

New York City
Local Brownfield Cleanup
Program

Draft Regulations

§43-1403(a)

- Eligibility for NYC Local Brownfield Cleanup Program
 - Must meet definition of “local brownfield site”
 - Otherwise ineligible

§43-1402(ag)

- “Local Brownfield Site” defined
 - Real property
 - Must be in NYC
 - Complicated by “light to moderate contamination”
 - Historic fill
 - Rejected from NYS BCP
 - E-Designation sites
 - “Delegated brownfield site”
 - Does not include petroleum
 - Unless authorized in writing

§43-1402(ae)

- “Light to moderate” defined
 - “detectable levels of contamination, the presence of which does not require an applicant or enrollee to conduct any mandatory, governmental-supervised investigation or remediation of the contamination under any state or federal law.”
 - Detectable levels of contamination
 - Does not require state/federal supervision

§43-1402(n)

- “Delegated Brownfield Site” defined
 - State/Federal Law requires investigation or remedy
 - Supervised by state or federal government
 - For State/Federal work, expressed in writing:
 - oversight by state/federal (coordinated)
 - Supervised oversight
 - City oversight (delegation)

§43-1403

- Exclusions
 - NPL
 - Subject to enforcement
 - Subject to order under navigation law
 - Stipulation is ok

§43-1403(b)

- Ineligible parties
 - Subject action or proceedings on site
 - Civil or criminal court
 - Any jurisdiction
 - State, federal or city government seeks for property:
 - Penalty
 - Remedial action or remedial investigation
 - Order for remedial action or remedial investigation

§43-1403(c)

- Eligibility: Public interest consideration
 - OER may reject a project if public interest is not served
 - Complexity of remedy
 - High degree of contamination
 - Onsite
 - Offsite

§43-1404(a)

- Pre-Application Process
 - Required (and necessary)
 - Pre-enrollment letter

§43-1404(b & c)

- Contents of Application
 - Complete remedial investigation report
 - Draft remedial action work plan
 - Application
 - Signed agreement
 - Community Participation Plan
 - Fact sheet
 - Notice
 - Repository
 - Site contact list

§43-1404(c)(5)

- Application
 - Form
 - State basis for eligibility
 - Light to moderate
 - Certification by QEP that there is no known state or federal authority
 - “no known on-site environmental conditions that would require the applicant to conduct any mandatory, governmental supervised investigation or remediation of the contamination under any state or federal law.”
 - Delegated brownfield site
 - Why subject to state or federal authority
 - Was it reported
 - Approvals/disapprovals
 - Include documents

§43-1404(e)

- Admission
 - Light to moderate: admitted
 - Delegated brownfield site
 - State/federal government must authorize in writing either:
 - (1) city oversight (delegation)
 - (2) supervised oversight
 - (3) coordinated state/federal oversight

§43-1405(a)

- Agreements
 - Boundary
 - Site access
 - Fee
 - Emergencies
 - Force majeure
 - Dispute resolution
 - Indemnification
 - Notice to owners, occupants
 - Report to state/federal
 - Termination
 - Can add conditions
 - Agreement binding

§43-1405(a)(3)

- Fee
 - \$1000 flat rate
 - Waiver for:
 - Affordable housing
 - Community development facility
 - BOA compliant (letter from grantee with executed contract)
 - Can waive for subdivided parcels

§43-1406(a)

- Work Plans
 - OER review and approval required
 - Work plans must include schedule
 - Field work overseen by QEP
 - 7 day notice of field work
 - Comply with rules and laws
 - OER streamline process
 - templates

§43-1406(c)

- Remedial Action Report
 - Includes all elements of work plan
 - Describe institutional & engineering controls
 - Site management plan
 - Certification
 - QEP
 - PE for engineering components

§43-1406(d)

- Review and approval
 - Approval (becomes part of agreement)
 - Document placed in repository
 - OER streamline process
 - Laptop meetings
 - Stipulation list

§43-1407(a)(1)

- Remedial action
 - Fully protect public health & environment
 - Prefer permanent cleanup
 - Consider current, intended use
 - Consistent with track based
 - Consistent with SCO's
 - Pursuant to alternatives analysis
 - RAWP: approval by DOHMH

§43-1407(a)(2)

- Remedial action
 - Operable units acceptable
 - Multiple work plans acceptable
 - May use presumptive remedy
 - Must address
 - Tanks
 - Source removal
 - Groundwater protection
 - Innovative technology
 - Site management plan

§43-1407(c)

- Hierarchy of source removal
 - Removal/treatment
 - Containment
 - Eliminate exposure
 - Treatment at point of exposure

§43-1407(d)

- Groundwater protection
 - Must consider short & long term strategies
 - Long term strategies:
 - Potable use
 - Non-potable use
 - Community needs
 - Feasibility
 - Protect natural resources
 - Lack of use of gw does not exclude cleanup

§43-1407(e)

- Goals of remedial investigation
 - Vertical and areal extent
 - Subsurface characteristics
 - Identify sources
 - Identify migration
 - Identify receptors
 - Evaluate threats
 - Determine impact
 - Indoor air
 - NYC groundwater wells
 - Surface water

§43-1407(f)

- Remedy selection
 - Ten factors
 - Public health protection
 - Environmental protection
 - Standards, criteria & guidance
 - Long term protection, permanence
 - Reduction in toxicity, mobility and volume
 - Short term effectiveness
 - Implementability
 - Cost effectiveness
 - Land uses
 - Sustainability

§43-1407(g)

- Soil Cleanup Objectives & Cleanup Tracks
 - NYS part 375 SCOs
 - NYS Part 375 tracks (I-IV)
 - Can use multiple tracks on same site

§43-1407(i)

- Alternatives analysis
 - Required unless:
 - Track 1
 - Presumptive remedy
 - Contents
 - Describe alternatives
 - Compare remedy selection factors
 - Long term reliability and viability
 - Evaluate plume stabilization
 - Identify preferred remedy
 - Basis for selection of preferred
 - Evaluation of IC/EC (required)

§43-1407(j)

- Remedial Action Work Plan
 - Volunteer
 - “liability arises solely as a result of a persons ownership or operation of or involvement with the local brownfield site subsequent to disposal or discharge of contaminants”
 - Onsite cleanup only; exposure assessment off-site
 - Participant
 - “owner of local brownfield site at time of disposal or discharge of contaminants”
 - Onsite and offsite cleanup

§43-1407(j)

- RAWP Elements
 - Site history
 - Nature and extent
 - Proposed use
 - Remedial action obj's
 - Cleanup track
 - IC/EC's
 - Alternatives analysis
 - Health and safety plan
 - Certification QEP, PE
 - CAMP
 - Community Protection statement
 - QA/QC plans
 - Sustainability statement

§43-1407(j)

- Community Protection Statement
 - In executive summary
 - Lay language
 - Efforts to protect public health and safety
 - Helps community
 - Helps project
 - Template

§43-1407(j)

- Sustainability Statement
 - In executive summary
 - Describes green elements of remedy
 - No mandated actions
 - Template guide
 - List of efforts to address NYC sustainability needs
 - Recycling of clean, local construction materials
 - Reduced use of virgin resources
 - Recontamination control
 - Stormwater retention to reduce CSO overflows
 - Carbon footprint reduction
 - Native landscaping
 - Community benefits
 - Sustainability audit grants: \$2k (EPA pilot)

§43-1407

- Site management
 - Required for institutional/engineering controls
 - Must identify imposed restrictions
 - Periodic inspection and certification
 - IC/EC in place
 - Performing as designed
 - Nothing has changed to impair remedy

§43-1407

- Institutional & Engineering Controls
 - Must describe mechanisms to:
 - Monitor
 - Maintain
 - Inspect
 - Report
 - Enforce
 - Reliability and viability of plan
 - Periodic certification
 - Financial assurance (if required)

§43-1407

- Declaration of Covenants & Restrictions
 - Deed notice
 - Contains all IC/EC's
 - Created and recorded prior to issuance of COC

§43-1407

- Enforcement
 - OER notifies Dept of Buildings
 - Failure to manage IC/EC
 - Could result in DOB withholding permits
 - Site access for inspection
 - Assure compliance

§43-1408(c)

- Certificate of Completion contents
 - Liability statement by NYC
 - Issued to enrollee
 - Transferable to successors and assigns
 - Remedial action work plan satisfied
 - Site boundary defined
 - Certify all state/federal remedy complete
 - Recommend no other government take action
 - Description of IC/EC and SMP
 - Must be recorded within 60 days of issuance
 - Advance notice

§43-1408(e)

- Liability release

“city shall not take or require any further investigatory or remedial action against the site and the enrollee, and his or her successors and his or her assigns, regarding matters addressed at the site”

– Enrollees preserve contribution for matters addressed

§43-1408(f)

- Reopeners for Certificate of Completion
 - Failed to implement IC/EC
 - Failed to comply with terms of agreement
 - Misrepresented facts
 - Violated Declaration of Covenant & Restrictions

§43-1409

- Citizen Participation
 - Citizen Participation Plan
 - Document repository
 - Site contact list
 - Public notice stages
 - Application; remedial investigation report & remedial action work plan
 - 30-day comment on RAWP
 - Can be extended for 15 days; no more than 30 days
 - Before start of remediation
 - After issuance of COC identifying all IC/EC's

§43-1409(c)

- Site contact list
 - Borough President
 - City Council
 - Community Board
 - Residents and owners on-site and adjacent property
 - Administrator of:
 - Day care
 - Schools
 - BOA groups
 - Community based organizations, as appropriate
 - Any requestor

§43-1410

- Miscellaneous
 - Electronic deliverables only
 - Paperless cleanup program
 - CEQR
 - Does not apply under OER approved plans
 - Provided:
 - Does not commit city to specific land use or action
 - Does not prevent alternate future uses

§43-1410

- Change of use
 - Notice
 - 60 day prior notice
 - Show how change in use will affect remedy
 - May prohibit change for cause
 - Change in title
 - Report in next SMP
 - Certification of notification of new owner
 - RIR, RAWP, RAR, SMP
 - Name and contact information of new owner