NYSDEC Finalizes Important Amendments to Its Brownfield and Superfund Regulations

Jan 15, 2026

Categories:

Publications

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On December 31, 2025, the New York State Department of Environmental Conservation (NYSDEC) **finalized** important amendments to the regulations that implement its remedial programs, including the Brownfield Cleanup Program (BCP) and State Superfund Program (SSF). This article provides a brief background on the BCP and SSF; context for the amendments; and an overview of some of the most notable regulatory changes.

Background on the BCP and SSF

The BCP provides robust tax credits for the cleanup and redevelopment of contaminated "brownfield" sites. These tax credits are refundable, so BCP enrollees receive a check if the credits exceed their tax liability. BCP enrollees also enjoy liability protection for completed cleanups. The SSF, by comparison, governs the investigation and cleanup of hazardous waste sites listed on the State's Superfund Registry, and liability for those investigations and cleanups. (The SSF was **recently amended** in ways that harmonize it with its federal counterpart; NYSDEC will propose corresponding regulations.)

Context of the Amendments

The regulatory amendments have a long history, dating back to **statutory amendments** to the BCP in 2015. Among other things, those amendments redefined what qualifies as a "brownfield site"; allowed SSF sites to be admitted into the BCP; and extended the deadline for sites to be admitted into the BCP. The 2015 amendments also provided that brownfield sites in New York City need to satisfy one or more "gates" in order to qualify for valuable tax credits for construction and development costs ("tangible tax credits"). The amendments established four gates: sites (1) being developed as an "affordable housing project"; (2) located in an economically distressed "environmental zone"; (3) that are "underutilized"; or (4) that are "upside down," meaning that the cleanup cost is disproportionate to the property value. Sites outside of New York City, however, do not need to qualify for a gate in order to obtain tangible tax credits. Tax credits for cleanup costs are available Statewide without regard to gates.

To implement the 2015 amendments, NYSDEC finalized some regulatory changes in 2016, and it proposed further (more comprehensive) regulations in late 2021. However, before the 2021 proposals were finalized, there were further **statutory amendments in early 2022** that, among other things, created two new gates for BCP sites in New York City—sites that qualify as "renewable energy facility sites" and sites located in "disadvantaged communities." The 2022 amendments also provided additional tax enhancements for those sites across the State; extended the deadline for admission into the BCP; redefined "affordable housing project"; and imposed a $50,000 BCP application fee.

Given the 2022 statutory amendments, NYSDEC allowed its 2021 regulatory proposals to expire. In early 2024, NYSDEC proposed comprehensive regulations to implement the 2015 and 2022 amendments. It made minor revisions to those proposals and reissued them to address procedural issues, and the regulations were finalized on December 31, 2025.

Overview of Regulatory Amendments

Numerous amendments were made to NYSDEC's regulations governing the BCP and SSF. The most important changes include:

- Requiring BCP "volunteers" to perform additional tasks, including sampling, off-site;
- Limiting conditional "Track 1" remedies where a site has long-term institutional or engineering controls to address contamination in groundwater or soil vapor, thus reducing the availability of higher tax credits applicable to Track 1 BCP sites (as before, conditional Track 1 remedies are available to volunteers but not to "participants");

- Redefining “cover system or site cover,” which impacts tax credit eligibility for associated costs;
- Defining what constitutes a “renewable energy facility site” in order to address the new tax incentives for those sites;
- Requiring BCP applicants to conduct searches for potentially responsible parties prior to admission of SSF sites into the BCP; and
- Providing that a “responsible party” under the SSF includes parties that engage in certain activities with respect to petroleum, which previously was handled by NYSDEC’s Spill Program and the BCP. (Notably, this definition is **inconsistent** with the definition of the similar term “responsible person” in the recently revised SSF statute itself.)

Key Takeaways

The new regulations will affect the BCP and SSF in significant ways. However, NYSDEC was already implementing some of the changes in practice prior to the regulations being finalized. Most notably, the changes offer both new opportunities and new challenges with respect to eligibility for tax credits and responsibility for off-site contamination. FBT Gibbons’ environmental team will continue to monitor and provide updates on NYSDEC’s implementation of the new regulations. For more information, contact the authors or any attorney with our **Environmental Practice Group**.