

Summary of Express Terms

Amendments to 6 NYCRR Part 375

Environmental Remediation Programs

Full text of the Express Terms is available on the New York State Department of Environmental Conservation's website at <https://www.dec.ny.gov/regulations/propregulations.html>

Part BB of Chapter 56 of the Laws of 2015 (“the 2015 Amendments”) amended and added new language to the Environmental Conservation Law (ECL), and the various other laws of New York State. This rule making amends 6 NYCRR Part 375 (Part 375), Environmental Remediation Programs, to conform the 2015 Amendments to the New York State Department of Environmental Conservation's (DEC) regulations with respect Brownfield Cleanup Program (BCP) at ECL Article 27, Title 14; addresses and enhances requirements pertaining to the Inactive Hazardous Waste Disposal Site Remedial Program (also known as State Superfund Program, SSF) at ECL Article 27, Title 13 and the Environmental Restoration Program (ERP) at ECL Article 56, Title 5; and updates the soil cleanup objectives (SCOs) based on review and comments received DEC staff and the New York State Department of Health (DOH).

The rule making also amends Part 375 to incorporate needed changes, clarifications, and modifications to the regulations based on the experience developed during the first decade of implementing the BCP. The changes will increase consistency across remedial programs (SSF, BCP, ERP) administered by DEC's Division of Environmental Remediation and provide DEC with the tools necessary to more effectively implement these programs.

Notable proposed amendments to Part 375 are described in greater detail below. Additional

minor, non-substantive, grammatical and formatting changes are proposed in each subpart as needed.

Subpart 375-1 (General Remedial Program Requirements)

Changes to section 375-1.2 (Definitions) include:

1. The definition of “brownfield site” is revised to reflect the amended statute, which references the presence of contamination rather than the complication of reuse.
2. The definitions of “change of use” is removed from each of subparts 375-2, 375-3 and 375.4, and added to 375-1, providing a consistent definition for all programs.
3. The definition for “responsible party” is moved from subpart 375-2 to 375-1. The term responsible party is also used in Part 375-3, and a consistent definition should apply to all uses of that term.
4. The definition for “historic fill” is removed. That term is not used in Part 375 (outside the definition itself). This term has also been removed from the Part 360 (solid waste) regulations.
5. The definition of “off-site contamination” is revised to include soil vapor and sediment.

The general provisions that apply to orders and agreements are clarified. The timeframe for payment of state costs are clarified to enhance DEC’s ability to collect payment. Changes in Part 375-1.5(b)(2)(i) specify that requests for dispute resolution under an order or agreement be sent to the Division Director and provides a time frame. A new provision at Part 375-1.5(b)(6) explicitly states that DEC has the authority to initiate the termination of an order or agreement with cause.

Additional details are set forth in section 375-1.6 related to work plans and report requirements.

A new provision requires daily reports during field work. This provision is intended to ensure that sufficient oversight is provided by the remedial party and documentation required for the Final Engineering Report (FER) is generated during the field work. Work plans will be required to provide details about import/export of fill and other materials. The information required to be provided in the FER, which is currently provided in templates and guidance, is added to the regulation. This includes a description of the work completed in accordance with the work plan, any changes to the approved design or work plan, and a list of wastes, documentation of disposal, manifests, etc. The certification requirements for the FER are updated to clarify who the certifying party(ies) is and the level of oversight required.

DEC has created administrative inactive hazardous waste disposal site classifications which DEC has posted on the public website. These classes are an important element used in the management of sites (particularly for sites in the BCP program and sites being evaluated for listing on the Registry), a new section is added at 6 NYCRR 375-1.7 to describe the specific administrative classes. Classes “A” and “C” are used in the BCP to denote sites that are “active” and “complete”, respectively. Class “P” is assigned to sites being evaluated for listing on the Registry. Additional definitions regarding evaluating the appropriate class were necessary and include:

1. The definition of “remedial site” in section 375-1.2 is revised to include sites being evaluated for listing on the Registry (Class P sites).
2. A definition is added to section 375-1.2 for “site characterization” which is a preliminary investigation used to determine whether a potential site (or Class “P” site) should be listed on the Registry.

The remedial program requirements found in section 375-1.8 are modified to include the reconstruction of habitat disturbed by the remedial program, to acknowledge DEC's existing authority under 6 NYCRR Part 182, Part 608, Part 661, and Part 663. Groundwater plume stabilization and management requirements applicable to volunteers in the BCP are clarified to state that a volunteer is required to evaluate the on-site plume and prevent further migration of any plume off-site. Activities allowed under restricted use scenarios (particularly agricultural) are also clarified to allow raised planters, roof-top gardens, and, if approved by DEC, community gardens.

Clarifying details are added to the Certificate of Completion (COC) provisions in 375-1.9(e) to specify that DEC can revoke a COC if the COC holder misrepresented facts regarding their status as a volunteer or the qualification for the project for tangible property credits, and that COCs may not be transferred to a responsible party.

Modifications to miscellaneous section 375-1.11 clarify notification and plan requirements when there is a change of use. Modifications to permits section 375-1.12 clarify DEC's authority regarding permit waivers to include disturbance to habitat subject to certain regulations.

Subpart 375-2 (Inactive Hazardous Waste Disposal Site Remediation Program)

Revisions in this subpart clarify that:

1. DEC has the authority to enter into a "cash out" consent order in circumstances where it is implementing a remedy.
2. a site is designated on the Registry on the date that the director of the Division of Environmental Remediation or their designee enters their approval of the reclassification in the electronic database.

3. The presence of engineering controls to address potential vapor intrusion would not necessarily prevent a site from being delisted.

Subpart 375-3 (Brownfield Cleanup Program)

Most of the proposed amendments are made within this subpart and are mandated by the 2015 legislation.

The following terms are defined and are consistent the intent of the legislation.

1. “Cover system requirements” or “site cover” means clean soil cover of one or two feet in thickness based on intended use with a clear demarcation layer as a visual cue defining clean soil from remaining contamination where possible and appropriate.

2. “Potentially Responsible Party (PRP) search” is a search to identify PRPs who may be legally liable for contamination at a particular site. A PRP search is defined so that volunteers seeking entry of a Class “2” site in the BCP have a clear understanding of the search required as part of application.

3. The proposed regulations will not include a definition of “site preparation costs” because the 2015 Amendments changed the Tax Law and specifically defined “site preparation costs” at section 21 of the Tax Law. Thus, this definition will not be included in Part 375 since it is codified in statute.

These regulations clarify eligibility requirements in section 375-3.3 for the BCP. Class 2 Superfund sites are now eligible for the program if there is no viable responsible party. The regulations also clarify the information required to demonstrate “contamination” for eligibility purposes and incorporate the provisions introduced in the 2015 legislation that a property is not

eligible for the BCP unless the site “requires remediation.” Criteria used to determine the site’s anticipated use are also provided.

6 NYCRR 375-3.3(d) is added to formalize the requirements related to tangible property tax credits (TPCs) from the statute related to the source of contamination. For example, TPCs are not available if groundwater contamination or soil vapor issues are entering the site from an off-site source or if the property was previously remediated (under another program) for the property’s “then intended use.”

Additional requirements for TPCs are in 6 NYCRR 375-3.3(e) for a site in a city with a population of one million or more to demonstrate substantial government assistance when applying for TPCs under the ‘underutilized’ gateway. Clarification of requests for DEC’s eligibility determination for TPCs is addressed in 6 NYCRR 375-3.3(f).

6 NYCRR 375-3.8(e) is modified to clarify the details related to the institutional and engineering controls and soil cover for parties seeking any of the four Tracks (1, 2, 3, or 4).

The proposed regulations also clarify that a volunteer may be required to conduct an off-site investigation to complete the exposure assessment including groundwater and soil vapor intrusion sampling.

Subpart 375-4 (Environmental Restoration Program)

Minor changes are proposed for Subpart 375-4. The revisions clarify that DEC prioritizes ERP applications based on need. Clarifications to the ERP explain that DEC can undertake the remediation using ERP funds, complete the remediation and incur the costs on behalf of the municipality, and be paid by the municipality through the ERP.

Subpart 375-6 (Soil Cleanup Objectives)

The proposed regulations update and revise various SCOs. Over half of the SCOs are revised, most by a factor of two or three, but some changed more substantially. A full explanation of the changes is provided in an addendum to the Technical Support Document that was issued in September 2006.

An illustrative example of the changes is Hexavalent Chromium where the Protection of Ecological Resources SCO will increase from 1 to 20 part per million (ppm) and residential and restricted residential protection of public health SCOs will decrease from 22 to 1 ppm and from 110 to 1 ppm, respectively.

Four new chemicals are added to Tables 375-6.8(a) and 375-6.8(b). DOH recently adopted a maximum contaminant level for two contaminants of emerging concern, perfluorooctanoic acid and perfluorooctanoic sulfonate. SCOs for these chemicals are adopted to provide criteria for direct exposure to soil contaminated by these chemicals, and for protection of groundwater. The protection of groundwater SCOs were calculated using the same approach used for all other organic chemicals in the regulations. DEC will reevaluate these numbers as research on the interaction with these chemicals and soil progresses. SCOs are also added for aniline and nitrobenzene. These chemicals are contaminants of concern at one or more remediation sites since the original SCOs were published. One pesticide, 2,4,5-TP Acid (Silvex) is being removed. A review of over 11,000 samples found no detections of this pesticide above the unrestricted use criteria. DEC did not find any evidence that this chemical is found at elevated levels. This is the only herbicide included in the SCOs. If herbicides are identified as a potential contaminant of concern at a site, then sampling for herbicides (including, but not limited to 2,4,5-TP acid) could still be required.

Existing footnotes are amended as needed, and additional footnotes added accordingly.

In summary, the proposed amendments to 6 NYCRR Part 375 will:

1. clarify general remedial program requirements [Subpart 375-1];
2. address requirements pertaining to SSF at ECL Article 27, Title 13 [Subpart 375-2];
3. conform the 2015 ECL amendments to DEC's regulations with respect to the BCP at ECL Article 27, Title 14 [Subpart 375-3];
4. address requirements pertaining to ERP at ECL Article 56, Title 5 [Subpart 375-4]; and
5. update SCOs [Subpart 375-6].

SUMMARY OF REGULATORY IMPACT STATEMENT

Amendments to 6 NYCRR Part 375

Environmental Remediation Programs

Full text of the Regulatory Impact Statement is available on the New York State Department of Environmental Conservation's website at <https://www.dec.ny.gov/regulations/propregulations.html>.

INTRODUCTION

6 NYCRR Part 375 describes the requirements for environmental remediation programs, including those performed under an order, agreement, stipulation or State assistance contract entered into by the New York State Department of Environmental Conservation (DEC). The Division of Environmental Remediation (DER) proposes to revise portions of this regulation to support DEC's mission to protect public health and the environment in New York State (State).

1. STATUTORY AUTHORITY

Part BB of Chapter 56 of the Laws of 2015 ("the 2015 Amendments") amended and added new language to the Environmental Conservation Law (ECL), and the various other laws of the State. This rule making amends 6 NYCRR Part 375 (Part 375), Environmental Remediation Programs, to conform with the 2015 Amendments with respect Brownfield Cleanup Program (BCP) at ECL Article 27, Title 14; addresses and enhances requirements pertaining to the Inactive Hazardous Waste Disposal Site Remedial Program (also known as State Superfund Program, SSF) at ECL Article 27, Title 13 and the Environmental Restoration Program (ERP) at ECL Article 56, Title 5; and updates the soil cleanup objectives (SCOs) based on review and comments received by DEC staff and the New York State Department of Health.

DEC's general authority to adopt any necessary, expedient, or desirable rules to carry out the environmental policy of the State is provided by ECL Article 3, Title 3, Section 3-0301(2)(a) and (m); additionally, DEC's specific authority to adopt rules of procedure for adjudicatory proceedings is provided by State Administrative Procedure Act (SAPA) § 301(3).

2. LEGISLATIVE OBJECTIVES

In furtherance of its commitment to environmental protection and economic revitalization, the State, created an array of programs and resources to help clean up and reuse contaminated sites. Specific to Part 375's rulemaking, the State administers the SSF, created in 1979; the BCP, created in 2003; and the ERP, created in 1996. General provisions that apply to all programs are found in subpart 375-1, while provisions specific to the SSF, BCP and ERP are found in subparts 375-2, 375-3 and 375-4, respectively.

The SSF identifies and characterizes suspected inactive hazardous waste disposal sites and also provides for the investigation and remediation of sites that pose a significant threat to public health or the environment.

The BCP encourages private-sector remediation of contaminated sites and reduces development pressure on "greenfields." The BCP addresses abandoned, idled, or underutilized brownfield sites that are often located in already industrialized or urban areas and restores these properties to productive use in the community. Local economies are improved by encouraging use of existing infrastructure rather than creating new infrastructure to reach "greenfields." The BCP encourages a cooperative approach among the DEC, current property owners, lenders, developers and prospective purchasers to investigate, remediate, and return contaminated sites to productive use. The BCP addresses the environmental and financial barriers and legal liabilities that often hinder the redevelopment of contaminated properties by providing financial incentives. Incentives include tax credits for remediation, related development and real property taxes.

The ERP was created under the 1996 Clean Water/Clear Air Bond Act. This remedial program provides increased financial assistance and incentives to municipalities for investigation and clean up at municipally-owned sites.

3. NEEDS AND BENEFITS

The proposed amendments to Part 375 are mandated by the 2015 Amendments. DEC is making additional amendments to Part 375 to incorporate clarifications and modifications based on the experience developed during the last 10 years which will increase consistency across remedial programs administered by DER and provide the tools necessary to more effectively implement the programs. These changes are detailed in the Summary of Express Terms and summarized in the Regulatory Impact Statement.

1. Subpart 375-1.2(b) revises the definition of a brownfield site, based on the 2015 Amendments.
2. Subpart 375-1.6(a) adds a requirement for daily reports to be submitted for all field activities.
3. Subpart 375-1.11(d)(2) requires sites to submit a work plan for any proposed change of use activity. DEC will maintain the ability to waive the requirement if the change does not include a physical alteration of the site.
4. Subpart 375-1.12(f) clarifies that habitats disturbed during remedial activities will require reconstruction.
5. Subpart 375-3.2 adds a definition for “site cover” to describe the costs that are eligible for tax credits for BCP sites.
6. Subpart 375-3.3(b)(2) allows Class 2 SSF sites, which represent a significant threat to public health or the environment, to enter the BCP program with specific requirements.
7. Subpart 375-3.8(b) clarifies that a volunteer is required to perform a qualitative exposure assessment to analyze contamination emanating from the site.
8. Subpart 375-3.8(e) changes which cleanup track a site is eligible for when Institutional Controls/Engineering Controls are used.

9. Subpart 375-6 Tables 375-6.8(a) and (b) include revisions to SCOs as a result of DEC's required periodic review. Four new chemicals are added: aniline, nitrobenzene, perfluorooctanoic acid (PFOA) and perfluorooctanoic sulfonate (PFOS). The changes are summarized and explained in the July 2020 Addendum to the Technical Support Document (issued in September 2006), which is included in this rulemaking package. Additional minor, non-substantive, grammatical, and formatting changes will also be made to each subpart of Part 375 as needed.

4. COSTS

The updates to Part 375 will result in only nominal additional costs to the regulated community or other branches of local or State government. The BCP and ERP programs are not compulsory, so participation in ECL Article 27, Title 14 and ECL Article 56, Title 5 is voluntary.

a. Costs to Regulated Parties

Promulgation of these regulations are anticipated to have minimal increased costs, examples of which are provided below. Costs provided were developed by DEC based on our own contracting experience and reviewed by engineering firms working in these programs. A more detailed explanation of the estimated costs is provided in the full RIS.

- i. Daily Reports (Subpart 375-1.6(a)) – Additional costs range from none up to an estimated \$150 per day.
- ii. Change of Use Work Plans (Subpart 375-1.11(d)(2)) – Costs are estimated to range from \$25,000 to \$40,000, which will vary based on site specifics.
- iii. Habitat reconstruction (Subpart 375-1.12(f)) – This will not increase costs, as this is an existing requirement outside of Part 375.
- vi. PRP Search – This cost is estimated at a minimum of \$25,000 and could be significantly more for sites where ownership is complicated.

v. Off-Site Investigation (Subpart 375-3.8(b)(2)) – The cost to the remedial party is estimated to be \$25,000 on average but could range up to \$50,00-\$75,000 for sites with technical or logistical challenges.

vi. Establish SCOs for PFOA and PFOS (Subpart 375-6) – PFOA and PFOS were added to the list of hazardous substances in 6 NYCRR Part 597 on April 26, 2016. Additionally, DOH recently adopted a maximum contaminant level for PFOA and PFOS. A true accounting of the remediation costs associated with these new SCOs will not be possible until the extent of PFOA and PFOS contamination is known at a site.

vii. Change of SCOs (Subpart 375-6) – For the SCOs whose values decreased, there may be some increase in costs associated with site remediation. For the SCOs whose values increased, there should be a decrease in costs associated with site remediation.

Overall, the Part 375 amendments are anticipated to result in minimal cost changes to regulated entities. There are mechanisms to offset costs for sites in the BCP and ERP. The cost of SSF work is borne in the first instance by the parties responsible for the contamination or by the State if there is no viable responsible party.

b. Costs to DEC, State and Local Governments

There will be continued costs incurred by DEC that exist under current statutes and regulations in administering the Part 375 remedial programs. There will be some costs to DEC to review and approval such newly required documents as PRP searches and daily reports. DEC's regulation and administration of the remedial programs in Part 375 currently necessitates extensive review of documents and data; therefore, the additional documents resulting from the amendments are proportionally inconsequential.

The proposed rulemaking requires no additional statutory authority, does not create new regulatory programs, does not expand existing regulatory programs and does not expand the regulated community. These regulations generally will not impose any additional direct costs on local governments.

5. LOCAL GOVERNMENT MANDATES

This rule making is not a mandate on local governments. Local governments have no additional compliance obligations compared to other subject entities.

To the extent that New York City certifications are required for projects to meet the definitions of underutilized or affordable housing, these certification programs are in place or are developed and implemented at the discretion of the local government.

6. PAPERWORK

Additional paperwork associated with the proposed amendments to Part 375 will be related to the requirements for the submittal of daily reports during all field activities and change of use work plans at sites where remediation has been completed. No other reporting requirements are being added.

7. DUPLICATION

The proposed rulemaking is not intended to duplicate, overlap, or conflict with any other State or federal requirements.

8. ALTERNATIVES

Many of the proposed changes to Part 375 are the result of the 2015 Amendments and required by statute to be incorporated. For these changes, the only alternative considered was “no action,” which would not have satisfied the statutory requirement and therefore is not feasible. Proposed changes to Part 375 unrelated to the 2015 Amendments were subject to extensive internal review for several years as well as public outreach efforts. During this process, alternatives specific to each individual change were evaluated. The result of this process is the proposed regulations that DEC considers protective of the environmental resources in a manner that limits the cost to the regulated community.

9. FEDERAL STANDARDS

The proposed regulations will not exceed any minimum federal standards where applicable or where there is no comparable federal standard.

10. COMPLIANCE SCHEDULE

Many of the changes in Part 375 reflect the 2015 Amendments and have been in effect since that law was enacted (e.g. changes to BCP eligibility and tax credits). Other changes document or clarify DEC interpretations, procedures or processes which are also already in practice. Changes made to these regulations that are not already in practice will be implemented when the regulations become effective.

11. INITIAL REVIEW OF RULE

DEC will conduct an initial review of the rule within 3 years as required by SAPA §207.

REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Amendments to 6 NYCRR Part 375

Environmental Remediation Programs

1. EFFECT OF RULE

Amendments to 6 NYCRR Part 375 (Part 375), Environmental Remediation Programs, are proposed to conform with the New York State Department of Environmental Conservation's (DEC's) regulations to Part BB of Chapter 56 of the Laws of 2015 ("the 2015 Amendment") which amended and added new language to the Environmental Conservation Law (ECL). This rulemaking will address remediation requirements pertaining to the Inactive Hazardous Waste Disposal Site Remedial Program (State Superfund Program, SSF) at ECL Article 27, Title 13; the Brownfield Cleanup Program (BCP) at ECL Article 27, Title 14; and the Environmental Restoration Program (ERP) at ECL Article 56, Title 5. Subpart 375-6 soil cleanup objectives (SCOs) will be amended where appropriate. Part 375 amendments to Part 375 will incorporate clarifications and modifications based on experience developed during implementation of the BCP, SSF, and ERP. The amendments will increase consistency across remedial programs administered by DEC's Division of Environmental Remediation and provide DEC with tools necessary to effectively implement the programs. The proposed amendments will apply statewide in all 62 counties of New York State (State) and are not anticipated to negatively affect small business and local governments.

Participation in the BCP and ERP is voluntary, therefore, obligations under these programs are required by statute because of a party's choice to apply for and participate in these programs. Therefore, the proposed rule will affect only small businesses and local governments that choose to participate in BCP or ERP. Parties

responsible for contamination under the SSF program will continue to be responsible for the cost of investigation and remediation.

2. COMPLIANCE REQUIREMENTS

The proposed rule imposes the following additional requirements for small business and local governments participating in the SSF, BCP, or ERP:

1. Additional requirement to demonstrate eligibility for tax credits for applicants in New York City;
2. Requirement for sites to submit a work plan for any proposed change of use activity. DEC will maintain the ability to waive if the site will not be physically altered (375-1.11(d)(2));
3. Reconstruction plan requirement for sites with habitat disturbance (375-1.12(f));
4. Added definition of “site cover” to allow for implementation of tax credits as intended (375-3.2);
5. Potentially responsible party (PRP) search requirement for BCP Class 2 sites (375-3.4(b)(1));
6. Off-site field investigation and sampling requirement for BCP volunteers when deemed necessary to complete the human health exposure assessment (375-3.8); and
7. Updates to most SCO values based on revised reference doses, partitioning coefficients, and exposure calculations and the addition of 4 new chemicals: aniline, nitrobenzene, perfluorooctanoic acid (PFOA), and perfluorooctanoic sulfonate (PFOS). The changes are summarized and explained in the July 2020 Addendum to the Technical Support Document, originally published September 2006.

3. PROFESSIONAL SERVICES

For a responsible party (potentially a local government or small business) under SSF or a participant in BCP, proposed amendments to Part 375 may increase the existing need for professional services to comply with new requirements. Examples include daily report submittal, change of use work plan submittal, reconstruction plan

for disturbed habitats development, and off-site field investigation and sampling.

4. COMPLIANCE COSTS

Updates to Part 375 will implement the statutorily created remedial programs without substantive changes and will result in nominal additional costs to small businesses or local governments. Further, BCP and ERP are not compulsory programs, i.e., participation in ECL Article 27, Title 14 and ECL Article 56, Title 5 is voluntary. Participation in ERP reduces the fiscal burden to municipalities associated with investigation and remediation of contaminated properties. State assistance grants covering up to 90 percent of eligible on-site and 100 percent of eligible off-site costs are available to local governments. Federal, State, or non-responsible party private monies may cover the remaining portion. A new benefit to municipalities is the option to have DEC manage ERP projects. This significantly reduces the financial responsibility of the municipality for remedial management and oversight of the project and for DEC's administrative costs.

Examples of fiscal effects on small businesses and local governments are summarized below. Costs were developed by DEC based on internal contracting experience and were reviewed by outside engineering firms.

1. Daily Reports – The Part 375 amendment requiring daily reports is not intended to increase oversight or costs. It will provide consistency in reporting methods and oversight necessary to successfully complete the program. Some BCP sites currently submit daily reports during remedial activities per the site's Remedial Action Work Plan. Furthermore, the information and documentation provided in the daily reports is required information for the FER. In most cases there will be no change in process and no change in cost. In instances where daily reports were not being submitted or were insufficient, cost increase is estimated at \$150 per day. Total potential costs for each project will depend on a site's remedy, size, and duration of remedial activities.

2. Change of Use Work Plans – Subpart 375-1.11(d)(2) will require sites to submit a work plan for any proposed change of use activity, creating an approximate increase of \$25,000 to \$40,5000 to the regulated party for document preparation. Costs will vary based on the proposed activity, size, and extent of potential exposure. This requirement can be waived if the change of use does physically alter the site.

3. Habitat Reconstruction – Requirement to reconstructed disturbed habitats during remedial activities will not increase costs for SSF, BCP, or ERP sites. This is an existing requirement in State laws and regulations outside of Part 375. Habitat reconstruction costs are incurred under existing projects.

4. PRP Search – Requiring Class 2 site BCP applicants to submit a PRP search with their application will increase costs. A PRP search is estimated to cost at least \$25,000 and could be more for sites with complicated ownership and corporate succession. The PRP search is currently completed by DEC; this rule change will shift the burden of completing the PRP search from DEC to the applicant. The applicant should already have information on prior owners or operators of sites, as applicants have typically performed title searches and Phase I Environmental Assessments as part of the purchase of potential BCP properties. PRP search is completed prior to the execution of the Brownfield Cleanup Agreement and thus costs cannot be directly offset by tax credits.

5. Off-Site Investigation – The subsection 375-3.8(b)(2) clarification requiring BCP Volunteers to potentially complete an off-site qualitative exposure assessment will result in increased costs for some sites; however, this work is required by ECL §27-1415(2)(b) and does not expand existing requirements. For sites with on-site data that provides a complete exposure assessment, no additional costs are incurred. For sites where additional, off-site contaminant data is needed to determine whether there is a significant threat to public health or the environment, investigation costs will be incurred. The remedial party cost to complete this assessment is estimated to be \$25,000 with a range of \$50,000-\$75,000 for sites with technical or logistical challenges. The investigation is considered a site preparation cost and a portion may be recoverable in the form of tax credits.

Clarifying and enforcing the volunteer's responsibility to collect off-site data when necessary to complete the exposure assessment as required by ECL §27-1415(2)(b) will ensure efficient use of resources in determining the need to list and investigate if a significant threat is posed by the off-site portion of some BCP sites. The amount of off-site investigation costs will vary based on on-site data, type and extent of contamination at the site, surrounding land use, and site conditions such as geology and groundwater flow.

6. Establish SCOs for PFOA and PFOS – PFOA and PFOS were added to the list of hazardous substances in 6 NYCRR Part 597 on April 26, 2016. The Regulatory Impact Statement for that rulemaking recognized that “where PFOA or PFOS has been released into the environment, regulated entities may be subject to costs associated with remediation of these hazardous substances under Part 375.” PFOA and PFOS were added to the standard analyte list in March 2019. Establishment of an SCO for PFOA and PFOS will provide the regulated community with certainty and help remedial parties understand the financial implications of remediation of these substances. However, a true accounting of costs will not be possible until the extent of PFOA and PFOS contamination is determined.

7. Change of SCOs – For SCOs whose values were decreased, there may be an increase in site remediation costs. The additional cost will be site-specific and will vary based on the level of contamination present, the site's end use, and the cleanup track being pursued. Lower SCOs along with site-specific variables, may result in the need for additional material excavation and disposal, which both have associated costs. Properties that previously had minimal or no SCO exceedances may now have exceedances based on the lower SCOs; this may result in additional sites being eligible for the BCP. For the SCOs whose values were increased, there should be a decrease in costs associated with site remediation.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

1. It is economically and technologically feasible for a small business or local government to comply with the

proposed rule. Increased costs resulting from the Part 375 amendments are anticipated to be nominal, particularly in relation to costs currently incurred by regulated parties under existing Part 375. The amendments will not create a need for additional technology beyond what is already used to comply with existing Part 375. Furthermore, many of the changes in the amendments to Part 375 are already met by regulated parties, demonstrating the amendments are economically and technologically feasible.

6. MINIMIZING ADVERSE IMPACT

The rulemaking is not anticipated to have adverse impacts on local governments or small businesses in the State. The proposed rule changes may create some minor increased costs to regulated parties, including small businesses and local governments as discussed above. For BCP sites, costs associated with daily reports, qualitative exposure assessments, and additional remediation resulting from changes to SCOs can be offset by tax credits. Costs to local municipalities participating in the ERP are offset by State funds. Participation in the BCP and ERP is voluntary, therefore, obligations under the BCP or ERP are either required by statute or imposed because of a party's choice to apply for and participate in those programs. Despite slight cost increases, DEC has determined that there is an overall positive impact since areas across the State will be cleaned up because of the SSF, BCP, and ERP.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

DEC continues to provide statewide outreach to regulated communities and interested parties, including small businesses and local governments. Relevant information pertaining to the SSF, BCP, and ERP continues to be posted on DEC's website. DEC maintains a listserv to which persons may subscribe to receive information and progress updates pertaining to SSF, BCP, and ERP sites.

Several statewide forums were held in 2017, 2018, and 2019 to present a summary of potential Part 375

amendments. The forums provided an opportunity for the audience to ask questions and engage in discussion. DEC will ensure public notice and input on proposed amendments to Part 375 by issuing public notices in the State Register and DEC's Environmental Notice Bulletin; holding a comment period of at least 90 days; conducting public hearings; and potentially scheduling webinars and public meetings during the comment period. Interested parties, including small businesses and local governments, can submit written comments and participate in the public hearings, and webinars or public meetings. Relevant rule-making documents will be posted on the DEC public website.

8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION

No cure period or other opportunity for ameliorative action is needed because the rule making will not impose additional penalties on the regulated community, including small businesses and local governments.

9. INITIAL REVIEW OF THE RULE

DEC will conduct an initial review of the rule within 3 years as required by SAPA §207.

RURAL AREA FLEXIBILITY ANALYSIS

Amendments to 6 NYCRR Part 375

Environmental Remediation Programs

6 NYCRR Part 375 describes the requirements for environmental remediation programs, including the State Superfund Program (SSF); Brownfield Cleanup Program (BCP); and Environmental Restoration Program (ERP). These programs are performed under an order, agreement, stipulation or State assistance contract entered into by the New York State Department of Environmental Conservation (DEC) and all work plans, reports, certificates, and other remedial program documents approved, accepted, or issued by DEC. DEC's Division of Environmental Remediation proposes to revise portions of this regulation to support DEC's mission to protect public health and the environment in New York State (State). DEC does not anticipate the rulemaking to have a negative economic impact on rural areas.

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS

For purposes of this Rural Area Flexibility Analysis (RAFA), "rural area" means those portions of the state so defined by Executive Law section 481(7), SAPA section 102(10). Under Executive Law section 481(7), rural areas are defined as "counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of two hundred thousand or greater population, 'rural areas' means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein." There are 44 counties in the State that have populations of less than 200,000 people and 71 towns in non-rural counties where the population densities are less than 150 people per square mile. The proposed changes to 6 NYCRR Part 375 will apply statewide; therefore, they apply to all rural areas of the State.

2. REPORTING, RECORDKEEPING, OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES

The rulemaking will not directly impose any significant service, duty, or responsibility upon any county, city, town, village, school district, or fire district in a rural area. This rulemaking does not directly mandate the expenditure of funds by any sector of local government. Minor increases to reporting, recordkeeping, compliance requirements, and professional services, which have been determined by DEC to be necessary for DEC to obtain the information needed to implement the remedial programs, are included in the amendments.

These changes include:

1. Daily report submittal requirement to adequately document remedial activities (375-1.6(a));
2. Requirement for sites to submit a work plan for any proposed change of use activity, which DEC will maintain the ability to waive if a physical alteration of the site is not involved (375-1.11(d)(2));
3. Reconstruction plan requirement for sites where there is a disturbance to habitat (375-1.12(f));
4. Potentially responsible party (PRP) Search requirement for BCP Class 2 sites (375-3.4(b)(1));
5. Off-site field investigation and sampling requirement for BCP volunteers when deemed necessary to complete the human health exposure assessment (375-3.8);

These changes will be imposed statewide, including in rural areas and will affect local governments and private entities. Each remedial program requires that various reports, work plans, and citizen participation activities be conducted and documented. These requirements are derived from current statutory, regulatory, and programmatic provisions.

3. COSTS

The amendments to Part 375 will not impose any direct costs on rural areas and will be applied statewide.

However, rural area governments may be a responsible party under the SSF or a participant in the BCP. There will be minor cost increases for responsible parties in the SSF and participants in the BCP, primarily due to increased reporting requirements. The great majority of the mandates to clean up contamination and the associated costs are a result of existing statutory provisions and not this rule making. Additionally, costs associated the BCP and ERP remedial programs can be offset through tax credits (BCP) or receive substantial reimbursement through grants (ERP). The ERP has a financial benefit to local governments, including those in rural areas, by reducing the fiscal burden associated with the investigation and remediation of contaminated properties.

Some examples of fiscal effects are provided below. Costs provided were developed by DEC based on our own contracting experience, and reviewed by engineering firms working in these programs:

1. Daily Reports – The amendment to Part 375 regarding daily reports is not intended to increase oversight or costs but is intended to provide consistency in reporting methods and the oversight necessary to successfully complete the program. Some BCP sites currently submit daily reports during remedial activities as described in the site’s Remedial Action Work Plan. Furthermore, the information and documentation provided in the daily reports is also required information for the Final Engineering Report (FER). In most cases, there will be no change in process, and, therefore, no change in cost. In other instances where daily reports were not being submitted or were insufficient, there may be some marginal increase in cost, estimated at \$150 per day, for regulated parties to prepare and submit the documents. Total potential costs for each project will depend on variables such as a site’s remedy, size, and duration of remedial activities.

2. Change of Use Work Plans – Subpart 375-1.11(d)(2) will require sites to submit a work plan for any proposed change of use activity. This will create an increase in costs to the regulated party for the document preparation of roughly \$25,000 to \$40,000. Costs will vary based on the proposed activity, size, extent of

potential exposure, and other variables, and can be waived if the change of use does not involve a physical alteration to the site.

3. Habitat Reconstruction – The requirement of reconstructing habitats disturbed during remedial activities will not increase costs for SSF, BCP, or ERP sites, as this is an existing requirement in State laws and regulations outside of Part 375 and costs of such habitat reconstruction are already incurred under existing projects.

4. PRP Search – Requiring Class 2 sites applying to the BCP to submit a PRP search with their application will increase costs to applicants. A PRP search is estimated to cost a minimum of \$25,000 and could be significantly more for sites where ownership and corporate succession is complicated. The PRP search is required prior to acceptance into the BCP and is currently being completed by DEC; this rule change will result in shifting the burden of completing the PRP search from DEC to the applicant. The applicant should already have information on prior owners or operators of sites, as applicants typically have already performed title searches and Phase I Environmental Assessments as part of the purchase of potential BCP properties. The cost of the PRP search cannot be directly offset by tax credits, as it will be completed prior to the execution of the Brownfield Cleanup Agreement.

5. Off-Site Investigation – The clarification in subsection 375-3.8(b)(2) that may require BCP Volunteers to complete a qualitative exposure assessment of contamination that may have migrated off-site will result in costs for some sites in the program; however this work is required by ECL §27-1415(2)(b) and does not expand the existing requirements. For sites with on-site data that allows for a complete exposure assessment, no additional costs will be incurred. For sites where additional, off-site data is needed to determine whether off-site contamination represents a significant threat to public health or the environment, costs will be incurred for these investigation activities. The cost to the remedial party for work to complete this assessment is estimated to be \$25,000 on average but could range up to \$50,00-\$75,000 for sites with technical or logistical challenges. A portion of the cost of this investigation is recoverable by the remedial party in the form of tax credits (the

investigation will be considered a site preparation cost). Clarifying and enforcing the responsibility for a volunteer to collect off-site data (when necessary) to complete the exposure assessment as required by ECL §27-1415(2)(b) will ensure efficient use of resources in determining the need to list and investigate if a significant threat is posed by the off-site portion of some BCP sites. The amount of the off-site investigation costs will vary based on the on-site data, type and extent of contamination at the site, surrounding land use, and site conditions such as geology and groundwater flow.

4. MINIMIZING ADVERSE IMPACT

The proposed amendments will not cause adverse impacts to rural areas of the State. Minor additional reporting requirements will affect all parties involved in remedial programs statewide, including rural areas, but only to the extent necessary for DEC to effectively implement the remedial programs. The proposed amendments will not create new regulatory programs, expand existing regulatory programs, or increase the regulatory requirements applicable to rural areas beyond existing State statutes. DEC has determined there will be a continued positive impact across the State, including rural areas, because contaminated sites will continue to be remediated under the remedial programs (SSF, BCP, ERP).

5. RURAL AREA PARTICIPATION

DEC continues to provide statewide outreach to regulated communities and interested parties, including those in rural areas of the State. Relevant information pertaining to the SSF, BCP, and ERP continues to be posted on DEC's website. DEC maintains a listserv to which persons may subscribe to receive information and progress updates pertaining to SSF, BCP, and ERP sites.

Several forums were held statewide in 2017, 2018 and 2019 at various venues, including those that were accessible to rural communities, to present a summary of potential Part 375 amendments that were being

considered by DEC. The forums also provided an opportunity for the audience to ask questions and engage in discussion.

DEC will ensure public notice and input on proposed amendments to Part 375 by issuing public notices in the State Register and DEC's Environmental Notice Bulletin; holding a comment period of at least 90 days; conducting public hearings; and most likely scheduling webinars and public meetings during the comment period. Interested parties, including those in rural areas, will have the opportunity to submit written comments and participate in the public hearings, as well as any webinars and public meetings that are held. DEC will also post relevant rule making documents on their website for public access.

6. INITIAL REVIEW OF THE RULE

DEC will conduct an initial review of the rule within 3 years as required by SAPA §207.

JOB IMPACT STATEMENT

Amendments to 6 NYCRR Part 375

Environmental Remediation Programs

1. NATURE OF IMPACT

The New York State Department of Environmental Conservation (DEC) is proposing amendments to 6 NYCRR Part 375 (Part 375) and the regulations apply statewide. This includes proposed amendments to the following remedial programs: Inactive Hazardous Waste Disposal Site Remedial Program (also known as State Superfund Program, SSF), the Brownfield Cleanup Program (BCP), and the Environmental Restoration Program (ERP). DEC does not anticipate these amendments to create an adverse impact on jobs and employment opportunities in New York State (State). The existing Part 375 has been in place for over 20 years, with the exception of the BCP which was initially adopted in 2006. The rule also incorporates needed clarifications and modifications to Part 375 based on the experience developed during the first decade of implementing the BCP. The amendments will increase consistency across remedial programs administered by the Division of Environmental Remediation and provide DEC with the tools necessary to more effectively implement the remedial programs.

2. CATEGORIES AND NUMBERS AFFECTED

The proposed amendments to Part 375 are not anticipated to negatively affect employment opportunities. Since its inception in 2003, the BCP has incentivized development of hundreds of contaminated properties resulting in the generation of thousands of jobs statewide. Part BB of Chapter 56 of the Laws of 2015 ("the 2015 Amendment") amended the Environmental Conservation Law (ECL) to limit BCP tax incentives on sites located within cities having a population of one million or more with the objective to focus the incentives on the most contaminated and most difficult sites to redevelop. Since the 2015 Amendment, participation in the program, which is voluntary, did not decline in the ensuing years, and the BCP continues to be a robust

revitalization program. These amendments will not restrict the estimated several hundred construction and commercial jobs that will be created statewide.

The Part 375 amendments are minor regarding the ERP and SSF and will not fundamentally change how these programs are administered. Therefore, jobs are not anticipated to be impacted.

3. REGIONS OF ADVERSE IMPACT

Part 375 is currently and will continue to be administered statewide. Regardless of the regional location, the amendments are not anticipated to negatively impact jobs or employment opportunities.

4. MINIMIZING ADVERSE IMPACT

The rule is not anticipated to have an adverse impact on jobs and employment. DEC already regulates State Superfund sites, brownfield sites and environmental restoration projects covered by Part 375.

5. SELF-EMPLOYMENT OPPORTUNITIES

The rule is not anticipated to negatively impact self-employment opportunities.

6. INITIAL REVIEW OF RULE

DEC will conduct an initial review of the rule within three years of its adoption as required by SAPA §207.