



Overview of the New York State Brownfields Cleanup Program

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Introduction

Chapter One of the Laws of 2003 created the New York State Brownfields Cleanup Program (BCP) under the oversight of the New York State Department of Environmental Conservation (DEC). The Program is intended to promote the cleanup and redevelopment of contaminated property in New York State. As stated in the legislative intent section of the Chapter, the purpose of the Program is to:

- Mitigate the threat to public health and the environment from contaminated sites.
- Promote the redevelopment of abandoned contaminated properties as a means to revitalize economically blighted communities.
- Create an alternative to greenfield development by removing barriers to redevelopment of urban brownfields.

To encourage parties to cleanup and redevelop contaminated sites, the Program provides **procedural, legal and financial** incentives.

- **Procedural incentives** include an expedited, streamlined process for characterizing site contamination and remedy selection when compared with requirements under the State Superfund Program. To provide certainty about Program cleanup requirements, specific soil cleanup standards associated with a site use were developed.
- **Legal incentives** include a limited waiver of liability for any contamination remaining on the site.
- **Financial incentives** include tax credits for a percentage of costs incurred in site cleanup, remediation of groundwater contamination and redevelopment of the site. In addition, tax credits are available for a percentage of property tax liability and the cost of environmental remediation insurance. Tax credits that exceed a party's state tax liability are refundable under the terms of the Program. In other words, the excess credit becomes a grant to an eligible entity.

To promote planning for cleanup and redevelopment of contaminated properties, grants are available to municipalities and community based non-profit organizations under the Brownfields Opportunity Area (BOA) Program. BOA grants support activities to identify contaminated sites, assess potential contamination and identify potential reuses for the sites.

In four and one-half years of operation, 44 sites have been cleaned up and have received letters of completion from the DEC, thereby triggering eligibility for certain Program incentives.

As sites were cleaned up under the Program and redeveloped, it became apparent that, in some cases, projects could qualify for extremely large tax credits that exceed the cost of cleanup. Several projects have accrued tax credits in excess of \$100 million. As a result, the New York State Division of the Budget (DOB) has expressed concern that the Program may pose a significant financial risk to the state.

In regulations promulgated to implement the Program, DEC established standards that exclude sites that are minimally contaminated.¹ DEC has in addition excluded properties located in extremely high value real estate markets.² Limiting Program eligibility creates other concerns, including that at contaminated sites excluded from the Program, cleanups can occur without State oversight, or may not occur at all.

In 2007, Governor Spitzer introduced a Governor's Program Bill, which was not enacted, that proposed to cap some tax credits offered under the BCP. In 2008, further reforms have been proposed to address tax credits, site eligibility and other aspects of the Program. The Enacted State Budget for State Fiscal Year 2008-09 includes a 90-day moratorium on acceptance of new sites into the BCP.

This white paper is an initial review of the BCP Program and proposals to amend it. It incorporates information from DEC, DOB and the United States Environmental Protection Agency (EPA). In addition, testimony presented at joint legislative hearings was evaluated and informal discussions were conducted with parties representing developers, real estate interests, municipal officials and conservation groups in order to provide an overview of the experiences of various constituencies with the BCP.

¹ Program regulations exclude historic fill from the list of hazardous materials considered to be "contaminants" (See 6NYCRR Part 375-1.2 (g) and (x)). Program regulations also exclude from consideration contamination that may have spread onto the site from a contamination source on an adjacent property (See 6NYCRR Part 3.3(2)). A small number of sites contaminated by historic fill, or off-site sources have been admitted to the Program.

² DEC indicates that contamination does not complicate development at these sites since the property value overcomes risks due to legal liability or costs of cleanup.

Overview of BCP Accomplishments

The number of sites admitted to the Program, the number of sites remediated, the geographic distribution of sites/cleanups around New York and within “Enzones” are important indicators of BCP success.³

At present, 394 sites have applied to the Program and 260 have been admitted of which 44 have been cleaned up and received a letter of completion from DEC. After being accepted into the Program, 60 sites were either withdrawn from the Program by a project sponsor, or removed from the Program by DEC.

Since its inception in 1994, the Voluntary Cleanup Program (VCP), which preceded the BCP, cleaned up 153 sites, or roughly 11 per year.⁴ Under the BCP, 44 sites have received a letter of completion, or approximately 11 sites per year. Based on this measure of sites addressed, the BCP is comparable to the VCP it replaced.

The VCP did not provide financial incentives to participants and was open to any site with known or suspected contamination. As discussed above, the BCP has eligibility criteria that restrict entry of minimally contaminated sites into the Program.

In addition, the distribution of sites around the State and the number of sites in specially designated “Enzones” are important indicators of whether the Program is encouraging redevelopment in all regions of the State and whether the Program is meeting the goal of encouraging redevelopment in economically distressed areas.

Of the 200 sites that DEC lists as currently enrolled in the Program, 77, or 38.5 percent, are located in Enzones.

From a regional perspective, 32 of New York State’s 62 counties have sites enrolled in the Program. The sites are almost evenly split between upstate and downstate counties with 93 located downstate and 107 located upstate.⁵ The Program has received applications from sites located in more than more than 90 percent of New York State counties.

³ Enzones are census tracts that meet poverty criteria established in Chapter 1 of the Laws of 2003. In order to be designated as an Enzone, the census tract must have a poverty rate of 20 percent and an unemployment rate of at least 1.25 times the statewide unemployment rate or a poverty rate of at least double the rate for the county in which the tract is located. Census tracts qualifying as Enzones can be found on the Empire State Development Corporation website - <http://www.empire.state.ny.us/Brownfield_Redevelopment/Default.asp>.

⁴ The VCP was not authorized in statute, or regulation. The DEC ran the VCP under administrative guidance. Participants in the Program remediated sites to a level consistent with intended use under the oversight of the DEC. On completion of the cleanup, participants received a waiver of liability from the DEC, which was not binding on other agencies or the New York State Attorney General. When the BCP was created the DEC stopped accepting applications for the VCP Program. The VCP was initiated in 1994. When the BCP was established in 2003, the DEC stopped accepting applications to the VCP. A total of 757 sites were admitted to the VCP.

⁵ Downstate counties are considered to be Rockland, Westchester, New York City Boroughs, Nassau and Suffolk.

**Regional Distribution of Sites
in the Brownfields Cleanup Program**

Region	Number of Sites
Long Island	12
New York City	52
Hudson Valley	46
Capital District	6
North Country	3
Central New York	11
Finger Lakes	3
Southern Tier	14
Western New York	53

Based on its performance over the last four years, the BCP has achieved a number of measures of success, including:

- Attracting a significant number of sites from economically distressed communities,
- Achieving rough parity in numbers of sites from upstate and downstate, and
- Drawing applications from all regions of the State.

While the Program is attracting interest and supporting the redevelopment of brownfields, it is currently on track to address roughly the same number of sites as the VCP it replaced. This finding is noteworthy in that the BCP offers generous financial incentives and the VCP offered no financial incentives. However, the BCP excludes sites that would have very likely been admitted into the VCP.

Comparison of the Program's Incentives and Achievements with Programs in Neighboring States

A review of the 2005 EPA report, *State Brownfields and Voluntary Response Actions*, reveals a large degree of variation in the number of sites cleaned up by state brownfields programs.⁶ The site numbers range from Massachusetts, which lists over 30,000 sites in their program and over 19,000 sites completed to Arkansas with one site in the program and no sites completed.

States that neighbor New York also show wide variations in numbers of sites cleaned up through a program. The following table identifies the number of sites enrolled in a program and the number of sites that have been cleaned up for states neighboring New York.⁷

Brownfield Site Cleanup Programs - Comparison of Participants by State⁸

State	Sites Enrolled	Sites Completed
Massachusetts	30,059	19,513
New Jersey	23,000	3,402
Pennsylvania	650	1,711
New York ⁹	200 ¹⁰	44
Connecticut	191	22
Vermont	6	3

These states also offer a widely varying array of incentives to promote the cleanup and redevelopment of sites. The following chart summarizes key tax credit and other incentives.

⁶ <http://www.epa.gov/brownfields/pubs/st_res_prog_report.htm>, accessed on May 28, 2008.

⁷ Sites at which the state regulatory agency has determined that remediation goals have been met.

⁸ Numbers of sites reported for Massachusetts, New Jersey, Pennsylvania, Connecticut and Vermont are drawn from Appendix B of EPA's *State Brownfields and Voluntary Response Actions*. The EPA report presents different numbers of sites enrolled in and cleaned up by each state Program in other sections of the report. For this reason, the numbers of sites addressed should be viewed as approximations for comparison purposes rather than exact numbers.

⁹ Numbers of sites enrolled in and remediated by the BCP are current as reported by DEC.

¹⁰ This number includes the 44 sites completed under the Program.

Brownfield Site Cleanup – Programs Financial Incentives

State	Cleanup Incentives	Redevelopment Incentives
Massachusetts	<ul style="list-style-type: none"> ▪ Site assessment and cleanup loans. ▪ Tax credit for cleanup – 25% with use restriction, 50% without use restriction. 	
New Jersey	<ul style="list-style-type: none"> ▪ Tax credits for up to 100% of eligible costs of cleanup.¹¹ ▪ Reimbursement from tax revenues of up to 75% of cleanup costs.¹² 	
Pennsylvania	Grants and low interest loans for site assessments (up to \$200,000) and remediation (up to \$1 million). ¹³	
New York	Tax credits of up to 22% of remediation costs, with no cap. Tax credit is refundable. ¹⁴	Tax credits of up to 22% of redevelopment costs with no cap. Tax credit is refundable. ¹⁵
Connecticut	Cash Grants for Phase I and Phase II site assessments.	<ul style="list-style-type: none"> ▪ Grants up to \$10 million. ▪ Tax credits for 100% of redevelopment costs up to \$100 million at qualifying sites.¹⁶
Vermont	<ul style="list-style-type: none"> • Technical Assistance grants of up to \$200,000. • Site Assessment grants of up to \$50,000. • Cleanup grants of up to \$200,000. • Cleanup loans of up to \$250,000. 	

Only Connecticut and New York offer tax credits for redevelopment costs specifically targeted for brownfield sites. In the other states, redevelopment incentives are offered through general economic development programs such as enterprise zones.

Massachusetts, the state with the largest number of sites cleaned up, offers modest tax credit benefits for costs incurred during cleanup.

¹¹ <http://www.state.nj.us/treasury/taxation/pdf/other_forms/cbt/2004/04314.pdf>.

¹² <<http://www.state.nj.us/njbusiness/locationdata/brownfields/contaminated.shtml>>.

¹³ <<http://www.newpa.com/ProgramDetail.aspx?id=25>>.

¹⁴ Tax credits for cleanup and redevelopment costs escalate from a 12percent base for businesses and a 10 percent base for individuals. Projects are eligible for an addition 8 percent tax credit if located in an Enzone and an addition 2 percent for a Track 1 cleanup. Current law provides no discretion to state agencies in awarding tax credits. In addition to tax credits associated with cleanup and redevelopment costs, the State provides tax credits for property tax payments (100 percent if the site is in an Enzone and 25 percent if not) and \$30,000 or 50 percent (which ever is less) for expenses associated with environmental remediation insurance.

¹⁵ The DEC has produced information projecting several projects with potential redevelopment tax credits in excess of \$100 million.

¹⁶ <http://www.epa.gov/brownfields/pubs/st_res_prog_report.htm>.

New Jersey, the state with the next largest number of sites cleaned up, offers generous tax credits for costs associated with cleanup or actual reimbursement of a significant percentage of cleanup expenses, but takes steps to mitigate the fiscal impact of these incentives. Reimbursement funds are deducted from tax payments generated by the redevelopment project, and tax credits are limited to a portion of taxes paid. Tax credits that exceed the tax liability in a given year can be carried over and applied to tax liability in succeeding years.

Pennsylvania, the state with the third largest number of sites cleaned up, offers no tax credits and fairly modest grants and loans to assist in cleanup activities.

Another factor that could explain the fewer number of sites addressed by New York's BCP than other neighboring states is its stringent eligibility criteria. As noted above, DEC regulation limits the eligibility of sites contaminated by historic fill and off-site sources. In doing so, the DEC has limited the potential universe of sites and eliminated a class of sites that tend to be less seriously contaminated and may be quickly and easily cleaned up. New Jersey, for example, has a broad definition of contamination based on presence of contamination in concentrations that exceed health or environmental quality standards.¹⁷ Massachusetts also considers sites contaminated and eligible for the Program if contaminant concentrations exceed standards.¹⁸

New York State has one of the most generous financial incentive programs among its neighboring states. Connecticut caps its redevelopment tax credit at \$100 million, but offers a redevelopment tax credit for 100 percent of cleanup, making the Connecticut program also very generous.¹⁹ However, based on raw numbers of sites cleaned up, neither of these programs compare favorably to New Jersey, Massachusetts and Pennsylvania, which offer much less generous incentives.

One explanation for the limited number of sites addressed by New York's BCP, is its relatively recent date of inception. Another explanation could be that other states define brownfields more broadly and allow potentially less contaminated sites into their programs. This comparison suggests that generous financial incentives may not be the most important factor in promoting cleanup and redevelopment of contaminated sites.

¹⁷ <<http://www.nj.gov/dep/srp/kcs-nj/reptdefs.htm>>.

¹⁸ <<http://www.mass.gov/dep/service/regulations/310cmr40.pdf>>.

¹⁹ Tax credits are not refundable; taxpayers can only claim a portion of the credit each year over a ten-year period.

Assessment of BCP Credit Liability

Much of the debate over proposals to amend the BCP has centered on provisions to address the impact of tax credits accruing to BCP projects. Refundable tax credits could create a significant fiscal liability for the State and it is prudent to attempt to project the extent of this liability.

In January 2008, the DEC released information assigning a tax liability of more than \$1 billion for 54 projects where cleanup was either completed or close to completion at that time. Using this analysis as a general basis, characteristics of all projects currently admitted to the Program were evaluated to determine a preliminary estimate of the State's potential tax credit liability for all projects currently admitted to the Program.

An average tax credit for four types of sites—upstate Enzone, upstate non-Enzone, downstate Enzone and downstate non-Enzone—was calculated and each of the currently enrolled sites were classified in the four site types. Numbers of sites in each site type were multiplied by the average credit for that type and the resulting products were summed to estimate the total tax credit liability for the Program.

Region	Enzone Site Numbers	Average Tax Credit	Non-Enzone	Average Tax Credit
Upstate	43	\$2.7 million	64	\$4.1 million
Downstate	34	\$49.0 million	59	\$17.7 million

The outstanding tax credit liability for all projects currently enrolled in the BCP is estimated to be potentially as high as \$3.1 billion. While this calculation factors in some specificity related to site types and projected tax liability, due to the limited availability of project specific data, as well as the extreme variability of costs associated with each cleanup site and the development thereof, this cost estimate is provided for illustrative purposes only, to demonstrate the potential liability the State may face associated with these tax credits.²⁰

²⁰ As stated above, this assessment was derived by extending information provided by DEC for a limited number of sites. No information is available from which to more accurately derive this figure. It is intended to provide a general sense of the potential tax credit liability posed by sites in the BCP.

Experience of BCP Constituencies

Through a review of public hearing testimony, as well as a series of informal discussions, representatives of real estate interests, developers, municipal officials and environmental advocacy groups shared their perspectives on the BCP and various reform proposals. It is noteworthy that these groups representing widely varying viewpoints agreed on several important components of the BCP.

Mitigating Fiscal Impacts

New York State's financial incentives are widely recognized to be both generous to applicants and costly for the State. The fact that the BCP tax credits are refundable is a benefit of the Program that is not available in other states. It was suggested that New York could follow New Jersey's example and allow unused tax credits to be carried over and applied to future tax liability. New Jersey's policy of awarding tax credits based on revenues generated by a redevelopment project was also suggested as a possible cost mitigating measure.

The Role of Incentives

The experience of Program constituents indicates that financial incentives are not the most important deciding factor in the success of a brownfields project. Local economic factors may play a more significant role. For example, one site cleaned up under the BCP has yet to be sold, despite the fact that the potential purchaser would be eligible for redevelopment tax credits. This reflects the fact that it may be difficult to develop economically viable projects, regardless of the incentives depending on the state of the local economy.

Tax credits appear to be effective in encouraging developers to select brownfields sites over other sites in regions that developers have already targeted for a particular project. If a developer believes that an economically viable project can be developed in a region in which there are both brownfield and greenfield sites available, financial incentives can tip the balance towards the redevelopment of a brownfield site.

Legal incentives in the form of limited liability waivers are felt to assist site owners and developers in obtaining project financing, or selling the property after remediation.

Eligibility

Many Program constituents felt that BCP eligibility should be expanded. It was reported that financial institutions are more comfortable lending money for a cleanup and redevelopment project if the cleanup was conducted under the oversight of a regulatory agency. Also, the liability incentives offered by participation in the BCP can make the Program attractive to developers and real estate interests. Finally, the

regulatory oversight provided by the Program offers more certainty that the cleanup would protect public health and environmental quality.²¹

Suggested BCP amendments to increase the numbers of sites cleaned up through the Program include eliminating the restriction on historic fill sites and authorizing municipalities to oversee remediation of minimally contaminated sites.

There appears to be a lack of clarity in eligibility standards and, consequently, lack of certainty with regard to admission to the Program. Developing the information required by the BCP application can be expensive. If admission to the Program is viewed to be uncertain, then the application is viewed as a financial risk that can serve as a disincentive for applicants.

Similar concerns were expressed in reference to proposals to require a needs test for access to redevelopment tax credits. If eligibility standards are not clear or applied consistently, then application to the Program can be viewed as a financial risk for project developers. This risk may also serve as a deterrent to brownfields redevelopment.

Finally, when the BCP was first created, owners of sites on New York State's Inactive Hazardous Waste Sites Registry were given approximately 18 months to apply to the Program. Since July 1, 2005, the window of opportunity for these sites to be eligible has been closed. However the BCP does admit sites that meet the criteria for classification as a State Superfund site if they have not yet been placed on the Superfund Registry. An argument raised against admitting additional existing Superfund sites is that these sites tend to be highly contaminated and complex and the expedited remedy selection process in the BCP could result in unsafe cleanups. More important, the Superfund program is an enforcement program through which parties that own the site are liable to the State for the remediation, maintaining the "polluter-pays" principle. Some argue that allowing Superfund sites to be remediated by a volunteer under the BCP allows parties that would otherwise be required to pay for cleaning the site to evade their financial responsibility for pollution at the site.

Representatives from the private, public and not-for-profit sector with an interest in the cleanup and redevelopment of brownfields demonstrated many similarities with regard to proposals to amend the BCP. Amendments to limit the fiscal risk of the Program and to broaden eligibility requirements were promoted. Requests were made for the clarification of eligibility standards and a uniform application of these standards. Also, requiring a needs assessment for redevelopment tax credits that is not clearly defined and allows a large degree of agency discretion could exacerbate the perceived uncertainty and risk associated with the Program.

²¹ New York City operates programs to oversee remediation of contaminated sites, but in many parts of the State cleanup of contamination at sites rejected from the BCP is carried out by private parties without regulatory oversight.

Importantly, many acknowledged that financial incentives alone are not sufficient to make a project economically viable. A community's economic characteristics play a significant role in determining whether a site will be attractive for redevelopment.

Comparison of Proposals to Amend the BCP with Existing Law

	Eligibility Criteria	Remediation Incentives	Redevelopment Incentives
Governor's Program Bill	<ul style="list-style-type: none"> Health or environmental standard is exceeded. Eligibility for incentives based on a needs test.²² 	<ul style="list-style-type: none"> 25%-75% of remediation costs.²³ 50%-75% of groundwater remediation costs. 	<ul style="list-style-type: none"> 15%-50% of redevelopment costs.²⁴ Redevelopment tax credits are capped at \$15 million.
S.6323 (Marcellino)	<ul style="list-style-type: none"> Eligibility standards of current law plus sites contaminated with "historic fill." 	Same as current law.	Same as current law.
S.8040 (Marcellino)	<ul style="list-style-type: none"> Eligibility standards of current law plus sites contaminated with "contaminated historic fill." 	<ul style="list-style-type: none"> 12% to 23% of qualifying cleanup costs. 	<ul style="list-style-type: none"> 12% to 23% of qualifying redevelopment costs. Includes measures to limit total tax credit.
A.11107 (Sweeney)	<ul style="list-style-type: none"> Eligibility standards of current law plus sites contaminated with "historic fill." 	<ul style="list-style-type: none"> Up to 50% of site and groundwater remediation costs.²⁵ 	<ul style="list-style-type: none"> 15% - 60% of redevelopment costs.²⁶ Tax credits are capped at \$50 million Cap can be exceeded based on needs test.
Current Law	<ul style="list-style-type: none"> Site redevelopment is complicated by presence of contamination, excluding contamination by "historic fill." 	<ul style="list-style-type: none"> 10%-22% of site and groundwater remediation costs. 	<ul style="list-style-type: none"> 10%-22% of redevelopment costs.

²² The applicant must demonstrate that the redevelopment of the site in question is unlikely without tax credits.

²³ Tax credit applies to costs associated with remediation of soils, surface waters, or sediments and scales up for cleanups requiring fewer use restrictions.

²⁴ Tax credit increases by: 10 percent if property located in an Enzone; 5 percent if located in a qualifying census tract; 10 percent for conformance with a BOA plan, or local waterfront revitalization plan; up to 10 percent in increments for smart growth and green building attributes.

²⁵ Assigns specific tax credits as follows: 50 percent for unrestricted use; 40 percent for residential use; 30 percent for commercial use; 20 percent for industrial use.

²⁶ Tax credit is the same as the Governor's Program bill except that BOA conformance is awarded a 20 percent increase.

Considerations

The BCP is intended to:

- Mitigate the threat to public health and the environment from contaminated sites.
- Promote redevelopment of abandoned contaminated properties as a means to revitalize economically blighted communities.
- Create an alternative to greenfield development by removing barriers to redevelopment of urban brownfields.

The BCP is a voluntary program. It can only be successful in achieving its goals if it encourages the voluntary purchase, remediation and redevelopment of contaminated sites. Based on a review of its achievements so far it can be argued that it is achieving its goals, albeit on a limited basis.

BCP stakeholders generally indicate the belief that while the current level of financial incentives is generous, it is not the only consideration in whether a developer selects a brownfield site. Local economic and zoning factors appear to be more important. In addition, there is recognition that the current level of financial incentives is costly to the State and steps could be taken to mitigate the cost risk.

This white paper presents a preliminary analysis of the issues and options currently being considered by the Legislature and Governor in their effort to amend the Program to make it more successful and mitigate its financial risk to the State.

Given the emphasis placed on certainty and predictability by real estate and development interests, any amendments to the Program should ensure that the Program be as transparent and predictable as possible.

Financial Incentives

The BCP provides tax credits for costs incurred in cleanup and redevelopment of contaminated sites. These tax credits are related to two State policy objectives. The tax credit for cleanup encourages the mitigation of threats to public health and the environment due to the presence of hazardous substances on a site. Redevelopment tax credits reward expenditures associated with economic development activities.

Massachusetts, New Jersey and Pennsylvania have achieved successful brownfields redevelopment programs with more modest financial incentives than those provided in New York. If New York were to look for ways to scale back financial incentives associated with the BCP one approach might be to separate the environmental and economic development policy objectives of the Program.

Since cleanup costs associated with the BCP sites tend to be lower than redevelopment costs the State could limit fiscal liability from the Program by following the approach adopted by Massachusetts and New Jersey.

To promote certainty for project sponsors, all sites that are admitted to the Program could be eligible for tax credits for a percentage of the cost of cleanups. Incentives for redevelopment could be limited to sites in economically distressed areas or for projects which accomplish other environmental goals. Specific options to be considered include:

- **Cleanup Tax Credits Reform**

Massachusetts provides an increased tax credit for cleanups that do not require use restrictions. Under New York State's Brownfields Cleanup Law, sites that are not cleaned up to "unrestricted use" require ongoing State agency oversight to ensure that use restrictions and engineering controls are maintained. This oversight imposes a cost on the State. From this perspective, unrestricted use cleanups produce a savings to the State. The State could recognize this value, as suggested by Governor Paterson's Program Bill and A.11107 (Sweeney), target tax credits at sites where unrestricted use cleanups are achieved.

While there would be a higher cost associated with a more generous tax credit for unrestricted use cleanups, it could achieve an important State policy objective of unrestricted use cleanups and reduce long-term program costs.

- **Redevelopment Tax Credits Reform**

In order to provide additional incentives for cleanup and redevelopment of sites in economically distressed communities, redevelopment tax credits could be awarded to sites based on need as demonstrated by a site's location in economically distressed regions.

The BCP's Enzones provide a measure of need and have the advantage of being transparent and predictable. Developers can identify whether or not their project is eligible for the Enzone tax credit easily by going to Empire State Development Corporation's website.

Additionally, since the Brownfields Cleanup Law clearly intends to promote and support community planning for cleanup and redevelopment of brownfields through the BOA Program it makes sense to provide incentives for project sponsors to comply with these plans. Developers can also easily tell if their project is consistent with a BOA plan.

Furthermore, escalating redevelopment tax credits for projects that meet smart growth and green building criteria could serve to advance New York State

policy objectives. The Governor's Program Bill and A.11107 (Sweeney) propose to increase tax credits based on these criteria.

If redevelopment tax credits based on BOA compliance, smart growth or green building criteria are adopted as amendments to the BCP, criteria should be clearly spelled out and all sites that meet these criteria should be eligible.

- **Cost Mitigation Efforts**

In order to mitigate the fiscal impact to the State from this program, several amendments to the tax credit pay out structure could be considered and, in particular, the refundability of tax credits could be reconsidered. Instead, tax credits could be allowed to carry forward to address tax liability in succeeding years. Another measure that could be considered is to defer tax credits until after the redevelopment project has been completed and is successfully producing tax revenue.

Strong consideration should be given to New Jersey's practice wherein financial incentives are based on tax revenues generated by a redevelopment project. This approach limits the tax credit liability to the state. Tax credit awards could be limited to the tax revenue generated by the project in any tax year up to the overall amount for which the project was eligible.

In order to be able to better project the potential fiscal liability from the program, more information about the redevelopment project could be required from applicants. With information about projected redevelopment costs, the State could more accurately project potential costs and benefits from the Program.

- **Eligibility Expansion**

Program eligibility should be based on objective criteria regarding the presence of contamination on the site in concentrations exceeding state standards. Current exclusions for contamination resulting from historic fill could be reconsidered.

In addition, the admission of parties that are true volunteers at sites on the state's Inactive Hazardous Waste Sites Registry could be considered. In admitting sites from the Superfund Registry DEC discretion should be maintained. Some sites may not be appropriate for remediation through the BCP. To maintain the "polluter pays" principle, financial incentives or liability protection should not be provided to parties responsible for contamination at this site. True volunteers would be considered parties that did not control the sites when contaminants were released, or play any role in the release of contamination at the sites.

- **Program Certainty**

The success of the BCP depends on parties involved in remediating and redeveloping brownfields voluntarily deciding to participate in the Program. Costs of preparing an application to the BCP can be significant. Therefore, amendments that increase the perceived risk associated with admission to the Program and receipt of incentives could potentially undermine the goals of the Program.

For this reason, eligibility requirements should be clearly defined and agency discretion in applying these requirements should be limited. Access to financial incentives should be based as much as possible on obvious objective criteria.

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