

New York State Registry Listing Process and Site Classification

Under ECL §27-1305 of the New York Inactive Hazardous Waste Disposal Site law, the NYSDEC is authorized to establish a Registry of Inactive Hazardous Waste Disposal Site Law (“Registry” or state superfund list). To be placed on the Registry, the NYSDEC must determine that the hazardous waste at the site creates an existing or reasonably foreseeable significant threat to public health or the environment. This is known as a “significant threat” determination.

The term “significant threat” is not defined by the statute. However, NYSDEC has promulgated criteria defining what constitutes a “significant threat” are described at 6 NYCRR 375-2.7(a). Note that the mere presence of hazardous waste at a site is not sufficient to constitute a “significant threat.”

Section 27-1305 of the SSF requires the NYSDEC to notify owners of sites that are proposed to be placed on the Registry. Owners or operators of sites that are proposed to be listed on the registry may challenge the proposed listing, to have a site de-listed or to have the classification changed. The DEC is required to convene an adjudicatory hearing within 90 days of receiving delisting or reclassifications petitions and provide at least 30 days notice of a scheduled hearing. The DEC is required to issue a ruling within 30 days after the hearing.

Sites typically are placed on the Registry as Class 2 sites (defined below) and may be reclassified or delisted (removed from the Registry) depending on the nature of the completed remediation.

Registry Classifications-

Sites will be placed on the Registry will have one of the following classifications.

Class 1 Site: This designation is for site that presents an imminent danger of causing, irreversible or irreparable damage to the public health or the environment.

Class 2 Site: This is the New York version of the Federal National Priorities List (NPL). This classification is assigned to a site where the contamination is determined to present a “significant threat” to public health or the environment.

Class 3 Site: This classification is used for sites where contamination does not presently and is not reasonably foreseeable to constitute a significant threat to public health or the environment. This classification is not used for sites where there is insufficient data to make a significant threat determination.

Class 4 Site: This classification is used for sites that have completed remediation but continued site management in the form of operation, maintenance and/or monitoring is required (e.g., a groundwater system has been installed and is operating properly but

groundwater standards have not been achieved yet). A site may be reclassified to Class 4 when construction of the remedy for all operable units has been completed.

Class 5 Site: This classification is used for sites where remediation has been completed and continued management is not required.

§27-1317 provides that no person may substantially change the use of a site that has been placed on the Registry without first notifying the DEC at least 60 days before the physical alteration or change in use is to commence. A substantial change” includes but is not limited to the following:

- * constructing a building or other structure;
- * the paving of the site for use as a roadway or parking lot;
- * the creation of a park or other private or public recreational facility