



2008 Brownfields Legislation Summary

On July 23, 2008, Governor David A. Paterson signed into law legislation to reform certain aspects of the State's brownfield programs. This legislation amends Chapter 1 of the Laws of 2003, which established the Brownfield Cleanup Program (BCP). The BCP, among other things, provides BCP tax credits in return for the cleanup and redevelopment of BCP sites. The principal reforms enacted relate to restructuring the tax credits to provide balance between remediation and redevelopment credits. In addition, the legislation transferred the administration of the Brownfield Opportunity Areas (BOA) Program from the Department of Environmental Conservation (DEC) to the Department of State (DOS). Key elements of the legislation include:

Tax Credits

Site Preparation Credit and On-site Groundwater Remediation Credit:

The legislation potentially more than doubles the current tax incentives for site preparation (including cleanup) and on-site groundwater cleanup. Site preparation and on-site groundwater costs cover remediation, demolition, excavation, fencing, security, and other capital account costs to make the site usable for redevelopment, excluding site acquisition costs. Eligible costs may be claimed for up to five years after the issuance of the Certificate of Completion (COC). Projects accepted into the BCP after June 23, 2008 may qualify for credits ranging from 22-50%, whereas projects accepted prior to June 23, 2008 may qualify for credits ranging from 10 - 22% (see chart for details).

Tangible Property Credit Component ("Redevelopment Credit"):

For sites accepted into the BCP after June 23, 2008, the legislation increases the tangible property credits by 2% for sites in a designated BOA where redevelopment conforms with the goals and priorities of the BOA. The tangible property credit component is capped as described below. This component covers costs of buildings and improvements (including structural components of buildings) that are placed into service within 10 years after the COC is issued. Applicants accepted into the BCP may qualify for tangible property credits ranging from 10 - 24% of eligible costs (see chart for details).

Tangible Property Credit (Cap):

The legislation limits redevelopment credits for sites accepted into the BCP after June 23, 2008 to provide reasonable balance between the credits available for remediation and redevelopment. The applicable tangible property tax cap is based on allowable land uses as outlined in the COC and calculated as follows:

- **Non-manufacturing projects:** \$35 million or three times (3x) the site preparation and on-site groundwater remediation costs, whichever is less.
- **Manufacturing projects:** \$45 million or six times (6x) the site preparation and on-site groundwater remediation costs, whichever is less.

Other Provisions

- **Brownfield Opportunity Areas Program (BOA):** Prior to the 2008 amendments, the BOA Program was administered by the Department of Environmental Conservation (DEC) in collaboration with the Department of State (DOS). The 2008 legislation authorizes DOS as the sole administrator of the BOA Program effective April 1, 2009. DEC maintains oversight of site assessments performed under the BOA Program.
- **New York State Brownfields Advisory Board:** A 15-member Brownfields Advisory Board was created whose primary responsibility is to monitor and evaluate the State's implementation of the Brownfield Cleanup Program and Brownfield Opportunity Areas Program. The Board is charged with reporting annually to the Governor and Legislature its assessment of the implementation of these two brownfield programs, their available funding and resources and the need for steps to ensure their future funding.
- **Reporting Requirements:** the legislation adds several reporting requirements under the BCP. Areas of reporting include the amount of tax credits claimed, the redevelopment and taxes generated, and data on the progress of the BCP.
 - requires the Commissioner of Taxation and Finance, in consultation with the Commissioner of Environmental Conservation, to publish an annual (by January 31st starting in 2009) Brownfield Credit Report that will describe, among other things, the tax credits granted, claimed and earned under the BCP during the previous calendar year.
 - requires that developers file a Brownfield Redevelopment Report with the Commissioner of Taxation and Finance that will include, but not be limited to, State and local taxes generated by the BCP project. The first report is due within one year of the signing of the Brownfield Cleanup Agreement and the obligation continues for an additional 11 years. This report will accompany the report issued by the Commissioner of Tax and Finance.
 - requires the Commissioner of DEC to publish and submit annually (by April 30th starting in 2009) to the Governor and Legislature a Brownfield Cleanup Report providing information related to the administration of the BCP.
- **Double Dipping:** The legislation allows taxpayers to transfer eligibility for BCP tangible property credits to future owners of the site. However, the legislation explicitly states that when claiming costs under the tangible property tax credit, taxpayers must exclude the acquisition cost of any item of tangible property for which a BCP tax credit was previously allowed.
- **Other Brownfield Tax Credits:** Calculation of the Brownfield Credit for Real Property Taxes and the Brownfield Credit for Remediation Insurance has not changed.

2008 Brownfield Legislation - Tax Credit Provisions

(Applies to Brownfield Cleanup Program projects with applications approved **after June 23, 2008**)

**1. Site Preparation Component and On-Site Groundwater Remediation Component:
Percent of Site Preparation Costs and On-Site Groundwater Remediation Costs (Max 50%, no cap)**

Cleanup of Soil to Soil Cleanup Objectives (SCOs) as follows:				
Use ➡	Unrestricted	Residential	Commercial	Industrial
Track 1	50%	N/A	N/A	N/A
Tracks 2 and 3	N/A	40%	33%	27%
Track 4	N/A	28%	25%	22%

**2. Tangible Property Component:
Percent of Tangible Property (Redevelopment) Costs (Max 10-24% with cap)**

Baseline (Based on Tax Status)*	10-12%
Plus the sum of the following:	
Environmental Zone: At least 50% of the site is located in an EN-zone (high poverty and unemployment rates)	8%
Track 1 Cleanup: Unrestricted soil and groundwater cleanup	2%
Brownfield Opportunity Areas: Development conforms with the goals and priorities of the designated Brownfield Opportunity Area (BOA) in which the site is located	2%

*Credit is 12% for entities filing as corporations subject to tax under Article 9-A, including LLCs electing to be taxed as corporations. Credit is 10% for entities taxable under Article 22, such as sole proprietors, partnerships, and LLCs electing to be taxed as a partnership, and S corporations.

Tax Credit Caps on Tangible Property Component (based on allowable land uses as outlined in the COC):

1. Non-manufacturing projects: \$35 million or three times (3x) the site preparation and on-site groundwater remediation costs, whichever is less.
2. Manufacturing projects: \$45 million or six times (6x) the site preparation and on-site groundwater remediation costs, whichever is less.

Tax Credit Provisions

(Applies to Brownfield Cleanup Program projects with applications approved **before June 23, 2008**)

**1. Site Preparation Component and On-Site Groundwater Remediation Component:
Percent of Site Preparation Costs and On-Site Groundwater Remediation Costs (Max 10-22%, no cap)**

Baseline (Based on Tax Status)*	10-12%
Plus the sum of the following:	
Environmental Zone: At least 50% of the site is located in an EN-zone (high poverty and unemployment rates)	8%
Track 1 Cleanup: Unrestricted soil and groundwater cleanup	2%

**2. Tangible Property Component:
Percent of Tangible Property (Redevelopment) Costs (Max 10-22%, no cap)**

Baseline (Based on Tax Status)*	10-12%
Plus the sum of the following:	
Environmental Zone: At least 50% of the site is located in an EN-zone (high poverty and unemployment rates)	8%
Track 1 Cleanup: Unrestricted soil and groundwater cleanup	2%

*Credit is 12% for entities filing as corporations subject to tax under Article 9-A, including LLCs electing to be taxed as corporations. Credit is 10% for entities taxable under Article 22, such as sole proprietors, partnerships, and LLCs electing to be taxed as a partnership, and S corporations.

For more information on New York's brownfield programs, please visit DEC's website at <http://www.dec.ny.gov/chemical/brownfields.html>.