§ 27-1419. Certification of completion.

1. Upon certification by the applicant that the remediation requirements of this title have been or will be achieved in accordance with the schedules provided in reports submitted to the department on the remedial work plan for the brownfield site, such applicant shall submit to the department a final engineering report prepared by an individual licensed or otherwise authorized in accordance with article one hundred forty-five of the education law to practice the profession of engineering.

2. A final engineering report shall include, at a minimum:

(a) a description of the remediation activities completed pursuant to the remedial work plan and any interim remedial measures for the brownfield site;

(b) a certification that the data submitted to the department demonstrates that the remediation requirements set forth in the remedial work plan and any other relevant provisions of this title have been or will be achieved in accordance with the timeframes, if any, established in such work plan;

(c) the boundaries of the real property that is subject to a brownfield site cleanup agreement;

(d) a complete description of any institutional and/or engineering controls employed at the site, including the mechanisms that will be used to continually implement, maintain, monitor, and enforce such controls both by the applicant, the applicant's successors and assigns, and by state or local government;

(e) a certification that any use restrictions, institutional controls, engineering controls and/or any operation and maintenance requirements applicable to the site are contained in an environmental easement created and recorded pursuant to title thirty-six of article seventy-one of this chapter and that any affected local governments, as defined in title thirty-six of article seventy-one of this chapter have been notified that such easement has been recorded;

(f) a certification that an operation and maintenance plan has been submitted by the applicant for the continual and proper operation, maintenance, and monitoring of any engineering controls employed at the

site including the proper maintenance of any remaining monitoring wells, and that such plan has been approved by the department; and

(g) a certification that any financial assurance mechanisms required by the department pursuant to this title have been executed.

3. Upon receipt of the final engineering report, the department shall review such report and the data submitted pursuant to the brownfield site cleanup agreement as well as any other relevant information regarding the brownfield site. Upon satisfaction of the commissioner that the remediation requirements set forth in this title have been or will be achieved in accordance with the timeframes, if any, established in the remedial work plan, the commissioner shall issue a written certificate of completion. The certificate shall include such information as determined by the department of taxation and finance, including but not limited to the brownfield site boundaries included in the final engineering report, the date of the brownfield site cleanup agreement, and the applicable percentages available as of the date of the certificate of completion for that site for purposes of section twenty-one of the tax law. For those sites for which the department has issued a notice to the applicant on or after July first, two thousand fifteen or the date of publication in the state register of proposed regulations defining "underutilized" as provided in subdivision thirty of section 27-1405 of this title, whichever shall be later, that its request for participation has been accepted under subdivision six of section 27-1407 of this title, 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 only be available to the taxpayer if the criteria for receiving such tax component have been met. For those sites for which the department has issued a notice to the taxpayer after June twenty-third, two thousand eight that its request for participation has been accepted under subdivision six of section 27-1407 of this title, the applicable percentage for the site preparation credit component pursuant to paragraph two of subdivision (a) of section twenty-one of the tax law, and the on-site groundwater remediation credit component pursuant to paragraph four of subdivision (a) of section twenty-one of the tax law shall be based on the level of cleanup achieved pursuant to subdivision

four of section 27-1415 of this title and the level of cleanup of soils to contaminant-specific soil cleanup objectives promulgated pursuant to subdivision six of section 27-1415 of this title, up to a maximum of fifty percent, as follows:

(a) soil cleanup for unrestricted use, the protection of groundwater or the protection of ecological resources, the applicable percentage shall be fifty percent;

(b) soil cleanup for residential use, the applicable percentage shall be forty percent, except for Track 4 which shall be twenty-eight percent;

(c) soil cleanup for commercial use, the applicable percentage shall be thirty-three percent, except for Track 4 which shall be twenty-five percent;

(d) soil cleanup for industrial use, the applicable percentage shall be twenty-seven percent, except for Track 4 which shall be twenty-two percent.

4. The commissioner shall not issue a certificate of completion to any applicant who has been identified by the administrator of the New York environmental protection and spill compensation fund pursuant to subdivision four of section 27-1407 of this title as a person responsible for the cleanup and removal costs for the discharge of petroleum at or emanating from the brownfield site for which the applicant is seeking a certificate of completion where the applicant has not resolved any outstanding claim at such site pursuant to article twelve of the navigation law.

5. A certificate of completion issued pursuant to this section may be transferred by the applicant or subsequent holder of the certificate of completion to a successor to a real property interest, including legal title, equitable title or leasehold, in all or a part of the brownfield site for which the certificate of completion was issued. Notwithstanding any provision of this chapter to the contrary, a certificate of completion shall not be transferred to a responsible party. Further, a certificate of completion may be modified or revoked by the commissioner upon a finding that:

(a) Either the applicant, or the applicant's successors or assigns,

has failed to comply with the terms and conditions of the brownfield site cleanup agreement;

(b) The applicant made a misrepresentation of a material fact tending to demonstrate that: (i) it was qualified as a volunteer; or (ii) met the criteria set forth in subdivision one-a of section 27-1407 of this title for the purpose of receiving 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;

(c) Either the applicant, or the applicant's successors or assigns, made a misrepresentation of a material fact tending to demonstrate that the cleanup levels identified in the brownfield site cleanup agreement were reached; or

(d) There is good cause for such modification or revocation.

6. Upon the commissioner's determination pursuant to subdivision three or five of this section, the commissioner shall provide the applicant with notice of such determination and notice of the right to appeal such determination. The commissioner's determination shall be final unless a hearing is requested by certified mail sent to the commissioner within thirty days after receiving notice of such determination. After such hearing, the commissioner shall give notice of final determination to such applicant. The commissioner may promulgate regulations to effectuate the purposes of this section.

7. Nothing herein shall be construed as abrogating any powers or duties of the administrator of the New York environmental protection and spill compensation fund as provided in article twelve of the navigation law.

8. A notice of such certification of completion shall be recorded and indexed in the office of the recording officer for the county or counties where such brownfield site is located in the manner prescribed by article nine of the real property law within thirty days of the issuance of the certificate of completion if the applicant is an owner or within thirty days of acquiring title to the brownfield site if the person is a prospective purchaser.