

5228

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

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; to repeal subparagraph (D) of paragraph 3-a of subdivision (a) of section 21 of the tax law relating thereto; 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
19 to this program and given a classification as described in subparagraph
20 one or two of paragraph b of subdivision two of section 27-1305 of this

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

LBD11103-03-1

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

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

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

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

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

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

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

55 (B) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ALL APPLI-
56 CANTS ACCEPTING PARTICIPATION IN THE BROWNFIELD CLEANUP PROGRAM SHALL

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

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

17 TITLE 45

18 ENVIRONMENTAL COVENANTS

19 SECTION 71-4501. SHORT TITLE.
20 71-4503. DECLARATION OF POLICY AND STATEMENT OF PURPOSE.
21 71-4505. DEFINITIONS.
22 71-4507. NATURE OF RIGHTS; SUBORDINATION OF INTERESTS.
23 71-4509. CONTENTS OF ENVIRONMENTAL COVENANT.
24 71-4511. VALIDITY; EFFECT ON OTHER INSTRUMENTS.
25 71-4513. RELATIONSHIP TO OTHER LAND USE LAW.
26 71-4515. NOTICE.
27 71-4517. RECORDING.
28 71-4519. COORDINATION WITH LOCAL GOVERNMENTS.
29 71-4521. DURATION.
30 71-4523. AMENDMENT OR TERMINATION BY CONSENT.
31 71-4525. ENFORCEMENT OF ENVIRONMENTAL COVENANT.
32 71-4527. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
33 71-4529. REGULATIONS.
34 71-4531. SEVERABILITY.

35 S 71-4501. SHORT TITLE.

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

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

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

1 4. THE FOLLOWING RULES APPLY TO INTERESTS IN REAL PROPERTY IN EXIST-
2 ENCE AT THE TIME AN ENVIRONMENTAL COVENANT IS CREATED OR AMENDED:

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

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

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

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

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

22 S 71-4509. CONTENTS OF ENVIRONMENTAL COVENANT.

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

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

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

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

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

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

43 (F) DESCRIBE THE REQUIREMENTS FOR NOTICE FOLLOWING TRANSFER OF A SPEC-
44 IFIED INTEREST IN, OR CONCERNING PROPOSED CHANGES IN USE OF, APPLICA-
45 TIONS FOR BUILDING PERMITS FOR, OR PROPOSALS FOR ANY SITE WORK AFFECTING
46 THE CONTAMINATION ON THE PROPERTY SUBJECT TO THE COVENANT;

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

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

55 (I) IDENTIFY THE DEPARTMENT AS THE HOLDER AND, IF APPROPRIATE, THE
56 FEDERAL GOVERNMENT OR OTHER APPROPRIATE PARTY AS AN ADDITIONAL HOLDER OR

1 INTENDED THIRD PARTY BENEFICIARY. IF THERE IS A HOLDER IN ADDITION TO
2 THE DEPARTMENT, THE DEPARTMENT MUST APPROVE THE HOLDER, AND THE HOLDER
3 MUST AGREE TO THE TERMS OF THE COVENANT;

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

6 (K) BE SIGNED BY EVERY HOLDER AND, UNLESS WAIVED BY THE DEPARTMENT,
7 EVERY OWNER OF THE FEE SIMPLE OF THE REAL PROPERTY SUBJECT TO THE COVEN-
8 ANT;

9 (L) IDENTIFY THE NAME AND LOCATION OF ANY ADMINISTRATIVE RECORD FOR
10 THE ENVIRONMENTAL REMEDIAL PROGRAM REFLECTED IN THE ENVIRONMENTAL COVEN-
11 ANT;

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

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

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

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

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

28 3. IN ADDITION TO OTHER CONDITIONS FOR ITS APPROVAL OF AN ENVIRON-
29 MENTAL COVENANT, THE DEPARTMENT MAY REQUIRE THOSE PERSONS SPECIFIED BY
30 THE DEPARTMENT WHO HAVE INTERESTS IN THE REAL PROPERTY TO SIGN THE
31 COVENANT.

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

36 (A) THE PERFORMANCE OF MAINTENANCE, MONITORING AND OPERATING REQUIRE-
37 MENTS; AND

38 (B) ACTIVITIES AND USE LIMITATIONS.

39 5. UNTIL SUCH TIME AS THE ENVIRONMENTAL COVENANT IS EXTINGUISHED, THE
40 PROPERTY DEED AND ALL SUBSEQUENT INSTRUMENTS OF CONVEYANCE RELATING TO
41 THE SUBJECT PROPERTY SHALL STATE IN AT LEAST FIFTEEN-POINT BOLD-FACED
42 TYPE: "THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT HELD BY
43 THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PURSUANT TO
44 TITLE 45 OF ARTICLE 71 OF THE ENVIRONMENTAL CONSERVATION LAW." THE PROP-
45 erty deed and all subsequent instruments of conveyance relating to the
46 property encumbered by the covenant shall reference, by book and page
47 number, the environmental covenant. Such deed and instrument shall also
48 specify that the eligible property is subject to the restrictions
49 contained in such covenant. An instrument for the purpose of creating,
50 conveying, modifying, or terminating an environmental covenant shall not
51 be effective unless recorded.

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

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

55 2. AN ENVIRONMENTAL COVENANT THAT IS OTHERWISE EFFECTIVE IS VALID AND
56 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 PRIVACY 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

1 IS LOCATED. FOR PURPOSES OF INDEXING, A HOLDER SHALL BE TREATED AS A
2 GRANTEE.

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

7 WHENEVER AN AFFECTED LOCAL GOVERNMENT RECEIVES AN APPLICATION FOR A
8 BUILDING PERMIT OR ANY OTHER APPLICATION AFFECTING LAND USE OR DEVELOP-
9 MENT OF LAND THAT IS SUBJECT TO AN ENVIRONMENTAL COVENANT AND THAT MAY
10 RELATE TO OR IMPACT SUCH COVENANT, THE AFFECTED LOCAL GOVERNMENT SHALL
11 NOTIFY THE DEPARTMENT AND REFER SUCH APPLICATION TO THE DEPARTMENT. THE
12 DEPARTMENT SHALL EVALUATE WHETHER THE APPLICATION IS CONSISTENT WITH THE
13 ENVIRONMENTAL COVENANT AND SHALL NOTIFY THE AFFECTED LOCAL GOVERNMENT OF
14 ITS DETERMINATION IN A TIMELY FASHION, CONSIDERING THE TIME FRAME FOR
15 THE LOCAL GOVERNMENT'S REVIEW OF THE APPLICATION. THE AFFECTED LOCAL
16 GOVERNMENT SHALL NOT APPROVE THE APPLICATION UNTIL IT RECEIVES APPROVAL
17 FROM THE DEPARTMENT.

18 S 71-4521. DURATION.

19 1. AN ENVIRONMENTAL COVENANT IS PERPETUAL UNLESS IT IS:

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

22 (B) EXTINGUISHED OR AMENDED BY A RELEASE OR AMENDMENT OF THE ENVIRON-
23 MENTAL COVENANT EXECUTED BY THE DEPARTMENT AND FILED WITH THE OFFICE OF
24 THE RECORDING OFFICER FOR THE COUNTY OR COUNTIES WHERE THE LAND IS SITU-
25 ATED IN THE MANNER PRESCRIBED BY ARTICLE NINE OF THE REAL PROPERTY LAW.

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

32 S 71-4523. AMENDMENT OR TERMINATION BY CONSENT.

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

36 (A) THE DEPARTMENT; AND

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

39 2. IF AN INTEREST IN REAL PROPERTY IS SUBJECT TO AN ENVIRONMENTAL
40 COVENANT, THE INTEREST IS NOT AFFECTED BY AN AMENDMENT OF THE COVENANT
41 UNLESS THE CURRENT OWNER OF THE INTEREST CONSENTS TO THE AMENDMENT OR
42 HAS WAIVED IN A WRITING, SIGNED IN THE MANNER PRESCRIBED BY SECTION
43 71-4509 OF THIS TITLE, THE RIGHT TO CONSENT TO AMENDMENTS.

44 S 71-4525. ENFORCEMENT OF ENVIRONMENTAL COVENANT.

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

47 (A) A PARTY TO THE COVENANT;

48 (B) THE DEPARTMENT;

49 (C) ANY AFFECTED LOCAL GOVERNMENT;

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

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

54 2. THE ENVIRONMENTAL COVENANT IS ENFORCEABLE AGAINST THE OWNER OF THE
55 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. Subdivision 5 of section 119-b of the public service law, as
43 amended by chapter 445 of the laws of 1995, is amended to read as
44 follows:

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

1 S 9. Paragraph a of subdivision 2 of section 761 of the general busi-
2 ness law, as amended by chapter 445 of the laws of 1995, is amended to
3 read as follows:

4 a. Receive notices from excavators of proposed excavation and demoli-
5 tion activities and transmit the information contained in such notices
6 to every member that operates an underground facility in the area of the
7 proposed activities AS WELL AS ELECTRONICALLY TRANSMITTING THE INFORMA-
8 TION CONTAINED IN SUCH NOTICES TO THE COMMISSIONER OF THE DEPARTMENT OF
9 ENVIRONMENTAL CONSERVATION;

10 S 10. Paragraph 5 of subdivision (a) of section 21 of the tax law, as
11 amended by section 1 of part H of chapter 577 of the laws of 2004, is
12 amended to read as follows:

13 (5) Applicable percentage. For purposes of paragraphs two, three and
14 four of this subdivision, the applicable percentage shall be twelve
15 percent [in the case of credits claimed under article nine, nine-A,
16 thirty-two or thirty-three of this chapter, and ten percent in the case
17 of credits claimed under article twenty-two of this chapter,] except
18 that where at least fifty percent of the area of the qualified site
19 relating to the credit provided for in this section is located in an
20 environmental zone as defined in paragraph six of subdivision (b) of
21 this section, the applicable percentage shall be increased by an addi-
22 tional eight percent. Provided, however, as afforded in section 27-1419
23 of the environmental conservation law, if the certificate of completion
24 indicates that the qualified site has been remediated to Track 1 as that
25 term is described in subdivision four of section 27-1415 of the environ-
26 mental conservation law, the applicable percentage set forth in the
27 first sentence of this paragraph shall be increased by an additional two
28 percent.

29 S 11. Subparagraph (A) of paragraph 3-a of subdivision (a) of section
30 21 of the tax law, as added by chapter 390 of the laws of 2008, is
31 amended to read as follows:

32 (A) Notwithstanding any other provision of law to the contrary, the
33 tangible property credit component available for any qualified site
34 pursuant to paragraph three of this subdivision shall not exceed thir-
35 ty-five million dollars or three times THE SUM OF the costs included in
36 the calculation of the site preparation credit component and the on-site
37 groundwater remediation credit component under paragraphs two and four,
38 respectively, of this subdivision, AND THE COSTS THAT WOULD HAVE BEEN
39 INCLUDED IN THE CALCULATION OF SUCH COMPONENTS IF NOT TREATED AS AN
40 EXPENSE AND DEDUCTED PURSUANT TO SECTION 198 OF THE INTERNAL REVENUE
41 CODE, whichever is less; provided, however, that: (1) in the case of a
42 qualified site to be used primarily for manufacturing activities, the
43 tangible property credit component available for any qualified site
44 pursuant to paragraph three of this subdivision shall not exceed
45 [forty-five] ONE HUNDRED FIFTY million dollars or [six] TWENTY times THE
46 SUM OF the costs included in the calculation of the site preparation
47 credit component and the on-site groundwater remediation credit compo-
48 nent under paragraphs two and four, respectively, of this subdivision,
49 AND THE COSTS THAT WOULD HAVE BEEN INCLUDED IN THE CALCULATION OF SUCH
50 COMPONENTS IF NOT TREATED AS AN EXPENSE AND DEDUCTED PURSUANT TO SECTION
51 198 OF THE INTERNAL REVENUE CODE, whichever is less; and (2) the
52 provisions of this paragraph shall not apply to any qualified site for
53 which the department of environmental conservation has issued a notice
54 to the taxpayer before June twenty-third, two thousand eight that its
55 request for participation has been accepted under subdivision six of
56 section 27-1407 of the environmental conservation law.

1 S 12. Subparagraph (D) of paragraph 3-a of subdivision (a) of section
2 21 of the tax law is REPEALED.

3 S 13. Paragraph 6 of subdivision (b) of section 21 of the tax law, as
4 amended by section 1 of part H of chapter 577 of the laws of 2004,
5 subparagraph (B) and the closing paragraph as amended by section 1 of
6 part G of chapter 62 of the laws of 2006, is amended to read as follows:

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

12 (A) areas that have both:

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

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

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

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

32 S 14. Paragraph 5 of subdivision (a) of section 22 of the tax law, as
33 amended by section 4 of part H of chapter 577 of the laws of 2004,
34 subparagraph (B) and the closing paragraph as amended by section 2 of
35 part G of chapter 62 of the laws of 2006, is amended to read as follows:

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

41 (A) areas that have both:

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

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

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

53 Such designation shall be made and a list of all such environmental
54 zones shall be established by the commissioner of economic development
55 no later than December thirty-first, two thousand [four provided, howev-
56 er, that a qualified site shall only be deemed to be located in an envi-

1 ronmental zone under subparagraph (B) of this paragraph if such site was
2 the subject of a brownfield site cleanup agreement pursuant to section
3 27-1409 of the environmental conservation law that was entered into
4 prior to September first, two thousand ten] ELEVEN.

5 S 15. Subdivision (a) of section 23 of the tax law, as amended by
6 section 10 of part H of chapter 577 of the laws of 2004, is amended to
7 read as follows:

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

18 S 16. Section 31 of part H of chapter 1 of the laws of 2003 amending
19 the tax law relating to brownfield redevelopment tax credits, is
20 REPEALED.

21 S 17. Severability. If any clause, sentence, paragraph, subdivision,
22 section or part of this act shall be adjudged by any court of competent
23 jurisdiction to be invalid, such judgment shall not affect, impair or
24 invalidate the remainder thereof, but shall be confined in its operation
25 to the clause, sentence, paragraph, subdivision, section or part thereof
26 directly involved in the controversy in which such judgment shall have
27 been rendered. It is hereby declared to be the intent of the legislature
28 that this act would have been enacted even if such invalid provisions
29 had not been included herein.

30 S 18. This act shall take effect immediately and shall apply to a
31 qualified site for which the commissioner of environmental conservation
32 has issued a notice to the taxpayer or other applicant after July 1,
33 2011 that its request for participation has been accepted under subdivi-
34 sion six of section 27-1407 of the environmental conservation law.