

Proposed Amendments to the Brownfield Cleanup Program

The New York Brownfield Cleanup Program (BCP) was enacted in 2003 and has provided significant legal and financial incentives for private parties to remediate and re-develop brownfield parcels across New York. Based on the duration of sites in the BCP, time is running out for developers to complete brownfield projects prior to the expiration of the tax credits at the end of 2015. As part of Governor Cuomo's budget, the administration has submitted a series of sweeping legislative changes to extend and modify the BCP tax credits.

Overview of the BCP Changes

- Definition of "Brownfield" revised to a site with documented contamination at levels above soil cleanup standards for the proposed future site use – will require a Phase II site investigation
- Makes certain Class 2 New York Superfund eligible for the BCP
- Creates a BCP-EZ program similar to the old VCP program for expedited remediation of sites without tax credits
- Only participants, and not volunteers, in the BCP would have to pay State costs

Site Preparation and Remediation Credits

- Site preparation tax credits remain: ranging from 22% to 50% of costs depending on cleanup level
- For sites admitted into the BCP after July 1, 2014, any Certificate of Completion needs to identify the entities eligible for tax credits and percentage of credits available
- Site preparation costs specifically include remediation of asbestos, lead and PCB
- Only site preparation costs identified in DEC approved remedial work plan would qualify – exclusion of site investigation, Phase I, and IRM costs

Key New Deadlines and Criteria to Obtain Tangible Property Tax Credits

- Sites admitted into the BCP *after July 1, 2014* would be restricted from obtaining tangible property tax credits for the value of on-site construction
- Sites where a Brownfield Cleanup Agreement is entered after July 1, 2014 need to seek and obtain approval of the tangible property tax credit at the time of the application by documenting that the site meets one of the following:
 - *Vacancy*: the site property and buildings have been vacant for 15 years or more, or have been both vacant and tax delinquent for 10 years or more; or
 - *Financially underwater*: the estimated cost of the investigation or remediation for the proposed future use of the site exceeds the appraised value of the property without construction; or
 - *Priority economic development project*: the project has been determined a PED by the Department of Economic Development, which include locating specific types of businesses at the parcel and the creation of significant jobs of 50, 100, or 300 net new jobs based on the type of business.
- The proposal would remove sites from the BCP if they were accepted in prior to June 23, 2008 and no COC is issued by December 31, 2015
- Sites admitted after July 23, 2008 but prior to July 1, 2014 would be removed if no COC is issued by December 31, 2017
- Sites accepted into the program after July 1, 2014 must obtain a COC by December 31, 2025 to apply for tax credits
- No sites accepted into the BCP after December 31, 2022 would be eligible for tax credits
- No tangible property tax credits for sites where contamination is from off-site source or DEC determines that prior remediation permits site development for proposed use
- If a site qualifies for the tangible property tax credit, it will be capped at 24% and the individual components have been adjusted based on the type and location of site

Other New York Brownfield Programs

- The municipal Environmental Restoration Program (ERP) is slated to receive \$10 million under the budget
- Despite new funding source, the ERP sites currently in the program account for all of the new funding – significant additional funding is necessary to allow municipalities to put new sites into the ERP program
- Funding is removed for the Brownfield Opportunity Area (BOA) Program administered by the Department of State
- Without BOA funding, municipalities will not be able to progress area-wide BOA planning in the multi-step program or identify sites that might fit into the BCP for re-development

If you have questions about the BCP program or the application to specific development sites, please contact us. Based on the proposed deadlines, we strongly encourage you to evaluate potential sites for BCP applications prior to any legislative changes to the program.

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