



2015-2016 NYS Budget Extends and Modifies Brownfield Cleanup Program

Syracuse, New York

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New York State Governor Andrew Cuomo and the New York State Legislature have agreed to extend and modify the financial incentives under New York's Brownfield Cleanup Program (BCP) as part of the 2015-2016 State budget. The budget is expected to be enacted on April 1st, but most of the BCP changes will apply to sites accepted on or after the later of July 1st or the date DEC issues certain regulations regarding tangible property tax credit eligibility.

This BCP extension and modification resolves lingering uncertainty over the future of the statewide program for cleaning up and redeveloping properties blighted by contamination, often referred to as "brownfields." A brief summary of the most significant changes and additions are outlined below. Later this week, we will be posting a full overview and analysis of the 2015 BCP extension and modification act on our website(www.BHlawPLLC.com/brownfields).

BCP Tax Credits extended and modified

- **CoC Deadline Extension; New sunsets.** The December 2015 deadline for sites to earn a certificate of completion (CoC) is extended until December 2017 for sites accepted prior to June 23, 2008, and until December 2019 for sites accepted after that date and before the effective date of the new provisions. Sites accepted after the effective date in the new legislation and before 2023 would be subject to the new tax credit provisions, and must obtain a CoC by March 31, 2026, to qualify for those tax credits.
- A number of tax credit changes are effective for sites accepted on and after the effective date.
 - In cities with populations larger than 1,000,000, **the tangible property credit component (TPCC) will only be available for sites that meet one or more of three eligibility criteria:** (1) 50% or more of the site is in an Environmental Zone; (2) the site is financially "upside down" or is "underutilized;" or (3) the site will be used for an affordable housing project.
 - **New calculation of TPCC.**
 - TPCC credit claims will be limited to long-lasting property (property with a useful life of at least 15 years, including commercial and residential real estate), and to "non-portable" equipment, machinery, and associated fixtures and appurtenances on the site.
 - Payments for services provided by related parties will be creditable only when actually paid.
 - The TPCC applicable percentage will start at a 10% base, which can increase by a number of 5% enhancements (up to a maximum of 24%) if site and/or cleanup has certain characteristics.
 - For the site preparation credit component, remediation costs will be tied more closely to specified remediation and compliance activities and costs.
 - **The BCP credits based on property taxes and environmental insurance premiums will not be available** to sites accepted into the BCP after the effective date.
 - Brownfield Credit Report (Form DTF-70) has been eliminated.
- The budget also enacted several important non-tax changes to the BCP, including:
 - Introduces the option for applicants to seek acceptance into a streamlined **BCP-EZ** program without tax incentives;
 - Amends the eligibility provisions for "volunteers" to include class 2 superfund sites;
 - Eliminates DEC oversight costs incurred after the effective date by volunteers, and participants may be offered a flat fee amount for future oversight costs.



While the legislation certainly accomplishes the Governor's stated intention to trim back some of the costs of the program, the BCP tax credits remain a robust financial incentive for eligible sites. The changes are quite detailed, and some of the new provisions will require careful consideration by taxpayers wishing to understand how the BCP tax credits will play out for their sites.

All in all, we are pleased that the uncertainty of the last two years has been addressed and that the BCP will continue to serve as a powerful incentive to draw private sector capital to address the plagues of contamination and blight afflicting our cities and our environment.

This is just a brief summary of some of the highlights in the BCP extension and modification legislation. Stay tuned for our detailed analysis of the legislation, which will be posted on our website (www.bhlawpllc.com/brownfields) later this week.

Bousquet Holstein's Brownfield Practice Group closely monitors legislative actions on the Brownfield Cleanup Program. Please do not hesitate to contact us with questions you have regarding these developments and your brownfield projects.



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