

**Brownfield Cleanup Program Extender
and Omnibus Proposal**

§ 1. Subdivision 2 of section 1405 in article 27 of the environmental conservation law as amended by section 2 of part A of chapter 577 of the laws of 2004 and by section 2 of part BB of chapter 56 of the laws of 2015, is amended by adding clarification that exceedances of the Track 1 Soil Cleanup Objectives can be used to determine eligibility if the planned remediation is to achieve the Track 1 soil cleanup objectives for a planned residential project as follows:

"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. **If a project as defined in the application by the Requestor is proposed on a Site as defined herein which consists of a single tax lot or multiple tax lots, the entire Site shall constitute the eligible Site to the extent the proposed project will encompass the entire Site or the applicable portion thereof.**

§ 2. Subdivisions 29 and 30 of Section 1405 in Article 27 of the environmental conservation law, as amended by section 2 of part A of chapter 577 of the laws of 2004 and by section 2 of part BB of chapter 56 of the laws of 2015, is amended and new subdivisions 32 and 33 are added as follows:

29. "Affordable housing project" **shall mean either (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 is the subject of a determination by a 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, under an affordable housing program which defines a percentage of residential rental or home ownership dwelling units to be dedicated to tenants or home owners at a defined maximum percentage or percentages of area median income based on the occupants' households annual gross income. 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. mean, as of the date of application,

(a) a Site on which no more than fifty percent of the permissible floor area of the building or buildings is certified by the applicant to have been used under the applicable base zoning or as a non-conforming use for at least three years prior to the application, which zoning has been in effect for at least three years; or

(b) the proposed future use is at least seventy-five percent for industrial or commercial uses; or

(c) the proposed development project on the Site could not take place without substantial government assistance, as certified by the municipality in which the Site is located, and for purposes of this provision, substantial government assistance shall mean a substantial loan, grant, land purchase subsidy, land purchase cost exemption or waiver, or tax credit, from a governmental entity; or

(d) a Site on which one or more primary structures have been condemned, or presently exhibits documented structural deficiencies, as certified by a professional engineer; or

(e) a Site on which there are no structures or the buildings have not been occupied or used for at least twelve months; or

(f) an industrial or commercial Site that is no longer functional for its initially intended use due to factors such as functional obsolescence that affects the Site itself or the Site's relationship with other surrounding property, and for purposes of this provision functional obsolescence means that the Site is unable to be used to adequately perform the function for which it was intended due to a substantial loss in value resulting from factors such as overcapacity, changes in technology, deficiencies or superadequacies in design, lack of demand for this type of use such as office space due to a pandemic, or other similar factors that affect the Site itself or the Site's relationship with other surrounding real property.

32. "Conforming BOA site" shall mean a site located within an area designated by the Secretary of State as a brownfield opportunity area pursuant to section nine hundred seventy-r of the general municipal law and for which the Secretary of State has issued an affirmative conformance determination pursuant to subdivision ten of section nine hundred seventy-r of the general municipal law.

33. "Renewable energy facility site" shall mean a site that is primarily used for a renewable energy facility as described in subparagraph (C) of paragraph (7) of subdivision (b) of the tax law.

§ 3. Subdivision 1-a of Section 1407 in Article 27 of the environmental conservation law, as amended by section 2 of part A of chapter 577 of the laws of 2004 and by section 2 of part BB of chapter 56 of the laws of 2015, is amended as follows:

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; or (c) the project is an affordable housing project as defined under paragraph (a) of the definition of affordable housing project. 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~~. Notwithstanding the foregoing, a site located in a city having a population of one million or more and which is a conforming BOA site or which is described in paragraph (b) of subdivision twenty-nine or section 27-1405 of this title, shall also be 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. 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.

§ 4. Section 27-1409 in Article 27 of the environmental conservation law is amended by adding a new subdivision 13 to read as follows:

13. An executed Brownfield Cleanup Agreement shall be submitted and returned to the department of environmental conservation with payment of an application fee in the amount of five thousand dollars for a volunteer and ten thousand dollars for a participant. The fee shall be paid to the "Environmental Conservation Special Revenue Fund, Fund Number 21050" created pursuant to State Finance Law section 71 and shall be exclusively dedicated for the department of environmental conservation to enhance funding for department staff to administer the Brownfield Cleanup Program pursuant to this article.

§ 5. Subdivision 2 of Section 27-1411 in Article 27 of the environmental conservation law is amended by adding clarification that the remedial work plan and final engineering report are the operative documents to describe the remedy planned and then implemented at the Site as follows:

A remedial work plan shall provide for the development and implementation of a remedial program for such contamination within the boundaries of such brownfield site; provided, however, that a participant shall also be required to provide in such work plan for the development and

implementation of a remedial program for contamination that has emanated from such site. The remedial action work plan, as amended and finalized, and for some sites an interim remedial measures work plan, is the document that describes all then known components of a remedial action selected by the volunteer or participant and approved by the Department in consultation with the Department of Health's review on the public health impacts of the remedy. The Commissioner may prepare a decision document to summarize the major components of the selected and approved remedy described in the remedial action work plan to assist the public's understanding of the remedy; however, a decision document shall not be relied upon as a complete or final description of the remedy; nor does it supersede the requirements for the remedy under the remedial action work plan. The final engineering report shall describe the final and completed remedy implemented during the remedial action work necessary for the site's qualification for the certificate of completion, including any revision or variance of the remedial action work plan, which is approved by the Department.

§ 6. Subdivision 4 entitled "Track 1" of Section 1415 of Article 27 of the environmental conservation law is amended to clarify the treatment of soil vapor intrusion on a Track 1 site as follows:

Track 1: The remedial program shall achieve a soil cleanup level that will allow the site to be used for any purpose without restriction and without reliance on the long-term employment of institutional or engineering controls ~~to, and shall~~ achieve the contaminant-specific remedial action objectives for soil which conform with those contained in the generic table of contaminant-specific remedial action objectives for unrestricted use developed pursuant to subdivision six of this section. Provided, however, that volunteers whose proposed remedial program for the remediation of groundwater or soil vapor may require the long-term employment of institutional or engineering controls after the bulk reduction of groundwater contamination to asymptotic levels has been achieved or if residual soil vapor remains present from residual on-site, area-wide soil vapor or an off-site soil vapor source, but whose soil cleanup program would otherwise conform with the soil remediation requirements necessary to qualify for Track 1, shall qualify for Track 1 provided the site's owner: a) shall be responsible for maintenance of the soil vapor mitigation remedy, whether in the form of a vapor barrier system or a passive or active sub slab depressurization treatment system, either ex-situ or in-situ, and 2) shall remain in compliance with the terms of an applicable environmental easement created and recorded pursuant to title thirty-six of article seventy-one of this chapter.

§ 7. Subdivision 4 entitled "Track 4" of Section 1415 of Article 27 of the environmental conservation law is amended by adding clarification that source removal is still required in a Track 4 remedy and how to address soil vapor intrusion on a Track 4 site as follows:

Track 4: The remedial program shall achieve a cleanup level that will be protective for the site's current, intended or reasonably

anticipated residential, commercial, or industrial use with restrictions and with reliance on the long-term employment of institutional or engineering controls to achieve such level. At a minimum, all Track 4 remedies shall include source removal as defined in subdivision five-a of this section and excavation and removal of all contaminated soils sufficient to facilitate the installation of remedial action cover systems and any remaining contaminated soils above applicable soil clean up objectives will be covered with a remedial action cover system selected by the applicant and consistent with subdivision five-b of this section. The regulations shall include a provision requiring that a cleanup level which poses a risk in exceedance of an excess cancer risk of one in one million for carcinogenic end points and a hazard index of one for non-cancer end points for a specific contaminant at a specific site may be approved by the department without requiring the use of institutional or engineering controls to eliminate exposure only upon a site specific finding by the commissioner, in consultation with the commissioner of health, that such level shall be protective of public health and environment. Such finding shall be included in the draft remedial work plan for the site and fully described in the notice and fact sheet provided for such work plan.

§ 8. Subdivision 5 of Section 1415 of Article 27 of the environmental conservation law, is amended to include a new section 5-b as follows:

5-b. Remedial action cover systems are engineering controls comprised of physical barriers employed to actively or passively contain, or stabilize contamination, restrict the movement of contamination to ensure the long-term effectiveness of the remedial program, or eliminate exposure pathways to contamination, and may include:

(1) soil cover systems in landscaped or exposed soil areas, which must:

(i) be comprised of soil or other unregulated material as set forth in Part 360 of this title and otherwise complies with applicable regulations; and

(ii) not exceed the applicable soil cleanup objectives for use of the site pursuant to applicable regulations; or

(2) hardscape cover systems which shall be defined as a physical layer of solid impervious material such as concrete, asphalt, or other hard surfaces, and which are designed to serve a remedial purpose by creating a physical barrier between remaining contaminated media and an exposure pathway notwithstanding that the hardscape cover system may also serve another purpose for building construction or end use of the Site such as foundation slabs, parking lots or sidewalls, and shall be included in the remedial action and not the tangible property for:

(i) a Track 3 or 4 site if residual soil exceeds any applicable soil cleanup objectives; or

(ii) a Track 1, 2, 3 or 4 remedial action site if the remedial action cover system is required for monitoring, or to prevent exposure to area-wide or remaining contaminated groundwater; or

(iii) a Track 1, 2, 3 or 4 remedial action site if soil vapor mitigation or monitoring is required due to an exceedance of an

applicable soil vapor concentrations established by the commissioner of health pursuant to guidance or regulation or as otherwise required by the commissioner of health, and therefore, soil vapor mitigation methodologies such as a vapor barrier or a passive or active sub slab depressurization treatment system including a vapor barrier as a sealing layer, either ex-situ or in-situ, is required to be covered by or integrated into the hardscape cover system.

The thickness of a hardscape cover system that meets the remedial action cover system requirements must be at least one foot thick at Sites where the hardscape cover system is being constructed in structurally sound native soil, or two feet thick for Sites in structurally unsound soil, such as historic fill or sand; and must otherwise meet the requirements of the Building Code of New York State, and New York State Department of Transportation Standard Specifications, if applicable, and be certified by a licensed Professional Engineer.

§ 9. Subdivision 3 of section 1419 of article 27 of the environmental conservation law is amended to read as follows:

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 time frames, if any, established in the remedial work plan, the commissioner shall issue a written certificate of completion. Following such issuance, the commissioner shall transmit an invoice for oversight costs incurred by the department of environmental conservation and the department of health staff who oversaw the project. Within thirty days of receipt of the invoice, the applicant shall transmit its payment of the department of environmental conservation's oversight costs to the "Environmental Conservation Special Revenue Fund, 71 Fund Number 21050" established pursuant to State Finance Law section and the department of health's oversight costs to the "Drinking Water program Management and Administration Fund, Fund Number 23100" established by Title IV of Article 11 of the Public Health Law and the Drinking Water Revolving Fund established by §1285-m of the Public Authorities Law. Provided, however, that such collective invoices for oversight costs cannot: (a) include any time spent on dispute resolution pursuant to subparagraph 3 in section 1409 and (b) exceed fifty thousand dollars in a municipality with a population of less than one million or seventy-five thousand dollars in a municipality with a population of one million or more. All such payments to the above-identified funds shall be dedicated as revenue for, respectively, the department of environmental conservation and the department of health to fund the staff of each respective department necessary to administer the Brownfield Cleanup Program pursuant to this article. 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, and the date of the brownfield site cleanup agreement, and the applicable percentages as

of the date of the certificate of completion available 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, the applicable percentage 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.

§ 10. Paragraph 2 of subdivision (a) of section 21 of the Tax Law, as amended by section 1 of part H of chapter 577 of the laws of 2004, is amended to read as follows:

(2) Site preparation credit component. The site preparation credit component shall be equal to the applicable percentage of the site preparation costs paid or incurred by the taxpayer with respect to a qualified site. The credit component amount so determined with respect to a site's qualification for a certificate of completion shall be allowed for the taxable year in which the effective date of the certificate of completion occurs. The credit component amount determined other than with respect to such qualification shall be allowed for the taxable year in which the improvement to which the applicable costs apply is placed in service for up to five taxable years after the issuance of such certificate of completion, **provided, however, that for any qualified site to which a certificate of completion is issued on or after January**

first, two thousand sixteen, the site credit component for such costs shall be allowed for up to seven taxable years after the certificate of completion; and provided further that the credit component amount for any costs necessary for compliance with the certificate of completion or subsequent modifications thereof or the remedial program defined in such certificate which were paid or incurred but not included in the calculation of a credit allowed under this section in any taxable year beginning prior to January first, two thousand twenty-one, shall be allowed for the taxpayer's first taxable year beginning on or after January first, two thousand twenty-one, and the credit component amount for any such costs paid or incurred in any taxable year beginning on or after January first, two thousand twenty-one shall be allowed in the taxable year such costs are paid or incurred for up to seven taxable years after issuance of the certificate of completion.

§ 11. Subparagraph (i) of paragraph 3 of subdivision (a) of section 21 of the Tax Law, as amended by section 1 of part AA of chapter 58 of the laws of 2021, is amended to read as follows:

(i) The tangible property credit component shall be equal to the applicable percentage of the cost or other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, which constitute qualified tangible property and may include any related party service fee paid; provided that in determining the cost or other basis of such property, the taxpayer shall exclude the acquisition cost of any item of property with respect to which a credit under this section was allowable to another taxpayer. A related party service fee shall be allowed only in the calculation of the tangible property credit component and shall not be allowed in the calculation of the site preparation credit component or the on-site groundwater remediation credit component. The portion of the tangible property credit component which is attributable to related party service fees shall be allowed only as follows: (A) in the taxable year in which the qualified tangible property described in subparagraph (iii) of this paragraph is placed in service, for that portion of the related party service fees which have been earned and actually paid to the related party on or before the last day of such taxable year; and (B) with respect to any other taxable year for which the tangible property credit component may be claimed under this subparagraph and in which the amount of any additional related party service fees are actually paid by the taxpayer to the related party, the tangible property credit component for such amount shall be allowed in such taxable year. The credit component amount so determined shall be allowed for the taxable year in which such qualified tangible property is first placed in service on a qualified site with respect to which a certificate of completion has been issued to the taxpayer, or for the taxable year in which the certificate of completion is issued if the qualified tangible property is placed in service prior to the issuance of the certificate of completion. This credit component shall only be allowed for up to one hundred twenty months after the date of the issuance of such certificate of completion, ~~provided, however, that for qualified~~

~~sites to which a certificate of completion is issued on or after March twentieth, two thousand ten, but prior to January first, two thousand twelve, the commissioner may extend the credit component for up to one hundred forty-four months after the date of such issuance, if the commissioner, in consultation with the commissioner of environmental conservation, determines that the requirements for the credit would have been met if not for the restrictions related to the state disaster emergency declared pursuant to executive order 202 of 2020 or any extension thereof or subsequent executive order issued in response to the novel coronavirus (COVID-19) pandemic.;~~ **provided, however, with respect to any qualified site for which the department of environmental conservation has issued a notice to the taxpayer before 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 the environmental conservation law, whichever shall be later, that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law, this credit component shall be allowed for up to one hundred eighty months after the date of such issuance of such certificate of completion; provided, however, with respect to any qualified site for which the department of environmental conservation has issued a notice to the taxpayer 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 the environmental conservation law, whichever shall be later, that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law, or which received such notice of acceptance prior to that date but is eligible for the brownfield redevelopment tax credits as if the site was accepted into the brownfield cleanup program after that date as provided in section thirty-three of chapter fifty-six of the laws of two thousand fifteen, this credit component shall be allowed for up to one hundred eighty months after the date of such issuance of such certificate of completion.**

§ 12. Subparagraph (A) of Paragraph 3-a of subdivision (a) of section 21 of the Tax Law is amended as follows:

Notwithstanding any other provision of law to the contrary, the tangible property credit component available for any qualified site pursuant to paragraph three of this subdivision shall not exceed thirty-five million dollars or three times the sum of the costs included in the calculation of the site preparation credit component and the on-site groundwater remediation credit component under paragraphs two and four, respectively, of this subdivision, and the costs that would have been included in the calculation of such components if not treated as an expense and deducted pursuant to section one hundred ninety-eight of the internal revenue code, whichever is less; provided, however, that: (1) in the case of a qualified site to be used primarily for manufacturing activities, the tangible property credit component available for any qualified site pursuant to paragraph three of this subdivision shall not exceed forty-five million dollars or six times the sum of the costs

included in the calculation of the site preparation credit component and the on-site groundwater remediation credit component under paragraphs two and four, respectively, of this subdivision, and the costs that would have been included in the calculation of such components if not treated as an expense and deducted pursuant to section one hundred ninety-eight of the internal revenue code, whichever is less; (2) for a site which is primarily used for a renewable energy facility pursuant to subparagraph (C) of paragraph (7) of subdivision (b) of section 21 of the tax law and as defined in Subdivision 33 of Section 1405 in Article 27 of the environmental conservation law, the tangible property credit component pursuant to paragraph three of this subdivision shall not exceed the greater of thirty-five million dollars or three times the sum of the costs included in the calculation of the site preparation credit component and the on-site groundwater remediation credit component under paragraphs two and four, respectively, of this subdivision; and ~~(2)~~ (3) the provisions of this paragraph shall not apply to any qualified site for which the department of environmental conservation has issued a notice to the taxpayer before June twenty-third, two thousand eight that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law.

§ 13. Paragraph 3-a of subdivision (a) of section 21 of the Tax Law is amended by the addition of a new subparagraph (E) to read as follows:

(E) If more than one taxpayer is claiming credits under this section with respect to the same qualifying site, then with respect to the limitations set forth in subparagraph A of this paragraph:

(i) the taxpayers who are subject to such limitations may allocate the amount of any applicable limitations in any manner that such taxpayers may agree upon. Any such agreement shall be in writing, and may be first entered into at any time prior to the due date with all available extensions for filing the tax return for the year in which the limitations set forth in subparagraph A will limit the allowable amount of any taxpayer's credits under this section, and a memorandum of such agreement shall be recorded in all counties where the qualified site is located. Each taxpayer that is party to such agreement or is otherwise bound by it, including as a successor or assign of a party, shall file a copy of the agreement with each tax return in which a tangible property credit component is claimed with respect to the qualified site. The agreement permitted by this subparagraph may be amended, provided that the aggregate of the available tangible property credit component for the qualified site shall not exceed the limitation prescribed by subparagraph A of this paragraph.

(ii) If a claim for a tangible property credit component for a qualified site is disallowed to a taxpayer in whole or in part, then, in the case of a written agreement subject to this subparagraph E, the effect of disallowance shall be subject to the agreement if provided for therein.

(iii) In the absence of a duly recorded written agreement under this subparagraph, the available tangible property credit component subject to this paragraph shall be allowable to taxpayers

claiming the tangible property credit component for the same qualified site in accordance with the following:

(a) for purposes of this clause (iii) only, qualified tangible property placed in service on the qualified site by a taxpayer at any point during a taxable year shall be deemed to have been placed in service by such taxpayer on the first day of January falling within such taxpayer's taxable year;

(b) the tangible property credit component shall be allowable to such taxpayers in the order and priority upon the date that qualified tangible property is deemed under sub-clause (a) of this clause (iii) to have been placed in service, with highest priority to the earliest date, until the limitation set forth in subparagraph A of this paragraph [§21(a)(3-a)(A)] shall have been reached for such qualified site;

(c) provided, that if more than one taxpayer shall have been deemed under sub-clause (a) of this clause (iii) to have placed qualified tangible property in service on the qualified site on the same date and year, such that the limitation set forth in subparagraph A of this paragraph would be exceeded by reason of such property being deemed placed in service on such date, then the limitation shall be allocated among such taxpayers so that the amount of the tangible property credit component allowable to each such taxpayer shall be in proportion to the ratio of the amount of the tangible property credit component that would otherwise be allowable to each such taxpayer in the absence of such limitation to the total amount of tangible property credit component that would be allowed to the taxpayers that are deemed to have placed qualified tangible property in service on the qualified site on the same date and year under sub-clause (a) of this clause (iii).

§ 14. Subparagraph B of paragraph 5 of subdivision (a) of Section 21 of the Tax Law, as amended by chapter 56 of the laws of 2015, is amended to modify clauses (iv) and (v) and to add a new clause (vi) as follows:

(iv) five percent for a site to be used primarily for manufacturing activities as such term is defined in subparagraph (B) of paragraph three-a of this subdivision;—and

—(v) five percent for sites remediated to Track 1 as that term is defined in subdivision four of section 27-1415 of the environmental conservation law; and

(vi) five percent for a site to be primarily used as a renewable energy facility in accordance with paragraph seven of subdivision (b) of this section.

§ 15. Subdivision (b) of Section 21 of the Tax Law is amended by the addition of a new subparagraph 2-a applicable to all brownfield sites regardless of the date of acceptance into the brownfield cleanup program to read as follows:

2-a. Site preparation costs as defined in paragraph two of this subdivision, and which under the Internal Revenue Code, as amended, are

also properly includible in the cost or other basis for federal income tax purposes of qualified tangible property, as described in paragraph three of this subdivision, shall be allowable for purposes of the calculation of the site preparation credit component under paragraph two of subdivision (a) of this section, but any such costs shall be excluded from such qualified tangible property basis for purposes of calculating the tangible property credit component under paragraph three of subdivision (a) of this section.

§ 16. Paragraph 2 of subdivision (b) of section 21 of the tax law, as amended by section 23 of part BB of chapter 56 of the laws of 2015, is amended as follows:

Site preparation costs. The term "site preparation costs" shall mean all amounts properly chargeable to a capital account, which are paid or incurred and which are necessary to implement a site's investigation, remediation, or qualification for a certificate of completion or to abate hazardous building materials or conditions, and shall include costs of, but may not be limited to: excavation; demolition; activities undertaken under the oversight of the department of labor or in accordance with standards established by the department of health to remediate and dispose of regulated materials including asbestos, lead or polychlorinated biphenyls; environmental consulting; engineering; legal costs; transportation, disposal, treatment or containment of contaminated soil; remediation and mitigation measures taken to address contaminated soil vapor such as sub slab depressurization systems and soil vapor barriers; remedial action cover systems ~~consistent with applicable regulations~~ as defined in subdivision five of section 27-1415 of the environmental conservation law; physical support of excavation; underpinning of structures and infrastructure adjacent to the site; dewatering and other work to facilitate or enable remediation activities; sheeting, shoring, and other engineering controls required to prevent off-site migration of contamination from the qualified site or migrating onto the qualified site; waterfront bulkheads facilitating excavation or which are part of a remedial cover system for the brownfield site and the costs of fencing, temporary electric wiring, scaffolding, and security facilities until such time as the certificate of completion has been issued. Site preparation shall include all costs paid or incurred within sixty months after the last day of the tax year in which the certificate of completion is issued that are necessary for compliance with the certificate of completion or subsequent modifications thereof, or the remedial program defined in such certificate of completion including but not limited to institutional controls, engineering controls, an approved site management plan, and an environmental easement with respect to the qualified site. Site preparation cost shall not include the costs of foundation systems that exceed the cover system requirements in the regulations applicable to the qualified site; provided, however, with respect to any qualified site for which the department of environmental conservation has issued a notice to the taxpayer before 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

the environmental conservation law, whichever shall be later, that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law, site preparation shall include all costs paid or incurred within eighty-four months after the last day of the tax year in which the certificate of completion is issued that are necessary for compliance with the certificate of completion or subsequent modifications thereof, or the remedial program defined in such certificate of completion, including but not limited to institutional controls, engineering controls, an approved site management plan, and an environmental easement with respect to the qualified site. Site preparation costs shall ~~not~~ include the cost of remedial action cover systems as defined in as defined in subdivision five of section 27-1415 of the environmental conservation law, but shall not include the costs of foundation systems that exceed the remedial action cover system requirements ~~in~~ as defined in subdivision five of section 27-1415 of the environmental conservation law the regulations applicable to the qualified site. Where an element of such remedial action cover system is enclosed within a building constructed or to be constructed on a qualified site or consists of a concrete slab, the allowable amount of the site preparation cost with respect to each square foot by surface area of such element shall be the actual cost per square foot to install and support such element, which should be compared to the established industry standard reference data unit costs as published by RSMeans (www.RSMeans.com) unless inapplicable due to unique field conditions where standard unit costs do not apply multiplied by one foot depth for a commercial or industrial project or a two foot depth for a residential project. In the event unique field conditions require a remedial action cover system to be more than one feet deep for a commercial or industrial project or two feet deep for a residential project, the engineer of record shall justify a request for a deeper remedial action cover system with geotechnical and other field specific data, which shall be considered by the department, and the final depth of the approved remedial action cover system shall be presented in the final engineering report pursuant to subdivision two of section 27-1419 of the environmental conservation law.

§ 17. Paragraph 3 of subdivision (b) of section 21 of the Tax Law is amended by the addition of a new subparagraph (C) to read as follows:

(C) is placed into service on a site that is primarily used as a renewable energy facility pursuant to subparagraph (C) of paragraph (7) of subdivision (b) of the section 21 of the tax law and: (i) which is a renewable energy facility or a component of a renewable energy facility, or (ii) which otherwise constitutes qualified tangible property under subparagraph (A) of this paragraph.

§ 18. Subdivision (b) of Section 21 of the Tax Law is amended by adding a new paragraph 7 to read as follows:

(7) Environmental zones (EN-Zones). An "environmental zone" shall mean, with respect to any qualified site for which the department of

environmental conservation has issued a notice to the taxpayer before 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 the environmental conservation law, whichever shall be later, that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law:

(A) an area designated as such by the commissioner of labor. Such areas shall be census tracts that satisfy either of the following criteria:

(i) areas that have both:

(I) a poverty rate of at least twenty percent based on the most recent five year American Community Survey; and

(II) an unemployment rate of at least one and one-quarter times the statewide unemployment rate based on the most recent five year American Community Survey, or;

(ii) areas that have a poverty rate of at least two times the poverty rate for the county in which the areas are located based on the most recent five year American Community Survey.

(iii) Such designation shall be made and a list of all such environmental zones shall be established by the commissioner of labor based on the most recent American Community Survey, or its successor.

(B) an area designated by the commissioner of the department of environmental conservation to be a potential environmental justice area.

(i) "Potential environmental justice area" means a minority or low-income community that may bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies and which are shown on maps created by the department of environmental conservation.

(ii) "Minority community" means a census block group, or contiguous area with multiple census block groups, having a minority population equal to or greater than 51.1%* in an urban area and 33.8%* in a rural area of the total population.

(iii) "Minority population" means a population that is identified or recognized by the U.S. Census Bureau as Hispanic, African-American or Black, Asian and Pacific Islander or American Indian.

(iv) "Low-income community" means a census block group, or contiguous area with multiple census block groups, having a low-income population equal to or greater than 23.59 percent of the total population.

(v) "Low-income population" means a population having an annual income that is less than the poverty threshold, as such thresholds are established by the United States Census Bureau.

(vi) "Census block group" means a unit for the U.S. Census used for reporting. Census block groups generally contain between two hundred fifty and five hundred housing units.

(vii) "Urban area" means all territory, population, and housing units located in urbanized areas and in places of 2,500 or

more inhabitants outside of an urbanized area. An urbanized area is a continuously built-up area with a population of 50,000 or more.

(viii) "Rural area" means territory, population, and housing units that are not classified as an urban area.

(C) The determination whether a site is located in an environmental zone shall be based on the date the department of environmental conservation issued a notice to the taxpayer that its request for participation in the brownfield cleanup program has been deemed complete pursuant to subdivision three of section 27-1407 of the environmental conservation law; provided, however, if the area in which a site is located is designated an environmental zone subsequent to the issuance of such notice and before qualified tangible property as defined in paragraph 3 of subdivision (b) of Section 21 of the Tax Law is placed in service, then the site shall be deemed located in an environmental zone.

(D) A site which is in a potential environmental justice area, as of the effective date of this act, shall be deemed to be in an environmental zone from and after January 1, 2021 for all purposes including but not limited to the site's eligibility for the tangible property credit component under subdivision 1-a of section 27-1407 of the environmental conservation law and the calculation of the brownfield redevelopment tax credit pursuant to section 21 of the tax law as amended by this action for all taxable years beginning on or after January 1, 2021.

§ 19. Subdivision (b) of section 21 of the Tax Law is amended by adding a new paragraph 8 to read as follows:

For purposes of this section:

(A) "renewable energy facility" means the following systems and any constituent components thereof (whether constituting real or personal property and regardless of useful life): any renewable energy system, as such term is defined in section sixty-six-p of the public service law as added by chapter one hundred six of the laws of two thousand nineteen, 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, and any standalone system storing energy interconnected into New York's bulk transmission system or an Investor Owned Utility's (IOU) transmission or distribution system providing distribution services, wholesale market energy, ancillary services, and/or capacity services, including all associated appurtenances to electric plants as defined under section two of the public service law;

(B) "renewable energy facility property" shall mean buildings, facilities, and equipment placed in service on the qualified site which are an integral part of a system included in the foregoing definition of renewable energy facility, or in the case of a building, more than fifty percent of the square footage of the building is dedicated to such system equipment or to occupancy by businesses

constructing, operating, or maintaining such systems; and

(C) a qualified site shall be deemed to be primarily used as a renewable energy facility if more than fifty percent - as measured by cost or other basis for federal income tax purposes - of the buildings, facilities, and equipment placed in service on the qualified site constitute renewable energy facility property.

An applicant claiming the tangible property credit component because the site is a renewable energy facility site shall attach to each tax return claiming the tangible property credit component under paragraph 3 of subdivision (a) of section 21 of the tax law with respect to the brownfield site: (i) a copy of interconnection agreement with a utility or equivalent documentation with respect to the renewable energy system or systems placed into service at the site; and (ii) the taxpayer's primary use determination under subparagraph (C) of this paragraph which shall set forth the cost or other basis for federal income tax purposes of all items of qualified tangible property placed into service on the site through the end of the taxable year.

§ 20. Section 31 of part H of chapter 1 of the laws of 2003, amending the tax law relating to brownfield redevelopment tax credits, remediated brownfield credit for real property taxes for qualified sites and environmental remediation insurance credits, as amended by chapter 56 of the laws of 2015, is amended to read as follows:

§ 31. The tax credits allowed under section 22 or 23 of the tax law and the corresponding provisions in articles 9, 9-A, 22 and 33 of the tax law, as added by the provisions of sections one through twenty-nine of this act, shall not be applicable to any site accepted into the brownfield cleanup program on and after July 1, 2015 ~~for the date of publication in the state register of proposed regulations defining "underutilized" as provided in subdivision 30 of section 27-1405 of the environmental conservation law, whichever shall be later~~. The tax credits allowed under section 21 of the tax law and the corresponding provisions in articles 9, 9-A, 22 and 33 of the tax law, as added by the provisions of sections one through twenty-nine of this act, shall not be applicable to any site accepted into the brownfield cleanup program after December 31, ~~2022~~ **2031**, provided, however that any sites accepted on or before December 31, ~~2022~~ **2031** must have received the certificate of completion required to qualify for any of such credits on or before ~~December March~~ **31, 2026 2036**.

§ 21. Effective Date:

This Act shall take effect immediately; provided, however:

(a) The amendments made by sections two and three of this act, and shall apply to sites for which the department of environmental conservation has issued a notice to the applicant that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law, regardless of the date of such

notice; provided, however, that the amendments made by section three of this act regarding eligibility for the tangible property credit component of the brownfield redevelopment tax credit under paragraph three of subdivision (a) of section twenty-one of the tax law shall apply to all taxable years beginning on and after January 1, 2021; and

(b) a site which is in an environmental justice area as of such effective date shall be deemed to be in an environmental zone from and after January 1, 2021 for all purposes, including but not limited to the site's eligibility of the tangible property credit component under subdivision 1-a of section 27-1407 of the environmental conservation law and the calculation of the brownfield redevelopment tax credit pursuant to section 21 of the tax law as amended by this act for all taxable years beginning on and after January 1, 2021.