

Proposed 6 NYCRR Part 375
Environmental Remediation Programs
Revised Express Terms
Effective August 12, 2016

6 NYCRR PART 375 is amended to read as follows:

(Existing Table of Contents remains unchanged.)

Subpart 375-1 General Remedial Program Requirements

(Existing section 375-1.1 through subdivision 375-1.2(a) remain unchanged.)

Existing subdivision 375-1.2(b) is amended to read as follows:

(b) “Brownfield site” means any real property[, the redevelopment or reuse of which may be complicated by the presence or potential presence of] where a contaminant is present at levels exceeding the soil cleanup objectives or other health-based or environmental standards, criteria or guidance adopted by the Department that are applicable based on the reasonably anticipated use of the property, in accordance with applicable regulations. Such term shall not include real property identified in subdivision 375-3.3(b).

(Existing subdivision 375-1.2(c) through section 375-1.12 remain unchanged.)

(Existing Subpart 375-2 remains unchanged)

Subpart 375-3 Brownfield Cleanup Program

(Existing section 375-3.1 remains unchanged.)

Existing subdivisions 375-3.2(a) through 375-3.2(j) are renumbered 375-3.2(b) through (k).

A new subdivision 375-3.2(a) is adopted to read as follows:

(a) “Affordable housing project” means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.

(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency’s affordable housing program, or a local government’s regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants’ households annual gross income.

(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency’s affordable housing program, or a local government’s regulatory agreement or legally binding restriction, which sets affordable units aside for home owners at a defined maximum percentage of the area median income.

(3) “Area median income” means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as

determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.

A new subdivision 375-3.2(1) is adopted to read as follows:

(1) "Underutilized" means, as of the date of application, real property on which no more than fifty percent of the permissible floor area of the building or buildings is certified by the applicant to have been used under the applicable base zoning for at least three years prior to the application, which zoning has been in effect for at least three years; and

(1) the proposed use is at least 75 percent for industrial uses; or

(2) at which:

(i) the proposed use is at least 75 percent for commercial or commercial and industrial uses;

(ii) the proposed development could not take place without substantial government assistance, as certified by the municipality in which the site is located; and

(iii) one or more of the following conditions exists, as certified by the applicant:

(a) property tax payments have been in arrears for at least five years immediately prior to the application;

(b) a building is presently condemned, or presently exhibits documented structural deficiencies, as certified by a professional engineer, which present a public health or safety hazard; or

(c) there are no structures.

"Substantial government assistance" shall mean a substantial loan, grant, land purchase subsidy, land purchase cost exemption or waiver, or tax credit, or some combination thereof, from a governmental entity.

(Existing subdivision 375-3.3(a) remains unchanged.)

Existing paragraph 375-3.3(a)(1) is repealed.

[(1) A brownfield site has two elements:

(i) there must be confirmed contamination on the property or a reasonable basis to believe that contamination is likely to be present on the property; and

(ii) there must be a reasonable basis to believe that the contamination or potential presence of contamination may be complicating the development, use or re-use of the property.]

Existing paragraphs 375-3.3(a)(2) through 375-3.3(a)(4) are renumbered 375-3.3(a)(1) through 375-3.3(a)(3).

(Existing subdivision 375-3.3(b) through section 375-3.11 remain unchanged.)

(Existing Subparts 375-4 through 375-6 remain unchanged.)