



New York reviewing state brownfield program: Governor's changes to go into effect July 1st

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Governor Andrew Cuomo's recently released 2014 executive budget proposal, includes several proposed brownfield cleanup program changes that may significantly impact future brownfield applications from being approved. The new remediation regulations regarding New York State brownfield sites are likely coming which is being seen by many as a potentially enormous shift in the way developers recoup the costs associated with treating tainted property.

The program which was enacted in 2003 has assisted developers that are interested in vacant, derelict plots in which the soil and groundwater beneath the property has been contaminated. As buildable land becomes scarcer, these tainted sites are more attractive to potential builders. To date, the program has approved 128 sites at a cost of nearly \$1 billion in tax credits having been granted. There are currently 389 additional sites already enrolled in the Brownfield Cleanup Program (BCP) with a potential tax-credit liability of \$3.3 billion for the state. The tangible property credit component (TPCC) which is one of the biggest incentives to the program has typically been equal to 10-24 percent of the re-development costs.

Many of the governor's proposed changes will go into effect July 1st, including separating the TPCC from the BCP as well as requiring an additional application process. The governor's plan would also redefine qualified sites, requiring that they be vacant for at least 15 years or be tax-delinquent for at least 10, and also have a projected remediation cost greater than the site's non-contaminated appraisal value.

Special cases could be made for sites not meeting these requirements, if a project is deemed regionally significant by the area's corresponding regional economic development council. In addition, projects that will result in at least 50 new jobs may be considered. Other potential revisions may exclude properties contaminated by neighboring sites from the BCP program.

These proposed restrictions and the extra application process could weigh on parties interested in the sites but feel the new rules are too onerous. Much of the debate over the program is the cost the taxpayers are contributing. A report prepared in 2013 by the state controller's office examined the BCP, and illustrated that the as-of-right tax credits within the program are considered to be among the most generous in the nation. The original estimate when the program was begun projected annual costs would be \$135 million. As of 2013, actual average annual costs totaled nearly \$190 million and were still climbing, according to the report.

These proposed cuts may also impact the separate Brownfield Opportunity Area plan. In which \$15 million is scheduled to be slashed. These projects typically include a three-step process that ties many brownfield sites to the re-development of certain community-driven revitalization plans.

In 2011, New York City adopted its own BCP program which was the first municipality in the country to do so as BCP's are usually orchestrated at the state level. Designed with the same goal as the

state program, the Office of Environmental Remediation (OER) has assisted developers in the five boroughs in a similar manner to the state BCP. The Brownfields Incentive Grant Program (BIG) introduced in 2010 currently has its own proposed amendments in which a public hearing is scheduled in early March of this year. To date there has been no official communication on how the State changes may impact the city program.

BCP programs offered at the local and state level will continue to be amended as needed. Consideration must always be given to the cost of the program; incentives to encourage development as well as the benefit to the community.

Chuck Merritt, LEED AP, is the president of Merritt Environmental Consulting Corp. located in Hauppauge, N.Y.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540