

5228--A

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. GRISANTI -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, the public service law, the general business law and the tax law, in relation to brownfield site cleanup; and to repeal section 31 of part H of chapter 1 of the laws of 2003 amending the tax law relating to brownfield redevelopment tax credits, relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 2 of section 27-1405 of the environmental
2 conservation law, as amended by section 2 of part A of chapter 577 of
3 the laws of 2004, is amended to read as follows:
4 2. (A) "Brownfield site" or "site" shall mean any real property, the
5 redevelopment or reuse of which [may be] IS complicated by the GROUND
6 SURFACE OR BELOW GROUND SURFACE LEVEL presence or [potential] SUSPECTED
7 presence of a contaminant REGARDLESS OF THE SOURCE OF SUCH CONTAMINANT.
8 A BROWNFIELD SITE IS CHARACTERIZED BY ANY OR ALL OF THE FOLLOWING:
9 (I) A CURRENT AND HISTORICAL LEGACY OF ABANDONMENT FROM PREVIOUS
10 INDUSTRIAL OR COMMERCIAL ACTIVITY.
11 (II) A CURRENT AND HISTORICAL LEGACY OF SEVERE ECONOMIC OR FUNCTIONAL
12 UNDERUTILIZATION INCLUDING USE OF SUCH SITE AS A HAZARDOUS WASTE OR
13 SOLID WASTE FACILITY.
14 (III) IN THE CASE OF A SITE CHARACTERIZED PRIMARILY BY INDUSTRIAL
15 ACTIVITY, FUNCTIONAL OBSOLESCENCE.
16 (B) Such term shall not include real property:
17 [(a)] (I) listed in the registry of inactive hazardous waste disposal
18 sites under section 27-1305 of this article at the time of application

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 to this program and given a classification as described in subparagraph
2 one or two of paragraph b of subdivision two of section 27-1305 of this
3 article; provided, however except until July first, two thousand five,
4 real property listed in the registry of inactive hazardous waste
5 disposal sites under subparagraph two of paragraph b of subdivision two
6 of section 27-1305 of this article prior to the effective date of this
7 article, where such real property is owned by a volunteer shall not be
8 deemed ineligible to participate and further provided that the status of
9 any such site as listed in the registry shall not be altered prior to
10 the issuance of a certificate of completion pursuant to section 27-1419
11 of this title;

12 [(b)] (II) listed on the national priorities list established under
13 authority of 42 U.S.C. section 9605;

14 [(c)] (III) subject to an enforcement action under title seven or nine
15 of this article, [except] OR PERMITTED AS a treatment, storage or
16 disposal facility [subject to a permit]; provided, that nothing herein
17 contained shall be deemed otherwise to exclude from the scope of the
18 term "brownfield site" a hazardous waste treatment, storage or disposal
19 facility having interim status according to regulations promulgated by
20 the commissioner;

21 [(d)] (IV) subject to an order for cleanup pursuant to article twelve
22 of the navigation law or pursuant to title ten of article seventeen of
23 this chapter except such property shall not be deemed ineligible if it
24 is subject to a stipulation agreement; or

25 [(e)] (V) subject to any other on-going state or federal environmental
26 enforcement action related to the contamination which is at or emanating
27 from the site subject to the present application.

28 (VI) PROVIDED HOWEVER FOR OTHERWISE INELIGIBLE SITES GIVEN A CLASSI-
29 FICATION AS DESCRIBED IN SUBPARAGRAPH TWO OR THREE OF PARAGRAPH B OF
30 SUBDIVISION TWO OF SECTION 27-1305 OF THIS ARTICLE, AND INELIGIBLE SITES
31 DESCRIBED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH, A VOLUNTEER SHALL NOT
32 BE DEEMED INELIGIBLE TO PARTICIPATE IN REGARDS TO ANY SUCH INELIGIBLE
33 SITE IF SUCH VOLUNTEER INTENDS TO ACQUIRE AND REDEVELOP SUCH REAL PROP-
34 ERTY AND ASSUME RESPONSIBILITY, NOT FOR PAST COSTS INCURRED PRIOR TO THE
35 APPLICATION, BUT FOR ALL FUTURE COSTS TO COMPLETE ANY REMAINING INVESTI-
36 GATION AND REMEDIATION UPON ACQUISITION OF SUCH REAL PROPERTY, OR MAIN-
37 TAIN LONG TERM INSTITUTIONAL AND ENGINEERING CONTROLS OF THE SITE, AND
38 IMPLEMENT A REDEVELOPMENT PROJECT ON THE SITE, THE SITE CONFORMS TO THE
39 DEFINITION OF A BROWNFIELD SITE IN PARAGRAPH (A) OF THIS SUBDIVISION,
40 AND ENTERS INTO A BROWNFIELD CLEANUP AGREEMENT IN ACCORDANCE WITH
41 SECTION 27-1409 OF THIS TITLE. ANY ON-GOING STATE ACTIONS AND/OR ORDERS
42 WILL NOT BE SUPERSEDED BY THE VOLUNTEER'S BROWNFIELD CLEANUP AGREEMENT,
43 BUT WILL REMAIN IN FULL FORCE AND EFFECT UNTIL SUCH TIME AS THE VOLUN-
44 TEER RECEIVES A CERTIFICATE OF COMPLETION PURSUANT TO SECTION 27-1419 OF
45 THIS TITLE AND THEREAFTER TO THE EXTENT THE VOLUNTEER OR SUBSEQUENT
46 OWNER OR OPERATOR FAIL TO COMPLY WITH THE TERMS OF AN ENVIRONMENTAL
47 EASEMENT IF ONE HAD BEEN CREATED PURSUANT TO TITLE THIRTY-SIX OF ARTICLE
48 SEVENTY-ONE, OR AN ENVIRONMENTAL COVENANT AS OF THIS CHAPTER PURSUANT TO
49 TITLE FORTY-FIVE OF ARTICLE SEVENTY-ONE OF THIS CHAPTER. IN THE EVENT
50 THE VOLUNTEER DOES NOT RECEIVE THE CERTIFICATE OF COMPLETION OR SUCH
51 CERTIFICATE OF COMPLETION IS REVOKED FOR ANY REASON, ANY AND ALL STATE
52 ENFORCEMENTS ACTION IMMEDIATELY WILL RESUME AFTER TIMELY NOTICE TO ALL
53 PARTIES.

54 S 2. The opening paragraph of subdivision 2 of section 27-1409 of the
55 environmental conservation law is designated paragraph (a) and a new
56 paragraph (b) is added to read as follows:

1 (B) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ALL APPLI-
2 CANTS ACCEPTING PARTICIPATION IN THE BROWNFIELD CLEANUP PROGRAM SHALL
3 PAY ALL REASONABLE STATE COSTS, HOWEVER, SUCH STATE COSTS SHALL NOT
4 EXCEED FIVE PERCENT OF THE TOTAL SITE PREPARATION COSTS, AS DEFINED BY
5 PARAGRAPH TWO OF SUBDIVISION (B) OF SECTION TWENTY-ONE OF THE TAX LAW,
6 PAID OR INCURRED BY THE APPLICANT, AND THE TOTAL STATE COSTS OWED SHALL
7 BE PAYABLE UPON NINETY DAYS OF, (I) THE ISSUANCE OF THE CERTIFICATE OF
8 COMPLETION FOR THE PROJECT, OR, (II) UPON TERMINATION OF A PARTICIPANT'S
9 BROWNFIELD CLEANUP AGREEMENT BY THE DEPARTMENT FOR FAILURE TO SUBSTAN-
10 Tially COMPLY WITH SUCH AGREEMENT'S TERMS AND CONDITIONS, OR (III), THE
11 VOLUNTARY WITHDRAWAL OF THE APPLICANT. FAILURE TO REMIT DUE PAYMENTS TO
12 THE STATE SHALL RESULT IN THE REVOCATION OF SUCH CERTIFICATE OF
13 COMPLETION, AND WILL PROHIBIT ANY FUTURE PARTICIPATION OF AN APPLICANT
14 IN THE PROGRAM. PAYMENT OF STATE COSTS SHALL BE MADE TO THE HAZARDOUS
15 WASTE REMEDIAL FUND ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-B OF
16 THE STATE FINANCE LAW.

17 S 3. Article 71 of the environmental conservation law is amended by
18 adding a new title 45 to read as follows:

19 TITLE 45

20 ENVIRONMENTAL COVENANTS

21 SECTION 71-4501. SHORT TITLE.
22 71-4503. DECLARATION OF POLICY AND STATEMENT OF PURPOSE.
23 71-4505. DEFINITIONS.
24 71-4507. NATURE OF RIGHTS; SUBORDINATION OF INTERESTS.
25 71-4509. CONTENTS OF ENVIRONMENTAL COVENANT.
26 71-4511. VALIDITY; EFFECT ON OTHER INSTRUMENTS.
27 71-4513. RELATIONSHIP TO OTHER LAND USE LAW.
28 71-4515. NOTICE.
29 71-4517. RECORDING.
30 71-4519. COORDINATION WITH LOCAL GOVERNMENTS.
31 71-4521. DURATION.
32 71-4523. AMENDMENT OR TERMINATION BY CONSENT.
33 71-4525. ENFORCEMENT OF ENVIRONMENTAL COVENANT.
34 71-4527. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
35 71-4529. REGULATIONS.
36 71-4531. SEVERABILITY.

37 S 71-4501. SHORT TITLE.

38 THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS THE "UNIFORM ENVIRON-
39 MENTAL COVENANTS ACT".

40 S 71-4503. DECLARATION OF POLICY AND STATEMENT OF PURPOSE.

41 THE LEGISLATURE HEREBY FINDS AND DECLARES THAT CONTAMINATED SITE REME-
42 DIAL PROGRAMS ARE AN IMPORTANT AND NECESSARY COMPONENT OF THE STATE'S
43 POLICY OF RESTORING AND REVITALIZING REAL PROPERTY LOCATED THROUGHOUT
44 NEW YORK STATE. THE LEGISLATURE FURTHER FINDS THAT WHEN AN ENVIRONMENTAL
45 REMEDIATION PROJECT LEAVES RESIDUAL CONTAMINATION AT LEVELS THAT HAVE
46 BEEN DETERMINED TO BE SAFE FOR A SPECIFIC USE, BUT NOT ALL USES, OR
47 INCLUDES ENGINEERED STRUCTURES THAT MUST BE MAINTAINED OR PROTECTED
48 AGAINST DAMAGE TO BE EFFECTIVE, IT IS NECESSARY TO PROVIDE AN EFFECTIVE
49 AND ENFORCEABLE MEANS OF ENSURING THE PERFORMANCE OF MAINTENANCE, MONI-
50 Toring OR OPERATION REQUIREMENTS, AND OF ENSURING THE POTENTIAL
51 RESTRICTION OF FUTURE USES OF THE LAND, INCLUDING RESTRICTIONS ON DRILL-
52 ING FOR OR PUMPING GROUNDWATER, FOR AS LONG AS ANY RESIDUAL CONTAM-
53 INATION REMAINS HAZARDOUS. THE LEGISLATURE DECLARES, THEREFORE, THAT IT
54 IS IN THE PUBLIC INTEREST TO CREATE LAND USE CONTROLS IN THE FORM OF
55 ENVIRONMENTAL COVENANTS BECAUSE SUCH ENVIRONMENTAL COVENANTS ARE NECES-
56 SARY FOR THE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT AND TO

1 ACHIEVE THE REQUIREMENTS FOR REMEDIATION ESTABLISHED AT CONTAMINATED
2 SITES. IT IS THE INTENT OF THE LEGISLATURE THAT THE PROVISIONS OF THIS
3 SECTION SHALL NOT BE CONSTRUED AS LIMITING OR OTHERWISE AFFECTING ANY
4 AUTHORITY CONFERRED UPON THE DEPARTMENT BY ANY OTHER PROVISION OF LAW.

5 S 71-4505. DEFINITIONS.

6 WHEN USED IN THIS TITLE:

7 1. "ACTIVITY AND USE LIMITATIONS" MEANS RESTRICTIONS OR OBLIGATIONS
8 CREATED UNDER THIS TITLE WITH RESPECT TO REAL PROPERTY.

9 2. "AFFECTED LOCAL GOVERNMENT" MEANS EVERY MUNICIPALITY IN WHICH LAND
10 SUBJECT TO AN ENVIRONMENTAL COVENANT IS LOCATED.

11 3. "COMMON INTEREST COMMUNITY" MEANS A CONDOMINIUM, COOPERATIVE, OR
12 OTHER REAL PROPERTY ASSOCIATION OR ORGANIZATION WITH RESPECT TO WHICH A
13 PERSON, BY VIRTUE OF THE PERSON'S COMMON INTEREST, AS THAT TERM IS
14 DEFINED IN SECTION THREE HUNDRED THIRTY-NINE-E OF THE REAL PROPERTY LAW,
15 OR OWNERSHIP OF A UNIT, SHARE OR PARCEL OF REAL PROPERTY, IS OBLIGATED
16 TO PAY PROPERTY TAXES OR INSURANCE PREMIUMS, OR FOR MAINTENANCE, OR
17 IMPROVEMENT OF OTHER REAL PROPERTY DESCRIBED IN A RECORDED DECLARATION
18 OR COVENANT THAT CREATES THE COMMON INTEREST COMMUNITY.

19 4. "ENVIRONMENTAL COVENANT" MEANS A SERVITUDE RUNNING WITH THE LAND
20 ARISING UNDER AN ENVIRONMENTAL REMEDIAL PROGRAM THAT IMPOSES ACTIVITY
21 AND USE LIMITATIONS AS WELL AS MAINTENANCE, MONITORING OR OPERATION
22 REQUIREMENTS ASSOCIATED WITH THE ENVIRONMENTAL REMEDIAL PROGRAM.

23 5. "ENVIRONMENTAL REMEDIAL PROGRAM" MEANS A REMEDIAL PROGRAM CONDUCTED
24 AT REAL PROPERTY:

25 (A) UNDER A FEDERAL OR STATE PROGRAM GOVERNING ENVIRONMENTAL REMEDI-
26 ATION OF REAL PROPERTY, INCLUDING REMEDIAL PROGRAMS PURSUANT TO TITLES
27 THIRTEEN AND FOURTEEN OF ARTICLE TWENTY-SEVEN OF THIS CHAPTER, TITLE
28 FIVE OF ARTICLE FIFTY-SIX OF THIS CHAPTER AND ARTICLE TWELVE OF THE
29 NAVIGATION LAW;

30 (B) INCIDENT TO A DEPARTMENT-APPROVED CLOSURE OF A SOLID OR HAZARDOUS
31 WASTE MANAGEMENT UNIT;

32 (C) UNDER A CORRECTIVE ACTION PLAN PURSUANT TO TITLE NINE OF ARTICLE
33 TWENTY-SEVEN OF THIS CHAPTER; OR

34 (D) UNDER OTHER DEPARTMENT REMEDIAL PROGRAMS.

35 6. "HOLDER" MEANS THE GRANTEE OF AN ENVIRONMENTAL COVENANT AS SPECI-
36 FIED IN SUBDIVISION ONE OF SECTION 71-4507 OF THIS TITLE.

37 7. "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST, ESTATE,
38 TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, JOINT
39 VENTURE, PUBLIC CORPORATION, GOVERNMENT, GOVERNMENTAL SUBDIVISION, AGEN-
40 CY, OR INSTRUMENTALITY, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

41 8. "RECORD", USED AS A NOUN, MEANS INFORMATION THAT IS INSCRIBED ON A
42 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND
43 IS RETRIEVABLE IN PERCEIVABLE FORM.

44 S 71-4507. NATURE OF RIGHTS; SUBORDINATION OF INTERESTS.

45 1. THE DEPARTMENT SHALL BE A HOLDER AND MAY IDENTIFY ONE OR MORE ADDI-
46 TIONAL HOLDERS OR BENEFICIARIES. THE INTEREST OF A HOLDER IS AN INTEREST
47 IN REAL PROPERTY.

48 2. A RIGHT OF THE DEPARTMENT OR OTHER INTENDED BENEFICIARY UNDER THIS
49 TITLE OR UNDER AN ENVIRONMENTAL COVENANT, OTHER THAN A RIGHT AS A HOLD-
50 ER, IS NOT AN INTEREST IN REAL PROPERTY.

51 3. THE DEPARTMENT IS BOUND BY ANY OBLIGATION IT ASSUMES IN AN ENVIRON-
52 MENTAL COVENANT, BUT THE DEPARTMENT DOES NOT ASSUME OBLIGATIONS MERELY
53 BY SIGNING AN ENVIRONMENTAL COVENANT. ANY OTHER PERSON THAT SIGNS AN
54 ENVIRONMENTAL COVENANT IS BOUND BY THE OBLIGATIONS THE PERSON ASSUMES IN
55 THE COVENANT, BUT SIGNING THE COVENANT DOES NOT CHANGE OBLIGATIONS,

RIGHTS, OR PROTECTIONS GRANTED OR IMPOSED UNDER LAW OTHER THAN THIS TITLE EXCEPT AS PROVIDED IN THE COVENANT.

4. THE FOLLOWING RULES APPLY TO INTERESTS IN REAL PROPERTY IN EXISTENCE AT THE TIME AN ENVIRONMENTAL COVENANT IS CREATED OR AMENDED:

(A) AN INTEREST THAT HAS PRIORITY UNDER OTHER LAW IS NOT AFFECTED BY AN ENVIRONMENTAL COVENANT UNLESS THE PERSON THAT OWNS THE INTEREST SUBORDINATES THAT INTEREST TO THE COVENANT.

(B) THIS TITLE DOES NOT REQUIRE A PERSON THAT OWNS A PRIOR INTEREST TO SUBORDINATE THAT INTEREST TO AN ENVIRONMENTAL COVENANT OR TO AGREE TO BE BOUND BY THE COVENANT.

(C) A SUBORDINATION AGREEMENT MAY BE CONTAINED IN AN ENVIRONMENTAL COVENANT COVERING REAL PROPERTY OR IN A SEPARATE RECORD. IF THE ENVIRONMENTAL COVENANT COVERS COMMONLY OWNED PROPERTY IN A COMMON INTEREST COMMUNITY, THE SUBORDINATE AGREEMENT OR RECORD MAY BE SIGNED BY ANY PERSON AUTHORIZED BY LAW, A RECORDED INSTRUMENT, OR THE GOVERNING BOARD OF THE OWNERS' ASSOCIATION TO BIND THE COMMON INTEREST COMMUNITY.

(D) AN AGREEMENT BY A PERSON TO SUBORDINATE A PRIOR INTEREST TO AN ENVIRONMENTAL COVENANT AFFECTS THE PRIORITY OF THAT PERSON'S INTEREST BUT DOES NOT BY ITSELF IMPOSE ANY AFFIRMATIVE OBLIGATION ON THE PERSON WITH RESPECT TO THE ENVIRONMENTAL COVENANT.

5. THE DEPARTMENT MAY REQUIRE THAT A SUBORDINATION AGREEMENT BE OBTAINED AS A CONDITION OF ACCEPTING AN ENVIRONMENTAL COVENANT TO PROTECT PUBLIC HEALTH AND THE ENVIRONMENT.

S 71-4509. CONTENTS OF ENVIRONMENTAL COVENANT.

1. AN ENVIRONMENTAL COVENANT MUST BE ON A FORM PRESCRIBED BY THE DEPARTMENT AND:

(A) BE GRANTED BY THE TITLE OWNERS OF THE RELEVANT REAL ESTATE ONLY BY AN INSTRUMENT THAT COMPLIES WITH THE REQUIREMENTS OF SECTION 5-703 OF THE GENERAL OBLIGATIONS LAW AND IS SIGNED AND ACKNOWLEDGED IN THE MANNER OF A DEED TO BE RECORDED;

(B) STATE THAT THE INSTRUMENT IS AN ENVIRONMENTAL COVENANT EXECUTED PURSUANT TO THIS TITLE;

(C) DESCRIBE THE PROPERTY ENCUMBERED BY THE ENVIRONMENTAL COVENANT BY ADEQUATE LEGAL DESCRIPTION OR BY REFERENCE TO A RECORDED MAP SHOWING ITS BOUNDARIES AND BEARING THE SEAL AND SIGNATURE OF A LICENSED LAND SURVEYOR OR, IF THE COVENANT ENCUMBERS THE ENTIRE PROPERTY DESCRIBED IN A DEED OF RECORD, THE COVENANT MAY INCORPORATE BY REFERENCE THE DESCRIPTION IN SUCH DEED, OTHERWISE IT SHALL REFER TO THE LIBER AND PAGE OF THE DEED OR DEEDS OF THE RECORD OWNER OR OWNERS OF THE REAL PROPERTY BURDENED BY THE ENVIRONMENTAL COVENANT;

(D) DESCRIBE THE ACTIVITY AND USE LIMITATIONS ON THE REAL PROPERTY;

(E) INCLUDE ANY ENGINEERING CONTROLS AND/OR MAINTENANCE REQUIRED FOR THE ENVIRONMENTAL COVENANT OR PROVIDE A REFERENCE TO PUBLICLY AVAILABLE DOCUMENTS CONTAINING SUCH INFORMATION;

(F) DESCRIBE THE REQUIREMENTS FOR NOTICE FOLLOWING TRANSFER OF A SPECIFIED INTEREST IN, OR CONCERNING PROPOSED CHANGES IN USE OF, APPLICATIONS FOR BUILDING PERMITS FOR, OR PROPOSALS FOR ANY SITE WORK AFFECTING THE CONTAMINATION ON THE PROPERTY SUBJECT TO THE COVENANT;

(G) DESCRIBE THE REQUIREMENTS FOR PERIODIC REPORTING DESCRIBING COMPLIANCE WITH THE COVENANT;

(H) DESCRIBE THE RIGHTS OF ACCESS TO THE PROPERTY GRANTED IN CONNECTION WITH IMPLEMENTATION OR ENFORCEMENT OF THE COVENANT, INCLUDING BUT NOT LIMITED TO THE RIGHT OF AGENTS, EMPLOYEES, OR OTHER REPRESENTATIVES OF THE STATE TO ENTER AND INSPECT THE PROPERTY BURDENED BY AN ENVIRONMENTAL COVENANT IN A REASONABLE MANNER AND AT REASONABLE TIMES TO ASSURE COMPLIANCE WITH THE RESTRICTION;

(I) IDENTIFY THE DEPARTMENT AS THE HOLDER AND, IF APPROPRIATE, THE FEDERAL GOVERNMENT OR OTHER APPROPRIATE PARTY AS AN ADDITIONAL HOLDER OR INTENDED THIRD PARTY BENEFICIARY. IF THERE IS A HOLDER IN ADDITION TO THE DEPARTMENT, THE DEPARTMENT MUST APPROVE THE HOLDER, AND THE HOLDER MUST AGREE TO THE TERMS OF THE COVENANT;

(J) INCLUDE AN ACKNOWLEDGMENT BY THE DEPARTMENT OF ITS ACCEPTANCE OF THE ENVIRONMENTAL COVENANT;

(K) BE SIGNED BY EVERY HOLDER AND, UNLESS WAIVED BY THE DEPARTMENT, EVERY OWNER OF THE FEE SIMPLE OF THE REAL PROPERTY SUBJECT TO THE COVENANT;

(L) IDENTIFY THE NAME AND LOCATION OF ANY ADMINISTRATIVE RECORD FOR THE ENVIRONMENTAL REMEDIAL PROGRAM REFLECTED IN THE ENVIRONMENTAL COVENANT;

(M) INCLUDE AN AGREEMENT TO INCORPORATE, EITHER IN FULL OR BY REFERENCE, THE ENVIRONMENTAL COVENANT IN ANY LEASES, LICENSES, OR OTHER INSTRUMENTS GRANTING A RIGHT TO USE THE PROPERTY THAT MAY BE AFFECTED BY SUCH COVENANT; AND

(N) THE DEPARTMENT MAY REQUIRE THAT INFORMATION DELINEATED IN PARAGRAPHS (D), (E), (F), (G) AND (H) OF THIS SUBDIVISION BE ENUMERATED IN A SITE MANAGEMENT PLAN IN LIEU OF BEING SET FORTH IN THE ENVIRONMENTAL COVENANT.

2. IN ADDITION TO THE INFORMATION REQUIRED BY SUBDIVISION ONE OF THIS SECTION, AN ENVIRONMENTAL COVENANT MAY CONTAIN OTHER INFORMATION, RESTRICTIONS, AND REQUIREMENTS AGREED TO BY THE PERSONS WHO SIGNED IT, INCLUDING ANY:

(A) LIMITATION ON AMENDMENT OR TERMINATION OF THE COVENANT IN ADDITION TO THOSE CONTAINED IN SECTIONS 71-4521 AND 71-4523 OF THIS TITLE; AND

(B) RIGHTS OF THE HOLDER IN ADDITION TO ITS RIGHT TO ENFORCE THE COVENANT PURSUANT TO SECTION 71-4525 OF THIS TITLE.

3. IN ADDITION TO OTHER CONDITIONS FOR ITS APPROVAL OF AN ENVIRONMENTAL COVENANT, THE DEPARTMENT MAY REQUIRE THOSE PERSONS SPECIFIED BY THE DEPARTMENT WHO HAVE INTERESTS IN THE REAL PROPERTY TO SIGN THE COVENANT.

4. THE TITLE OWNERS SHALL FURNISH TO THE DEPARTMENT ABSTRACTS OF TITLE AND OTHER DOCUMENTS SUFFICIENT TO ENABLE THE DEPARTMENT TO DETERMINE THAT THE ENVIRONMENTAL COVENANTS SHALL BE AN EFFECTIVE AND ENFORCEABLE MEANS OF ENSURING:

(A) THE PERFORMANCE OF MAINTENANCE, MONITORING AND OPERATING REQUIREMENTS; AND

(B) ACTIVITIES AND USE LIMITATIONS.

5. UNTIL SUCH TIME AS THE ENVIRONMENTAL COVENANT IS EXTINGUISHED, THE PROPERTY DEED AND ALL SUBSEQUENT INSTRUMENTS OF CONVEYANCE RELATING TO THE SUBJECT PROPERTY SHALL STATE IN AT LEAST FIFTEEN-POINT BOLD-FACED TYPE: "THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT HELD BY THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PURSUANT TO TITLE 45 OF ARTICLE 71 OF THE ENVIRONMENTAL CONSERVATION LAW." THE PROPERTY DEED AND ALL SUBSEQUENT INSTRUMENTS OF CONVEYANCE RELATING TO THE PROPERTY ENCUMBERED BY THE COVENANT SHALL REFERENCE, BY BOOK AND PAGE NUMBER, THE ENVIRONMENTAL COVENANT. SUCH DEED AND INSTRUMENT SHALL ALSO SPECIFY THAT THE ELIGIBLE PROPERTY IS SUBJECT TO THE RESTRICTIONS CONTAINED IN SUCH COVENANT. AN INSTRUMENT FOR THE PURPOSE OF CREATING, CONVEYING, MODIFYING, OR TERMINATING AN ENVIRONMENTAL COVENANT SHALL NOT BE EFFECTIVE UNLESS RECORDED.

S 71-4511. VALIDITY; EFFECT ON OTHER INSTRUMENTS.

1. AN ENVIRONMENTAL COVENANT THAT COMPLIES WITH THIS TITLE RUNS WITH THE LAND.

1 2. AN ENVIRONMENTAL COVENANT THAT IS OTHERWISE EFFECTIVE IS VALID AND
2 ENFORCEABLE EVEN IF:

3 (A) IT IS NOT APPURTENANT TO AN INTEREST IN REAL PROPERTY;

4 (B) IT IS NOT OF A CHARACTER THAT HAS BEEN RECOGNIZED TRADITIONALLY AT
5 COMMON LAW;

6 (C) IT IMPOSES A NEGATIVE BURDEN;

7 (D) IT IMPOSES AN AFFIRMATIVE OBLIGATION ON A PERSON HAVING AN INTER-
8 EST IN THE REAL PROPERTY OR ON THE HOLDER;

9 (E) THE BENEFIT OR BURDEN DOES NOT TOUCH OR CONCERN REAL PROPERTY; OR

10 (F) THERE IS NO PRIVACY OF ESTATE OR CONTRACT.

11 3. AN INSTRUMENT THAT CREATES RESTRICTIONS OR OBLIGATIONS WITH RESPECT
12 TO REAL PROPERTY THAT WOULD QUALIFY AS ACTIVITY AND USE LIMITATIONS
13 EXCEPT FOR THE FACT THAT THE INSTRUMENT WAS RECORDED BEFORE THE EFFEC-
14 TIVE DATE OF THIS TITLE IS NOT INVALID OR UNENFORCEABLE BECAUSE OF ANY
15 OF THE LIMITATIONS ON ENFORCEMENT OF INTERESTS DESCRIBED IN SUBDIVISION
16 TWO OF THIS SECTION OR BECAUSE IT WAS IDENTIFIED AS AN EASEMENT, SERVI-
17 TUTE, DEED RESTRICTION, OR OTHER INTEREST. THIS TITLE DOES NOT APPLY IN
18 ANY OTHER RESPECT TO SUCH AN INSTRUMENT.

19 4. THIS TITLE DOES NOT INVALIDATE OR RENDER UNENFORCEABLE ANY INTER-
20 EST, WHETHER DESIGNATED AS AN ENVIRONMENTAL COVENANT OR OTHER INTEREST,
21 THAT IS OTHERWISE ENFORCEABLE UNDER THE LAWS OF THIS STATE.

22 5. THIS TITLE SHALL NOT AFFECT ANY INTERESTS OR RIGHTS IN REAL PROPER-
23 TY WHICH ARE NOT ENVIRONMENTAL COVENANTS, AND SHALL NOT AFFECT THE
24 RIGHTS OF OWNERS TO CONVEY ANY INTERESTS IN REAL PROPERTY WHICH THEY
25 COULD NOW CREATE UNDER EXISTING LAW WITHOUT REFERENCE TO THE TERMS OF
26 THIS TITLE. NOTHING IN THIS TITLE SHALL DIMINISH THE POWERS GRANTED BY
27 ANY OTHER LAW TO ACQUIRE INTERESTS OR RIGHTS IN REAL PROPERTY BY
28 PURCHASE, GIFT, EMINENT DOMAIN, OR OTHERWISE AND TO USE THE SAME FOR
29 PUBLIC PURPOSES.

30 S 71-4513. RELATIONSHIP TO OTHER LAND USE LAW.

31 THIS TITLE DOES NOT AUTHORIZE A USE OF REAL PROPERTY THAT IS OTHERWISE
32 PROHIBITED BY ZONING, BY LAW OTHER THAN THIS TITLE REGULATING USE OF
33 REAL PROPERTY, OR BY A RECORDED INSTRUMENT THAT HAS PRIORITY OVER THE
34 ENVIRONMENTAL COVENANT. AN ENVIRONMENTAL COVENANT MAY PROHIBIT OR
35 RESTRICT USES OF REAL PROPERTY WHICH ARE AUTHORIZED BY ZONING OR BY LAW
36 OTHER THAN THIS TITLE.

37 S 71-4515. NOTICE.

38 1. A COPY OF AN ENVIRONMENTAL COVENANT, AND ANY AMENDMENT OR TERMI-
39 NATION THEREOF, SHALL BE PROVIDED IN THE MANNER REQUIRED BY THE DEPART-
40 MENT TO:

41 (A) EACH PERSON THAT SIGNED THE COVENANT;

42 (B) EACH PERSON HOLDING A RECORDED INTEREST IN THE REAL PROPERTY
43 SUBJECT TO THE COVENANT;

44 (C) EACH PERSON IN POSSESSION OF THE REAL PROPERTY SUBJECT TO THE
45 COVENANT;

46 (D) EACH AFFECTED LOCAL GOVERNMENT; AND

47 (E) ANY OTHER PERSON THE DEPARTMENT REQUIRES.

48 2. THE VALIDITY OF A COVENANT IS NOT AFFECTED BY FAILURE TO PROVIDE A
49 COPY OF THE COVENANT AS REQUIRED UNDER THIS SECTION.

50 3. THE DEPARTMENT SHALL INCLUDE A COPY OF EACH ENVIRONMENTAL COVENANT
51 IN THE DATABASE CREATED PURSUANT TO SECTION 27-1415 OF THIS CHAPTER AND
52 MAKE SUCH DATABASE READILY SEARCHABLE.

53 S 71-4517. RECORDING.

54 1. AN ENVIRONMENTAL COVENANT AND ANY AMENDMENT OR TERMINATION OF THE
55 COVENANT MUST BE RECORDED IN THE OFFICE OF THE RECORDING OFFICER IN THE
56 MANNER PRESCRIBED BY ARTICLE NINE OF THE REAL PROPERTY LAW IN EVERY

COUNTY IN WHICH ANY PORTION OF THE REAL PROPERTY SUBJECT TO THE COVENANT IS LOCATED. FOR PURPOSES OF INDEXING, A HOLDER SHALL BE TREATED AS A GRANTEE.

2. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION TWO OF SECTION 71-4521 OF THIS TITLE, AN ENVIRONMENTAL COVENANT IS SUBJECT TO THE LAWS OF THIS STATE GOVERNING RECORDING AND PRIORITY OF INTERESTS IN REAL PROPERTY. S 71-4519. COORDINATION WITH LOCAL GOVERNMENTS.

WHENEVER AN AFFECTED LOCAL GOVERNMENT RECEIVES AN APPLICATION FOR A BUILDING PERMIT OR ANY OTHER APPLICATION AFFECTING LAND USE OR DEVELOPMENT OF LAND THAT IS SUBJECT TO AN ENVIRONMENTAL COVENANT AND THAT MAY RELATE TO OR IMPACT SUCH COVENANT, THE AFFECTED LOCAL GOVERNMENT SHALL NOTIFY THE DEPARTMENT AND REFER SUCH APPLICATION TO THE DEPARTMENT. THE DEPARTMENT SHALL EVALUATE WHETHER THE APPLICATION IS CONSISTENT WITH THE ENVIRONMENTAL COVENANT AND SHALL NOTIFY THE AFFECTED LOCAL GOVERNMENT OF ITS DETERMINATION IN A TIMELY FASHION, CONSIDERING THE TIME FRAME FOR THE LOCAL GOVERNMENT'S REVIEW OF THE APPLICATION. THE AFFECTED LOCAL GOVERNMENT SHALL NOT APPROVE THE APPLICATION UNTIL IT RECEIVES APPROVAL FROM THE DEPARTMENT.

S 71-4521. DURATION.

1. AN ENVIRONMENTAL COVENANT IS PERPETUAL UNLESS IT IS:

(A) BY ITS TERMS LIMITED TO A SPECIFIC DURATION OR TERMINATED BY THE OCCURRENCE OF A SPECIFIC EVENT; OR

(B) EXTINGUISHED OR AMENDED BY A RELEASE OR AMENDMENT OF THE ENVIRONMENTAL COVENANT EXECUTED BY THE DEPARTMENT AND FILED WITH THE OFFICE OF THE RECORDING OFFICER FOR THE COUNTY OR COUNTIES WHERE THE LAND IS SITUATED IN THE MANNER PRESCRIBED BY ARTICLE NINE OF THE REAL PROPERTY LAW.

2. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION ONE OF THIS SECTION, AN ENVIRONMENTAL COVENANT MAY NOT BE EXTINGUISHED, LIMITED, OR IMPAIRED THROUGH FORECLOSURE OF A LIEN, ISSUANCE OF A TAX DEED, FORECLOSURE OF A TAX LIEN, OR APPLICATION OF THE DOCTRINE OF ADVERSE POSSESSION, PRESCRIPTION, EMINENT DOMAIN, ABANDONMENT, WAIVER, LACK OF ENFORCEMENT, OR ACQUIESCENCE, OR A SIMILAR DOCTRINE.

S 71-4523. AMENDMENT OR TERMINATION BY CONSENT.

1. AN ENVIRONMENTAL COVENANT MAY BE AMENDED OR TERMINATED BY CONSENT ONLY IF THE AMENDMENT OR TERMINATION IS SIGNED IN THE MANNER PRESCRIBED BY SECTION 71-4509 OF THIS TITLE BY:

(A) THE DEPARTMENT; AND

(B) UNLESS WAIVED BY THE DEPARTMENT, THE CURRENT OWNER OF THE FEE SIMPLE OF THE REAL PROPERTY SUBJECT TO THE COVENANT.

2. IF AN INTEREST IN REAL PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, THE INTEREST IS NOT AFFECTED BY AN AMENDMENT OF THE COVENANT UNLESS THE CURRENT OWNER OF THE INTEREST CONSENTS TO THE AMENDMENT OR HAS WAIVED IN A WRITING, SIGNED IN THE MANNER PRESCRIBED BY SECTION 71-4509 OF THIS TITLE, THE RIGHT TO CONSENT TO AMENDMENTS.

S 71-4525. ENFORCEMENT OF ENVIRONMENTAL COVENANT.

1. A CIVIL ACTION FOR INJUNCTIVE OR OTHER EQUITABLE RELIEF FOR VIOLATION OF AN ENVIRONMENTAL COVENANT MAY BE MAINTAINED BY:

(A) A PARTY TO THE COVENANT;

(B) THE DEPARTMENT;

(C) ANY AFFECTED LOCAL GOVERNMENT;

(D) ANY PERSON TO WHOM THE COVENANT EXPRESSLY GRANTS POWER TO ENFORCE, OR IS IDENTIFIED IN THE COVENANT AS AN INTENDED BENEFICIARY; OR

(E) A PERSON WHOSE INTEREST IN THE REAL PROPERTY OR WHOSE COLLATERAL OR LIABILITY MAY BE AFFECTED BY THE ALLEGED VIOLATION OF THE COVENANT.

2. THE ENVIRONMENTAL COVENANT IS ENFORCEABLE AGAINST THE OWNER OF THE BURDENED PROPERTY, ANY LESSEES, AND ANY PERSON USING THE LAND.

1 3. A PERSON IS NOT RESPONSIBLE FOR OR SUBJECT TO LIABILITY FOR ENVI-
2 RONMENTAL REMEDIATION SOLELY BECAUSE IT HAS THE RIGHT TO ENFORCE AN
3 ENVIRONMENTAL COVENANT.

4 4. ENFORCEMENT SHALL NOT BE DEFEATED BECAUSE OF ANY SUBSEQUENT ADVERSE
5 POSSESSION, LACHES, ESTOPPEL, OR WAIVER. NO GENERAL LAW OF THE STATE
6 WHICH OPERATES TO DEFEAT THE ENFORCEMENT OF ANY INTEREST IN REAL PROPER-
7 TY SHALL OPERATE TO DEFEAT THE ENFORCEMENT OF ANY ENVIRONMENTAL COVENANT
8 UNLESS SUCH GENERAL LAW EXPRESSLY STATES THE INTENT TO DEFEAT THE
9 ENFORCEMENT OF SUCH COVENANT OR PROVIDES FOR THE EXERCISE OF THE POWER
10 OF EMINENT DOMAIN.

11 5. FOR ANY PERSON WHO INTENTIONALLY VIOLATES AN ENVIRONMENTAL COVENANT
12 THE DEPARTMENT MAY REVOKE THE CERTIFICATE OF COMPLETION PROVIDED BY
13 SECTION 27-1419 OF THIS CHAPTER AS TO THE RELEVANT REAL ESTATE.

14 S 71-4527. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

15 IN APPLYING AND CONSTRUING THIS TITLE, CONSIDERATION MUST BE GIVEN TO
16 THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS SUBJECT
17 MATTER AMONG STATES THAT ENACT IT.

18 S 71-4529. REGULATIONS.

19 THE DEPARTMENT IS AUTHORIZED TO PROMULGATE RULES AND REGULATIONS
20 NECESSARY AND APPROPRIATE TO CARRY OUT THE PURPOSES OF THIS TITLE.

21 S 71-4531. SEVERABILITY.

22 THE PROVISIONS OF THIS TITLE SHALL BE SEVERABLE, AND IF ANY CLAUSE,
23 SENTENCE, PARAGRAPH, SUBDIVISION, OR PART OF THIS TITLE SHALL BE
24 ADJUDGED BY ANY COURT OF COMPETENT JURISDICTION TO BE INVALID, SUCH
25 JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAINDER THEREOF,
26 BUT SHALL BE CONFINED IN ITS OPERATION TO THE CLAUSE, SENTENCE, PARA-
27 GRAPH, SUBDIVISION, OR PART THEREOF DIRECTLY INVOLVED IN THE CONTROVERSY
28 IN WHICH SUCH JUDGMENT SHALL HAVE BEEN RENDERED; PROVIDED THAT IF AN
29 ENVIRONMENTAL COVENANT CREATED PURSUANT TO THIS TITLE IS DETERMINED BY
30 ANY COURT OF COMPETENT JURISDICTION TO BE LAND OR WATER OR AN INTEREST
31 IN LAND OR WATER SUBJECT TO THE PROVISIONS OF ARTICLE FOURTEEN OF THE
32 CONSTITUTION, THEN THE AUTHORITY OF THE STATE TO HOLD OR ACQUIRE SUCH
33 COVENANT AND THE CONVEYANCE TO THE STATE OF SUCH COVENANT SHALL BE VOID
34 AB INITIO.

35 S 4. Subdivision (b) of section 27-1318 of the environmental conserva-
36 tion law, as amended by section 2 of part E of chapter 577 of the laws
37 of 2004, is amended to read as follows:

38 (b) Within sixty days of commencement of the remedial design, the
39 owner of an inactive hazardous waste disposal site, and/or any person
40 responsible for implementing a remedial program at such site, where
41 institutional or engineering controls are employed pursuant to this
42 title, shall execute an environmental easement pursuant to title thir-
43 ty-six of article seventy-one of this chapter OR AN ENVIRONMENTAL COVEN-
44 ANT PURSUANT TO TITLE FORTY-FIVE OF ARTICLE SEVENTY-ONE OF THIS CHAPTER.

45 S 5. Paragraph (d) of subdivision 7 of section 27-1415 of the environ-
46 mental conservation law, as added by section 1 of part A of chapter 1 of
47 the laws of 2003, is amended to read as follows:

48 (d) The commissioner shall create, update, and maintain a database
49 system for public information purposes and to monitor and track all
50 brownfield sites subject to this title. Data incorporated into such
51 system for each site for which information has been collected pursuant
52 to this title shall include, but shall not be limited to, a site summa-
53 ry, name of site owner, location, status of site remedial activity,
54 [and, if one has been created pursuant to title thirty-six of article
55 seventy-one of this chapter, a copy of the environmental easement,] and
56 a contact number to obtain additional information. THE DATABASE SHALL

1 ALSO INCLUDE FOR EACH SITE A COPY OF THE ENVIRONMENTAL EASEMENT, IF ONE
2 HAS BEEN CREATED PURSUANT TO TITLE THIRTY-SIX OF ARTICLE SEVENTY-ONE OF
3 THIS CHAPTER, OR A COPY OF THE ENVIRONMENTAL COVENANT, IF ONE HAS BEEN
4 CREATED PURSUANT TO TITLE FORTY-FIVE OF ARTICLE SEVENTY-ONE OF THIS
5 CHAPTER. Sites shall be added to such system upon the execution of a
6 brownfield site cleanup agreement [pursuant to section 27-1409 of this
7 title]. If and when an environmental easement OR COVENANT is modified or
8 extinguished, the copy of the environmental easement OR COVENANT
9 contained in the database shall be updated accordingly. Such database
10 shall be in such a format that it can be readily searched by affected
11 local governments and the public for purposes including but not limited
12 to determining whether an environmental easement OR COVENANT has been
13 recorded for a site pursuant to title thirty-six OR FORTY-FIVE of arti-
14 cle seventy-one of this chapter. The database shall be available elec-
15 tronically. Information from this database shall be incorporated into
16 the geographic information system created and maintained by the depart-
17 ment pursuant to section 3-0315 of this chapter.

18 S 6. Paragraph (e) of subdivision 2 of section 27-1419 of the environ-
19 mental conservation law, as added by section 1 of part A of chapter 1 of
20 the laws of 2003, is amended to read as follows:

21 (e) a certification that any use restrictions, institutional controls,
22 engineering controls and/or any operation and maintenance requirements
23 applicable to the site are contained in an environmental easement
24 created and recorded pursuant to title thirty-six of article seventy-one
25 of this chapter OR AN ENVIRONMENTAL COVENANT CREATED AND RECORDED PURSU-
26 ANT TO TITLE FORTY-FIVE OF SUCH ARTICLE and that any affected local
27 governments, as defined in title thirty-six of SUCH article [seventy-one
28 of this chapter] have been notified that such easement OR COVENANT has
29 been recorded;

30 S 7. Paragraph (g) of subdivision 2 of section 56-0503 of the environ-
31 mental conservation law, as amended by section 4 of part D of chapter 1
32 of the laws of 2003, is amended to read as follows:

33 (g) An agreement by the municipality that it shall put into place any
34 engineering and/or institutional controls (including environmental ease-
35 ments pursuant to title thirty-six of article seventy-one of this chap-
36 ter OR ENVIRONMENTAL COVENANTS PURSUANT TO TITLE FORTY-FIVE OF SUCH
37 ARTICLE) that the department may deem necessary to allow the contem-
38 plated use to proceed, that such engineering and/or institutional
39 controls shall be binding on such municipality, any successor in title,
40 and any lessees and that any successors in title and any lessees cannot
41 challenge state enforcement of such controls;

42 S 8. Paragraph 5 of subdivision (a) of section 21 of the tax law, as
43 amended by section 1 of part H of chapter 577 of the laws of 2004, is
44 amended to read as follows:

45 (5) Applicable percentage. For purposes of paragraphs two, three and
46 four of this subdivision, the applicable percentage shall be twelve
47 percent [in the case of credits claimed under article nine, nine-A,
48 thirty-two or thirty-three of this chapter, and ten percent in the case
49 of credits claimed under article twenty-two of this chapter,] except
50 that where at least fifty percent of the area of the qualified site
51 relating to the credit provided for in this section is located in an
52 environmental zone as defined in paragraph six of subdivision (b) of
53 this section, the applicable percentage shall be increased by an addi-
54 tional eight percent. Provided, however, as afforded in section 27-1419
55 of the environmental conservation law, if the certificate of completion
56 indicates that the qualified site has been remediated to Track 1 as that

1 term is described in subdivision four of section 27-1415 of the environ-
2 mental conservation law, the applicable percentage set forth in the
3 first sentence of this paragraph shall be increased by an additional two
4 percent.

5 S 9. Subparagraph (A) of paragraph 3-a of subdivision (a) of section
6 21 of the tax law, as added by chapter 390 of the laws of 2008, is
7 amended to read as follows:

8 (A) Notwithstanding any other provision of law to the contrary, the
9 tangible property credit component available for any qualified site
10 pursuant to paragraph three of this subdivision shall not exceed thir-
11 ty-five million dollars or three times THE SUM OF the costs included in
12 the calculation of the site preparation credit component and the on-site
13 groundwater remediation credit component under paragraphs two and four,
14 respectively, of this subdivision, AND THE COSTS THAT WOULD HAVE BEEN
15 INCLUDED IN THE CALCULATION OF SUCH COMPONENTS IF NOT TREATED AS AN
16 EXPENSE AND DEDUCTED PURSUANT TO SECTION 198 OF THE INTERNAL REVENUE
17 CODE, whichever is less; provided, however, that: (1) in the case of a
18 qualified site to be used primarily for manufacturing activities, the
19 tangible property credit component available for any qualified site
20 pursuant to paragraph three of this subdivision shall not exceed
21 [forty-five] ONE HUNDRED FIFTY million dollars or [six] TWENTY times THE
22 SUM OF the costs included in the calculation of the site preparation
23 credit component and the on-site groundwater remediation credit compo-
24 nent under paragraphs two and four, respectively, of this subdivision,
25 AND THE COSTS THAT WOULD HAVE BEEN INCLUDED IN THE CALCULATION OF SUCH
26 COMPONENTS IF NOT TREATED AS AN EXPENSE AND DEDUCTED PURSUANT TO SECTION
27 198 OF THE INTERNAL REVENUE CODE, whichever is less; and (2) the
28 provisions of this paragraph shall not apply to any qualified site for
29 which the department of environmental conservation has issued a notice
30 to the taxpayer before June twenty-third, two thousand eight that its
31 request for participation has been accepted under subdivision six of
32 section 27-1407 of the environmental conservation law.

33 S 10. Paragraph 6 of subdivision (b) of section 21 of the tax law, as
34 amended by section 1 of part H of chapter 577 of the laws of 2004,
35 subparagraph (B) and the closing paragraph as amended by section 1 of
36 part G of chapter 62 of the laws of 2006, is amended to read as follows:

37 (6) Environmental zones (EN-Zones). An "environmental zone" shall mean
38 an area designated as such by the commissioner of economic development.
39 Such areas so designated are areas which are census tracts and block
40 numbering areas which, as of the [two thousand] MOST RECENT census,
41 satisfy either of the following criteria:

42 (A) areas that have both:

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

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

47 (B) areas that have a poverty rate of at least two times the poverty
48 rate for the county in which the areas are located for the year to which
49 the data relate [provided, however, that a qualified site shall only be
50 deemed to be located in an environmental zone under this subparagraph
51 (B) if such site was the subject of a brownfield site cleanup agreement
52 pursuant to section 27-1409 of the environmental conservation law that
53 was entered into prior to September first, two thousand ten].

54 Such designation shall be made and a list of all such environmental
55 zones shall be established by the commissioner of economic development
56 no later than December thirty-first, two thousand [four provided, howev-

er, that a qualified site shall only be deemed to be located in an environmental zone under subparagraph (B) of this paragraph if such site was the subject of a brownfield site cleanup agreement pursuant to section 27-1409 of the environmental conservation law that was entered into prior to September first, two thousand ten] TWELVE.

S 11. Paragraph 5 of subdivision (a) of section 22 of the tax law, as amended by section 4 of part H of chapter 577 of the laws of 2004, subparagraph (B) and the closing paragraph as amended by section 2 of part G of chapter 62 of the laws of 2006, is amended to read as follows:

(5) Environmental zones (EN-Zones). An "environmental zone" shall mean an area designated as such by the commissioner of economic development. Such areas so designated are areas which are census tracts and block numbering areas which, as of the [two thousand] MOST RECENT census, satisfy either of the following criteria:

(A) areas that have both:

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

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

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

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

S 12. Subdivision (a) of section 23 of the tax law, as amended by section 10 of part H of chapter 577 of the laws of 2004, is amended to read as follows:

(a) Allowance of credit. General. A taxpayer subject to tax under article nine, nine-A, twenty-two, thirty-two or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (e) of this section. The amount of such credit shall be equal to the lesser of [thirty] NINETY thousand dollars or fifty percent of the premiums paid on or after the date of the brownfield site cleanup agreement executed by the taxpayer and the department of environmental conservation pursuant to section 27-1409 of the environmental conservation law by the taxpayer for environmental remediation insurance issued with respect to a qualified site.

S 13. Section 31 of part H of chapter 1 of the laws of 2003 amending the tax law relating to brownfield redevelopment tax credits, is REPEALED.

S 14. Severability. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have

1 been rendered. It is hereby declared to be the intent of the legislature
2 that this act would have been enacted even if such invalid provisions
3 had not been included herein.

4 S 15. This act shall take effect immediately and shall apply to a
5 qualified site for which the commissioner of environmental conservation
6 has issued a notice to the taxpayer or other applicant after July 1,
7 2012 that its request for participation has been accepted under subdivi-
8 sion 6 of section 27-1407 of the environmental conservation law.