STATE OF NEW YORK

7396--B

2023-2024 Regular Sessions

IN ASSEMBLY

May 19, 2023

Introduced by M. of A. LEE, OTIS -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to the availability of technical assistance grants in brownfield site remedial programs

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 6 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:

6. "[~~Citizen~~] Community participation plan" shall mean the description of [~~citizen~~] community participation activities prepared and carried out pursuant to section 27-1417 of this title.

§ 2. Subdivisions 2 and 9 of section 27-1409 of the environmental conservation law, subdivision 2 as amended by section 7 of part BB of chapter 56 of the laws of 2015, and subdivision 9 as amended by section 4 of part A of chapter 577 of the laws of 2004, are amended to read as follows:

2. One requiring: (a) the participant to pay for state costs, including the recovery of state costs incurred before the effective date of such agreement; provided, however, that such costs may be based on a reasonable flat-fee for oversight, which shall reflect the projected future state costs incurred in negotiating and overseeing implementation of such agreement; [~~and~~]

(b) with respect to a brownfield site which: (i) the department has determined constitutes a significant threat to the public health or

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

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environment, or (ii) is located on and/or adjacent to a school or day care facility, the department [~~may~~] shall include a provision requiring the applicant to provide a technical assistance grant, as described in subdivision four of section 27-1417 of this title and under the conditions described therein, to an eligible party in accordance with procedures established under such program, with the cost of such a grant incurred by a volunteer serving as an offset against such state costs;

(c) with respect to all other brownfield sites the department may include a provision requiring the applicant to provide a technical assistance grant, as described in subdivision four of section 27-1417 of this title and under the conditions described therein, to an eligible party in accordance with procedures established under such program, with the cost of such a grant incurred by a volunteer serving as an offset against such state costs;

9. One requiring the preparation and implementation of a [~~citizen~~] community participation plan consistent with the requirements of this title as soon as possible following execution of the agreement but no later than prior to the preparation of a draft remedial investigation plan by the applicant which shall include a description of [~~citizen~~] community participation activities already performed by the applicant and/or the department;

§ 3. Subparagraph (vi) of paragraph (i) of subdivision 3 of section 27-1415 of the environmental conservation law, as amended by section 7 of part A of chapter 577 of the laws of 2004, is amended to read as follows:

(vi) Any written and oral comments submitted by members of the public on the applicant's proposed use as part of [~~citizen~~] community participation activities performed by the applicant pursuant to this title.

§ 4. Section 27-1417 of the environmental conservation law, as added by section 1 of part A of chapter 1 of the laws of 2003, paragraphs (b), (d), (e), (f), (g), (h), (i) of subdivision 3 and paragraph (a) of subdivision 4 as amended by section 8 of part A of chapter 577 of the laws of 2004, is amended to read as follows:

§ 27-1417. [~~Citizen~~] Community participation.

1. [~~Citizen~~] Community participation handbook. The commissioner shall prepare a [~~citizen~~] community participation handbook for the purpose of providing guidance to applicants in the design and implementation of meaningful [~~citizen~~] community participation plans consistent with the requirements of this section for the remediation of brownfield sites as provided in this title. Such handbook shall encourage [~~citizen~~] community involvement by outlining opportunities and recommended methods for effective [~~citizen~~] community participation, including the availability of technical assistance grants. The commissioner shall make such handbook available to all applicants and other interested members of the public upon request and shall make it available on the department's website.

2. [~~Citizen~~] Community participation plans. (a) The design of any [~~citizen~~] community participation plan, including the level of [~~citizen~~] community involvement and the tools utilized, shall take into account the scope and scale of the proposed remedial program, local interest and history, and other relevant factors. While retaining flexibility, [~~citizen~~] community participation plans shall embody the following principles of meaningful [~~citizen~~] community participation:

(1) opportunities for [~~citizen~~] community involvement should be provided as early as possible in the decision making process prior to

the selection of a preferred course of action by the department and/or the applicant.

(2) activities proposed in such plan should be as reflective of the diversity of interests and perspective found within the community as possible, allowing the public the opportunity to have their views heard and considered, which may include opportunities for two-way dialogue.

(3) full, timely, and accessible disclosure and sharing of information by the department shall be provided, including the provision of technical data and the assumptions upon which the analyses are based.

(b) All [~~citizen~~] **community** participation plans shall include the following minimum elements:

(1) identification of the interested public and preparation of a brownfield site contact list;

(2) identification of major issues of public concern related to the brownfield site;

(3) a description and schedule of public participation activities required pursuant to this section; and

(4) a description and schedule of any additional public participation activities needed to address public concerns.

3. [~~Citizen~~] **Community** participation requirements. (a) In addition to the formal milestones listed below, the public may provide comments at any time during the remedial program.

(b) The person submitting a request for participation, in cooperation with the department, shall provide a newspaper notice of the person's request to participate in the program. The person, in cooperation with the department, shall also provide notice thereof to the brownfield site contact list. Such notice shall provide for a thirty day public comment period following publication.

(c) Before the department finalizes the remedial investigation work-plan, the applicant, in cooperation with the department, must notify individuals on the brownfield site contact list. Such notice shall include a fact sheet describing such plan and provide for a thirty day public comment period.

(d) Before the department approves a proposed remedial investigation report, the department, in consultation with the applicant, shall notify individuals on the brownfield site contact list. Such notice shall include a fact sheet describing such report.

(e) Upon the department's determination of significant threat pursuant to section 27-1411 of this title, the department must provide notice to individuals on the brownfield site contact list. Such notice shall include a fact sheet describing the basis of the department's determination.

(f) Before the department finalizes a proposed remedial work plan or makes a determination that site conditions meet the requirements of this title without the necessity for remediation pursuant to section 27-1411 of this title, the department, in consultation with the applicant, must notify individuals on the brownfield site contact list. Such notice shall include a fact sheet describing such plan and provide for a forty-five day public comment period. The commissioner shall hold a public meeting if requested by the affected community and the commissioner has found that the site constitutes a significant threat to the public health or the environment. Further, the affected community may request a public meeting at sites that do not constitute a significant threat. (1) To the extent that the department has determined that site conditions do not pose a significant threat and the site is being addressed by a volunteer, the notice shall state that the department has

determined that no remediation is required for the off-site areas and that the department's determination of a significant threat is subject to this forty-five day comment period. (2) If the remedial work plan includes a Track 2, Track 3 or Track 4 remedy at a non-significant threat site, such comment period shall apply both to the approval of the alternatives analysis by the department and the proposed remedy selected by the applicant.

(g) Before the applicant commences construction at the brownfield site, the applicant, in cooperation with the department, shall provide notice to the individuals on the brownfield site contact list.

(h) Before the department approves a proposed final engineering report, the department, in consultation with the applicant, must notify individuals on such contact list. Such notice shall include a fact sheet describing the brownfield site report, including any proposed institutional or engineering controls.

(i) Within ten days of the issuance of a certificate of completion at a site which will utilize institutional or engineering controls, the applicant, in cooperation with the department, shall provide notice to the brownfield site contact list. Such notice shall include a fact sheet describing such controls.

4. Technical assistance grants. (a) Within the limits of appropriations made available pursuant to paragraph [~~j~~] **(j)** of subdivision three of section ninety-seven-b of the state finance law, the commissioner is authorized to provide grants to **the New York city community board, which shall have the same meaning as set forth in section twenty-eight hundred of the New York city charter, in which the site is located or to** any not-for-profit corporation exempt from taxation under section 501(c)(3) of the internal revenue code at any site determined to pose a significant threat by the department and which may be affected by a brownfield site remedial program. To qualify to receive such assistance, a community group must demonstrate that its membership represents the interests of the community affected by such site. Furthermore, the commissioner is authorized to direct any applicant who is a responsible party, as defined in section 27-1313 of this article, to provide such grants. Such grants shall be known as technical assistance grants and may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard posed by contamination located **at** or emanating from a brownfield site or sites and the development and implementation of a brownfield site remedial program or programs. Such grants may also be used to hire health and safety experts to advise affected residents on any health assessments and for the education of interested affected community members to enable them to more effectively participate in the remedy selection process. Grants awarded under this section may not be used for the purposes of collecting field sampling data, political activity or lobbying legislative bodies.

(b) The amount of any grant awarded under this section may not exceed fifty thousand dollars at any one site.

(c) No matching contribution from the grant recipient shall be required for a technical assistance grant. Following a grant award, a portion of the grant shall be made available to the grant recipient, in advance of the expenditures to be covered by the grant, in five thousand dollar installments.

§ 5. This act shall take effect on the first of February next succeeding the date upon which it shall have become a law and shall apply to any applications received on or after such date.