



New York state modifies Brownfield Law: Program is now viable and active again

July 21, 2008 - Upstate New York

The changes to New York's Brownfield Law were released on June 24. Although many issues were not addressed, the key sticking point in Albany, the Tangible Property Tax Credit, has been resolved. Though the bill does not satisfy everyone, the Brownfield Cleanup Program is now viable and active again, and the DEC will begin accepting new sites and moving stalled sites through the system. The following changes were made to the law:

The 90-day moratorium has been repealed and new sites are being accepted into the program.

Site Preparation Tax Credit

The percentages for site preparation costs have been increased. Site preparation costs are defined as all components of investigation, clean up and related cost to get the site a Certificate of Completion (COC). The percentage applied is based on the end use and what Soil Cleanup Object (SCO) is met. The percentages are as follows:

- * Unrestricted use (track 1)- 50%.
- * Residential use (track 2 and 3)- 40%, but if track 4 cleanup - 28%.
- * Commercial use (track 2 and 3) - 33%, but if track 4 cleanup - 25%.
- * Industrial use (track 2 and 3) - 27%, but if track 4 cleanup - 22%.

Tangible Property Tax Credit

The tangible property tax credit has been capped at \$35 million for the calculated tangible property credit or three times the site preparation cost, whichever is less. The cap is \$45 million, or six times the site preparation cost for manufacturing sites, whichever is less. The percentages used to calculate the tangible property credit component have not changed and range from 10-22%. The only change is an increase of 2% if the site is in a Brownfield Opportunity Area (BOA).

Tangible property credits for subsequent owners who have made additional improvements has been clarified. A subsequent owner of a site that has received a COC can claim the tangible property credit on improvements they have made. They cannot claim the credit on improvements made by a prior owner that have already been claimed.

Brownfield Opportunity Area (BOA)

The administration and oversight of the Brownfield Opportunity Area (BOA) program will be transferred to the Department of State (DOS) effective April 1, 2009.

Brownfield Advisory Board

A 15-person Brownfield advisory board will be established. They will report to the governor and legislature on the implementation of the brownfield programs and will make comments and recommendations related to steps needed to ensure future availability of funding.

Brownfield Credit Report

The commissioner will publish annually a report on the Brownfield Tax Credits that will include

information such as the name of taxpayers claiming the credits (individual names will not be listed, only corporate entities), amount of each credit earned, project information, number of credits claimed at each brownfield site and copies of reports from developers.

Brownfield Redevelopment Report

A developer (and his or her lessees) will submit within one year of signing a Brownfield Cleanup Agreement (BCA), and for each of the following 11 years, a report to the DEC commissioner stating the amount of local taxes that have been generated by their brownfield site.

Brownfield Cleanup Program Report

The commissioner along with the commissioner of tax and finance will prepare a Brownfield Cleanup Program report which will include the number of requests for participation, the number of remedial investigations commenced and completed, the number of requests for participation withdrawn or terminated, the length of time from entrance into the program to certificate of completion and the number of certificates of completion issued.

If you have any questions about the Brownfield Cleanup Program or these changes please contact S&W Redevelopment. S&W Redevelopment is a brownfield redevelopment company specializing in the acquisition and redevelopment of contaminated property. We own property across NYS and are one of the most frequent users of the Brownfield Cleanup Program.

Terence Maliga is manager of project development at S&W Redevelopment of North America, LLC, Syracuse, N.Y.

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