

Administrative Criteria Used to Apply Statutory Exemptions for Hazardous Waste Regulatory Fees & Special Assessment Taxes

(Aligned to show which exemptions exist in both statutes: ECL 72-0402.1(d) and 27-0923.3(c))

| Fees | | Taxes | |
|--|--|--|---|
| Statute Exemption Language Regulatory Fees ECL 72-0402.1(d) | Administrative Criteria Used to Apply Fee Exemptions | Statute Exemption Language Special Assessment Tax ECL 27-0923.3(c)** | Administrative Criteria Used to Apply Fee Exemptions |
| <p>(i) Under a contract with the department, or with the department's written approval and in compliance with department regulations; or</p> | <ul style="list-style-type: none"> Department Approved Closure Plan Activities (Both RCRA-C Permitted and Region specific unpermitted 90 day closure plans where required). US Army Corps. of Engineers with Department Approval Solid Waste Permits which resulted in hazardous waste generation Spills (petroleum and non-petroleum) where the Department has exercised oversight and provided prior written approval of a remedial action work plan or equivalent (including email) | | |

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| <p>(i) Pursuant to an order of the department, the United States Environmental Protection Agency or a court, related to the cleanup or remediation of a hazardous material or hazardous waste spill, discharge, or surficial cleanup, pursuant to this chapter</p> | <ul style="list-style-type: none"> • Enforcement Consent Orders • State Superfund/Federal CERCLA Orders • U.S. Department of Defense (CERCLA authorization clause) • USEPA Emergency Orders, USEPA Underground Injection Control Program, TSCA orders (see dispute responses for R.H. Law), orders with delegated counties • SPDES Orders which resulted in hazardous waste generation (see American Axle/CSO Declaratory Ruling) • Solid Waste Orders which resulted in hazardous waste generation • Non-petroleum spill orders and stipulations (including stipulations issued at any time subsequent to the initial response, including hazardous waste generation) | <p>Under an order of or agreement with the United States Environmental Protection Agency</p> <p><i>Note: language added in 2015 statute changes</i></p> | <ul style="list-style-type: none"> • Enforcement Consent Orders • Federal CERCLA Orders • U.S. Department of Defense (CERCLA authorization clause) • USEPA Emergency Orders, USEPA Underground Injection Control Program, TSCA Orders, orders with delegated counties |

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| (ii) Under a contract for, or with the department's approval and in compliance with department regulations for, the cleanup and removal of a petroleum spill or discharge, pursuant to subdivision seven of section one hundred seventy-six of the navigation law | <ul style="list-style-type: none"> Petroleum spill orders and stipulations (including stipulations issued at any time subsequent to the initial response, including hazardous waste generation). <p>The spill status of "monitoring and closeout" described in the Division of Environmental Remediation's (DER's) Spill Guidance Document appears to be routine regulatory oversight as opposed to the "Department Approval"</p> | | |
| (iii) Under the order of a court, the department or the department of health, or the United States environmental protection agency related to an inactive hazardous waste disposal site pursuant to section 27-1313 of this chapter, | <ul style="list-style-type: none"> State Superfund CERCLA Orders, NYS Department of Health orders | Under an order of or agreement with the department pursuant to title thirteen of this article | <ul style="list-style-type: none"> State Superfund Order or Agreement |
| (iii) Section thirteen hundred eighty-nine-b of the public health law, or | <ul style="list-style-type: none"> NYS Department of Health Orders (see Dial Ace Uniform Supply Company Inc. Summary Statement) | | |
| (iii) The Comprehensive Environmental Response, Compensation and Liability Act (42 USC 9601 et seq.) | <ul style="list-style-type: none"> Federal Superfund CERCLA Orders | The Comprehensive Environmental Response, Compensation and Liability Act (42 USC 9601 et seq.) <i>Note: language added in 2015 statute changes</i> | <ul style="list-style-type: none"> Federal Superfund CERCLA Orders |

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| (iv) Voluntarily and without expectation of monetary compensation in accordance with subdivision one of section 27-1321 of this chapter | <ul style="list-style-type: none"> “Good Samaritan Clause” This exemption has never been granted because the conditions imposed by section ECL 27-1321 have never been met in their entirety in a dispute. (See Alexander’s of Rego Park Summary Statement) | | |
| (v) Under permit or order requiring corrective action pursuant to title nine of article twenty-seven of this chapter, title twenty-seven of article seventy-one of this chapter or the Resource Conservation and Recovery Act (42 USC 6901 et seq.) | <ul style="list-style-type: none"> Resource Conservation and Recovery Act Consent (RCRA) Order | | |
| (vi) Under a brownfield site cleanup agreement with the department pursuant to section 27-1409 of this chapter, or under a written agreement with a municipality which has entered into a memorandum of agreement with the department related to the remediation of brownfield sites as of August fifth, two thousand ten | <ul style="list-style-type: none"> Brownfield Cleanup Agreement or New York City Office of Environmental Remediation Voluntary Cleanup Program Certifications A - C. | <p>Under an order of or agreement with the department pursuant to title fourteen of this article, or</p> <p>Under a written agreement with a municipality which has entered into a memorandum of agreement with the department related to the remediation of brownfield sites as of August fifth, two thousand ten.</p> <p><i>Note: language added in 2015 statute changes</i></p> | <ul style="list-style-type: none"> Brownfield Cleanup Agreement or New York City Office of Environmental Remediation Voluntary Cleanup Program Certifications A - C. |

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| (vii) Under an environmental restoration program State Assistance Contract with the department pursuant to section 56-0503 of this chapter | <ul style="list-style-type: none"> Environmental Restoration Program (ERP) State Assistance Contract or Agreement <p><i>Note: ECL 56-0502 and 56-0503 provide for contracts or agreements with municipalities for ERP projects</i></p> | Under a contract or agreement with the department pursuant to title five of article fifty-six of this chapter | <ul style="list-style-type: none"> Environmental Restoration Program State Assistance Contract or Agreement <p><i>Note: ECL 56-0502 and 56-0503 provide for contracts or agreements with municipalities for ERP projects</i></p> |

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