



**Department of
Environmental
Conservation**

DEC Update on NYS Brownfield Cleanup Program

**December 5, 2018
New York State Bar Association, Albany, NY**

Topics to Cover:

- **Potential Changes to Part 375**
 - Expected to be released in Spring 2019
 - Regulatory Process
- **Termination of Voluntary Cleanup Program (VCP)**
 - Ended July 13, 2018
- **Emerging Contaminant Sampling**
 - Brownfield Cleanup Program (BCP) sites
 - State Superfund Class 2 and 4 sites
- **2019 Deadline for Generation 2 BCP sites**

Part 375: Potential Changes

This rule making would amend Part 375 to:

- Incorporate provisions as specified in Chapter 56 of the Laws of 2015 as they pertain to the Environmental Remediation Programs in Part 375.
- Increase consistency across all remedial programs administered by DEC.
- Incorporate needed changes, clarifications, and modifications based on the experience developed during first decade of implementing the BCP.
- Incorporate SCO changes in Subpart 375-6 resulting from the statutorily required five-year review. Some may increase; most changes will be lower.

Subpart 375-3 (BCP): Notable Potential Changes

- **375-3.3(d)** – Change from no on-site source ineligibility to eligibility with no tangible property tax credits.
- **375-3.4(d)** – Public Interest Consideration: Includes the factors that DEC may use to evaluate whether an application will serve the public interest. For example, whether or not there is a viable party that has agreed to perform remediation and if the interests of public health require urgent action.
- **375-3.8(e)(1)(ii)** – Track 1: Conditional Track 1 would no longer be issued; instead Track 2 will be issued and Applicant can request modified Certificate of Completion (COC) for Track 1 upon meeting requirements.

Part 375: Regulatory Process

- Outreach conducted for various groups, including consultants and NYSBA: April 2017- present.
- Once changes to Part 375 are proposed, DEC will hold public meetings and conduct public hearings – likely in Rochester, NYC, and Albany.
- Public comment period will most likely be at least 90 days.
- Barring substantive revisions to proposed regulations, amendments to Part 375 could be adopted in late 2019 or early 2020.

Termination of Voluntary Cleanup Program

- Ended on July 13, 2018.
- All sites were offered a Consent Order or entry into BCP.
- If sites that DEC considers a significant threat did neither, DEC will commence listing process (ongoing).
- If you have one of these sites, consider advising your client to contact DEC about entering into a remedial program.
- An evaluation of alternatives will occur as necessary to comply with specific requirements of the transitioned program.

Emerging Contaminant Sampling at BCPs

- DEC has been systematically requiring sampling of 21 emerging contaminant analytes at all active BCP sites and State Superfund Class 2 and 4 sites.
- Upon a new site being brought into any remedial program, PFAS (per- and polyfluoroalkyl substances) and 1,4-dioxane will be incorporated into the investigation of groundwater as part of the standard parameter list.
- DEC has received some resistance from Applicants.
 - Question whether DEC should require this sampling in Manhattan.
- DEC is committed to finding any possible sources of perfluorinated chemicals (PFCs) or other emerging contaminants statewide to protect groundwater and, of course, drinking water.

2019 Deadline for Generation 2 BCP sites

- Generation 2 BCP sites are those accepted into BCP between June 23, 2008 to July 1, 2015.
- If these sites fail to receive a COC by December 31, 2019, they will be sent an amendment to become Generation 3 sites (DEC already used this practice for Gen 1 sites).
- Failure to sign and send back amendment will be grounds for termination from BCP.

2019 Deadline for Gen 2 BCP sites (con't)

- If deadline is missed, will need to establish eligibility for tangible property tax credits (mostly will affect NYC sites).
- Eligible costs will still be counted from date of Brownfield Cleanup Agreement (BCA), even if well before 2015.
- Refer to Program Policy DER-32, *BCP Applications and Agreements*, for details.

Thank You

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