

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Proposed changes to state's Brownfield Cleanup Program

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The Brownfield Cleanup Program (BCP) is about to undergo substantial changes.

Statutorily enacted in 2003, the program encourages the redevelopment and reuse of brownfield sites by providing liability relief and tax credits to parties performing investigation and remediation work.

A variety of issues have developed in the administration of the program, namely determination of site eligibility for acceptance into the BCP; treatment of background contamination as a basis to include or exclude brownfield parcels in the program; issuance of substantial tax credits to projects Downstate in exchange for modest environmental remediation expenditures and a need to further encourage redevelopment of Upstate's brownfield sites to assure prompt and efficient cleanup, as well as stimulate the local economy.

Narrow restrictions on site eligibility have made it increasingly expensive, time consuming and uncertain as to whether brownfield parcels actually can be admitted to the program, thereby preventing cleanup and redevelopment of numerous parcels that should fit squarely within the program. In 2007, four proposed legislative changes were issued by the governor, the Assembly and the Senate, but they were not enacted. On Jan. 22, the governor issued two legislative proposals to revise the program as part of New York's 2008 budget bill.

Currently, the brownfield redevelopment tax credit consists of three parts: site preparation costs, tangible property costs and on-site groundwater costs. The tax credits are available to individuals (10 percent base credit) and corporations (12 percent base credit). Credits may be increased by an additional 2 percent if a Track 1 cleanup is completed; and by an additional 8 percent if the property is in an En-Zone. The maximum credits available are for individuals (20 percent) and corporations (22 percent).

Two other tax credits exist — the remediated brownfield credit for real property taxes (based on an employment factor and the actual property taxes), and an environment remediation insurance credit (one time credit of up to \$30,000 premiums paid or 50 percent of premiums).

In the wake of judicial challenges, program issues and tax credit concerns, the DEC is evaluating the program more closely and seeking legislative revisions. The agency is still accepting certain steps in the BCP, such as pre-application meetings, review of applications for completeness, review of draft workplans (submitted with BCP applications) and public comment periods. However, the DEC is not going to make final acceptance decisions until the legislative proposals are addressed as

part of the budget bill. If the Legislature does not approve the changes at that time, the DEC will await further statutory revisions later in the year, prior to making any formal acceptance determinations.

The governor's 2008 budget bill offers two proposals, one a fiscal proposal to cap tangible property credits and the second a more detailed programmatic revision to the BCP. The fiscal proposal leaves the BCP tax credit calculation formula, but caps the tangible property component credit at \$10 million. The proposal creates a new "but for" test for site eligibility that authorizes the DEC to reject an application if it determines reuse or redevelopment of a site likely can occur without tax credits, based on the extent and difficulty of con-

tamination, projected remedial costs, the potential impact of remediation on the value of real property and economic conditions in the community. The proposal would apply to all applicants accepted into the BCP program after July 1, 2007, and to those receiving the transfer of a COC after that date.

The programmatic proposal would substantially revise the BCP program. A new "but for" eligibility test would be established: If the redevelopment is likely without tax credits, the site would be eligible only for a liability release. However, sites with contamination above health and environmental standards would be allowed, and could obtain liability releases for attaining cleanup standards.

The programmatic proposal would dramatically revise the tax credit scheme. Site preparation credits would be based on the site use and cleanup level achieved, ranging from 25 to 75 percent (no tax credit cap). Onsite groundwater cleanup costs would range from 50 to 75 percent, depending on the level of cleanup (no cap). The tangible property credit would be capped at a maximum of 50 percent and \$15 million. The tangible property credit components are a baseline of 15 percent, plus additional percentages of 10 percent for EN-zone sites; 5 percent for sites in qualified census tracts (high poverty or low income); 10 percent for BOA sites; and an additional 10 percent for smart growth. The effective date is the same as the fiscal proposal.

It is impossible to accurately predict the final form of BCP legislative changes; however, since the governor, the DEC and the Legislature have all pushed for modifications, it appears 2008 will be the year for further BCP amendments.

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