

OFFICE OF ENVIRONMENTAL REMEDIATION

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Mayor's Office of Environmental Remediation ("OER") is considering amending the City's Environmental Remediation rules, set forth in Chapter 14 of Title 43 of the Rules of the City of New York. The amendments would further define the definition of "unrestricted use" cleanups addressed in the remediation program, and with respect to its Brownfield Incentive Grant program, would facilitate redevelopment of certain development projects and provide additional funding to place-based community planning groups.

When and where is the Hearing? OER will hold a public hearing, at which the public and interested parties are invited to submit comments and testimony on the proposed amended rules, at 10 AM on November 12, 2015 in the Central Park Room at 100 Gold Street, 2nd floor, New York, NY 10038.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Mail.** You can mail written comments to OER, 100 Gold Street, 2nd floor, New York, NY 10007.
- **Email.** You can email written comments to OER at brownfields@cityhall.nyc.gov
- **Fax.** You can fax written comments to OER at 212-788-2941.
- **Website.** You can submit comments to OER through the NYC rules Website at www.nyc.gov/nycrules.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before either hearing by calling (212) 788-3015. You can also sign up in the hearing room before the session begins at 9:30 AM on November 12, 2015. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by November 13, 2015.

Do you need assistance to participate in the Hearing? You must tell OER if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by email or U.S. mail at the addresses given above, or by telephone at (212) 788-3015. You must tell us by November 5, 2015.

Can I review the comments made on the proposed rule? You can review the

comments that have been submitted online by visiting the NYC rules website: <http://rules.cityofnewyork.us/>. In addition, copies of all submitted comments concerning the proposed rule and a summary of oral comments from the hearing will be available to the public a few days after the hearing at the Office of Environmental Remediation, 100 Gold Street, 2nd floor, New York, NY 10038.

What authorizes OER to make this rule? Section 15(e)(18) and Section 1043 of the City Charter authorize OER to make this proposed rule. This proposed rule is included in OER’s FY ’16 regulatory agenda.

Where can I find OER’s rules? OER’s rules are in Chapter 14 of Title 43 of the Rules of the City of New York.

What rules govern the rulemaking process? OER must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

STATEMENT OF BASIS AND PURPOSE

The Office of Environmental Remediation (“Office” or “OER”) was established by Local Law No. 27 of 2009, and Charter § 15(e)(5) authorizes its Director to administer financial incentive programs to promote the identification, investigation, remediation, and redevelopment of brownfields. Charter § 15(e)(6) also authorizes the Director to promote community participation in these activities.

OER is proposing amendments to its Environmental Remediation Rules in two principal ways.

(1) The rule relating to the New York City Brownfield Cleanup Program (“Program Rule”), set forth in Subchapter 1 of Chapter 14, would be revised to amend the definition of “unrestricted use” for sites that enroll in the City Voluntary Cleanup Program (“VCP”) (§ 14-1407).

OER designs, reviews, and approves cleanup plans for light- to moderately-contaminated sites in New York City and later oversees the initial phase of construction at VCP sites to ensure that proposed cleanup plans are actually carried out in the field. Properties that achieve “unrestricted use” status are desirable because they are protective of any legal use the property can be put to. Another feature of “unrestricted use” sites is that their owners are not required to monitor the continued implementation of any restrictions on use.

The proposed amendments (§ 43-1407(k) and (l)) would revise the definition of “unrestricted use” in New York City to specify that restrictions that would be mandatory for a property in the VCP would not include restrictions that already apply to the property as part of area-wide or city-wide land-use or resource-use restrictions. For example, remedial actions would not be required to specify restrictions for activities that are

unlawful in New York City. In some circumstances, under existing regulations, the only restriction that would be placed on a property during a remedial action is for uses that are already prohibited by City statutes (i.e., dairy farming). The proposed amendments would allow remedial actions to exclude the establishment of site-specific restrictions that are already prohibited by the City. In other words, such land uses would be excluded from consideration when determining if an unrestricted use cleanup at a site in New York City that achieves the restricted-residential standard is appropriate. Because sensitive uses of land such as dairy farming are not allowed in New York City, the unrestricted use standard that is fully protective of all possible uses of property in New York City can be slightly higher (i.e., the restricted-residential standard) than across the state.

The amendments would also eliminate the need for site owners to conduct long-term monitoring for activities that are not lawful. In addition, by redefining “unrestricted use,” the amendments would encourage more parties enrolled in the VCP to pursue higher-level soil cleanups across New York City.

(2) The Office also oversees and administers the New York City Brownfield Incentive Grant (“BIG”) Program, set forth in Subchapter 2 of Chapter 14, which provides City funds to promote the cleanup and redevelopment of light- to moderately-contaminated sites across the city. The proposed amendments would:

- Expand the list of entities that can perform work eligible for reimbursement with City brownfield grants to include (1) workforce development organizations that offer short term employment to trainees and (2) vendors under contract with the City or the NYC Economic Development Corporation that perform eligible services under the city brownfield grant program (§ 43-1416(m)).

- Expand an existing City pre-enrollment grant, increase the City pre-enrollment grant award limit to \$125,000, and create a new City enrollment grant to reimburse affordable and industrial development projects for cleanup activities undertaken in either the VCP or the State brownfield cleanup program. Affordable and supportive housing projects financed by the City Department of Housing Preservation and Development or the City Housing Development Corporation, as well as industrial development projects supported by the NYC Economic Development Corporation, would be eligible for up to \$125,000 to cover investigation costs and up to \$250,000 in total to cover investigation and site cleanup costs. Services and activities that can be reimbursed under a City enrollment grant are those performed pursuant to a remedial action work plan issued by the Office or the New York state department of environmental conservation (§43-1417(a)(3); § 43-1417(b)(7); § 43-1418(c)(2); § 43-1418(d); § 43-1419(c)(2); § 43-1422(c)(11); § 43-1422(c)(12)).

- Make place-based community brownfield planning groups recognized by OER eligible for a technical assistance grant to develop a reuse plan for a development site and a BOA local match grant to identify, screen, and select strategic sites. By expanding eligibility for these grants, the Office seeks to increase the number of community organizations performing community brownfield planning in the city. The BOA program

provides State planning grants to community based organizations to develop plans for the redevelopment of neighborhoods with idle, vacant sites. Recently, the State has declined to provide new funds for the BOA program, prompting OER to supplement existing City support for community brownfield planning (§ 43-1416 (b), (l), (n)(5) and (q); § 43-1417(c)(1) and (2); § 43-1418(d)(2)(B), (d)(3)(A)(ii) and (B); (d)(4)(B)(ii)); § 43-1422(a), (c) (3) and (4); § 43-1423 (d)).

- Expand eligible services and activities for cleanup grants, track one bonus cleanup grants, brownfield opportunity area strategic property bonus cleanup grants, City enrollment grants, e-designation hazardous material remediation grants, climate change resilience bonus cleanup grants, and E-designation/restrictive declaration hazardous material remediation grants to include additional long-term management plans and additional remedial actions commonly required by Office-approved remedial plans. (§ 43-1419(a)(4)).

- Require that parties seeking City reimbursement for eligible cleanup expenses have six months from the receipt of a notice of completion, a notice of satisfaction or a certificate of completion to file a complete City brownfield grant application (§ 43-1420(h)).

- Increase the maximum cleanup grant award available to not-for-profit developers of preferred community development projects to \$50,000 and make available to developers of housing and industrial sites supported by City development agencies a consultation service on the feasibility of entering such a site in the State brownfield cleanup program (§ 43-1422(c)(2)).

- The proposed rule amendments acknowledge the change in nomenclature regarding the program that was formerly known as the “Local Brownfield Cleanup Program”, which is now known as the “City Voluntary Cleanup Program” (§§ 43-1401 to 43-1405, 43-1408 to 43-1410, et al).

- The proposal includes numerous technical drafting changes to Subchapters 1 and 2 to ensure consistency and conformity throughout this regulatory scheme.

Finally, Schedule A (“Grant Awards and Award Limits”) and Schedule B (“Eligible Services and Activities/Reimbursable Allowance”) are repealed and re-promulgated both to reflect the numerous substantive revisions set forth in the proposed rule, and to incorporate improved formatting changes.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this Office, unless otherwise specified or unless the context clearly indicates otherwise.

New text is underlined; deleted material is in [brackets].

Section 1. Section 43-1401 of Subchapter 1 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

CHAPTER 14
ENVIRONMENTAL REMEDIATION
SUBCHAPTER 1
[Local Brownfield] City Voluntary Cleanup Program Requirements

§ 43-1401 **Purpose.**

The purpose of this subchapter is to provide for the orderly and efficient administration of chapter nine of title twenty-four of the administrative code of the city of New York, the [New York city local brownfield] City voluntary cleanup program.

§ 2. Section 43-1402 of Subchapter 1 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

§ 43-1402 **Definitions.**

* * *

c. "Applicant" means a person who has submitted a request to participate in the [local brownfield] City voluntary cleanup program but is not yet an enrollee.

* * *

t. "Enrollee" means an applicant who has been accepted into the [local brownfield] City voluntary cleanup program and has signed a local brownfield cleanup agreement.

* * *

ee. "Local brownfield cleanup agreement" or "agreement" means an agreement executed by an applicant and the office that sets forth the parties' responsibilities in the remediation of a site in the [local brownfield] City voluntary cleanup program.

* * *

ss. "Program" means the [local brownfield] City voluntary cleanup program pursuant to chapter nine of title twenty-four of the administrative code of the city of New York.

§ 3. Section 43-1403 of Subchapter 1 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

§ 43-1403 **Eligibility.**

a. *Ineligible sites.* Any real property that does not meet the definition of a qualified local brownfield site shall be ineligible for the [local brownfield] City voluntary cleanup

program.

b. *Ineligible parties.* A person is ineligible for participation in the [local brownfield] City voluntary cleanup program if the person is subject to:

* * *

c. *Public interest consideration.* The office may reject an application to participate in the [local brownfield] City voluntary cleanup program upon a determination that the public interest would not be served by granting such application. In making this determination, the office shall consider, but is not limited to, the complexity of the remedial work, the degree of on-site and off-site contamination, and, for sites that would require significant office staff resources to oversee, the availability of staff resources to oversee the project.

§ 4. Section 43-1404 of Subchapter 1 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

§ 43-1404 **Applications.**

a. *Pre-application.* A person interested in applying to the [local brownfield] City voluntary cleanup program shall request a pre-application meeting with the office. At the pre-application meeting, the person and representatives of the office shall discuss the suitability of the property for participation in the program. Following the meeting, the office may issue a pre-enrollment letter stating its intent to work with the applicant on the development of a complete application and to consider its eligibility for acceptance of the site into the program. Following the meeting and prior to the applicant submitting an application, the office shall assist the applicant in the applicant's performance of all activities necessary to develop a complete application. Such activities shall include, but not be limited to, scoping of the remedial investigation work plan, review of the results of the remedial investigation and development of the remedial investigation report, scoping of the remedial action work plan, and development of a citizen participation plan.

* * *

c. *Application contents.*

1. Applications to participate in the [local brownfield] City voluntary cleanup program shall be submitted to the office in such form and manner and containing such information as the office may require.

* * *

3. Applications shall include (A) a completed application form, (B) a completed [local brownfield] City voluntary cleanup agreement, pursuant to section 43-1405, executed by the applicant, and (C) a remedial investigation report and a remedial action work plan or, when permitted or otherwise required by the office, a remedial investigation work plan.

* * *

5. Applications shall state the basis for which the property meets the definition of a qualified local brownfield site.

A. An application that states that a property meets the definition of a qualified local brownfield site based on section 43-1402(uu)(1)(A) shall include a confirmation of such statement from a qualified environmental professional, made after the completion of the remedial investigation report. The office shall not execute a final [local brownfield] City voluntary cleanup agreement for entry into the program without receipt of this confirmation. The office shall independently evaluate whether the property meets the definition of a qualified local brownfield site based on section 43-1402(uu)(1)(A).

e. *Admission into the [local] City voluntary cleanup program.* The office shall evaluate complete applications for eligibility and, if the applicant is eligible, shall admit the applicant into the program.

* * *

2. Qualified local brownfield sites that are coordinated brownfield sites. When an applicant proposes a property as a coordinated brownfield site for entry into the [local brownfield] City voluntary cleanup program, the following process shall apply:

* * *

B. if the office determines that such property is not a coordinated brownfield site because the state and/or federal agency has not provided express written authorization, and the office determines that a portion of such property may meet the definition of a qualified local brownfield site based on section 43-1402(uu)(1)(A), the office may allow the applicant to amend its application to (i) describe the site boundaries, pursuant to section 43-1405(a)(1), that meet the definition of a qualified local brownfield site based on section 43-1402(uu)(1)(A), and (ii) comply with subparagraph A of paragraph five of subdivision c of this section. The office shall evaluate the modified application pursuant to paragraph one of this subdivision.

* * *

ii. If the applicant does modify the application and the applicant is admitted into the program, the office subsequently may, upon request of the applicant or enrollee, amend the description of site boundaries in the [local brownfield] City voluntary cleanup agreement to expand the boundaries of such qualified local brownfield site to include the remainder of such property or another portion of such property, provided that all investigation and remediation required by state or federal law to be supervised and/or approved by a state and/or federal agency have been completed on such property or such other portion of such property and appropriately documented in a remedial action report.

f. Citizen participation upon entering the [local] City voluntary cleanup program.

1. Simultaneously with the submission of an application to participate in the [local brownfield] City voluntary cleanup program, the applicant shall ensure that the document repository contains all relevant site documents and shall distribute an office-approved notice of application and an office-approved fact sheet describing any associated work plans or reports to the site contact list. Prior to submission of an application, applicants shall work with the office to obtain approval of the notice of application and fact sheet. The initial public comment period shall not begin until the applicant certifies that the office-approved notice of application and fact sheet have been distributed to the site contact list.

§ 5. Section 43-1405 of Subchapter 1 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

§ 43-1405 [**Local Brownfield**] **City Voluntary Cleanup Agreements**.

* * *

a. The following terms and conditions apply to [local brownfield] City voluntary cleanup agreements required for eligibility in the program.

1. *Description of site boundaries.* The [local brownfield] City voluntary cleanup agreement shall contain a description of the site's boundaries.

* * *

3. *Enrollment fee.*

A. The enrollee shall pay an enrollment fee of one thousand dollars. An enrollment fee shall not be required unless an application is accepted and a [local brownfield] City voluntary cleanup agreement is executed.

B. The enrollment fee is payable upon execution of the [local brownfield] City voluntary cleanup agreement by the office. The office shall not execute a [local brownfield] City voluntary cleanup agreement without receipt of any applicable fee.

* * *

E. The office may waive all or part of the enrollment fee where:

* * *

iv. a contiguous property is subdivided into two or more qualified local brownfield sites for the purpose of facilitating the administration of the [local brownfield] City voluntary cleanup program. In such case, the office may waive the enrollment fee for any of the second and/or subsequent qualified local brownfield sites.

* * *

5. *Force majeure.* No enrollee shall suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of a [local brownfield] City voluntary cleanup agreement to implement all or part of a remedial program as a result of a force majeure event.

6. *Dispute resolution.* A. The enrollee shall submit any dispute relating to the local brownfield cleanup agreement to the designated individual under the [local brownfield] City voluntary cleanup agreement in writing no more than fifteen days after the enrollee knew or should have known of the facts that are the basis of the dispute. Such dispute shall be decided by the designated individual solely on the basis of papers submitted by the parties. The designated individual shall render a written decision and furnish a copy thereof to the enrollee. The written decision shall be the final determination of the office, unless the enrollee files a written appeal of that decision with the designated appeal individual within twenty days of receipt of that decision.

7. *Indemnification.* The enrollee shall indemnify the city, its representatives and employees from any claim, suit, action, and cost arising out of or resulting from the fulfillment or attempted fulfillment of the [local brownfield] City voluntary cleanup agreement.

8. *Notice of agreement.* The enrollee shall provide written notice of a [local brownfield] City voluntary cleanup agreement to any prospective purchaser, lessee, tenant or occupant of any interest in a qualified local brownfield site.

9. Reporting to state and federal agencies.

A. If a condition that requires reporting and/or notice to a state and/or federal agency, including a release of petroleum, is found to exist on a site during the course of the remedial program, then the enrollee shall immediately notify the appropriate state and/or federal agency in accordance with applicable law and regulation and provide copies of such notification to the office. In such event the office reserves the right to modify the [local brownfield] City voluntary cleanup agreement or terminate it in accordance with paragraph ten of this subdivision.

B. If such condition renders the site a property for which state or federal law requires the investigation or remediation, or a portion of an investigation or remediation, to be supervised and/or approved by a state and/or federal agency, then the office shall review the site pursuant to section 43-1404(e). If the office determines that the site is no longer eligible for the [local brownfield] City voluntary cleanup program, then the office shall

terminate the agreement, in accordance with paragraph ten of this subdivision.

10. *Termination of the [local brownfield] City voluntary cleanup agreement.*

A. Termination of the agreement by the enrollee. The enrollee may terminate a [local brownfield] City voluntary cleanup agreement at any time and for any reason, provided that:

* * *

ii. At the time of termination, as determined by the office, the site is in no worse condition, from an environmental and public health perspective, than before the applicant entered into the [local brownfield] City voluntary cleanup agreement. The enrollee may seek dispute resolution within fifteen days of the effective date of the notice of determination by the office, as provided in section 43-1410(d).

B. *Termination of the agreement by the office.* The [office] Office may terminate the [local brownfield] City voluntary cleanup agreement for cause, including, but not limited to, if the enrollee or the site is no longer eligible for the [local brownfield] City voluntary cleanup program, the enrollee provided information or made statements that are materially inaccurate or incomplete, or the enrollee failed to substantially comply with the agreement's terms and conditions, including, without limitation, the failure to initiate, proceed with, or complete the remedial program in accordance with its schedule.

i. Prior to termination of a [local brownfield] City voluntary cleanup agreement by the office, the office shall:

(a) notify the enrollee in writing of its intention to terminate the [local brownfield] City voluntary cleanup agreement and the reasons for the intended termination; and

(b) provide the enrollee with a reasonable opportunity of thirty days to correct deficiencies.

ii. The [local brownfield] City voluntary cleanup agreement shall be terminated thirty-one days after the effective date of the office's notice, as provided in section 43-1410(d), unless the enrollee:

(a) seeks dispute resolution within fifteen days of the effective date of the notice; or

(b) cures the deficiency within the thirty day period after the effective date of the notice.

iii. If the office determines that the deficiency has been cured, the proposed termination of the [local brownfield] City voluntary cleanup agreement shall be withdrawn.

iv. If the office determines that the recipient has not proven that the deficiency has been cured, the office shall provide notice to the recipient. The recipient shall have fifteen days after the effective date of the notice, as provided in section 43-1410(d), to seek dispute resolution. If the recipient does not seek dispute resolution within such fifteen day

period, the [local brownfield] City voluntary cleanup agreement shall be terminated on the sixteenth day.

v. Nothing herein shall preclude the office from terminating a [local brownfield] City voluntary cleanup agreement with less than thirty days notice if the New York state department of environmental conservation determines that the site constitutes a significant threat. Prior to terminating a [local brownfield] City voluntary cleanup agreement pursuant to this clause, the office shall provide the enrollee with written notice, indicating the reason for the termination, and shall provide the enrollee with an opportunity to challenge in writing the finding of the office that the New York state department of environmental conservation had determined that the site constitutes a significant threat. The enrollee shall submit papers supporting such challenge to the office no later than fifteen days from the effective date of the written notice of termination, as provided in section 43-1410(d). Such challenge shall be decided by the director solely on the basis of papers submitted by the enrollee. The director shall render a written decision and furnish a copy thereof to the enrollee. The director's written decision shall be the final determination of the office.

* * *

11. *Additional terms and conditions.* The office may require that a [local brownfield] City voluntary cleanup agreement include additional terms and/or conditions.

b. The [local brownfield] City voluntary cleanup agreement shall be binding while in effect on each party, its successors and assignees. No change in the ownership or corporate or business status of any party or of the site shall alter any signatory's responsibilities under the [local brownfield] City voluntary cleanup agreement.

§ 6. Section 43-1407 of Subchapter 1 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

§ 43-1407 **Remedial Program.**

* * *

k. *Use of a site.* A site or a portion of a site may be used for either unrestricted or restricted use.

1. "Unrestricted use" means a lawful use without imposed restrictions, such as a declaration of covenants and restrictions or other land use controls. In reviewing applications for unrestricted use, the Office may consider area-wide or city-wide use restrictions.

2. "Restricted use" means a use with imposed restrictions, such as a declaration of covenants and restrictions. The imposed restrictions are part of the remedy selected for the site and are stipulated in a site management plan. The imposed restrictions rely on

institutional controls or engineering controls to manage remaining exposure to contamination at a site. Restricted uses include:

* * *

B. "Restricted-residential use" is the land use category that shall only be considered when there is common ownership or a single owner/managing entity of the site. When considering the applicability of this land use category, the [office] Office shall consider the ability to implement the proposed site management plan and its implementation program. Restricted-residential use:

i. shall, at a minimum, include restrictions that prohibit:

(a) any vegetable gardens on a site, where such gardens in the restricted-residential soil are feasible and reasonably anticipated; and

(b) single family housing.

ii. includes active recreational uses, which are public uses with a reasonable potential for soil contact.

* * *

3. The [office] Office may approve a remedial program that relies upon no restrictions on use (unrestricted use) or on a range of restrictions on use (restricted uses). The Office may also consider area-wide or city-wide restrictions on use in approval of a remedial program. The following hierarchy represents the range from a less restrictive to a more restrictive land use:

- A. residential;
- B. restricted-residential;
- C. commercial; and
- D. industrial.

* * *

1. Institutional controls, engineering controls, and restrictive declarations.

* * *

2. Declaration of covenants and restrictions.

A. Any site-specific use restrictions, any other institutional controls, any engineering controls and/or any site management requirements applicable to the qualified local

brownfield site shall be contained in a declaration of covenants and restrictions, which shall be:

- i. created and recorded, prior to the issuance of the notice of completion, in the recording office for the borough(s) where any portion of the site is located; and
- ii. in a form and manner as prescribed by the director.

* * *

§ 7. Subdivisions e and f of section 43-1408 of Subchapter 1 of Chapter 14 of Title 43 of the Rules of the City of New York are amended to read as follows:

e. No further action by the city. 1. Subsequent to the issuance of a notice of completion, subject to the provisions of section 24-906 of the administrative code of the city of New York and except as provided in the [local brownfield] City voluntary cleanup agreement, the remedial action work plan, site management plan, declaration of covenants and restrictions, or notice of completion, the city shall not take or require any further investigatory or remedial action against the site and the enrollee, his or her successors, and his or her assigns, regarding matters addressed at the site. If the office seeks to exercise its rights reserved pursuant to section 24-906(b) of the administrative code of the city of New York, it shall provide notice to the holder of the notice of completion, as provided in paragraph two of subdivision f of this section.

2. "Matters addressed" at the site shall mean all response actions taken by the enrollee to implement the [local brownfield] City voluntary cleanup agreement for the site and all response costs incurred and to be incurred by any person or party in connection with the work performed under such agreement, which costs have been paid by the enrollee, including fees for costs incurred by the city pursuant to the [local brownfield] City voluntary cleanup agreement.

f. Modification or revocation of a notice of completion. 1. The office may modify or revoke a notice of completion upon a finding that:

* * *

B. the enrollee has failed to comply with the terms and conditions of the [local brownfield] City voluntary cleanup agreement executed by the [office] Office;

§ 8. Section 43-1409 of Subchapter 1 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

§ 43-1409 Citizen Participation.

* * *

d. Upon application to the [local brownfield] City voluntary cleanup program, an applicant shall submit a citizen participation plan to the office that shall include at a minimum the following elements:

* * *

g. Public notice and public comment.

1. In addition to distributing a notice of application as required by section 43-1404(f), public notice, in the form of a fact sheet, and public comment activities are required for each site in the [local brownfield] City voluntary cleanup program at the following milestones:

* * *

§ 9. Section 43-1410 of Subchapter 1 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

§ 43-1410 **Miscellaneous.**

d. Change of use.

* * *

3. Where a change in use arises from a transfer of title to a qualified local brownfield site that results in a new party implementing a site management plan, such notice shall be included in the next annual certification and site management report to the office, pursuant to section 43-1407(1)(3). The notice shall include:

* * *

B. A certification that the new owner has been provided a copy of the [local brownfield] City voluntary cleanup agreement and a copy of all approved remedial work plans and reports.

* * *

f. Participation in the [local brownfield] City voluntary cleanup program shall not relieve an enrollee of the obligation to pay any hazardous waste fees or assessments required by state or federal law, rule or regulation for any action undertaken by such enrollee in the course of implementing a remedial program.

g. Participation in the [local brownfield] City voluntary cleanup program shall not relieve an enrollee of the obligation to obtain any permit required by state or federal law, rule or regulation for any action undertaken by such enrollee in the course of implementing a remedial program.

§ 10. Section 43-1416 of Subchapter 2 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

§ 43-1416 **Definitions.**

* * *

b. “Brownfield opportunity area” means an area in the city of New York with a concentration of brownfields for which the New York state department of state has awarded a brownfield opportunity area grant to a recipient pursuant to general municipal law section 970-r or that has otherwise been identified by the Office as a place-based community brownfield planning area.

* * *

g. “Grant administration contractor” means an entity under contract with the New York city economic development corporation, the department of environmental protection or the Office for administration of the New York city brownfield incentive grant program. The grant administration contractor shall provide oversight of the grant process, including, but not limited to, review of grant applications including evaluation of eligibility for grants; review of statements of work; establishment and maintenance of a list of qualified vendors; communication with grantees and qualified vendors; and performance of quality control of work products.

* * *

l. “Preferred community development project” means a development proposed for a qualifying brownfield property that is: (1) an affordable housing development; (2) consistent with the strategic brownfield goals established in a brownfield opportunity area plan pursuant to section 970-r of the general municipal law, as evidenced by a letter from the recipient of a brownfield opportunity area grant pursuant to [section] § 43-1418(d)(4)(B)(i); (3) consistent with the strategic brownfield goals established by a [City] place-based community brownfield planning [district] organization recognized by the Office and as evidenced by a letter from the place-based community brownfield planning organization pursuant to §43-1418(d)(4)(B)(ii); or (4) a community facility development.

m. “Qualified vendor” or “vendor” means:

- (1) an environmental professional or consultant or firm thereof;
- (2) an architect, engineer, attorney, or other professional or firm thereof;
- (3) a community based organization preparing an application for a brownfield opportunity grant from the New York state department of state; [or]
- (4) a community development corporation, local development corporation, community development financial institution, or another similar entity, that is qualified by the grant administration contractor to perform, subcontract, and/or supervise work eligible for reimbursement under the New York city brownfield incentive grant program;
- (5) a workforce development organization; or
- (6) a vendor under contract with the New York city economic development corporation, the department of environmental protection or the Office for eligible activities and services pursuant to § 43-1419.

n. “Qualifying brownfield property” means:

- (1) for a pre-enrollment grant, a property that contains a recognized environmental condition;
- (2) for an enrollment grant, a track one bonus cleanup grant,[a brownfield green

job training bonus cleanup grant, and] a green property certification [bonus cleanup] grant, and a property admitted to the [local brownfield] City voluntary cleanup program;

(3) for a climate change resilience bonus cleanup grant, a property admitted to the City voluntary cleanup program that is located in a designated coastal flood zone;

(4) for an e-designation hazardous material remediation grant or a restrictive declaration hazardous material remediation grant, an e-designation hazardous material site or a restrictive declaration hazardous material site respectively;

(5) for a technical assistance grant, a preferred community development project where the developer is a not-for-profit corporation, or a community based organization that seeks to apply for a brownfield opportunity grant from the New York state department of state or perform brownfield planning analyses for place-based community brownfield planning; [and]

(6) for a brownfield opportunity area strategic property bonus cleanup grant, a property that has been designated a strategic brownfield property within the New York state brownfield opportunity area program;

(7) for a brownfield green job training grant, a property admitted to the City voluntary cleanup program or an environmental project recognized by the Office;

(8) for a City pre-enrollment grant, a property to be used for affordable housing and/or supportive housing funded by the New York city department of housing preservation and development, an industrial or manufacturing development supported by the New York city economic development corporation or other project receiving substantial support from the City, or an environmental tax lien site designated by the New York city office of management and budget; and

(9) for a City enrollment grant, a property that is enrolled in the City voluntary cleanup program or the New York State brownfield cleanup program.

* * *

q. "Strategic brownfield property" means a property within a brownfield opportunity area or place-based brownfield community planning area that has been determined by the [recipient of the brownfield opportunity area grant] community brownfield planning organization to be a strategic site within the brownfield opportunity area program or the place-based brownfield community planning area.

§ 11. Section 43-1417 of Subchapter 2 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows

§ 43-1417 Types of grants.

a. Pre-enrollment grants are awarded for services and activities performed at qualifying brownfield properties that are not yet enrolled in the [local brownfield] City voluntary cleanup program.

* * *

3. City pre-enrollment grants finance eligible pre-enrollment activities and services at publicly-owned sites, at affordable and/or supportive housing sites funded by the New York city department of housing preservation and development, at industrial or manufacturing development sites supported by the New York city economic development corporation or other project receiving substantial support from the City, and at environmental tax lien sites designated by the New York city office of management and budget.

b. Enrollment cleanup grants are grants awarded for activities performed at qualifying brownfield properties that are enrolled in the [local brownfield] City voluntary cleanup program.

[1. Cleanup grants.]

[i.] 1. Cleanup grants pay for costs incurred in a property's remediation. They may be used for eligible services and/or activities, as provided in [section] § 43-1419, that are included in, and performed according to the terms of, a remedial action work plan approved by the [office] Office.

[ii.] 2. Brownfield opportunity area strategic property bonus cleanup grants are a type of cleanup grant that is awarded to pay for eligible cleanup services and/or activities at strategic brownfield properties.

[iii.] 3. Track one bonus cleanup grants are a type of cleanup grant that provides funding for track one cleanups, as set forth in [section] § 43-1407(h)(1) of this chapter.

[iv.] 4. Climate change resilience bonus cleanup grants provide funding to accelerate designated coastal flood zone cleanup and are intended to enhance public and environmental protection.

[v.] 5. Brownfield green job training [bonus cleanup] grants provide funding for job training program participants to acquire work experience at sites enrolled in the City voluntary cleanup program or on environmental projects recognized by the Office.

[vi.] 6. Green property certification [bonus cleanup] grants pay for a New York city green property certification plaque. To be eligible for a green property certification grant, parties must receive a notice of completion from the [office] Office or a certificate of completion of the New York state department of environmental conservation.

7. City enrollment grants fund eligible cleanup activities at publicly-owned sites, at affordable and/or supportive housing sites funded by the New York city department of housing preservation and development, at industrial or manufacturing development sites supported by the New York city economic development corporation or other projects receiving substantial support from the City, and at environmental tax lien sites designated by the New York city office of management and budget. They may be used for eligible services and/or activities, as provided in §43-1419, that are included in, and performed according to the terms of, a remedial action work plan approved by the office or by the New York state department of environmental conservation.

[2. Repealed.]

c. Other Grants.

1. Technical assistance grants are awarded to a developer of a preferred community development project where such developer is a not-for-profit corporation, [or] to a community based organization that seeks to apply for a department of state brownfield opportunity area grant, or to a community brownfield planning organization facilitating community brownfield planning activities and services in a place-based community brownfield planning area. The grant covers a range of technical services performed by a qualified vendor for project pre-development, management and technical assistance, as provided in section 43-1419.

2. Brownfield opportunity area local match grants are awarded to a recipient of a New York state department of state brownfield opportunity area grant [to facilitate brownfield activities and services performed under that program, by assisting recipients of brownfield opportunity area grants] or to a community brownfield planning organization identified by the Office that is facilitating brownfield planning activities and services for a place-based community brownfield planning area. For recipients of a New York state brownfield opportunity area grant, this grant assists grantees that meet the local match requirement for a state brownfield opportunity area grant pursuant to general municipal law section 970-r.

3. E-designation hazardous material remediation grants and restrictive declaration hazardous material remediation grants provide funding for hazardous material cleanup at e-designation hazardous material sites and restrictive declaration hazardous material sites that are not enrolled in the [local brownfield] City voluntary cleanup program, that have an approved remedial action plan, and that have received a notice of satisfaction from the office for remediation of hazardous material.

§ 12. Section 43-1418 of Subchapter 2 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

§ 43-1418 **Eligibility.**

* * *

b. Property eligibility.

1. A property shall be located within the city of New York. However, projects that are not supported by the New York city department of housing preservation and development, or the New York city housing development corporation for affordable and /or supportive housing, or are not supported by the New York city economic development corporation for industrial or manufacturing, or are not substantially supported by the City

for other projects in Manhattan at or south of 96th Street [and] or projects larger than 100,000 square feet that are not preferred community development projects are ineligible for pre-enrollment and enrollment grants, except for brownfield green job training [bonus cleanup] grants and green property certification [bonus cleanup] grants [if enrolled in the City voluntary cleanup program after April 2013]. Contiguous properties enrolled by the same developer are eligible for only one grant award.

2. A property shall meet the definition of a qualifying brownfield property for the type of grant(s) sought.

3. A property admitted to the brownfield cleanup program administered by the New York state department of environmental conservation is ineligible for a grant except for a City pre-enrollment grant as defined in § 43-1417(b)(3), a City enrollment grant as defined in § 43-1417(b)(7), a brownfield green job training grant as defined in § 43-1417(b)(5), and a green property certification grant, as defined in § 43-1417(b)(6).

* * *

d. *Eligibility requirements for specific grants.*

1. *Pre-enrollment grants.*

* * *

B. *City pre-enrollment grants.* [Grants may be obtained for City-owned sites and environmental tax lien sites as designated by the New York city office of management and budget to fund eligible pre-enrollment activities and services.] To be eligible for a City pre-enrollment grant, a property must be an affordable and/or supportive housing site funded by the New York city department of housing preservation and development or the housing development corporation, an industrial or manufacturing development site supported by the New York city economic development corporation, other projects receiving substantial support from the City, an environmental tax lien site identified by the New York city office of management and budget or be public property in New York city whose investigation and/or remedial planning is managed by the Office.

* * *

[D. To be eligible for a City pre-enrollment grant, a property must be identified by the New York city office of management and budget as an environmental tax lien site or be public property in New York city whose investigation and/or remedial planning is managed by the office.]

2. *Enrollment grants.* Enrollment in the City voluntary cleanup program is required for a property to be eligible for an enrollment grant except for a City enrollment grant as defined in § 43-1417(b)(7), a green property certification grant as defined in § 43-1417(b)(6), and a green job training grant as defined in §43-1417(b)(5) which may also allow enrollment in the New York state brownfield cleanup program.

A. *Cleanup grants.*

i. To be eligible for a cleanup grant, a qualifying brownfield property shall have an Office-approved remedial action work plan under the City voluntary cleanup program except for properties that are eligible for City enrollment grants which may have a remedial action work plan approved by the New York state department of environmental conservation.

ii. Cleanup services and/or activities that are eligible for awards under this grant are listed in schedule B.

iii. Cleanup services and/or activities that are eligible for awards under this grant shall be performed in accordance with an [office approved] Office-approved or a New York state department of environmental conservation-approved remedial action work plan under the State brownfield cleanup program. If any cleanup services are performed in a manner that is not in accordance with an Office-approved or a New York state department of environmental conservation-approved remedial action work plan, all cleanup services and/or activities will be ineligible for any further awards under this grant.

iv. To be eligible for a climate change resilience bonus cleanup grant, a qualifying brownfield property must be located in a designated coastal flood zone and be enrolled in the City voluntary cleanup program.

v. To be eligible for a brownfield green job training [bonus cleanup] grant, an applicant must employ a participant in a City, state, or federally supported non-profit work force development program for [full-time] work participating in construction activities at a remedial action site regulated by the Office or the New York state department of environmental conservation or an environmental project recognized by the Office. Reimbursement is subject to the award limit set forth in §43-1422(c)[7](9).

vi. To be eligible for a green property certification [bonus cleanup] grant, a party must have received a notice of completion from the Office or a certificate of completion from the New York state department of environmental conservation in accordance with 6 NYCRR §375-3.9.

B. Brownfield opportunity area strategic property bonus cleanup grants. To be eligible for a brownfield opportunity area strategic property bonus cleanup grant, a qualifying brownfield property shall be eligible for a cleanup grant and shall be designated a strategic brownfield property by the BOA grantee in the New York state brownfield opportunity area program or a place-based community brownfield planning area identified by the Office.

* * *

D. Climate change resilience bonus cleanup grants. To be eligible for a climate change resilience bonus cleanup grant, a qualifying brownfield property shall be located in a designated coastal flood zone and enrolled in the City voluntary cleanup program.

E. Brownfield green job training [bonus cleanup] grants. To be eligible for a brownfield green job training [bonus cleanup] grant, an applicant must employ participant(s) in a City, state, or federally supported nonprofit work force development

program for [full-time] work participating in construction activities at a remedial action site regulated by the Office or the New York state department of environmental conservation or an environmental project recognized by the Office.

F. E-designation hazardous material sites and restrictive declaration hazardous material sites are eligible for enrollment grants if the applicant enrolls in the [City] city voluntary cleanup program, except E-designation sites and restrictive declaration sites that are enrolled in the New York state brownfield cleanup program are eligible for a City enrollment grant.

G. To be eligible for a City enrollment grant, a qualifying brownfield property shall have an Office-approved remedial action work plan and be enrolled in the City voluntary cleanup program or have a New York state department of environmental conservation-approved remedial action work plan and be enrolled in the state brownfield cleanup program.

3. *Other Grants.*

A. *Technical Assistance Grants.*

i. To be eligible for a technical assistance grant for a qualifying brownfield property that is a preferred community development project where a developer is a not-for-profit corporation, the applicant shall provide the [office] Office with evidence that such developer is a not-for-profit corporation or qualifies for a real property tax exemption afforded by real property tax law [section] § 420-c and evidence required by paragraph four of this subdivision.

ii. Community based organizations that seek to apply for a brownfield opportunity grant are eligible for a technical assistance grant for the purpose of development of the brownfield opportunity area grant application. Community brownfield planning organizations that conduct place-based community brownfield planning in a geographic area with vacant or underutilized land identified by the Office are eligible for a place-based community brownfield technical assistance grant.

B. *Brownfield opportunity area local match grants.* For the recipient of a brownfield opportunity area grant to be eligible for a brownfield opportunity area local match grant, the applicant shall be a community based organization, have entered into a brownfield opportunity area contract with and have a work plan approved by the New York state department of state, and have submitted an invoice to the grant administration contractor for activities pursuant to such work plan. For a place-based community brownfield planning area to be eligible for a brownfield opportunity area local match grant, the applicant shall be a community based organization, have a place-based community planning area identified by the Office, and have an agreement with the Office.

C. *E-designation hazardous material remediation grants and restrictive declaration hazardous material remediation grants.* To be eligible for an e-designation hazardous

material remediation grant or a restrictive declaration hazardous material remediation grant respectively, a qualifying brownfield property shall have been remediated pursuant to an [office-approved] Office-approved remedial action plan for an e-designation hazardous material site or a restrictive declaration hazardous material site and have received a notice of satisfaction from the [office] Office.

4. *Preferred community development projects.*

* * *

B. Projects consistent with strategic brownfield goals.

i. For a qualifying brownfield property to be eligible for a grant as a preferred community development project based on a proposed development that is consistent with the strategic brownfield goals established in a brownfield opportunity area plan, the applicant shall provide the [office] Office with a signed letter of support for the proposed development from the recipient of a brownfield opportunity area grant that has an executed brownfield opportunity area contract with the New York state department of state pursuant to [section] § 970-r of the general municipal law. The letter shall state that the brownfield property is located within the identified brownfield opportunity area and that its proposed redevelopment is consistent with plans established for the brownfield opportunity area by such recipient of a brownfield opportunity area grant.

ii. For a qualifying brownfield property to be eligible for a grant as a preferred community development project based on a proposed development that is consistent with the strategic brownfield goals established by a place-based community brownfield planning organization, the applicant shall provide the Office with a signed letter of support for the proposed development from the place-based community brownfield planning organization that is a recipient of a brownfield opportunity area local match grant or a technical assistant grant The letter shall state that the brownfield property is located within the area identified by the Office, and that the proposed redevelopment is consistent with plans for the place-based community brownfield planning area by the recipient of the brownfield opportunity area local match grant or the technical assistance grant.

* * *

§ 13. Section 43-1419 of Subchapter 2 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

§ 43-1419 Eligible Services and Activities.

a. Eligible services and/or activities within each grant type for which grant awards may be issued are listed in Schedule B.

* * *

4. For cleanup grants, track-one bonus cleanup grants, brownfield opportunity area strategic property bonus cleanup grants, City enrollment grants, e-designation hazardous material remediation grants, climate change resilience bonus cleanup grants,

and E-designation/restrictive declaration hazardous material remediation grants, eligible services and/or activities shall include, but shall not be limited to, activities required to develop or implement tasks required by a government-approved remedial action work plan, including development of an approved remedial action work plan or remedial action plan; soil removal and disposal; tank removal and other removal actions; backfill; engineering controls (i.e., cap emplacement; cover system; vapor barrier system; sub slab depressurization system); institutional controls; documentation preparation; development of remedial action reports and the purchase of environmental insurance including cleanup cost cap insurance; and site management plans.

5. For brownfield green job training [bonus cleanup] grants, eligible services and/or activities shall include any hourly work participating in construction activities at a remedial action site regulated by the Office, [or] the New York state department of environmental conservation or an environmental project recognized by the Office by trainees, pre-approved by the Office, from a City, state, or federally supported nonprofit work force development program.

6. For green property certification [bonus cleanup] grants, eligible services include the purchase of a New York City green property certification plaque.

7. For technical assistance grants for preferred community development projects and for community brownfield planning organizations conducting community brownfield planning in a geographic area identified by the Office, eligible services shall include consulting or other services for activities including, but not limited to:

A. assistance in the planning and execution of a brownfield project, including assessment of the viability of a brownfield project;

B. development and/or review of technical and legal documents required by the brownfield incentive grant program or the City voluntary cleanup program, including:

- i. applications[.]
- ii. agreements[.]
- iii. insurance policies
- iv. statements of work[.]
- v. scopes of work[.]
- vi. work plans[, or]
- vii. reports;

C. development and/or review of design reports;

D. preparation of a budget;

E. development of a pro forma financial analysis;

F. development of a site re-use plan;

G. project planning; and

[G.] H. review of brownfield project sequencing and scheduling.

* * *

For technical assistance grants for community based organizations seeking to apply to the New York state department of state for a brownfield opportunity area grant, eligible

services shall include consulting services for the development of such an application.

8. For brownfield opportunity area local match grants, eligible services and/or activities shall include those that are covered by a work plan approved by the New York state department of state associated with a contract executed with the New York state department of state. For community brownfield planning organizations conducting place-based community brownfield planning, eligible services for brownfield opportunity area local match grants include, but are not limited to, existing conditions and land vacancy studies, a community reuse plan, zoning analyses, Phase I environmental studies, and pro-forma financial analyses.

* * *

c. The [office] Office shall require a remedial action work plan or remedial action plan, respectively, before eligible services and/or activities may be performed using the following grant funds:

1. For cleanup grants, track one bonus grants, and brownfield opportunity area strategic property bonus cleanup grants, the eligible services and/or activities shall be described in a remedial action work plan approved by the [office] Office as part of the [local brownfield] City voluntary cleanup program.

2. For City enrollment grants, the eligible services and/or activities shall be described in a remedial action work plan approved by the Office as part of the City voluntary cleanup program or by the New York state department of environmental conservation as part of the state brownfield cleanup program.

[2.] 3. For e-designation hazardous material remediation grants and restrictive declaration hazardous remediation cleanup grants, the eligible services and/or activities shall be described in a remedial action plan approved by the office as part of the e-designation hazardous material and restrictive declaration hazardous material management programs respectively.

[3.] 4. Eligibility for awards is contingent upon approval of a remedial action work plan or remedial action plan.

* * *

§ 14. Section 43-1420 of Subchapter 2 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

§43-1420 Applications.

* * *

h. To be eligible for a brownfield incentive grant available to qualifying brownfield properties in the City voluntary cleanup program, the E-designation program, the restrictive declaration program or the state brownfield program, an applicant must submit a complete brownfield incentive grant application with invoices and manifests, if applicable, within six months of receipt of a notice of completion or a notice of satisfaction from the Office or a certificate of completion from the State department of environmental conservation.

§ 15. Section 43-1422 of Subchapter 2 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

§ 43-1422 Grant Awards and Award Limits.

a. Brownfield incentive grants shall be paid to the grantee or the qualified vendor who performed the work upon receipt of invoices for eligible activities and/or services listed in schedule B, provided that brownfield opportunity area local match grants shall be paid to the grantee upon receipt of a copy of a work plan approved by the New York state department of state and a copy of a contract executed with the New York state department of state. Brownfield opportunity area local match grants shall be paid to a community based organization in a place-based community brownfield planning area identified by the Office upon receipt of an executed agreement with the Office identifying the work to be performed.

* * *

c. Award limits.

1. *Generally.* Grants may be awarded for a qualifying brownfield property totaling up to the amount listed in schedule A, including the costs for administration pursuant to § 43-1423(a)(2).

2. *Preferred community development projects.* A grantee for a preferred community development project may be awarded: (1) a pre-enrollment grant of up to [\\$20,000] \\$25,000, (2) a technical assistance grant of up to \$5,000, and (3) [if] once the project is enrolled in the City voluntary cleanup program, [the grantee may be awarded] an enrollment grant of up to \$35,000, including the sum of the pre-enrollment grant and excluding the sum of the technical assistance grant. A not-for-profit developer of a preferred community development project is eligible for an enrollment grant of \$50,000. The amount of the enrollment grant includes the sum of the pre-enrollment grant and excludes the sum of the technical assistance grant. The cost of grant administration shall not be deducted from grants awarded to a grantee of a preferred community development project.

3. *Brownfield opportunity area local match grant.* A grantee of a brownfield opportunity area local match grant may receive a grant of up to \$25,000 or ten percent of the brownfield opportunity area grant award from the New York state department of state, for step one of the brownfield opportunity area program, whichever is less, and \$25,000 or ten percent of the brownfield opportunity area grant award from the New York state department of state for step two of the brownfield opportunity area program, whichever is less. A grantee of a brownfield opportunity area local match grant that is a community based organization in a place-based community brownfield planning area may receive a grant of up to \$25,000. The cost of grant administration shall not be deducted from grants awarded to a grantee of a brownfield opportunity area local match grant.

4. *Community based organization applicant for a brownfield opportunity area grant.* A community based organization that seeks to apply for a brownfield opportunity

grant may receive a technical assistance grant of up to \$10,000 for eligible consulting services. Community based organizations that conduct place-based community brownfield planning in areas identified by the Office may also receive a technical assistance grant of \$10,000. The cost of grant administration shall not be deducted from grants awarded to a grantee of a community based organization brownfield opportunity area grant.

* * *

8. *Climate change resilience bonus cleanup grants.* An applicant for a climate change resilience bonus cleanup grant may receive a grant award of up to \$[5,000] 10,000. This grant award shall be in addition to a pre-enrollment and enrollment grants received under this program, and the costs of administration shall be deducted from grants awarded to the grantee.

9. *Brownfield green job training [bonus cleanup] grants.* An applicant for a brownfield green job training [bonus cleanup] grant may receive a grant award of up to \$6,000. This grant award shall be in addition to pre-enrollment and enrollment grants received under this program, and the costs of administration shall not be deducted from [grants] the brownfield green job training grant awarded to the grantee.

10. *Green property certification [bonus cleanup] grants.* An applicant for a green property certification [bonus cleanup] grant is eligible for a grant of up to \$1,000 to cover the cost of one New York city green property certification plaque for each eligible site pursuant to §43-1428. The cost of administration shall not be deducted from grants awarded to the grantee.

11. *City pre-enrollment grants.* City pre-enrollment grants are funded to a maximum of \$[100,000] 125,000 for pre-enrollment activities and services. Activities and services for a City pre-enrollment grant can be performed by a qualified vendor under contract with the New York city economic development corporation, the New York city department of environmental protection or the Office. The cost of grant administration shall not be deducted from grants awarded to a grantee of a City pre-enrollment grant.

12. City enrollment grants are funded to a maximum of \$250,000 for eligible services and activities including any City pre-enrollment grants. Activities and services for a City enrollment grant can be performed by a qualified vendor under contract with the New York city economic development corporation, the department of environmental protection, or the Office. The cost of grant administration shall not be deducted from grants awarded to a grantee of a city enrollment grant.

§ 16. Section 43-1423 of Subchapter 2 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

§ 43-1423 **Grant Disbursements and Administration.**

a. *Administration of grants.*

* * *

2. The grant administration contractor may reduce awards, other than awards for a preferred community development project, a brownfield opportunity area local match grant, a green job training grant, a City pre-enrollment grant, a City enrollment grant and a technical assistance grant for a community based organization that seeks to apply for a brownfield opportunity grant or one that conducts place-based community brownfield planning, by a reasonable amount to cover costs of administering the New York city brownfield incentive grant program.

b. *Disbursement of grants.*

1. Grants are payable to the grantee or the qualified vendor, except that a green property certification [bonus cleanup] grant is payable to the vendor who produced the certification plaque and a green job training [bonus cleanup] grant may be paid to a workforce development organization or to a contractor associated with a project at a remedial site or to a party on an environmental project recognized by the Office that employs a participant from a workforce development organization for full-time work. A community based organization conducting place-based community brownfield planning can receive the technical assistance grant or the BOA local match grant on a lump sum basis if the organization has an executed agreement with the Office.

* * *

[Note: the following Schedules A and B are being repealed and re-promulgated, but for the sake of legibility are not underscored.]

**Schedule A
Grant Awards and Award Limits**

		Property Type ¹							BOA Development Grants	
Standard Grants		Qualifying brownfield properties not enrolled in VCP ²	Qualifying brownfield properties enrolled in VCP ^{2,3}	Preferred community development projects not enrolled in VCP ⁴	Preferred community development projects enrolled in VCP ^{4,5}	City-supported development properties ²	E-designation/restrictive declaration hazardous material sites not enrolled in VCP ²	BOA strategic property enrolled in VCP ⁴	Community based organization BOA grant applicant ⁴	BOA grant recipient with an executed state assistance contract ⁴
	Pre-development grant	Up to \$5,000	Up to \$5,000	Up to \$10,000	Up to \$10,000	N/A	N/A	Up to \$10,000	N/A	N/A
	Environmental investigation grant	Up to \$10,000 ⁷	Up to \$10,000 ⁷	Up to \$25,000 ⁷	Up to \$25,000 ⁷	N/A	N/A	Up to \$25,000 ⁷	N/A	N/A
	Cleanup grant	N/A	Up to \$25,000 ⁸	N/A	Up to \$35,000 ^{8, 9}	N/A	N/A	Up to \$35,000 ^{8, 10}	N/A	N/A

	E-designation hazardous material remediation grant or restrictive declaration hazardous materials remediation grant ¹¹	N/A	up to \$25,000	N/A	up to \$35,000	N/A	Up to \$2,500	up to \$35,000	N/A	N/A
	Standard grant award cap ¹²	\$10,000	\$25,000	\$25,000	\$35,000 ⁹	N/A	\$2,500	\$35,000 ¹⁰	N/A	N/A
Special Grants	Track one bonus cleanup grant	N/A	\$10,000	N/A	\$10,000	N/A	N/A	\$10,000	N/A	N/A
	Climate change resilience bonus cleanup grant	N/A	Up to \$10,000	N/A	Up to \$10,000	N/A	N/A	Up to \$10,000	N/A	N/A
	Brownfield green job training grant ⁴	N/A	Up to \$6,000	N/A	Up to \$6,000	N/A	N/A	Up to \$6,000	N/A	N/A
	Green property certification grant	N/A	Up to \$1,000	N/A	Up to \$1,000	N/A	N/A	Up to \$1,000	N/A	N/A
	City pre-enrollment grant ⁴	N/A	N/A	N/A	N/A	\$125,000	N/A	N/A	N/A	N/A

City enrollment grant ⁴	N/A	N/A	N/A	N/A	\$250,000 ¹³	N/A	N/A	N/A	N/A
BOA strategic property bonus cleanup grant	N/A	N/A	N/A	N/A	N/A	N/A	\$10,000	N/A	N/A
Technical assistance grant ⁴	N/A	N/A	Up to \$5,000 ¹⁴	Up to \$5,000 ¹⁴	N/A	N/A	Up to \$5,000 ¹⁴	Up to \$10,000 ¹⁵	N/A
BOA local match grant ⁴	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	The lesser of \$25,000 or 10% of the BOA grant award ⁶
Maximum grant award	\$10,000	\$47,000	\$25,000	\$62,000 ¹⁶	\$250,000	\$2,500	\$72,000 ¹⁷	\$10,000	\$50,000

VCP: The City Voluntary Cleanup Program administered by the Office of Environmental Remediation.

BOA: The brownfield opportunity area. This is a program for area-wide brownfield and community planning managed by the New York State Department of State.

N/A: not applicable.

¹ Properties for which a grant is pursued can fall into only one type. The property type may change as conditions change.

² The grant administration contractor may reduce the grant amount to cover the cost of administration.

³ Includes e-designation hazardous material sites and restrictive declaration hazardous material sites that are enrolled in the VCP.

⁴ Grants shall not be reduced to cover the cost of grant administration.

⁵ This property type includes e-designation hazardous material sites and restrictive declaration hazardous materials sites that are also preferred community development projects and enrolled in the VCP.

⁶ A BOA grant recipient with an executed state assistance contract by definition also has an approved work program. A BOA grant recipient is eligible for local match grants both for step 1 and step 2 of the BOA program. A place-based community planning area with an agreement with the Office is eligible for a \$25,000 BOA local match grant.

⁷ Limit includes all proceeds from pre-development grant.

⁸ Limit includes all proceeds from the pre- development grant and the environmental investigation grant. The grant amount reflects reduced funding of the BIG program. Projects that were enrolled in the [City] city voluntary program by April 2013 receive larger BIG grant awards.

⁹ A not for profit developer of a preferred community development project is eligible for a \$50,000 cleanup grant, which includes all proceeds of the predevelopment and environmental investigation grants.

¹⁰ A not for profit developer of a preferred community development project which is a BOA strategic site is eligible for a \$50,000 cleanup grant, which includes all proceeds from the predevelopment and environmental investigation grants.

¹¹ For e-designation hazardous material sites and restrictive declaration hazardous material sites that are remediated pursuant to an Office-approved remedial work plan. The grant amount reflects the reduced funding of the BIG program. Projects that received a notice of satisfaction by April 2013 receive a larger BIG grant award.

¹² Limit includes all proceeds from the pre-development grant, environmental investigation grant and cleanup grant. The grant amount reflects reduced funding of the BIG program. Projects that were enrolled in the city voluntary cleanup program by April 2013 receive larger BIG grant awards.

¹³ Limit includes all proceeds from the City pre-enrollment grant.

¹⁴ Technical assistance grants for preferred community development projects are limited to not-for-profit developers.

¹⁵ The grant pays for technical assistance with development of a BOA program application or, for a place-based community planning area, services and consultation in planning for the re-use of a development site.

¹⁶ The maximum grant for a not-for-profit developer of a preferred community development project is \$77,000.

¹⁷ The maximum grant for a not-for-profit developer of a BOA strategic site or a strategic site of a place-based brownfield community planning organization recognized by the Office is \$87,000.

Schedule B
Eligible Services and Activities / Reimbursable Allowance ^{a, b}

Activity	Unit	Reimbursable Allowance for Non-Preferred Community Development Project ^c	Reimbursable Allowance for Preferred Community Development Project ^d
Pre-development			
Title Insurance/ Title Search			
full coverage	each	\$765	\$1,020
limited coverage	each	\$382.50	\$510
non-insured reports	each	\$255	\$340
Project Feasibility Study			
market analysis	each	\$765	\$1,020
concept plans	each	\$765	\$1,020
pro-forma financial analysis	each	\$765	\$1,020
zoning analysis	each	\$765	\$1,020
legal due diligence review	report	\$300	\$400
State BCP eligibility consultation	each	\$0	\$500
Other Services			
community outreach	each	\$956.25	\$1,275
site survey	day	\$956.25	\$1,275
Phase 1 ESA	each	\$1,593.75	\$2,125
Environmental Investigation			
Workplans			
Phase II/site characterization workplan	each	\$1,275	\$1,700
remedial investigation workplan	each	\$1,593.75	\$2,125
Phase II (soil)			
geophysical survey report (GPR contractor)	1/2 day	\$765	\$1,020
geophysical survey report (GPR contractor)	day	\$1,116	\$1,488

Activity	Unit	Reimbursable Allowance for Non-Preferred Community Development Project ^c	Reimbursable Allowance for Preferred Community Development Project ^d
geophysical anomalies investigation (excavator/operator)	day	\$606	\$808
soil boring Installation	1/2 day	\$637.50	\$850
soil boring Installation	day	\$956.25	\$1,275
soil sample collection/field screening	day	\$510	\$680
Phase II (groundwater)			
monitoring well installation (unconsolidated)	Well	\$1,593.75	\$2,125
monitoring well installation (bedrock)	Well	\$2,550	\$3,400
disposal of drill cuttings and transportation	drum	\$79.50	\$106
monitoring well survey	day	\$956.25	\$1,275
temporary well-point installation	each	\$382.50	\$510
groundwater sample collection	day	\$510	\$680
disposal of purge water and transportation	drum	\$51	\$68
aquifer test	each	\$382.50	\$510
Phase II (vapor)			
vapor probe installation	day	\$956.25	\$1,275
vapor sample collection	day	\$510	\$680
ambient air sample and collection	day	\$510	\$680
Reports			
Phase II/site characterization report	each	\$1,275	\$1,700
remedial investigation report	each	\$1,593.75	\$2,125
grant project reporting	each	\$318.75	\$425
Lab Analysis			
Metals (soil/water)			
Priority Pollutant metals (13 metals)	sample	\$62.25	\$83
total RCRA metals (8 metals)	sample	\$39.75	\$53
Target Analyte List metals (23 metals)	sample	\$96.75	\$129

Activity	Unit	Reimbursable Allowance for Non-Preferred Community Development Project ^c	Reimbursable Allowance for Preferred Community Development Project ^d
Organics (soil/water)			
base neutrals	sample	\$86.25	\$115
base neutrals + 10 or 15	sample	\$96	\$128
base neutrals/acid extractables (semivolatile organics)	sample	\$153	\$204
BTEX	sample	\$30.75	\$41
BTEX + MTBE + TBA	sample	\$30.75	\$41
herbicides	sample	\$57.75	\$77
PAHs	sample	\$86.25	\$115
PCBs	sample	\$38.25	\$51
PCBs in oil	sample	\$30.75	\$41
pesticides	sample	\$38.25	\$51
volatiles	sample	\$51	\$68
volatiles + 10 or 15	sample	\$57.75	\$77
volatiles (drinking water)	sample	\$78.75	\$105
volatiles (drinking water) + 10 or 15	sample	\$86.25	\$115
target compound list (VO+10, BNAE+20, Pest/PCB)	sample	\$306	\$408
Organics (air)			
TO-15	sample	\$204	\$272
Group Tests			
ID-27 (TCLP metals, TPH, PCBs, reactive CN & S, Ignitability, pH)	sample	\$156	\$208
Priority Pollutants + 40 (VO+15, BNAE+25, pest/PCB, 13 metals, CN, phenol)	sample	\$401.25	\$535
RCRA characteristics (reactive CN & S, ignitability, corrosivity)	sample	\$38.25	\$51
TCLP-full (8 metals, VO, BNAE, pesticides, herbicides)	sample	\$381.75	\$509

Environmental Remediation	Unit	Reimbursable Allowance
Workplans and Reports		
remedial action workplan	each	\$5,000
remedial action report	each	\$5,000
remedial investigation report and remedial action work plan: full service ^e	each	\$5,000
Remedial action report: full service ^f	each	\$30,000
site management plan	each	\$30,000
grant project reporting	each	\$2,500
field oversight ^g	each	\$425
	half day	\$400
	day	\$1,000
environmental insurance ^h	premium	\$25,000/\$30,000
Soil Removal		
disposal - soil, non-hazardous (does not include transportation)	ton	\$102
disposal – soil, non-hazardous (does not include transportation)	ton	\$43
waste characterization: ID-27 (TCLP metals, TPH, PCBs, reactive CN & S, ignitability, PH)	sample	\$208
mobilization/demobilization - one time allowable per site per machine	each	\$425
loader/backhoe w/ operator	day	\$808
small-trackhoe w/ operator (J Deere 200LC or equivalent)	day	\$1,190
large trackhoe w/ operator (Cat 325 or equivalent)	day	\$1,445
skid steer loader w/ operator	day	\$595
dump truck w/ operator (approx. 12 yd. 3)	day	\$340
dump truck, tandem - triaxle w/ operator (25 yd. 3)	day	\$765
rolloff container (20 yd. 3)	each	\$510
vacuum truck w/ operator	hr	\$77
post-excavation soil sample collection	day	\$680
Backfill		
recycled concrete aggregate	ton	\$13
certified clean fill material	ton	\$17

Environmental Remediation	Unit	Reimbursable Allowance
top soil	cy	\$21
Engineering Controls (cap emplacement)		
clean fill/gravel	ton	\$17
top soil	cy	\$21
asphalt (2 in. compacted asphalt on 2 in. gravel base)	sf	\$3.80
cement paving (4 in.)	sf	\$4.25
sub-slab depressurization system passive	sf	\$7.00
sub-slab depressurization system active	sf	\$8.50
vapor barrier/water proofing (up to 39 mil)	sf	\$5.00
vapor barrier (40 mil and greater)	sf	\$6.00
Institutional Controls		
deed restriction preparation	Each	\$2,125
Lab Analysis		
Metals (soil/water)		
Target Analyte List metals (23 metals)	Sample	\$129
Organics (soil/water)		
Target Compound List SVOC's	Sample	\$204
PCBs	sample	\$51
Pesticides/herbicides	sample	\$51
Target Compound List VOC's	sample	\$204
target compound list (VO+10, BNAE+20)	sample	\$408
Organics (air)		
TO-15	sample	\$272
<i>Group Tests</i>		
ID-27 (TCLP metals, TPH, PCBs, reactive CN & S, ignitability, pH)	sample	\$208
RCRA characteristics (reactive CN & S, ignitability, corrosivity)	sample	\$51
TCLP-full (8 metals, VO, BNAE, pesticides, herbicides)	sample	\$509

Technical Assistance Grants		
Professional Services		
attorney	hr	\$213
architect	hr	\$128
planner	hr	\$128
professional engineers	hr	\$128
environmental consultants	hr	\$81
community based organizations	hr	\$81
Brownfield Opportunity Area Local Match Grants		
For Brownfield Opportunity Area (BOA) Local Match Grants, eligible services and/or activities must be reasonable, relevant, and directly related to the BOA scope of work. In order for these eligible costs to be reimbursed, they must be related to a work plan approved by the New York State Department of State pursuant to an executed State Assistance Contract and be appropriately documented in accord with the BOA Record Keeping and Payment Guide. See the guidance for the BOA Program issued by the New York State Department of State for questions or clarification regarding eligible and ineligible costs. For a Step 1 BOA award and a step 2 BOA award, the total amount of reimbursable expenses may not surpass the grant limit of the lesser of \$25,000 or 10% for each Brownfield Opportunity Area Grant award. For Brownfield Opportunity Area Local Match Grants made to a place-based brownfield community planning organization, eligible services and activities must be set forth in the organization's agreement with the Office.		

^a All listed prices are inclusive of all subcontractor, professional oversight, materials and equipment costs.

^b The Grant Allowance amounts presented in Schedule B represent the maximum amounts up to which specified activities may be funded. An eligible service and activity will not necessarily be funded up to that maximum amount.

^c Pursuant to section 43-1423(b)(4), predevelopment and environmental investigation grants, other than for preferred community development projects where the developer is a not-for-profit corporation, are reimbursed subject to the grant payment percentage limit of 75% for eligible costs for approved services and activities.

^d This column applies to preferred community development projects where the developer is a not-for-profit corporation. Pursuant to section 43-1423(b)(4), such projects are not subject to the grant payment percentage limit.

^e Reimbursement up to \$30,000 subject to the project award cap. This payment is intended to cover all remedial investigation activities and all document preparation activities including: a remedial investigation work plan, a Phase I environmental site assessment, a remedial investigation report, sampling, field oversight, mobilization, monitoring, chemical analysis and a remedial action work plan. This activity can only be selected for projects that have enrolled in the City voluntary cleanup program and no other costs for remedial investigation or remedial work plan preparation may be claimed.

^f Reimbursement up to \$30,000 subject to the project award cap. This payment is intended to cover all remedial action oversight activities and all document preparation activities including: field oversight by staff, daily reports, CAMP monitoring and equipment, HASP monitoring, sample collection, and preparation of a remedial action report. It does not cover construction of remedial systems including engineering controls. This activity can only be selected for projects that have enrolled in the City voluntary cleanup program and no other costs for remedial action oversight or remedial action report preparation may be claimed.

^g Reimbursement for field oversight consists of oversight of active remedial work by a qualified environmental professional, CAMP monitoring equipment, HASP monitoring, and the collection of samples. The

deliverable is a daily report that identifies the qualified environmental professional.

^h Eligible activities consist of the purchase of Pollution Legal Liability, Contractors Pollution Liability and Cleanup Cost Cap Insurance. The total amount of reimbursable expenses may not surpass the grant limits established in Schedule A. Purchase of environmental insurance for a project that subsequently enrolls in the City voluntary cleanup program is an eligible expense following program enrollment.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendments to the Environmental Remediation Rules

REFERENCE NUMBER: 2015 RG 25

RULEMAKING AGENCY: Mayor's Office of Environmental Remediation

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: October 1, 2015

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400

CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Amendments to the Environmental Remediation Rules

REFERENCE NUMBER: OER-10

RULEMAKING AGENCY: Mayor's Office of Environmental Remediation

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because this rule does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ [Stephen Narloch]
Mayor's Office of Operations

[October 5, 2015]
Date