§ 27-1407. Request for participation.

1. A person who seeks to participate in this program shall submit a request to the department on a form provided by the department. Such form shall include information to be determined by the department sufficient to allow the department to determine eligibility and the current, intended and reasonably anticipated future land use of the site pursuant to section 27-1415 of this title. Any such person shall submit an investigation report sufficient to demonstrate that the site requires remediation in order to meet the remedial requirements of this title.

1-a. If the person is also seeking a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit pursuant to paragraph three of subdivision (a) of section twenty-one of the tax law for a site located in a city having a population of one million or more, such person shall submit information sufficient to demonstrate that: (a) at least half of the site area is located in an environmental zone as defined in section twenty-one of the tax law; (b) the property is upside down or underutilized; (c) the project is an affordable housing project; (d) the project is within a disadvantaged community, within a designated brownfield opportunity area, and meets the conformance determinations pursuant to subdivision ten of section nine hundred seventy-r of the general municipal law; or (e) the project is being developed as a renewable energy facility site. An applicant may request an eligibility determination for tangible property credits at any time from application until the site receives a certificate of completion pursuant to section 27-1419 of this title except for sites seeking eligibility under the underutilized category.

Sites are not eligible for tangible property tax credits if: (a) the contamination from ground water or soil vapor is solely emanating from property other than the site subject to the present application; or (b) the department has determined that the property has previously been remediated pursuant to titles nine, thirteen and fourteen of this article, title five of article fifty-six of this chapter and article twelve of the navigation law such that it may be developed for its then

intended use.

2. If the person chooses, such person may also submit a work plan for a site investigation or a final report describing the results of an investigation that meets the requirements of this article.

3. The department shall notify the person requesting participation in this program within thirty days after receiving such request that such request is either complete or incomplete. In the event the application is determined to be incomplete the department shall specify in writing the missing necessary information required pursuant to this article to complete the application and shall have ten days after receipt of the missing information to issue a written determination if the application is complete.

4. Upon the receipt of an application, the department shall notify the administrator of the New York environmental protection and spill compensation fund to determine whether such person has been identified as responsible for cleanup and removal costs for the discharge of petroleum at or emanating from the brownfield site for which the person is seeking participation and whether there is an outstanding claim against such person pursuant to article twelve of the navigation law. The administrator shall notify the department and the person within thirty days of such notice of any outstanding claim by the fund against such person at the brownfield site for which the person is seeking participation.

5. Upon the determination that the application is complete, the department shall commence a thirty day comment period and place a notification of receipt of request to participate in this program in the environmental notice bulletin and provide newspaper notice. The department shall also provide notice thereof in writing to the chief executive officer and zoning board of each county, city, town and village in which such brownfield site is located, residents on and/or adjacent to the site, the public water supplier which services the area in which such brownfield site is located, any person who has requested to be placed on the brownfield site contact list and the administrator

of any school or day care facility located on and/or adjacent to the site for the purposes of posting and/or dissemination at the facility. For 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 person shall work with the department to develop an alternative method for providing such notice in lieu of mailing to each individual.

6. The department shall use all best efforts to expeditiously notify the applicant within forty-five days after receiving a complete application for participation that such request is either accepted or rejected, and, for any applicant seeking to receive the tangible property credit component of the brownfield redevelopment tax credit pursuant to paragraph three of subdivision (a) of section twenty-one of the tax law, shall concurrently notify the applicant whether the criteria for receiving such component as set forth in subdivision one of this section have been met.

7. In the event a final investigation report describing the results of an investigation that meets the requirements of this article was submitted with the application, the person shall establish a document repository, notify individuals on the brownfield site contact list, and provide for a thirty day comment period. Within sixty days after receiving a person's application the commissioner shall inform the person in writing that the investigation is complete or that the investigation is incomplete and specify the missing necessary information required pursuant to this article to complete the investigation and/or the final investigation report.

8. The department shall reject such request if:

(a) the department determines that the request is for real property which does not meet the requirements of a brownfield site as defined in this title; or

(b) there is an action or proceeding relating to the brownfield site against the person who is requesting participation that is pending in

any civil or criminal court in any jurisdiction, or before any state or federal administrative agency or body, wherein the state or federal government seeks the investigation, removal, or remediation of contamination or penalties;

(c) there is an order providing for the investigation, removal, or remediation of contamination relating to the brownfield site against the person who is requesting participation; or

(d) The person requesting participation is subject to an outstanding claim as provided in subdivision four of this section.

9. The department may reject such request for participation if the department determines that the public interest would not be served by granting such request. The department shall consider factors, including but not limited to, the following:

(a) The person has been determined in an administrative, civil or criminal proceeding to have violated any provision of this article, any related order or determination of the commissioner, any regulation promulgated pursuant to this article, or any similar statute, regulation, order of the federal or other state government.

(b) The person has been denied entry into this program based upon one or more of the provisions of this subdivision, or a similar provision of federal or other state law.

(c) The person has been found in a civil proceeding to have committed a negligent or intentionally tortious act, or has been convicted in a criminal proceeding of a criminal act involving the handling, storing, treating, disposing or transporting of contaminants.

(d) The person has been convicted of a criminal offense under the laws of any state or of the United States which involves a violent felony offense, fraud, bribery, perjury, theft, or an offense against public administration as that term is used in article one hundred ninety-five of the penal law.

(e) The person has in any matter within the jurisdiction of the department knowingly falsified or concealed a material fact or knowingly submitted a false statement or made use of or made a false statement on or in connection with any document or application submitted to the department.

(f) The person is either:

(1) an individual who had a substantial interest in or acted as a high managerial agent or director for any corporation, partnership, association or organization which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a request for participation pursuant to this section or regulations promulgated thereunder if such corporation, partnership, association or organization submitted a request under this title;

(2) a corporation, partnership, association, organization, or any principal thereof, or any person holding a substantial interest therein, which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a request for participation pursuant to this section or regulations promulgated thereunder if such corporation, partnership, association or organization submitted a request under this title; or

(3) a corporation, partnership, association or organization or any high managerial agent or director thereof, or any person holding a substantial interest therein, acting as high managerial agent or director for or holding a substantial interest in another corporation, partnership, association or organization which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a request for a participation pursuant to this section or regulations promulgated thereunder had such other corporation, partnership, association or organization submitted a request under this title.

(g) The person's participation in any remedial program under the department's oversight was terminated by the department or by a court for failure to substantially comply with an agreement or order.

For the purposes of this subdivision, "high managerial agent" has the same meaning as is given that term in section 20.20 of the penal law, and "substantial interest" shall be defined in regulations promulgated by the commissioner.