



# NY Brownfield Cleanup Program

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# What is Brownfield?

## ◆ Statutory Definition:

- redevelopment/reuse may be complicated by
- presence or potential presence of hazardous waste, petroleum, pollutant or contaminant

## ◆ 2004 BCP Guide Definition:

- Confirmed contamination or “reasonable basis to believe contamination likely present; and
- Contamination or potential presence “may be” complicating redevelopment /reuse”




# Eligible Sites

- ◆ Hazardous Waste Sites
- ◆ Petroleum Contaminated sites
- ◆ Excluded Sites
  - Class 1 or 2
  - Permitted TSDF
  - Enforcement Action or Cleanup Order
  - 2004 Amendments allow Stipulation



# Is Site Contaminated or Basis to Believe

- ◆ Nature and Extent of contamination;
- ◆ Does contamination exceed guidance values or standards (fill vs. release?);
- ◆ Does contamination exceed historic background;
- ◆ Did prior industrial or commercial operations result in contamination;
- ◆ Has site been subject to closure, removal or prior remedial action by or under agency oversight.



## Does Presence or Potential Presence Complicate Reuse

- ◆ Is Site idled, abandoned or underused;
- ◆ Is site unattractive for redevelopment or reuse because of contamination;
- ◆ Does area have indicators of economic distress such as high vacancy rate or depressed property values;
- ◆ Is estimated cleanup costs “significant” in comparison to value of project.



## “But For” Test

- ◆ Reuse or Redevelopment would not occur “but for” tax credits
- ◆ On-site source from prior use



# BCP Site Screening

- ◆ Contamination
  - Phase 2 or RI-Quality Sampling
  - Applicable Standards (SCOs)
- ◆ On-Site Source
  - Historical Investigation
  - Link to Contamination
  - Migration From Off-Site Not Enough
- ◆ Development Plans
- ◆ Timing



# Problematic Sites

- ◆ Historic Fill
- ◆ Landfills/solid waste
- ◆ “Non-Program”
- ◆ Petroleum Stipulation Sites
- ◆ VCP Sites
- ◆ Class 2
- ◆ RCRA Corrective Action





# Pre-Application Meeting

- ◆ Information Worksheet
  - Eligibility criteria
- ◆ Prepared to Answer Following Questions
  - Applicant
  - Relationship to Site



# Pre-Application Meeting Cont'd.

- ◆ Current Use
- ◆ Proposed Development
  - Type (e.g., Residential)
  - Footprint and Excavation
  - Volume of soil
  - Project and Remedial Costs
- ◆ Impediments to Construction
- ◆ Schedule
- ◆ Required Local Approvals
- ◆ zoning
- ◆ Community Outreach



# Pre-Application

- ◆ Sensitive Receptors
- ◆ Site History
- ◆ Outstanding Violations
- ◆ Nature of Contamination
  - Part 375 SCO
  - Identify AOCs
- ◆ Extent of Contamination (e.g., entire site?)
- ◆ New Proposed Factors



# Types of Applicants

## ◆ **Volunteers-**

- Non-PRPs (after discharge or disposal)
- PRP solely on basis of ownership

## ◆ **Participants-**

- Anyone who does not qualify as Volunteer



# BCP Application Process

- ◆ 10 day completion notice
  - fact sheet, contact list
  - ENB published on wednesday
- ◆ 30 or 45 day comment period
- ◆ “Best Efforts” to notify applicant within 45 days of approval or denial



# Volunteer/Participant Obligations

## ◆ Volunteer

- investigate and remediate on-site contamination
- Qualitative exposure assessment for off-site plumes
- Exercise “appropriate care” if owner

## ◆ Participants-

- May be required to chase off-site plumes
- Pay all state costs up to BCA effective date



# Public Participation

- ◆ Filing of application
- ◆ Before finalizing RI Workplan
- ◆ Before DEC approves RIR
- ◆ Before DEC approves RAW
- ◆ Before Commencing Construction
- ◆ Before DEC approves final engineering report
- ◆ Within 10 days of COC



# Brownfield Tax Credits

- ◆ Brownfield Redevelopment Tax Credit
  - Site Preparation
  - Tangible Property Costs
  - On-Site Groundwater Remediation Costs
- ◆ Taxpayer must be a party to a BCA (i.e. don't have to be owner of property)
- ◆ Taxpayer must receive COC





# Revised Site Prep Costs

- ◆ Track 1-50%
- ◆ Track 2/3- 50%(unrestricted), 40%(residential), 33%(commercial), 27% (industrial)
- ◆ Track 4-28% (residential), 25% (commercial), 22% (industrial)
- ◆ Percentage set forth in COC



# Tangible Property Tax

## ◆ Amount of Tax Credit

- 12% for corporate taxpayer of non-BOA site
- 10% for non-corporate taxpayer of non-BOA site
- Add 2% if unrestricted use remedy
- Add 8% if 50% of property in En-Zone
- Add 2% if BOA



# Revised Tangible Property Tax Credit

- ◆ Non-Manufacturing: Lesser of:
  - \$35MM (hard cap) or
  - 3x Site Prep Costs (soft cap)
- ◆ Manufacturing Sites: Lesser of:
  - \$45 MM (hard cap)
  - 6x site prep costs
- ◆ Grandfathering for BCP applications accepted prior to 6/23/08



# Dual Costs Issues

- ◆ Shift costs to Site Prep Bucket
- ◆ Lose IRS § 198 expense deduction
- ◆ DEC/TDF will scrutinize



# Winners and Losers

- ◆ Build-out to Cleanup Cost Ratio
- ◆ Winners
  - Low BC Ratio (10:1): no hard cap
  - Small sites not in En-zones/BOA
- ◆ Losers
  - Mega sites
  - Smaller sites with high applicable percentages and relatively low cleanup costs



# Remediated Brownfield Credit for Real Property Taxes

- Property Owner Only
- Income Tax Credit
- Available to partners and “S” Corp shareholders and certain LLCs
- Runs with land but successors must take title within 7 years of COC
- $25\%$  ( $100\%$  in EN-zone) x avg. no of fulltime jobs x eligible real property taxes
- Maximum limit in one year is  $\$10K$  x avg. fulltime jobs



## Tax Credits Cont'd

- ◆ Environmental Remediation Insurance Credit
  - \$30K or 50% of premium, whichever is less
  - After BCA is executed
  - One-time Use
  - May be claimed in year COC issued



# Getting Across Finish Line

- ◆ FER, SMP, EE
- ◆ EE
  - ALTA Survey
  - Condo Deeds Language
  - Record Before COC
- ◆ Facts Sheets
- ◆ TCO To Maximize Tax Credits
- ◆ COC before Place Into Use