

## **New York Bar Task Force Recommends Changes to Brownfields Cleanup Program**

A task force of the New York State Bar Association's Environmental Law Section May 22 released recommendations for changing key provisions of the state's brownfield cleanup program (BCP), including its tax credits and criteria for participating in the program.

The report analyzed provisions in proposed bills from the governor and top legislative leaders and urged them to enact legislation before the end of the regular 2014 legislative session in June.

"The report and recommendations highlight what we believe are the best aspects of each of these proposals," David J. Freeman, co-chairman of the Brownfield Task Force, told Bloomberg BNA in an e-mail.

"We think that the result is a set of pragmatic, results-oriented recommendations to amend the law to make it even more effective in encouraging the cleanup and revitalization of the many remaining brownfields in New York State," said Freeman, who is director of real property and environmental law at Gibbons P.C.

Lawrence P. Schnapf of Schnapf LLC, the other co-chairman of the task force, told Bloomberg BNA the report "represents a consensus of environmental lawyers who have extensive experience with the brownfield program."

"This new set of recommendations is intended to reflect our objective observations of how the BCP can be improved without unduly burdening the state budget," Schnapf said in an e-mail message. "It is our hope that the legislative and executive branches will put aside political considerations and consider our recommendations on their merits."

One of the key recommendations is the creation of new criteria for the program's redevelopment tax credits. The report said the credits should be targeted at "high-market-value" sites, including those abandoned, vacant or tax delinquent for at least one year.

### **Less-Restrictive Proposals**

The recommended criteria, which were included in a 2011 bar association report, are far less restrictive than those contained in proposals by the governor and State Assembly.

The report recommended extending the deadline for obtaining certificates of completion to qualify for the program's tax credits either by 10 years from the current deadline of Dec. 31, 2015, or to 10 years from a site's acceptance into the program.

The report recommends a change in the definition of brownfield to a site "where a contaminant is present at levels exceeding soil cleanup objectives or other health-based or environmental standards." The current definition, which is based on federal law, said a brownfield site is one that "may be complicated by the presence or potential presence" of a contaminant, according to the report.

### **Other Recommendations**

Other recommendations in the report include:

- creating a streamlined brownfield cleanup program for sites that aren't applying for tax credits but require a liability release,
- expanding the program to certain sites on the state's mini-superfund list if the cleanup is being done by parties that weren't responsible for the original contamination and

- exempting sites cleaned up under local government brownfield programs from state hazardous waste fees and taxes.