

# 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:

1 Section 1. Subdivision 6 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 6. "[~~Citizen~~] Community participation plan" shall mean the description  
5 of [~~citizen~~] community participation activities prepared and carried out  
6 pursuant to section 27-1417 of this title.

7 § 2. Subdivisions 2 and 9 of section 27-1409 of the environmental  
8 conservation law, subdivision 2 as amended by section 7 of part BB of  
9 chapter 56 of the laws of 2015, and subdivision 9 as amended by section  
10 4 of part A of chapter 577 of the laws of 2004, are amended to read as  
11 follows:

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

18 (b) with respect to a brownfield site which: (i) the department has  
19 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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1 environment, or (ii) is located on and/or adjacent to a school or day  
2 care facility, the department [~~may~~] shall include a provision requiring  
3 the applicant to provide a technical assistance grant, as described in  
4 subdivision four of section 27-1417 of this title and under the condi-  
5 tions described therein, to an eligible party in accordance with proce-  
6 dures established under such program, with the cost of such a grant  
7 incurred by a volunteer serving as an offset against such state costs;

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

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

22 § 3. Subparagraph (vi) of paragraph (i) of subdivision 3 of section  
23 27-1415 of the environmental conservation law, as amended by section 7  
24 of part A of chapter 577 of the laws of 2004, is amended to read as  
25 follows:

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

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

34 § 27-1417. [~~Citizen~~] Community participation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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