



Department of Environmental Conservation

Enacted Budget Brownfield Cleanup Program Reforms Chapter 56 of the Laws of 2015 Part BB – S.2006-B/A3006-B

In the ten years since it was established, the Brownfield Cleanup Program (BCP) has cleaned up more than 190 contaminated sites statewide and incentivized redevelopment. However, it has also resulted in the awarding of unnecessary and excessive tax credits.

To address the issues with the BCP, the budget adopted by the legislature and signed by Governor Andrew M. Cuomo includes sensible reforms to the program to catalyze redevelopment while providing the means to improve the environment and clean up contaminated sites. The reforms will provide measures to ensure the program is fair to the state's taxpayers by targeting tax incentives in New York City only to those sites that would not otherwise be attractive to developers.

The reforms address many issues with the current BCP. Specifically, the legislation:

Continues tax credits for 10 years with program reforms. The BCP tax credits were scheduled to expire on December 31, 2015. If they had been allowed to sunset, potential economic development opportunities could have been lost and brownfield sites would have remained fallow or been developed without appropriate environmental cleanup and oversight. In addition, a greater burden would have been placed on the State-funded Superfund cleanup program, instead of being cleaned up by the private sector.

The following provisions apply to sites accepted into the BCP after July 1, 2015:

Under the new law, sites will have until March 31, 2026 to receive a certificate of completion, which will allow successful private cleanups to continue under state oversight and limit the state's expensive cleanup burden while providing certainty to developers.

Separates BCP eligibility and Redevelopment (Tangible Property) Credit eligibility in New York City. Under the old rules, all projects get redevelopment tax credits for development costs. Credits were not focused on sites in blighted or low-income neighborhoods or on projects that are otherwise in need of tax credits to advance. In addition, windfalls could go to projects that are in strong real estate markets where state assistance for redevelopment is not necessary.

This reform focuses tax credits on blighted areas and sites by limiting eligibility for redevelopment credits in New York City to:

- Properties which are located in Environmental Zones (En-Zones), which are areas with high poverty and/or unemployment levels;
- "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
- Sites that will be redeveloped for affordable housing projects, as defined by DEC, in consultation with the Division of Housing and Community Renewal.

The new criteria are straight forward, and clearly targets areas in need of assistance.

All sites outside of New York City will be eligible for the Tangible Property Credit without being subject to the new tests.

Limits eligible costs for the Site Preparation Credit to those needed for remediation, which will also reduce the redevelopment credit cap. Under the old rules, Site Preparation Credits cover more than cost of remediation—any costs associated with preparing a site were eligible for the Site Preparation Credit. In turn, site preparation costs are the basis for calculating an existing cap on the redevelopment credit, so that cap is higher than it should be.

The reforms will move costs not associated with investigation, remediation or qualification for a certificate of completion for the site from the Site Preparation Credit to the redevelopment credit, including costs of foundations which exceed the equivalent of a cover system as required by regulations. The credit was expanded to explicitly include the costs associated with remediating asbestos, PCBs and lead in structures which will remain on the site. This will more closely align the credit with cleanup costs and reduce the maximum redevelopment credit since the cap is based on the site’s eligible site preparation costs.

Limits eligible costs for the Redevelopment (Tangible Property) credit and restructures credits. The redevelopment credits will be limited to property with a useful life of at least 15 years, and non-portable equipment, machinery, and associated fixtures and appurtenances on the site. Payments for related party service fees (developer fees) can only be claimed when they are actually paid and cannot be claimed under the site preparation or groundwater credits. Below is a chart showing the various tangible property credit structures:

Tangible Property Tax Credits	Current, Accepted Prior to June 23, 2008	Current, Accepted after June 23, 2008	Reformed, Accepted after July 1, 2015
Baseline (Based on Tax Status)*	10-12%	10-12%	10%
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%	8%	5%
Track 1 Cleanup: Unrestricted soil and groundwater cleanup	2%	2%	5%
Brownfield Opportunity Areas: Development conforms with the goals and priorities of the designated Brownfield Opportunity Area (BOA) in which the site is located	N/A	2%	5%
Affordable Housing	N/A	N/A	5%
Manufacturing	N/A	N/A	5%
Maximum Percentage	22%	24%	24%
Cap Non-Manufacturing Manufacturing	N/A	\$35M or 3X Site Prep \$45M or 6X Site Prep	\$35M or 3X Site Prep \$45M or 6X Site Prep

Sunsets the real property tax and environmental remediation insurance credits. Sites accepted after the effective date will not be able to claim these credits.

Clarifies the definition of brownfields. Applicants will now be required to demonstrate that the site is contaminated prior to being accepted into the program. In addition, volunteers may bring orphan Class 2 Superfund and RCRA sites into the BCP.

Eliminates DEC oversight costs for Volunteers. DEC would also be authorized to offer flat fees for oversight costs. These costs can be very significant, in particular for small sites, and may be unexpected as they are often billed near the end of a project. In addition, these costs may be claimed in tax credits and contribute to increasing the cap for the redevelopment credit. This change will provide greater certainty and predictability of costs to developers.

Re-establishes a voluntary cleanup option – BCP EZ – with no tax credits. Currently, BCP is the only path to a liability release from the State. For many sites, a liability release is needed to get financing for redevelopment. Stakeholders have signaled that tax credits are less important than the release of liability at some sites. In exchange for waiving any right to tax credits, lightly contaminated sites would be able to enter a streamlined program, the BCP-EZ option, with State oversight of the cleanup work. Significant threat sites will not be able to participate in this program. Comment periods for the application and remedial investigation work plan may be eliminated. BCP-EZ will enable sites to get the critical liability release and obtain financing.

Any site in the BCP prior to June 23, 2008 which has not received a COC by December 31, 2017 or any site accepted between June 23, 2008 and the effective date which has not received a COC by December 31, 2019 will be subject to the new rules, including the test to determine eligibility for the redevelopment credit. Many sites in the BCP with NO cap on tax credits still have not been cleaned up. Approximately 90 sites started in the BCP before 2008, when the caps were imposed, but have not completed cleanup. These sites are still eligible for unlimited tax credits. Many others which have come into the project since 2008 also would not require state assistance to advance. These new deadlines incentivize timely redevelopment and allow ample time for sites to finish cleanup, including those which have been in the program since prior to June 23, 2008 and eligible to claim unlimited tax credits. Sites where work is not completed by the deadline will be subject to the reformed eligibility criteria and tax credit structure.

Effective date for brownfields reforms is the later of July 1, 2015 or the date DEC publishes the proposed definition of “underutilized” in the State Register. The changes will apply to sites accepted into the program on and after the effective date. The law requires the regulations to be adopted by October 1, 2015.

Enacted Budget Provides State Superfund and the Environmental Restoration Program funding. The Enacted Budget authorizes an additional \$1 billion over 10 years in bond authorization for State Superfund, and up to \$100 million per year may be appropriated. This will ensure that significantly contaminated sites continue to be addressed. In addition, up to 10 percent of those funds can be used for the Environmental Restoration Program, which funds investigation and remediation of municipally owned brownfield sites. Upon request, DEC would be able to undertake the project on behalf of a municipality. The ERP program provides a cost-effective means for local governments to clean up blight and spur local development.