Waste Site Remediation Projects), ECL 56-0501 (ERP), and ECL 71-3601 et seq. (Environmental Easements). These general provisions have been determined to have no direct negative effect on the generation of employment opportunities.

Subpart 375-2 applies to the development and implementation of remedial programs aimed at the cleanup of inactive hazardous waste disposal sites and related matters through the SSF. The expansion of the statutory definition of hazardous waste to include hazardous substances has increased the number of eligible cleanup sites. This increase of recognized eligible sites translates to an increase of long term temporary employment due to remediation. Further, the increase in the universe of sites provides for additional business opportunities and redevelopment opportunities.

Moreover, this proposed regulation includes an explanation of the provisions for Technical Assistance Grants (TAGs), as provided in statute, which are available for eligible community based not-for-profit organizations. TAGs provide community based not-for-profit organizations, otherwise unable to participate in the remediation projects due to cost and lack of

technical expertise in the investigation phase, funding to cover the technical aspects required during the investigation phase.

These increased employment, business, redevelopment and TAG opportunities have been determined to have a positive impact on job creation.

Subpart 375-3 applies to a “person” who voluntarily participates in the BCP. Currently, the Department has received almost 200 applications for the BCP. This voluntary program encourages private entity involvement in the investigation and remediation of contaminated properties, resulting in jobs and a subsequent positive impact on the availability of local employment opportunities.

The statute provides for tax credits for parties who perform remedial activities under the BCP. While this rulemaking does not deal with the tax provisions themselves (the Department of Taxation and Finance will address these issues), this rulemaking does provide for the programmatic requirements in order to obtain the certificate of completion, which is needed to avail oneself of tax credits. The tax credits will offset costs associated with real property taxes, site preparation, property improvements, on-site groundwater cleanup costs, and environmental insurance premiums. The tax credits will start to accrue upon signing of the Brownfield Cleanup Agreement and become effective in the tax year beginning April 1, 2005. The real property tax credit is based upon a jobs formula and requires a minimum of 25 full time employees. Tax credits for businesses not only attract new business but also retain existing business. Subpart 375-3 will positively impact jobs and employment opportunities.

Subpart 375-4 applies to municipalities that voluntarily participate in the ERP. Through this program, the State provides grants to municipalities to assist in investigating and remediating contaminated properties, which will result in increased employment. Potential redevelopment will also create additional employment. The ERP will have a positive impact on job creation, much like the BCP.

Subpart 375-6 contains soil cleanup objectives applicable to the remedial programs set forth in subparts 375-2 through 375-4, which, as stated above, will have a positive impact on employment and redevelopment opportunities. Additionally, subpart 375-6 sets forth the procedures for development of soil cleanup objectives for compounds not included in the soil cleanup objective tables.

Part 375 generally will result in the creation of temporary, possible long term, employment during the property's investigation, site remediation and redevelopment. Depending on the redevelopment plans of particular sites, an increase of permanent jobs and secondary business activities will occur.

Therefore, the Department concludes that adoption of these regulatory proposals should not have a substantial adverse impact on jobs within New York State.

June 8, 2006

APPENDIX D
REVISED RURAL AREA FLEXIBILITY ANALYSIS

REVISED RURAL AREA FLEXIBILITY ANALYSIS

Proposed Amendments to 6 NYCRR Part 375, relating to regulations governing the State Superfund Program (SSF), the Brownfield Cleanup Program (BCP), and the Environmental Restoration Program (ERP).

1. Types and Estimated Number of Rural Areas

This rule will apply Statewide, to all 44 rural counties and 71 additional rural towns. All entities subject to the regulations, including those in rural areas, will be affected.

2. Reporting, Recordkeeping, Other Compliance Requirements, and Need for Professional Services

No substantive reporting, recordkeeping, compliance requirements, or professional services, other than those imposed by State statute or existing regulations and programs, will be imposed on local governments by this rulemaking. Each program requires various reports, work plans and citizen participation activities to be conducted and documented. As noted, these requirements are derived from current requirements (statutory, regulatory or programmatic).

3. Costs

No local mandates will be created by this rule, and no different or additional costs will be imposed because the businesses are in a rural area. All mandates and costs are a result of statutory provisions and not this rulemaking. Additionally, costs associated with two of the remedial programs covered by this rulemaking, the BCP and ERP, are offset through tax credits (BCP) or substantial reimbursement through grants (ERP).

4. Minimizing Adverse Impact

It is the Department's belief that the proposed regulations will not cause a significant economic burden to the rural areas. The proposed rulemaking does not place any additional burdens on rural areas, create new regulatory programs, expand existing regulatory programs or increase the universe of regulatory requirements applicable to rural areas beyond that, which is required by State statutes. The Department has determined that there is a positive impact in that the cleaned up areas will result from these remedial programs.

5. Rural Area Participation

The Department has an ongoing statewide outreach program to regulated communities and interested parties including public and private interests in rural areas. This includes a Teleconference broadcast to 17 locations across the State, held in November and December 2003; public workshops which were held in different parts of the State in May and June 2004; over 25 seminars around the State; public meetings on the proposed rulemaking at 7 locations

across the State in November and December 2005; public hearings on the proposed rulemaking at 3 locations across the State in March 2006; and opportunities through the Department's website to ask questions and/or obtain answers about the new regulations. These outreach efforts have included mailings to environmental groups, citizen advisory committees, environmental management councils, statewide organizations, regulated community and other interested parties, including those located in rural areas.

June 8, 2006

APPENDIX E
REVISED BACKGROUND DOCUMENTS FOR SOIL CLEANUP OBJECTIVES

Appendix E can be accessed at:

<http://www.dec.state.ny.us/website/der/superfund/index.html>