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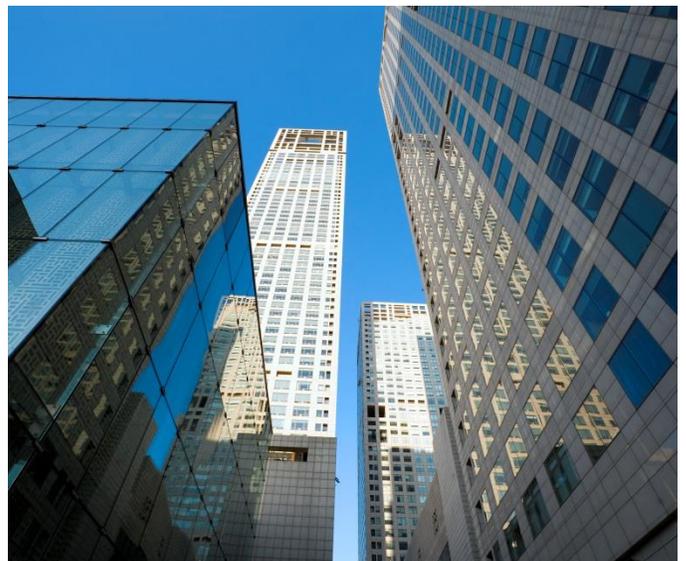
NEW YORK BROWNFIELD CLEAN-UP PROGRAM: 2015 UPDATE

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Recently, New York State enacted changes to the widely popular Brownfield Clean-Up Program (BCP). Although relatively modest, the amendments are important to anyone seeking to redevelop sites in New York.

The BCP was established to encourage private-sector cleanups of contaminated property, as well as to promote and revitalize economically challenged communities. The Department of Environmental Conservation (DEC) defines a brownfield as property where redevelopment is complicated by hazardous waste, petroleum, pollutants or contaminants in the soil, groundwater or air. For example, some specific areas that the BCP has been applied to include former dry cleaners, gas stations, old factories, mill complexes, and foundries. Without the BCP incentives, often these properties remain abandoned and the surrounding areas become less attractive to future development.

Since it has been established, the BCP has helped clean up more than 190 contaminated sites statewide; however, some environmentalists believe it has also resulted in the awarding of unnecessary and excessive tax credits. They have faulted the program, saying that credits were not focused on sites in low-income communities and have been awarded to developers on valuable properties that would have been developed even without the BCP. The recent amendments to the program are an effort to address some of these issues.



Under prior regulations, any project qualified for redevelopment tax credits on related development costs. Under the new law, the eligibility for these redevelopment credits in New York City will be limited to (i) properties which are located in Environmental Zones (En-Zones), defined as areas with high poverty and/or unemployment or (ii) “Upside down” properties,

where the cost of cleanup is 75 percent or more of the property value as if uncontaminated or “underutilized” properties, which DEC will define by regulation or (iii) sites that will be redeveloped for affordable housing projects, as defined by DEC, in consultation with the Division of Housing and Community Renewal.

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Outside of New York City, the redevelopment tax credits will remain available to all developers that would otherwise qualify under the BCP, as per the existing law. The new rules are clearly aimed at trying to benefit and improve areas that need support.

The BCP tax credits are comprised of three individual credits. They include (i) the site preparation credit, (ii) the tangible property credit and (iii) the on-site groundwater remediation credit.

The site preparation credit is equal to the applicable percentage of site preparation costs paid or incurred to obtain a certificate of completion (COC) from the DEC, by the taxpayer, with respect to the qualified site. Under the old rules, these credits covered more than the necessary costs associated with the preparation of a site. One such example would be digging a foundation deeper and wider than the contaminated area. The new rules now limit the eligible costs for the site preparation credit to those that are necessary to implement a site’s investigation, remediation, or

qualification for closure. Eligible costs include expenses for excavation, demolition, consulting, engineering and legal fees. It should be noted that acquisition costs are not eligible expenses.

The tangible property credit is equal to the applicable percentage of costs associated with on-site building and improvements, including structural components of the buildings that are placed in service within ten taxable years after the issuance date of the COC. The tangible property credit is limited to the lesser of \$35 million or three times the costs included in the calculation of the site preparation credit and the on-site groundwater remediation credit. This amount jumps to \$45 million or six times the site preparation credit and the on-site groundwater remediation credit if the site is primarily used for manufacturing activities. With the recent amendments, these eligible costs are now limited to property with a useful life of at least 15 years and non-portable equipment, machinery and fixtures and appurtenances used on the site.

The on-site groundwater remediation credit is equal to the applicable percentage of costs paid or incurred to remediate on-site contamination, and is exclusive of the costs included in the determination of the site preparation credit or the tangible property credit. Similar to the changes for the site preparation credit, the on-site ground water remediation credit is limited to only those costs that are necessary to the site’s remediation.

The BCP tax credits were set to expire on December 31, 2015. The recent changes have now extended the program an additional ten years. Under the new law, sites will have until March 31, 2026 to receive a certificate of completion.

Additional changes to the BCP include the “grandfathering” of existing tax credits. Sites that were already accepted into the BCP before the effective date of July 1, 2015 (or the date when the DEC defines “underutilized,” whichever is later), will be grandfathered in and allowed to continue under the BCP’s existing tax credit system. For those admitted into the BCP prior to June 23, 2008, the COC must be

obtained by December 31, 2017. For those accepted into the BCP between June 23, 2008 and July 1, 2015, the COC must be obtained by December 31, 2019. The recent amendments are applicable for sites accepted to the BCP between July 1, 2015 (or the date when the DEC defines “underutilized,” whichever is later) and December 31, 2022, as long as they obtain a COC by March 31, 2026.

For anyone seeking to redevelop a brownfield site in New York, the BCP credits are essential. The recent amendments have tried to address many of the issues with the current program and the BCP will continue to provide tax incentives to developers looking to clean up and redevelop contaminated sites, as well as revitalize economically blighted communities.

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