S T A T E O F N E W Y O R K

11435

I N A S S E M B L Y

June 14, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Sweeney) -- (at request of the Department of Environmental Conservation) -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, the tax law, the general municipal law, the public service law and the business law, in relation to eligibility for participation in the brownfield cleanup program, the provision for a covenant, and assignment of the brownfield redevelopment tax; and repealing certain provisions of the environmental conservation law relating thereto

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

Section 1. Subdivision (b) of section 27-1318 of the environmental conservation law, as amended by section 2 of part E of chapter 577 of the laws of 2004, is amended to read as follows:

(b) Within [sixty] ONE HUNDRED EIGHTY days of commencement of the remedial design, the owner of an inactive hazardous waste disposal site, and/or any person responsible for implementing a remedial program at such site, where institutional or engineering controls are employed pursuant to this title, shall execute an environmental easement pursuant to title thirty-six of article seventy-one of this chapter OR AN ENVIRONMENTAL COVENANT PURSUANT TO TITLE FORTY-FIVE OF ARTICLE SEVENTY-ONE OF THIS CHAPTER.

S 2. Subdivisions 2 and 4 of section 27-1405 of the environmental conservation law, subdivision 2 as amended by section 2 of part A of chapter 577 of the laws of 2004 and subdivision 4 as added by section 1 of part A of chapter 1 of the laws of 2003, are amended to read as follows:

2. "Brownfield site" or "site" shall mean any real property[, the redevelopment or reuse of which may be complicated by the presence or potential presence of] WHERE a contaminant IS KNOWN TO BE PRESENT AT LEVELS EXCEEDING APPLICABLE HEALTH-BASED OR ENVIRONMENTAL STANDARDS OR IS REASONABLY EXPECTED TO BE PRESENT BASED ON HISTORIC COMMERCIAL OR INDUSTRIAL USE OF THE SITE AS ESTABLISHED BY A PHASE I REPORT AS DEFINED

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

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IN REGULATIONS PROMULGATED BY THE DEPARTMENT. Such term shall not include real property:

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

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

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

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

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

4. "Brownfield site cleanup agreement" shall mean: (A) FOR THOSE SITES WHERE THE DEPARTMENT HAS ISSUED A NOTICE TO THE APPLICANT ON OR BEFORE JULY FIRST, TWO THOUSAND TEN THAT ITS REQUEST FOR PARTICIPATION HAS BEEN ACCEPTED UNDER SUBDIVISION SIX OF SECTION 27-1407 OF THIS TITLE, an agreement executed in accordance with section 27-1409 of this title [by an applicant and the department for the purpose of completing a brownfield site remedial program]; (B) FOR THOSE SITES WHERE THE DEPARTMENT HAS ISSUED SUCH NOTICE AFTER JULY FIRST, TWO THOUSAND TEN, THE APPLICANT'S WRITTEN ACCEPTANCE OF THE TERMS AND CONDITIONS OF PARTICIPATION PURSUANT TO SECTION 27-1409 OF THIS TITLE, AND THE DATE OF THE APPLICANT'S WRITTEN ACCEPTANCE SHALL BE THE DATE OF THE BROWNFIELD SITE CLEANUP AGREEMENT.

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

1. A person who seeks to participate in this program shall submit a request to the department on a form provided by the department. Such form shall include information to be determined by the department sufficient to allow the department to determine eligibility and the current, intended and reasonably anticipated future land use of the site pursuant to section 27-1415 of this title. IF THE PERSON IS ALSO SEEKING TO RECEIVE THE TANGIBLE PROPERTY CREDIT COMPONENT OF THE BROWNFIELD REDEVELOPMENT TAX CREDIT PURSUANT TO PARAGRAPH THREE OF SUBDIVISION (A) OF SECTION TWENTY-ONE OF THE TAX LAW SUCH PERSON SHALL:

(A) SUBMIT INFORMATION SUFFICIENT TO DEMONSTRATE THAT (I) THE SITE HAS BEEN A VACANT LOT FOR TEN OR MORE YEARS, OR, IN THE CASE OF A SITE WITH A BUILDING OR BUILDINGS, HAS BEEN VACANT OR SEVERELY UNDERUTILIZED, AS DEMONSTRATED BY TWENTY PERCENT OR LESS USE OF ANY BUILDING SPACE FOR THE PURPOSES FOR WHICH THE BUILDING WAS DESIGNED FOR TEN OR MORE YEARS, (II) THE SITE OR A PART THEREOF IS WITHIN AN ENVIRONMENTAL ZONE AS DEFINED IN PARAGRAPH SIX OF SUBDIVISION (B) OF SECTION TWENTY-ONE OF THE TAX LAW, (III) THE PROJECTED COST OF THE INVESTIGATION AND REMEDIATION WHICH IS PROTECTIVE FOR THE ANTICIPATED USE OF THE SITE EXCEEDS THE CERTIFIED APPRAISED VALUE OF THE PROPERTY ABSENT CONTAMINATION, OR (IV) THE SITE IS TO BE DEVELOPED AS AFFORDABLE HOUSING, DEFINED AS HAVING AT LEAST TWENTY PERCENT OF ITS RESIDENTIAL UNITS SUBJECT TO AN AGREEMENT WITH A MUNICIPALITY, THE STATE, THE FEDERAL GOVERNMENT, OR AN INSTRUMENTALITY THEREOF, WHERE SUCH AGREEMENT RESTRICTS OCCUPANCY OF THOSE UNITS TO RESIDENTS WHO QUALIFY IN ACCORDANCE WITH AN INCOME TEST;

(B) SUBMIT AN INVESTIGATION REPORT SUFFICIENT TO DEMONSTRATE THAT THE SITE REQUIRES REMEDIATION IN ORDER TO MEET THE REMEDIAL REQUIREMENTS OF THIS TITLE; AND

(C) FOR ANY SITE LOCATED WITHIN A BROWNFIELD OPPORTUNITY AREA DESIGNATED BY THE SECRETARY OF STATE PURSUANT TO SECTION NINE HUNDRED SEVENTY-R OF THE GENERAL MUNICIPAL LAW, SUBMIT A DEMONSTRATION THAT THE DEVELOPMENT OF THE SITE WILL BE IN CONFORMANCE WITH SUCH BROWNFIELD OPPORTUNITY AREA PLAN.

S 4. Subdivision 3 of section 27-1407 of the environmental conservation law, as amended by section 3 of part A of chapter 577 of the laws of 2004, is amended to read as follows:

3. The department shall notify the person requesting participation in this program within [ten] THIRTY days after receiving such request that such request is either complete or incomplete. In the event the application is determined to be incomplete the department shall specify in writing the missing necessary information required pursuant to this article to complete the application and shall have ten days after receipt of the missing information to issue a written determination if the application is complete.

S 5. Subdivision 6 of section 27-1407 of the environmental conservation law, as added by section 1 of part A of chapter 1 of the laws of 2003, is amended to read as follows:

6. The department shall use all best efforts to expeditiously notify the applicant within forty-five days after receiving [their] A request for participation that such request is either accepted or rejected, AND, FOR ANY APPLICANT SEEKING TO RECEIVE THE TANGIBLE PROPERTY CREDIT COMPONENT OF THE BROWNFIELD REDEVELOPMENT TAX CREDIT PURSUANT TO PARAGRAPH THREE OF SUBDIVISION (A) OF SECTION TWENTY-ONE OF THE TAX LAW, WHETHER THE CRITERIA FOR RECEIVING SUCH COMPONENT AS SET FORTH IN SUBDIVISION ONE OF THIS SECTION HAVE BEEN MET. IN THE CASE OF A SITE WITHIN A DESIGNATED BROWNFIELD OPPORTUNITY AREA, THE NOTICE SHALL INCLUDE A DETERMINATION BY THE SECRETARY OF STATE AS TO WHETHER THE PROPOSED DEVELOPMENT FOR THE SITE IS IN CONFORMANCE WITH THE DESIGNATED BROWNFIELD OPPORTUNITY AREA PLAN PURSUANT TO SECTION NINE HUNDRED SEVENTY-R OF THE GENERAL MUNICIPAL LAW.

S 6. Subdivision 8 of section 27-1407 of the environmental conservation law is amended by adding a new paragraph (e) to read as follows:

(E) THE PERSON'S PARTICIPATION IN ANY REMEDIAL PROGRAM UNDER THE DEPARTMENT'S OVERSIGHT WAS TERMINATED BY THE DEPARTMENT FOR FAILURE TO SUBSTANTIALLY COMPLY WITH AN AGREEMENT OR ORDER.

S 7. Section 27-1409 of the environmental conservation law is REPEALED and a new section 27-1409 is added to read as follows:

S 27-1409. TERMS OF PARTICIPATION.

1. WITHIN FIFTEEN DAYS OF RECEIPT OF A NOTICE PURSUANT TO SUBDIVISION SIX OF SECTION 27-1407 OF THIS TITLE THAT ITS REQUEST FOR PARTICIPATION HAS BEEN ACCEPTED, THE APPLICANT SHALL ADVISE THE DEPARTMENT IN WRITING WHETHER IT ACCEPTS THE DEPARTMENT'S ELIGIBILITY DETERMINATION AND THE TERMS AND CONDITIONS OF PARTICIPATION AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION, THE REGULATIONS PROMULGATED AND GUIDANCE ISSUED PURSUANT TO THIS TITLE, AND OTHER TERMS AND CONDITIONS AS MAY BE CONTAINED IN THE NOTICE. IF THE APPLICANT DOES NOT SO ADVISE THE DEPARTMENT OR DECLINES TO ACCEPT SUCH TERMS AND CONDITIONS, THE APPLICATION SHALL BE DEEMED WITHDRAWN.

2. ALL APPLICANTS ACCEPTING PARTICIPATION IN THE BROWNFIELD CLEANUP PROGRAM IN ACCORDANCE WITH SUBDIVISION ONE OF THIS SECTION ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

(A) THE BOUNDARIES OF THE REAL PROPERTY THAT WILL BE CONSIDERED THE PARTICIPATING BROWNFIELD SITE FOR PURPOSES OF THIS TITLE SHALL BE THOSE SET FORTH IN THE DEPARTMENT'S NOTICE PURSUANT TO SUBDIVISION SIX OF SECTION 27-1407 OF THIS TITLE;

(B) THE PARTICIPANT SHALL PAY ALL COSTS INCURRED BY THE STATE UP TO THE EFFECTIVE DATE OF SUCH AGREEMENT AND ALL STATE COSTS INCURRED IN NEGOTIATING AND OVERSEEING IMPLEMENTATION OF SUCH AGREEMENT, PROVIDED, HOWEVER, THAT SUCH COSTS MAY BE BASED UPON A REASONABLE FLAT-FEE FOR OVERSIGHT, WHICH SHALL REFLECT THE PROJECTED FUTURE STATE COSTS TO BE INCURRED IN NEGOTIATING AND OVERSEEING IMPLEMENTATION OF SUCH AGREEMENT. PAYMENT OF STATE COSTS SHALL BE MADE TO THE HAZARDOUS WASTE REMEDIAL FUND ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-B OF THE STATE FINANCE LAW;

(C) WITH RESPECT TO A BROWNFIELD SITE WHICH THE DEPARTMENT HAS DETERMINED CONSTITUTES A SIGNIFICANT THREAT TO THE PUBLIC HEALTH OR ENVIRONMENT, THE DEPARTMENT MAY INCLUDE A PROVISION REQUIRING THE PARTICIPANT TO PROVIDE A TECHNICAL ASSISTANCE GRANT, AS DESCRIBED IN SUBDIVISION FOUR OF SECTION 27-1417 OF THIS TITLE, TO AN ELIGIBLE PARTY;

(D) DISPUTES ARISING FROM THE EVALUATION, ANALYSIS, AND OVERSIGHT OF THE IMPLEMENTATION OF THE WORK PLAN SHALL BE RESOLVED IN ACCORDANCE WITH REGULATIONS PROMULGATED BY THE DEPARTMENT;

(E) NOTWITHSTANDING SECTION EIGHT OF THE COURT OF CLAIMS ACT OR ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE STATE SHALL BE IMMUNE FROM LIABILITY AND ACTION WITH RESPECT TO ANY ACT OR OMISSION DONE IN THE DISCHARGE OF THE DEPARTMENT'S RESPONSIBILITIES UNDER THIS TITLE; PROVIDED, HOWEVER, THAT THIS PARAGRAPH SHALL NOT LIMIT THE LIABILITY WHICH MAY OTHERWISE EXIST FOR THE STATE'S GROSS NEGLIGENCE OR UNLAWFUL, WILLFUL OR MALICIOUS ACTS OR OMISSIONS ON THE PART OF THE STATE, STATE AGENCIES, OR THEIR OFFICERS, EMPLOYEES OR AGENTS;

(F) THE DEPARTMENT MAY TERMINATE AN APPLICANT'S PARTICIPATION IN THE BROWNFIELD CLEANUP PROGRAM AT ANY TIME IF THE APPLICANT FAILS TO SUBSTANTIALLY COMPLY WITH THE TERMS AND CONDITIONS OF THIS SUBDIVISION, ANY DULY PROMULGATED REGULATIONS IMPLEMENTING THE BROWNFIELD CLEANUP PROGRAM, ANY TERMS AND CONDITIONS SET FORTH IN THE DEPARTMENT'S NOTICE PURSUANT TO SUBDIVISION SIX OF SECTION 27-1407 OF THIS TITLE, OR ANY WORK PLAN APPROVED BY THE DEPARTMENT;

(G) THE DEPARTMENT SHALL NOT CONSIDER THE APPLICANT AN OPERATOR OF A BROWNFIELD SITE BASED SOLELY UPON PARTICIPATION IN THE BROWNFIELD CLEANUP PROGRAM FOR PURPOSES OF REMEDIATION LIABILITY;

(H) THE APPLICANT SHALL CONDUCT INVESTIGATION AND/OR REMEDIATION ACTIVITIES PURSUANT TO WORK PLANS APPROVED BY THE DEPARTMENT AND SHALL BEGIN SUCH INVESTIGATION AND/OR REMEDIATION ACTIVITIES WITHIN NINETY DAYS OF APPROVAL OF THE WORK PLAN BY THE DEPARTMENT;

(I) THE APPLICANT SHALL PREPARE AND IMPLEMENT A CITIZEN PARTICIPATION PLAN CONSISTENT WITH THE REQUIREMENTS OF THIS TITLE AS SOON AS POSSIBLE FOLLOWING THE DEPARTMENT'S NOTICE PURSUANT TO SUBDIVISION SIX OF SECTION 27-1407 OF THIS TITLE BUT PRIOR TO THE PREPARATION OF A DRAFT REMEDIAL INVESTIGATION PLAN BY THE APPLICANT WHICH SHALL INCLUDE A DESCRIPTION OF CITIZEN PARTICIPATION ACTIVITIES ALREADY PERFORMED BY THE APPLICANT AND/OR THE DEPARTMENT; AND

(J) EFFECTIVE UPON THE ACCEPTANCE INTO THE BROWNFIELD CLEANUP PROGRAM PURSUANT TO SUBDIVISION ONE OF THIS SECTION, THE APPLICANT IS DEEMED TO HAVE WAIVED ANY RIGHT SUCH APPLICANT HAS OR MAY HAVE TO MAKE A CLAIM AGAINST THE STATE OF NEW YORK PURSUANT TO ARTICLE TWELVE OF THE NAVIGATION LAW WITH RESPECT TO THE BROWNFIELD SITE, AND RELEASED THE NEW YORK ENVIRONMENTAL PROTECTION AND SPILL COMPENSATION FUND FROM ANY AND ALL LEGAL OR EQUITABLE CLAIMS OR CAUSES OF ACTION THAT SUCH APPLICANT MAY HAVE AS A RESULT OF PARTICIPATING IN THE BROWNFIELD CLEANUP PROGRAM OR FULFILLING A BROWNFIELD SITE REMEDIAL PROGRAM AT SUCH SITE.

S 8. Section 27-1411 of the environmental conservation law is amended by adding two new subdivisions 6 and 7 to read as follows:

6. AN APPLICANT SHALL COMMENCE IMPLEMENTATION OF ANY WORK PLAN WITHIN NINETY DAYS OF APPROVAL OF THE PLAN BY THE DEPARTMENT AND COMPLETE THE ACTIVITIES PROVIDED FOR IN SUCH WORK PLAN IN ACCORDANCE WITH THE SCHEDULE SET FORTH THEREIN, OR AS OTHERWISE APPROVED BY THE DEPARTMENT IN WRITING.

7. AN APPLICANT SHALL INCLUDE WITH EVERY REPORT SUBMITTED TO THE DEPARTMENT A SCHEDULE FOR THE SUBMISSION OF ANY SUBSEQUENT WORK PLAN REQUIRED TO MEET THE REQUIREMENTS OF THIS TITLE.

S 9. Paragraph (d) of subdivision 7 of section 27-1415 of the environmental conservation law, as added by section 1 of part A of chapter 1 of the laws of 2003, is amended to read as follows:

(d) The commissioner shall create, update, and maintain a database system for public information purposes and to monitor and track all brownfield sites subject to this title. Data incorporated into such system for each site for which information has been collected pursuant to this title shall include, but shall not be limited to, a site summary, name of site owner, location, status of site remedial activity, [and, if one has been created pursuant to title thirty-six of article seventy-one of this chapter, a copy of the environmental easement,] and a contact number to obtain additional information. THE DATABASE SHALL ALSO INCLUDE FOR EACH SITE A COPY OF THE ENVIRONMENTAL EASEMENT, IF ONE HAS BEEN CREATED PURSUANT TO TITLE THIRTY-SIX OF ARTICLE SEVENTY-ONE OF THIS CHAPTER, OR A COPY OF THE ENVIRONMENTAL COVENANT, IF ONE HAS BEEN CREATED PURSUANT TO TITLE FORTY-FIVE OF ARTICLE SEVENTY-ONE OF THIS CHAPTER. Sites shall be added to such system upon the execution of a brownfield site cleanup agreement [pursuant to section 27-1409 of this title]. If and when an environmental easement OR COVENANT is modified or extinguished, the copy of the environmental easement OR COVENANT contained in the database shall be updated accordingly. Such database shall be in such a format that it can be readily searched by affected local governments and the public for purposes including but not limited to determining whether an environmental easement OR COVENANT has been recorded for a site pursuant to title thirty-six OR FORTY-FIVE of article seventy-one of this chapter. The database shall be available elec-

tronically. Information from this database shall be incorporated into the geographic information system created and maintained by the department pursuant to section 3-0315 of this chapter.

S 10. Paragraph (e) of subdivision 2 of section 27-1419 of the environmental conservation law, as added by section 1 of part A of chapter 1 of the laws of 2003, is amended to read as follows:

(e) a certification that any use restrictions, institutional controls, engineering controls and/or any operation and maintenance requirements applicable to the site are contained in an environmental easement created and recorded pursuant to title thirty-six of article seventy-one of this chapter OR AN ENVIRONMENTAL COVENANT CREATED AND RECORDED PURSUANT TO TITLE FORTY-FIVE OF ARTICLE SEVENTY-ONE OF THIS CHAPTER and that any affected local governments, as defined in title thirty-six of article seventy-one of this chapter have been notified that such easement OR COVENANT has been recorded;

S 11. Subdivision 3 of section 27-1419 of the environmental conservation law, as amended by chapter 390 of the laws of 2008, is amended to read as follows:

3. Upon receipt of the final engineering report, the department shall review such report and the data submitted pursuant to the brownfield site cleanup agreement as well as any other relevant information regarding the brownfield site. Upon satisfaction of the commissioner that the remediation requirements set forth in this title have been or will be achieved in accordance with the timeframes, if any, established in the remedial work plan, the commissioner shall issue a written certificate of completion[, such]. SUCH certificate shall include such information as determined by the department of taxation and finance, including but not limited to the brownfield site boundaries included in the final engineering report, the date of the brownfield site CLEANUP agreement [pursuant to section 27-1409 of this title], and the applicable percentages available AS OF THE DATE OF THE CERTIFICATE OF COMPLETION for that site for purposes of section twenty-one of the tax law[, with such]. FOR THOSE SITES FOR WHICH THE DEPARTMENT HAS ISSUED A NOTICE TO THE TAXPAYER AFTER JULY FIRST, TWO THOUSAND TEN THAT ITS REQUEST FOR PARTICIPATION HAS BEEN ACCEPTED UNDER SUBDIVISION SIX OF SECTION 27-1407 OF THIS TITLE, THE TANGIBLE PROPERTY CREDIT COMPONENT OF THE BROWNFIELD REDEVELOPMENT TAX CREDIT PURSUANT TO PARAGRAPH THREE OF SUBDIVISION (A) OF SECTION TWENTY-ONE OF THE TAX LAW SHALL ONLY BE AVAILABLE TO THE TAXPAYER IF SUCH NOTICE INCLUDES A DETERMINATION THAT THE CRITERIA FOR RECEIVING SUCH TAX COMPONENT HAVE BEEN MET. APPLICABLE percentages [to] FOR COMPUTING THE BROWNFIELD REDEVELOPMENT TAX CREDIT PURSUANT TO SECTION TWENTY-ONE OF THE TAX LAW SHALL be determined as follows:

(A) with respect to such qualified site for which the department has issued a notice to the taxpayer after June twenty-third, two thousand eight that its request for participation has been accepted under subdivision six of section 27-1407 of this title[:

For the purposes of calculating], THE APPLICABLE PERCENTAGE FOR the site preparation credit component pursuant to paragraph two of subdivision (a) of section twenty-one of the tax law, and the on-site groundwater remediation credit component pursuant to paragraph four of subdivision (a) of section twenty-one of the tax law[, the applicable percentage] shall be based on the level of cleanup achieved pursuant to subdivision four of section 27-1415 of this title and the level of cleanup of soils to contaminant-specific soil cleanup objectives promulgated pursuant to subdivision six of section 27-1415 of this title, up to a maximum of fifty percent, as follows:

[(a)] (I) soil cleanup for unrestricted use, the protection of groundwater or the protection of ecological resources, the applicable percentage shall be fifty percent;

[(b)] (II) soil cleanup for residential use, the applicable percentage shall be forty percent, except for Track 4 which shall be twenty-eight percent;

[(c)] (III) soil cleanup for commercial use, the applicable percentage shall be thirty-three percent, except for Track 4 which shall be twenty-five percent;

[(d)](IV) soil cleanup for industrial use, the applicable percentage shall be twenty-seven percent, except for Track 4 which shall be twenty-two percent.

(B) WITH RESPECT TO SUCH QUALIFIED SITE FOR WHICH THE DEPARTMENT HAS ISSUED A NOTICE TO THE TAXPAYER AFTER JULY FIRST, TWO THOUSAND TEN THAT ITS REQUEST FOR PARTICIPATION HAS BEEN ACCEPTED UNDER SUBDIVISION SIX OF SECTION 27-1407 OF THIS TITLE, THE APPLICABLE PERCENTAGE FOR THE TANGIBLE PROPERTY CREDIT COMPONENT OF THE BROWNFIELD REDEVELOPMENT TAX PURSUANT TO PARAGRAPH THREE OF SUBDIVISION (A) OF SECTION TWENTY-ONE OF THE TAX LAW SHALL BE THE SUM OF TEN PERCENT AND THE FOLLOWING ADDITIONAL PERCENTAGES, PROVIDED THAT THE TOTAL PERCENTAGE OF THE TANGIBLE PROPERTY CREDIT COMPONENT SHALL NOT EXCEED TWENTY-FOUR PERCENT AND IS OTHERWISE SUBJECT TO THE LIMITATIONS SET FORTH IN PARAGRAPHS THREE AND THREE-A OF SUBDIVISION (A) OF SECTION TWENTY-ONE OF THE TAX LAW:

(I) TEN PERCENT FOR A SITE WITHIN AN ENVIRONMENTAL ZONE OR FOR A SITE LOCATED WITHIN A DESIGNATED BROWNFIELD OPPORTUNITY AREA WHERE THE SECRETARY OF STATE HAS DETERMINED THAT THE PROPOSED DEVELOPMENT OF THE SITE IS IN CONFORMANCE WITH SUCH BROWNFIELD OPPORTUNITY AREA PLAN PURSUANT TO SECTION NINE HUNDRED SEVENTY-R OF THE GENERAL MUNICIPAL LAW. FOR ANY SITE WITHIN AN ENVIRONMENTAL ZONE AND WITHIN AND IN CONFORMANCE WITH A BROWNFIELD OPPORTUNITY AREA, THE APPLICABLE PERCENTAGE UNDER THIS SUBPARAGRAPH SHALL BE TWELVE PERCENT;

(II) FOUR PERCENT FOR SITES ON WHICH THE PRIMARY DEVELOPMENT IS A BUILDING OR BUILDINGS CONSTRUCTED IN CONFORMANCE WITH GREEN BUILDING REGULATIONS PROMULGATED PURSUANT TO SECTION NINETEEN OF THE TAX LAW OR SECTION EIGHTEEN HUNDRED SEVENTY-TWO OF THE PUBLIC AUTHORITIES LAW; AND

(III) FOUR PERCENT FOR SITES DEVELOPED AS AFFORDABLE HOUSING, DEFINED AS HAVING AT LEAST TWENTY PERCENT OF ITS RESIDENTIAL UNITS SUBJECT TO AN AGREEMENT WITH A MUNICIPALITY, THE STATE, THE FEDERAL GOVERNMENT, OR AN INSTRUMENTALITY THEREOF, WHERE SUCH AGREEMENT RESTRICTS OCCUPANCY OF THOSE UNITS TO RESIDENTS WHO QUALIFY IN ACCORDANCE WITH AN INCOME TEST.

(C) ALL OTHER APPLICABLE PERCENTAGES ARE SET FORTH IN PARAGRAPH FIVE OF SUBDIVISION (A) OF SECTION TWENTY-ONE OF THE TAX LAW.

S 12. Subdivision 5 of section 27-1419 of the environmental conservation law, as amended by section 9 of part A of chapter 577 of the laws of 2004, is amended to read as follows:

5. A certificate of completion issued pursuant to this section may be transferred to the applicant's successors or assigns upon transfer or sale of the brownfield site. Further, a certificate of completion may be modified or revoked by the commissioner upon a finding that:

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

(b) The applicant made a misrepresentation of a material fact tending to demonstrate that it (I) was qualified as a volunteer OR (II) MET THE CRITERIA SET FORTH IN SUBDIVISION ONE OF SECTION 27-1407 OF THIS TITLE FOR THE PURPOSE OF RECEIVING THE TANGIBLE PROPERTY CREDIT COMPONENT OF

THE BROWNFIELD REDEVELOPMENT TAX CREDIT PURSUANT TO PARAGRAPH THREE OF SUBDIVISION (A) OF SECTION TWENTY-ONE OF THE TAX LAW;

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

(d) THE ENVIRONMENTAL EASEMENT CREATED AND RECORDED PURSUANT TO TITLE THIRTY-SIX OF ARTICLE SEVENTY-ONE OF THIS CHAPTER OR ENVIRONMENTAL COVENANT CREATED AND RECORDED PURSUANT TO TITLE FORTY-FIVE OF ARTICLE SEVENTY-ONE OF THIS CHAPTER DOES NOT PROVIDE AN EFFECTIVE OR ENFORCEABLE MEANS OF ENSURING THE PERFORMANCE OF MAINTENANCE, MONITORING OR OPERATING REQUIREMENTS, OR THE RESTRICTIONS ON FUTURE LAND USES, INCLUDING RESTRICTIONS ON DRILLING FOR OR WITHDRAWING GROUNDWATER; OR

(E) There is good cause for such modification or revocation.

S 13. Section 27-1423 of the environmental conservation law is REPEALED.

S 14. Section 27-1429 of the environmental conservation law, as amended by section 13 of part A of chapter 577 of the laws of 2004, is amended to read as follows:

S 27-1429. Permit waivers.

The department[, by and through the commissioner,] shall be EXEMPT, AND SHALL BE authorized to exempt a person from the requirement to obtain any state or local permit or other authorization for any activity needed to implement a program for the investigation and/or remediation of contamination AT OR EMANATING FROM A BROWNFIELD SITE; provided that the activity is conducted in a manner which satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

S 15. Subdivision 1 of section 27-1431 of the environmental conservation law is amended by adding a new paragraph c to read as follows:

C. TO INSPECT FOR COMPLIANCE WITH THE SITE MANAGEMENT PLAN APPROVED BY THE DEPARTMENT, INCLUDING (I) INSPECTION OF THE PERFORMANCE OF MAINTENANCE, MONITORING AND OPERATIONAL ACTIVITIES REQUIRED AS PART OF THE REMEDIAL PROGRAM FOR THE SITE, (II) INSPECTION FOR THE PURPOSE OF ASCERTAINING CURRENT USES OF THE SITE, AND (III) TAKING SAMPLES IN ACCORDANCE WITH PARAGRAPH A OF THIS SUBDIVISION.

S 16. Paragraph (g) of subdivision 2 of section 56-0503 of the environmental conservation law, as amended by section 4 of part D of chapter 1 of the laws of 2003, is amended to read as follows:

(g) An agreement by the municipality that it shall put into place any engineering and/or institutional controls (including environmental easements pursuant to title thirty-six of article seventy-one of this chapter OR ENVIRONMENTAL COVENANTS PURSUANT TO TITLE FORTY-FIVE OF ARTICLE SEVENTY-ONE OF THIS CHAPTER) that the department may deem necessary to allow the contemplated use to proceed, that such engineering and/or institutional controls shall be binding on such municipality, any successor in title, and any lessees and that any successors in title and any lessees cannot challenge state enforcement of such controls;

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

TITLE 45

ENVIRONMENTAL COVENANTS

SECTION 71-4501. SHORT TITLE.
71-4503. DECLARATION OF POLICY AND STATEMENT OF PURPOSE.
71-4505. DEFINITIONS.
71-4507. NATURE OF RIGHTS; SUBORDINATION OF INTERESTS.

71-4509. CONTENTS OF ENVIRONMENTAL COVENANT.
71-4511. VALIDITY; EFFECT ON OTHER INSTRUMENTS.
71-4513. RELATIONSHIP TO OTHER LAND USE LAW.
71-4515. NOTICE.
71-4517. RECORDING.
71-4519. COORDINATION WITH LOCAL GOVERNMENTS.
71-4521. DURATION.
71-4523. AMENDMENT OR TERMINATION BY CONSENT.
71-4525. ENFORCEMENT OF ENVIRONMENTAL COVENANT.
71-4527. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
71-4529. REGULATIONS.
71-4531. SEVERABILITY.

S 71-4501. SHORT TITLE.

THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS THE "UNIFORM ENVIRONMENTAL COVENANTS ACT".

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

THE LEGISLATURE HEREBY FINDS AND DECLARES THAT CONTAMINATED SITE REMEDIAL PROGRAMS ARE AN IMPORTANT AND NECESSARY COMPONENT OF THE STATE'S POLICY OF RESTORING AND REVITALIZING REAL PROPERTY LOCATED THROUGHOUT NEW YORK STATE. THE LEGISLATURE FURTHER FINDS THAT WHEN AN ENVIRONMENTAL REMEDIATION PROJECT LEAVES RESIDUAL CONTAMINATION AT LEVELS THAT HAVE BEEN DETERMINED TO BE SAFE FOR A SPECIFIC USE, BUT NOT ALL USES, OR INCLUDES ENGINEERED STRUCTURES THAT MUST BE MAINTAINED OR PROTECTED AGAINST DAMAGE TO BE EFFECTIVE, IT IS NECESSARY TO PROVIDE AN EFFECTIVE AND ENFORCEABLE MEANS OF ENSURING THE PERFORMANCE OF MAINTENANCE, MONITORING OR OPERATION REQUIREMENTS, AND OF ENSURING THE POTENTIAL RESTRICTION OF FUTURE USES OF THE LAND, INCLUDING RESTRICTIONS ON DRILLING FOR OR PUMPING GROUNDWATER, FOR AS LONG AS ANY RESIDUAL CONTAMINATION REMAINS HAZARDOUS. THE LEGISLATURE DECLARES, THEREFORE, THAT IT IS IN THE PUBLIC INTEREST TO CREATE LAND USE CONTROLS IN THE FORM OF ENVIRONMENTAL COVENANTS BECAUSE SUCH ENVIRONMENTAL COVENANTS ARE NECESSARY FOR THE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT AND TO ACHIEVE THE REQUIREMENTS FOR REMEDIATION ESTABLISHED AT CONTAMINATED SITES. IT IS THE INTENT OF THE LEGISLATURE THAT THE PROVISIONS OF THIS SECTION SHALL NOT BE CONSTRUED AS LIMITING OR OTHERWISE AFFECTING ANY AUTHORITY CONFERRED UPON THE DEPARTMENT BY ANY OTHER PROVISION OF LAW.

S 71-4505. DEFINITIONS.

WHEN USED IN THIS TITLE:

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

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

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

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

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

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

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

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

(D) UNDER OTHER DEPARTMENT REMEDIAL PROGRAMS.

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

7. "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, JOINT VENTURE, PUBLIC CORPORATION, GOVERNMENT, GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

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

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

1. THE DEPARTMENT SHALL BE A HOLDER AND MAY IDENTIFY ONE OR MORE ADDITIONAL HOLDERS OR BENEFICIARIES. THE INTEREST OF A HOLDER IS AN INTEREST IN REAL PROPERTY.

2. A RIGHT OF THE DEPARTMENT OR OTHER INTENDED BENEFICIARY UNDER THIS TITLE OR UNDER AN ENVIRONMENTAL COVENANT, OTHER THAN A RIGHT AS A HOLDER, IS NOT AN INTEREST IN REAL PROPERTY.

3. THE DEPARTMENT IS BOUND BY ANY OBLIGATION IT ASSUMES IN AN ENVIRONMENTAL COVENANT, BUT THE DEPARTMENT DOES NOT ASSUME OBLIGATIONS MERELY BY SIGNING AN ENVIRONMENTAL COVENANT. ANY OTHER PERSON THAT SIGNS AN ENVIRONMENTAL COVENANT IS BOUND BY THE OBLIGATIONS THE PERSON ASSUMES IN 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, 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.

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

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

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

(C) IT IMPOSES A NEGATIVE BURDEN;

(D) IT IMPOSES AN AFFIRMATIVE OBLIGATION ON A PERSON HAVING AN INTEREST IN THE REAL PROPERTY OR ON THE HOLDER;

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

(F) THERE IS NO PRIVITY OF ESTATE OR CONTRACT.

3. AN INSTRUMENT THAT CREATES RESTRICTIONS OR OBLIGATIONS WITH RESPECT TO REAL PROPERTY THAT WOULD QUALIFY AS ACTIVITY AND USE LIMITATIONS EXCEPT FOR THE FACT THAT THE INSTRUMENT WAS RECORDED BEFORE THE EFFECTIVE DATE OF THIS TITLE IS NOT INVALID OR UNENFORCEABLE BECAUSE OF ANY OF THE LIMITATIONS ON ENFORCEMENT OF INTERESTS DESCRIBED IN SUBDIVISION TWO OR BECAUSE IT WAS IDENTIFIED AS AN EASEMENT, SERVITUDE, DEED RESTRICTION, OR OTHER INTEREST. THIS TITLE DOES NOT APPLY IN ANY OTHER RESPECT TO SUCH AN INSTRUMENT.

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

5. THIS TITLE SHALL NOT AFFECT ANY INTERESTS OR RIGHTS IN REAL PROPERTY WHICH ARE NOT ENVIRONMENTAL COVENANTS, AND SHALL NOT AFFECT THE RIGHTS OF OWNERS TO CONVEY ANY INTERESTS IN REAL PROPERTY WHICH THEY COULD NOW CREATE UNDER EXISTING LAW WITHOUT REFERENCE TO THE TERMS OF THIS TITLE. NOTHING IN THIS TITLE SHALL DIMINISH THE POWERS GRANTED BY ANY OTHER LAW TO ACQUIRE INTERESTS OR RIGHTS IN REAL PROPERTY BY

PURCHASE, GIFT, EMINENT DOMAIN, OR OTHERWISE AND TO USE THE SAME FOR PUBLIC PURPOSES.

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

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

S 71-4515. NOTICE.

1. A COPY OF AN ENVIRONMENTAL COVENANT, AND ANY AMENDMENT OR TERMINATION THEREOF, SHALL BE PROVIDED IN THE MANNER REQUIRED BY THE DEPARTMENT TO:

(A) EACH PERSON THAT SIGNED THE COVENANT;

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

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

(D) EACH AFFECTED LOCAL GOVERNMENT; AND

(E) ANY OTHER PERSON THE DEPARTMENT REQUIRES.

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

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

S 71-4517. RECORDING.

1. AN ENVIRONMENTAL COVENANT AND ANY AMENDMENT OR TERMINATION OF THE COVENANT MUST BE RECORDED IN THE OFFICE OF THE RECORDING OFFICER IN THE 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.

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

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

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

S 71-4527. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

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

S 71-4529. REGULATIONS.

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

S 71-4531. SEVERABILITY.

THE PROVISIONS OF THIS TITLE SHALL BE SEVERABLE, AND IF ANY CLAUSE, SENTENCE, PARAGRAPH, SUBDIVISION, OR PART OF THIS TITLE 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, PARA-

GRAPH, SUBDIVISION, OR PART THEREOF DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH SUCH JUDGMENT SHALL HAVE BEEN RENDERED; PROVIDED THAT IF AN ENVIRONMENTAL COVENANT CREATED PURSUANT TO THIS TITLE IS DETERMINED BY ANY COURT OF COMPETENT JURISDICTION TO BE LAND OR WATER OR AN INTEREST IN LAND OR WATER SUBJECT TO THE PROVISIONS OF ARTICLE FOURTEEN OF THE CONSTITUTION, THEN THE AUTHORITY OF THE STATE TO HOLD OR ACQUIRE SUCH COVENANT AND THE CONVEYANCE TO THE STATE OF SUCH COVENANT SHALL BE VOID AB INITIO.

S 18. Paragraph 3 of subdivision (a) of section 21 of the tax law, as amended by chapter 390 of the laws of 2008, is amended to read as follows:

(3) Tangible property credit component. The tangible property credit component shall be equal to the applicable percentage of the cost or other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, which constitute qualified tangible property; provided[, however,] that in determining the cost or other basis of such property[,] the taxpayer MAY INCLUDE THE COSTS INCURRED IN CONNECTION WITH PREPARING A SITE FOR THE ERECTION OF A BUILDING OR A COMPONENT OF A BUILDING, SUCH AS THE COST OF EXCAVATION, DEMOLITION, TEMPORARY ELECTRIC WIRING, SCAFFOLDING, FENCING AND SECURITY FACILITIES, TO THE EXTENT THAT SUCH COSTS ARE NOT USED AS A BASIS FOR COMPUTING THE SITE PREPARATION COMPONENT OF THE BROWNFIELD REDEVELOPMENT TAX CREDIT PURSUANT TO PARAGRAPH TWO OF THIS SUBDIVISION; AND PROVIDED FURTHER THAT, IN THE CASE OF QUALIFIED SITES ELIGIBLE FOR THE TANGIBLE PROPERTY CREDIT COMPONENT SOLELY ON THE BASIS OF THE AFFORDABLE HOUSING CRITERION AS SET FORTH IN SUBDIVISION ONE OF SECTION 27-1407 OF THE ENVIRONMENTAL CONSERVATION LAW, THE TANGIBLE PROPERTY CREDIT COMPONENT WILL BE LIMITED TO THE APPLICABLE PERCENTAGE OF THE COSTS ATTRIBUTABLE TO THE AFFORDABLE UNITS OF THE DEVELOPMENT. THE TAXPAYER shall exclude the acquisition cost of any item of property with respect to which a credit under this section was allowable to another taxpayer. The credit component amount so determined shall be allowed for the taxable year in which such qualified tangible property is placed in service on a qualified site with respect to which a certificate of completion has been issued to the taxpayer, OR FOR THE TAXABLE YEAR IN WHICH THE CERTIFICATE OF COMPLETION IS ISSUED IF THE QUALIFIED TANGIBLE PROPERTY IS PLACED IN SERVICE PRIOR TO THE ISSUANCE OF THE CERTIFICATE OF COMPLETION, for up to ten taxable years after the date of the issuance of such certificate of completion. The tangible property credit component shall be allowed with respect to property leased to a second party only if such second party is either (i) not a party responsible for the disposal of hazardous waste or the discharge of petroleum at the site according to applicable principles of statutory or common law liability, or (ii) a party responsible according to applicable principles of statutory or common law liability if such party's liability arises solely from operation of the site subsequent to the disposal of hazardous waste or the discharge of petroleum, and is so certified by the commissioner of environmental conservation at the request of the taxpayer, pursuant to section 27-1419 of the environmental conservation law. Notwithstanding any other provision of law to the contrary, in the case of allowance of credit under this section to such a lessor, the commissioner shall have the authority to reveal to such lessor any information, with respect to the issue of qualified use of property by the lessee, which is the basis for the denial in whole or in part, or for the recapture, of the credit claimed by such lessor. For purposes of the tangible property credit component allowed under this

section the taxpayer to whom the certificate of completion is issued, as provided for under subdivision five of section 27-1419 of the environmental conservation law, may transfer the benefits and burdens of the certificate of completion, which run with the land and to the applicant's successors or assigns upon transfer or sale of all or any portion of an interest or estate in the qualified site. However, the taxpayer to whom certificate's benefits and burdens are transferred shall not include the cost of acquiring all or any portion of an interest or estate in the site and the amounts included in the cost or other basis for federal income tax purposes of qualified tangible property already claimed by the previous taxpayer pursuant to this section.

S 19. Subparagraph (A) of paragraph 3-a of subdivision (a) of section 21 of the tax law, as added by chapter 390 of the laws of 2008, is amended to read as follows:

(A) Notwithstanding any other provision of law to the contrary, the tangible property credit component available for any qualified site pursuant to paragraph three of this subdivision shall not exceed thirty-five million dollars or three times the SUM OF THE costs included in the calculation of the site preparation credit component and the on-site groundwater remediation credit component under paragraphs two and four, respectively, of this subdivision, AND THE COSTS THAT WOULD HAVE BEEN INCLUDED IN THE CALCULATION OF SUCH COMPONENTS IF NOT TREATED AS AN EXPENSE AND DEDUCTED PURSUANT TO SECTION ONE HUNDRED NINETY-EIGHT OF THE INTERNAL REVENUE CODE, whichever is less; provided, however, that: (1) in the case of a qualified site to be used primarily for manufacturing activities, the tangible property credit component available for any qualified site pursuant to paragraph three of this subdivision shall not exceed forty-five million dollars or six times the SUM OF THE costs included in the calculation of the site preparation credit component and the on-site groundwater remediation credit component under paragraphs two and four, respectively, of this subdivision, AND THE COSTS THAT WOULD HAVE BEEN INCLUDED IN THE CALCULATION OF SUCH COMPONENTS IF NOT TREATED AS AN EXPENSE AND DEDUCTED PURSUANT TO SECTION ONE HUNDRED NINETY-EIGHT OF THE INTERNAL REVENUE CODE, whichever is less; and (2) the provisions of this paragraph shall not apply to any qualified site for which the department of environmental conservation has issued a notice to the taxpayer before June twenty-third, two thousand eight that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law.

S 20. Subparagraph (D) of paragraph 3-a of subdivision (a) of section 21 of the tax law, as added by chapter 390 of the laws of 2008, is amended to read as follow:

(D) [If] WITH RESPECT TO ANY QUALIFIED SITE FOR WHICH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS ISSUED A NOTICE TO THE TAXPAYER ON OR BEFORE JULY FIRST, TWO THOUSAND TEN THAT ITS REQUEST FOR PARTICIPATION HAS BEEN ACCEPTED UNDER SUBDIVISION SIX OF SECTION 27-1407 OF THE ENVIRONMENTAL CONSERVATION LAW, OR WHERE THE TAXPAYER HAS EITHER BEEN ISSUED OR RECEIVED A CERTIFICATE OF COMPLETION FROM ANOTHER TAXPAYER UNDER SECTION 27-1419 OF THE ENVIRONMENTAL CONSERVATION LAW ON OR BEFORE JULY FIRST, TWO THOUSAND TEN, IF the qualifying site is located in a brownfield opportunity area and is developed in conformance with the goals and priorities established for that applicable brownfield opportunity area as designated pursuant to section nine hundred seventy-r of the general municipal law, the applicable percentage of the tangible property credit component will be increased by two percent.

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

(5) Applicable percentage. For purposes of COMPUTING THE SITE PREPARATION AND ON-SITE GROUNDWATER REMEDIATION CREDIT COMPONENTS PURSUANT TO paragraphs two[, three] and four of this subdivision, WITH RESPECT TO SUCH QUALIFIED SITES FOR WHICH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS ISSUED A NOTICE TO THE TAXPAYER BEFORE JUNE TWENTY-THIRD, TWO THOUSAND EIGHT THAT ITS REQUEST FOR PARTICIPATION HAS BEEN ACCEPTED UNDER SUBDIVISION SIX OF SECTION 27-1407 OF THE ENVIRONMENTAL CONSERVATION LAW, OR WHERE THE TAXPAYER HAS EITHER BEEN ISSUED OR RECEIVED A CERTIFICATE OF COMPLETION FROM ANOTHER TAXPAYER UNDER SECTION 27-1419 OF THE ENVIRONMENTAL CONSERVATION LAW BEFORE JUNE TWENTY-THIRD, TWO THOUSAND EIGHT, AND, FOR PURPOSES OF COMPUTING THE TANGIBLE PROPERTY COMPONENT PURSUANT TO PARAGRAPH THREE OF THIS SUBDIVISION WITH RESPECT TO SUCH QUALIFIED SITES FOR WHICH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS ISSUED A NOTICE TO THE TAXPAYER ON OR BEFORE JULY FIRST, TWO THOUSAND TEN THAT ITS REQUEST FOR PARTICIPATION HAS BEEN ACCEPTED UNDER SUBDIVISION SIX OF SECTION 27-1407 OF THE ENVIRONMENTAL CONSERVATION LAW, OR WHERE THE TAXPAYER HAS EITHER BEEN ISSUED OR RECEIVED A CERTIFICATE OF COMPLETION FROM ANOTHER TAXPAYER UNDER SECTION 27-1419 OF THE ENVIRONMENTAL CONSERVATION LAW ON OR BEFORE JULY FIRST, TWO THOUSAND TEN, the applicable percentage shall be twelve percent in the case of credits claimed under article nine, nine-A, thirty-two or thirty-three of this chapter, and ten percent in the case of credits claimed under article twenty-two of this chapter, except that where at least fifty percent of the area of the qualified site relating to the credit provided for in this section is located in an environmental zone as defined in paragraph six of subdivision (b) of this section, the applicable percentage shall be increased by an additional eight percent. Provided, however, as afforded in section 27-1419 of the environmental conservation law, if the certificate of completion indicates that the qualified site has been remediated to Track 1 as that term is described in subdivision four of section 27-1415 of the environmental conservation law, the applicable percentage set forth in the first sentence of this paragraph shall be increased by an additional two percent. ALL OTHER APPLICABLE PERCENTAGES ARE SET FORTH IN SECTION 27-1419 OF THE ENVIRONMENTAL CONSERVATION LAW.

S 22. Paragraphs 2 and 6 of subdivision (b) of section 21 of the tax law, as amended by section 1 of part H of chapter 577 of the laws of 2004 and subparagraph (B) and the closing paragraph of paragraph 6 as amended by section 1 of part G of chapter 62 of the laws of 2006, are amended to read as follows:

(2) Site preparation costs. The term "site preparation costs" shall mean all amounts properly chargeable to a capital account, (i) which are paid or incurred in connection with a site's qualification for a certificate of completion AND ATTRIBUTABLE TO ACTIVITIES SPECIFIED IN A REMEDIAL WORK PLAN APPROVED BY THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION UNDER SECTION 27-1411 OF THE ENVIRONMENTAL CONSERVATION LAW, and (ii) WITH RESPECT TO ANY QUALIFIED SITE FOR WHICH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS ISSUED A NOTICE TO THE TAXPAYER ON OR BEFORE JULY FIRST, TWO THOUSAND TEN THAT ITS REQUEST FOR PARTICIPATION HAS BEEN ACCEPTED UNDER SUBDIVISION SIX OF SECTION 27-1407 OF THE ENVIRONMENTAL CONSERVATION LAW, all other site preparation costs paid or incurred in connection with preparing a site for the erection of a building or a component of a building, or otherwise to establish a site

as usable for its industrial, commercial (including the commercial development of residential housing), recreational or conservation purposes. [Site] FOR PURPOSES OF SUBPARAGRAPH (II) OF THIS PARAGRAPH, SITE preparation costs shall include, but not be limited to, the costs of excavation, temporary electric wiring, scaffolding, demolition costs, and the costs of fencing and security facilities. Site preparation costs shall not include the cost of acquiring the site and shall not include amounts included in the cost or other basis for federal income tax purposes of qualified tangible property, as described in paragraph three of this subdivision.

(6) 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 EITHER MUNICIPALITIES OR 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; and

(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] NINETY DAYS FOLLOWING THE OFFICIAL PUBLICATION OF THE MOST RECENT CENSUS.

S 23. Section 171-r of the tax law is amended by adding a new subdivision (e) to read as follows:

(E) THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION, SHALL PUBLISH BY SEPTEMBER THIRTIETH, TWO THOUSAND TEN A SUPPLEMENTAL BROWNFIELD CREDIT REPORT CONTAINING THE INFORMATION REQUIRED BY THIS SECTION ABOUT THE CREDITS CLAIMED FOR THE YEARS TWO THOUSAND FIVE, TWO THOUSAND SIX, AND TWO THOUSAND SEVEN.

S 24. Section 970-r of the general municipal law is amended by adding a new subdivision 10 to read as follows:

10. FOR PURPOSES OF ASSISTING THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION IN DETERMINING THE BASIS FOR BROWNFIELD REDEVELOPMENT TAX CREDITS AVAILABLE UNDER THE BROWNFIELD CLEANUP PROGRAM PURSUANT TO TITLE FOURTEEN OF ARTICLE TWENTY-SEVEN OF THE ENVIRONMENTAL CONSERVATION LAW, FOR ANY SITE LOCATED WITHIN A DESIGNATED BROWNFIELD OPPORTUNITY AREA FOR WHICH SUCH TAX CREDITS ARE SOUGHT, THE SECRETARY SHALL MAKE A DETERMINATION ABOUT THE CONFORMANCE OF THE PROPOSED DEVELOPMENT WITH THE BROWNFIELD OPPORTUNITY AREA PLAN. THE SECRETARY SHALL ESTABLISH CRITERIA AND APPLICANT SUBMISSION REQUIREMENTS FOR BROWNFIELD OPPORTUNITY AREA CONFORMANCE DETERMINATIONS. IN MAKING CONFORMANCE DETERMINATIONS, THE SECRETARY SHALL BE GUIDED BY, BUT NOT LIMITED TO, THE FOLLOWING CONSID-

ERATIONS: HOW THE PROPOSED USE AND DEVELOPMENT ADVANCES THE DESIGNATED BROWNFIELD OPPORTUNITY AREA PLAN'S VISION STATEMENT, GOALS AND OBJECTIVES FOR REVITALIZATION; HOW THE DENSITY OF DEVELOPMENT AND ASSOCIATED BUILDINGS AND STRUCTURES ADVANCES THE PLAN'S OBJECTIVES FOR FUTURE LAND USE, DESIRED REDEVELOPMENT AND PRIORITIES FOR INVESTMENT; AND HOW THE PROJECT COMPLIES WITH ZONING AND OTHER LOCAL LAWS AND STANDARDS TO GUIDE AND ENSURE APPROPRIATE DEVELOPMENT ON THE PROJECT SITE.

S 25. Subdivision 5 of section 119-b of the public service law, as amended by chapter 445 of the laws of 1995, is amended to read as follows:

5. Any person operating a one-call system in the state shall (A) register with and obtain certification from the commission. The commission shall have the power to grant, amend, or revoke certificates of any such system. Any one-call system engaged in business on or before the effective date of this subdivision, after registration with the commission, shall be registered, certified and authorized to continue its business operations; AND (B) PROVIDE THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, AT NO COST, THE INFORMATION RECEIVED AND MAINTAINED BY SUCH ONE-CALL SYSTEM IN AN ELECTRONIC FORMAT NO LESS FREQUENTLY THAN ONE TIME PER WEEK.

S 26. Paragraph a of subdivision 2 of section 761 of the general business law, as amended by chapter 445 of the laws of 1995, is amended to read as follows:

a. Receive notices from excavators of proposed excavation and demolition activities and transmit the information contained in such notices to every member that operates an underground facility in the area of the proposed activities AS WELL AS ELECTRONICALLY TRANSMITTING THE INFORMATION CONTAINED IN SUCH NOTICES TO THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION;

S 27. 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 been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 28. This act shall take effect July 1, 2010.