§ 27-1409. Brownfield site cleanup agreement.

The agreement shall include, but not be limited to, the following provisions:

1. One describing the boundaries of the real property that is subject to the brownfield site cleanup agreement;

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 the department has determined constitutes a significant threat to the public health or environment 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;

3. One setting forth a process for resolving disputes arising from the evaluation, analysis, and oversight of the implementation of the work plan as described;

4. One requiring an indemnification provision which holds the state harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the agreement, except for those claims, suits, actions, and costs arising from the state's gross negligence or willful or intentional misconduct;

5. One authorizing the department to terminate a brownfield site cleanup agreement at any time during the implementation of such agreement if the applicant implementing such agreement fails to

substantially comply with such agreement's terms and conditions;

6. One stating that the department may exempt the applicant from the requirement to obtain any state or local permit or other authorization pursuant to section 27-1429 of this title;

7. One stating that the department shall not consider the applicant an operator of such brownfield site based solely upon execution or implementation of such brownfield site cleanup agreement for purposes of remediation liability;

8. One requiring that the applicant conduct investigation and/or remediation activities pursuant to one or more work plans which are approved by the department;

9. One requiring the preparation and implementation of a citizen 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 participation activities already performed by the applicant and/or the department;

10. One requiring a waiver by the applicant, effective upon the execution of the brownfield site cleanup agreement, any right such applicant has or may have to make a claim against the state of New York pursuant to article twelve of the navigation law with respect to the brownfield site, and a release of the New York environmental protection and spill compensation fund from any and all legal or equitable claims or causes of action that such applicant may have as a result of entering into a brownfield site cleanup agreement or fulfilling a brownfield site remedial program at such site; and

11. The inclusion of other conditions considered necessary by the department concerning the effective and efficient implementation of this title;

12. Nothing in this section shall prohibit or limit the department

from terminating a brownfield site cleanup agreement at any time during its implementation if the applicant fails to comply substantially with such agreement's terms and conditions.

13. After acceptance by the department, an executed brownfield cleanup agreement shall be submitted and returned to the department with payment of a nonrefundable program fee in the amount of fifty thousand dollars, which shall be deposited to the credit of the oversight and assistance account of the hazardous waste remedial fund pursuant to section ninety-seven-b of the state finance law. The department shall waive such fee upon a demonstration of financial hardship by the applicant. To demonstrate financial hardship the applicant must show but for the program fee, remediation of the brownfield site would not be economically viable. When evaluating financial hardship, the department will consider whether the applicant has waived their rights to tax credits, whether the location of the proposed brownfield site is in a disadvantaged community or the proposed brownfield site is being developed as an affordable housing project, the assets and income of the applicant, and any other factors deemed relevant. The department shall establish regulations governing the demonstration of financial hardship. Program fees shall not qualify for any of the tax credits available for brownfield sites under sections twenty-one, twenty-two, and twenty-three of the tax law.