**§ 27-1405. Definitions.**

1. "Applicant" shall mean a person whose request to participate in the brownfield cleanup program under this title has been accepted by the department:

(a) "Participant" shall mean an applicant who either: (i) was the owner of the site at the time of the disposal or discharge of contaminants or (ii) is otherwise a person responsible according to applicable principles of statutory or common law liability, unless such person's liability arises solely as a result of such person's ownership or operation of or involvement with the site subsequent to the disposal or discharge of contaminants.

(b) "Volunteer" shall mean an applicant other than a participant, including without limitation a person whose liability arises solely as a result of such person's ownership or operation of or involvement with the site subsequent to the disposal or discharge of contaminants, provided however, such person exercises appropriate care with respect to contamination found at the facility by taking reasonable steps to:

(i) stop any continuing release;

(ii) prevent any threatened future release; and

(iii) prevent or limit human, environmental, or natural resource exposure to any previously released contamination.

2. "Brownfield site" or "site" shall mean any real property where a contaminant is present at levels exceeding the soil cleanup objectives or other health-based or environmental standards, criteria or guidance adopted by the department that are applicable based on the reasonably anticipated use of the property, in accordance with applicable regulations. Such term shall not include real property:

(a) listed in the registry of inactive hazardous waste disposal sites under section 27-1305 of this article at the time of application to this program and given a classification as described in subparagraph one or two of paragraph b of subdivision two of section 27-1305 of this article; provided, however, real property listed in the registry of inactive hazardous waste disposal sites under subparagraph two of paragraph b of subdivision two of section 27-1305 of this article, where such real property is owned by a volunteer or under contract to be

transferred to a volunteer, shall not be deemed ineligible to participate, provided that, prior to the site being accepted into the brownfield cleanup program, the department has not identified any responsible party for that property having the ability to pay for the investigation or cleanup of the property 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. The department's assessment of eligibility under this paragraph shall not constitute a finding concerning liability with respect to the property;

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

(c) subject to an enforcement action under title seven or nine of this article, or permitted or required to be permitted as a treatment, storage or disposal facility; 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 and provided further that real property owned by a volunteer or under contract to be transferred to a volunteer shall not be deemed ineligible to participate provided that, prior to the site being accepted into the brownfield cleanup program, the department has not identified any responsible party for that property having the ability to pay for the investigation or cleanup of the property;

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

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

3. "Brownfield site contact list" shall mean a list of persons, government agencies, groups, or organizations, including, but not limited to the chief executive officer and zoning board of each county, city, town and village in which such site is located, in a city with a population of one million or more, any community board in which such

site is located, the public water supplier which serves the area in which such site is located, any site residents, any person who has requested to be placed on the site contact list, and the administrator of any school or day care facility located on the site for the purposes of posting and/or dissemination at the facility. For the purposes of this section "water supplier" means any public water system as such term is defined for the purposes of the sanitary code of the state of New York as authorized by section two hundred twenty-five of the public health law. Provided, however, that where the site or adjacent real property contains multiple dwelling units, the applicant shall work with the department to develop an alternative method for providing such notice in lieu of mailing to each individual.

4. "Brownfield site cleanup agreement" shall mean an agreement executed in accordance with section 27-1409 of this title by an applicant and the department for the purpose of completing a brownfield site remedial program.

5. "Brownfield site remedial program" or "remedial program" shall mean all remedial activities or actions undertaken to eliminate, remove, treat, abate, control, manage, or monitor contamination at or emanating from a brownfield site, including, but not limited to, the following:

(a) remedial investigation and remedy selection activities needed to develop such a program;

(b) design activities;

(c) construction activities including without limitation grading, contouring, trenching, grouting, capping, excavating, transporting, incinerating, thermally treating, chemically treating, biologically treating, constructing leachate collection and treatment systems or application of innovative technologies approved by the department;

(d) interim remedial measures;

(e) post-construction operation, maintenance, and monitoring;

(f) restoration of the environment;

(g) involvement by local governments of jurisdiction and by the general public; or

(h) oversight by the department.

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

7. "Concentrated solid or semi-solid hazardous wastes" shall mean solid or semi-solid hazardous wastes present in surface or subsurface soil, surface water or groundwater in a concentrated form, such as precipitated metallic salts, metal oxides, or chemical sludges.

7-a. "Contaminant" shall mean hazardous waste and/or petroleum as such terms are defined in this section.

8. "Contamination" or "contaminated" shall mean the presence of a contaminant in any environmental media, including soil, surface water, groundwater, air, or indoor air.

9. "Dense non-aqueous phase liquid" or "DNAPL" shall mean a hazardous waste that is a liquid that is denser than water and does not dissolve or mix easily in water.

10. "Document repository" shall mean a repository of brownfield site remedial program documents approved by the department or released for public notice established in a publicly accessible building near the location of such site.

11. "Engineering control" shall mean any physical barrier or method employed to actively or passively contain, stabilize, or monitor contamination, restrict the movement of contamination to ensure the long-term effectiveness of a remedial program, or eliminate potential exposure pathways to contamination. Engineering controls include, but are not limited to, pavement, caps, covers, subsurface barriers, vapor barriers, slurry walls, building ventilation systems, fences, access controls, provision of alternative water supplies via connection to an existing public water supply, adding treatment technologies to such water supplies, and installing filtration devices on private water supplies.

12. "Feasible" shall mean suitable to site conditions, capable of being successfully carried out with available technology, implementable and cost effective.

13. "Financial assurance" shall include but not be limited to surety bonds, trust funds, letters of credit, insurance or a multiple of financial mechanisms as determined to be adequate by the department.

14. "Free product" shall mean an immiscible non-aqueous phase liquid, other than a dense non-aqueous phase liquid present as a liquid in surface or sub-surface soil, surface water or groundwater in a potentially mobile state.

15. "Grossly contaminated soil" shall mean soil which contains free product or residual contamination which is identifiable either visually, through the perception of odor, by elevated contaminant vapor levels, by field instrumentation, or is otherwise readily detectable.

16. "Groundwater" shall mean water below the land surface in a saturated zone of soil or rock. This includes perched water separated from the main body of groundwater by an unsaturated zone.

17. "Hazardous waste" shall mean a hazardous waste as defined in section 27-1301 of this article.

18. "Institutional control" shall mean any non-physical means of enforcing a restriction on the use of real property that limits human or environmental exposure, restricts the use of groundwater, provides notice to potential owners, operators, or members of the public, or prevents actions that would interfere with the effectiveness of a remedial program or with the effectiveness and/or integrity of operation, maintenance, or monitoring activities at or pertaining to a brownfield site.

19. "Interim remedial measures" shall mean activities to address both emergency and non-emergency site conditions, which can be undertaken without extensive investigation and evaluation, to prevent, mitigate, or

remedy environmental damage or the consequences of environmental damage attributable to a site, including but not limited to, the following activities: construction of diversion ditches, collection systems, free product recovery systems, or leachate collection systems; construction of fences or other barriers; installation of water filters; provision of alternative water systems; the removal of free product; or plume control.

20. "Light Non Aqueous Phase Liquid" or "LNAPL" shall mean a contaminant that is a liquid that is lighter than water and does not dissolve or mix easily in water.

21. "Municipality" shall mean a local public authority or public benefit corporation, a county, city, town, village, school district, supervisory district, district corporation, improvement district within a county, city, town or village or Indian nation or tribe recognized by the United States with a reservation wholly or partly within the boundaries of the state, or any combination thereof.

22. "Newspaper notice" shall mean the placement of a prominently located, paid newspaper advertisement in the community bulletin section or similar local section of a newspaper of general circulation in the vicinity of the brownfield site which is the subject of the notice. Such notice shall be in English and in any other language spoken by significant numbers of people within the community.

23. "Non-aqueous phase liquid" shall mean a liquid that does not dissolve or mix easily in water.

24. "Off-site contamination" shall mean any contamination which has emanated from a brownfield site beyond the real property boundaries of such site, via movement through air, indoor air, soil, surface water or groundwater.

25. "On-site contamination" shall mean any contamination located within the real property boundaries of a brownfield site.

26. "Permanent cleanup" or "permanent remedy" shall mean a cleanup or remedy that would allow a site to be used for any purpose without restriction and without reliance on the long-term employment of institutional or engineering controls.

27. "Petroleum" shall have the meaning set forth in section one hundred seventy-two of the navigation law.

28. "Residual contamination" shall mean contamination remaining as a solid, semi-solid or immiscible liquid in surface or subsurface soil, geologic matrix pore spaces or fractures and held in place by capillary forces or other physical or chemical forces that will not drain from the formation.

29. "Affordable housing project" shall mean (a) a project as shall be defined in regulation by the department, after consultation with the division of housing and community renewal, which shall at a minimum, establish the percentage of units in the project that must be below a defined percentage of the area median income; or (b) a project situated on a brownfield site that demonstrates the project is the subject of a determination by a federal, state or local government housing agency that all or a portion of the project or site will qualify for benefits, including but not limited to real property taxation exemptions, is or will be eligible under an affordable housing program which requires that a percentage of residential rental or home ownership dwelling units be dedicated to tenants or homeowners at a defined maximum percentage or percentages of area median income based on the occupants' households annual gross income. Such federal, state or local affordable housing program shall confer a benefit to the project. For the purposes of this subdivision, the term "benefit" shall be broadly construed, and shall include, but not be limited to, tax benefits, including real estate tax benefits, tax credits, bond financing, subsidy financing, and zoning variances or waivers. Further, the department may by regulation, after consulting with the division of housing and community renewal, exclude specific benefits from qualifying pursuant to this subdivision. To demonstrate eligibility under this subdivision, the project must present a certification of compliance or other evidence of eligibility by a

federal, state, or local government affordable housing agency that such project is an affordable housing project. For purposes of this subdivision, "area median income" shall mean the area median income for the primary metropolitan statistical area or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development or its successor for a family of four, as adjusted for family size.

30. "Underutilized" shall be defined in regulation by the department, after consultation with the business community and the city of New York. Such regulations shall be adopted no later than October first, two thousand fifteen and take into consideration the existing use of a property relative to allowable development under zoning, the need for substantial government assistance to redevelop and other relevant factors.

31. "Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.

32. "Disadvantaged community" shall mean a community that is identified pursuant to section 75-0111 of this chapter.

33. "Renewable energy facility site" shall mean real property: (a) that is used for a renewable energy system, as defined in section sixty-six-p of the public service law; or (b) any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission, sub-transmission, or distribution system.