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

6063

2013-2014 Regular Sessions

I N  A S S E M B L Y

March 14, 2013

Introduced by M. of A. BRINDISI -- read once and referred to the Committee on Environmental Conservation

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

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

Section 1. Subdivision 2 of section 27-1405 of the environmental conservation law, as amended by section 2 of part A of chapter 577 of the laws of 2004, is amended to read as follows:

2. (A) "Brownfield site" or "site" shall mean any real property, the redevelopment or reuse of which [may be] IS complicated by the GROUND SURFACE OR BELOW GROUND SURFACE LEVEL presence or [potential] SUSPECTED presence of a contaminant REGARDLESS OF THE SOURCE OF SUCH CONTAMINANT. A BROWNFIELD SITE IS CHARACTERIZED BY ANY OR ALL OF THE FOLLOWING:

(I) A CURRENT AND HISTORICAL LEGACY OF ABANDONMENT FROM PREVIOUS INDUSTRIAL OR COMMERCIAL ACTIVITY.

(II) A CURRENT AND HISTORICAL LEGACY OF SEVERE ECONOMIC OR FUNCTIONAL UNDERUTILIZATION INCLUDING USE OF SUCH SITE AS A HAZARDOUS WASTE OR SOLID WASTE FACILITY.

(III) IN THE CASE OF A SITE CHARACTERIZED PRIMARILY BY INDUSTRIAL ACTIVITY, FUNCTIONAL OBSOLESCENCE.

(B) Such term shall not include real property:

[(a)] (I) 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

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

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

[(c)] (III) 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)] (IV) 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)] (V) 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.

(VI) PROVIDED HOWEVER FOR OTHERWISE INELIGIBLE SITES GIVEN A CLASSIFICATION AS DESCRIBED IN SUBPARAGRAPH TWO OR THREE OF PARAGRAPH B OF SUBDIVISION TWO OF SECTION 27-1305 OF THIS ARTICLE, AND INELIGIBLE SITES DESCRIBED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH, A VOLUNTEER SHALL NOT BE DEEMED INELIGIBLE TO PARTICIPATE IN REGARDS TO ANY SUCH INELIGIBLE SITE IF SUCH VOLUNTEER INTENDS TO ACQUIRE AND REDEVELOP SUCH REAL PROPERTY AND ASSUME RESPONSIBILITY, NOT FOR PAST COSTS INCURRED PRIOR TO THE APPLICATION, BUT FOR ALL FUTURE COSTS TO COMPLETE ANY REMAINING INVESTIGATION AND REMEDIATION UPON ACQUISITION OF SUCH REAL PROPERTY, OR MAINTAIN LONG TERM INSTITUTIONAL AND ENGINEERING CONTROLS OF THE SITE, AND IMPLEMENT A REDEVELOPMENT PROJECT ON THE SITE, THE SITE CONFORMS TO THE DEFINITION OF A BROWNFIELD SITE IN PARAGRAPH (A) OF THIS SUBDIVISION, AND ENTERS INTO A BROWNFIELD CLEANUP AGREEMENT IN ACCORDANCE WITH SECTION 27-1409 OF THIS TITLE. ANY ON-GOING STATE ACTIONS AND/OR ORDERS WILL NOT BE SUPERSEDED BY THE VOLUNTEER'S BROWNFIELD CLEANUP AGREEMENT, BUT WILL REMAIN IN FULL FORCE AND EFFECT UNTIL SUCH TIME AS THE VOLUNTEER RECEIVES A CERTIFICATE OF COMPLETION PURSUANT TO SECTION 27-1419 OF THIS TITLE AND THEREAFTER TO THE EXTENT THE VOLUNTEER OR SUBSEQUENT OWNER OR OPERATOR FAIL TO COMPLY WITH THE TERMS OF AN ENVIRONMENTAL EASEMENT IF ONE HAD BEEN CREATED PURSUANT TO TITLE THIRTY-SIX OF ARTICLE SEVENTY-ONE, OR AN ENVIRONMENTAL COVENANT AS OF THIS CHAPTER PURSUANT TO TITLE FORTY-FIVE OF ARTICLE SEVENTY-ONE OF THIS CHAPTER. IN THE EVENT THE VOLUNTEER DOES NOT RECEIVE THE CERTIFICATE OF COMPLETION OR SUCH CERTIFICATE OF COMPLETION IS REVOKED FOR ANY REASON, ANY AND ALL STATE ENFORCEMENTS ACTION IMMEDIATELY WILL RESUME AFTER TIMELY NOTICE TO ALL PARTIES.

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

(B) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ALL APPLICANTS ACCEPTING PARTICIPATION IN THE BROWNFIELD CLEANUP PROGRAM SHALL PAY ALL REASONABLE STATE COSTS, HOWEVER, SUCH STATE COSTS SHALL NOT EXCEED FIVE PERCENT OF THE TOTAL SITE PREPARATION COSTS, AS DEFINED BY PARAGRAPH TWO OF SUBDIVISION (B) OF SECTION TWENTY-ONE OF THE TAX LAW,

PAID OR INCURRED BY THE APPLICANT, AND THE TOTAL STATE COSTS OWED SHALL BE PAYABLE UPON NINETY DAYS OF, (I) THE ISSUANCE OF THE CERTIFICATE OF COMPLETION FOR THE PROJECT, OR, (II) UPON TERMINATION OF A PARTICIPANT'S BROWNFIELD CLEANUP AGREEMENT BY THE DEPARTMENT FOR FAILURE TO SUBSTANTIALLY COMPLY WITH SUCH AGREEMENT'S TERMS AND CONDITIONS, OR (III), THE VOLUNTARY WITHDRAWAL OF THE APPLICANT. FAILURE TO REMIT DUE PAYMENTS TO THE STATE SHALL RESULT IN THE REVOCATION OF SUCH CERTIFICATE OF COMPLETION, AND WILL PROHIBIT ANY FUTURE PARTICIPATION OF AN APPLICANT IN THE PROGRAM. 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.

S 3. 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 OF THIS SECTION, AN ENVIRONMENTAL COVENANT MAY CONTAIN OTHER INFORMATION, RESTRICTIONS, AND REQUIREMENTS AGREED TO BY THE PERSONS WHO SIGNED IT, INCLUDING ANY:

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

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

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

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

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

(B) ACTIVITIES AND USE LIMITATIONS.

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

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

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

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 OF THIS SECTION 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, PARAGRAPH, 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 4. 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 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 5. 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 electronically. 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 6. 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 SUCH ARTICLE and that any affected local governments, as defined in title thirty-six of SUCH article [seventy-one of this chapter] have been notified that such easement OR COVENANT has been recorded;

S 7. 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 SUCH ARTICLE) 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 8. 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 paragraphs two, three and four of this subdivision, 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.

S 9. 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 198 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] ONE HUNDRED FIFTY million dollars or [six] TWENTY 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 198 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 10. Paragraph 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, subparagraph (B) and the closing paragraph as amended by section 1 of part G of chapter 62 of the laws of 2006, is amended to read as follows:

(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 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] TWELVE.

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

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

(A) areas that have both:

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

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

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

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

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

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

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

S 14. Severability. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have 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 15. This act shall take effect immediately and shall apply to a qualified site for which the commissioner of environmental conservation has issued a notice to the taxpayer or other applicant after July 1, 2013 that its request for participation has been accepted under subdivision 6 of section 27-1407 of the environmental conservation law.