

ANNUAL MEETING 2008

[ENVIRONMENTAL LAW SECTION]

State's Brownfield Clean-up Program in need of reform

By Amy Jasiewicz

When the Brownfield Cleanup Program was created in 2003, it was expected that many land owners would take advantage of the tax credits and liability release the BCP offered, and clean up contaminated properties. Unfortunately, of the thousands of brownfield sites throughout the state, only a small number have benefited from the program, and now the BCP is on the verge of reform.



Reform Efforts—Dale Desnoyers of Albany (New York State Department of Environmental Conservation) was a panelist at the Environmental Law Section's panel "Brownfields on the State Front," part of the "Brownfields Revisited: New Directions/New Opportunities" program. Desnoyers noted that reform efforts have begun in New York. [Photo by Jacques Cornell]

Panelists at the Environmental Law Section's Annual Meeting program discussed the problems with the current program, and the proposals that will breathe new life into the BCP and more effectively use tax dollars.

What Went Wrong?

"The problem is that tax credits aren't targeted," said Val Washington of Albany, deputy commissioner of the state Department of Environmental Conservation's Office of Remediation



Lawrence P. Schnapf of New York (Schulte Roth & Zabel LLP) spoke at the Environmental Law Section's program "Stakeholder Community: Lessons Learned; Emerging Issues." [Photo by Jacques Cornell]

and Materials Management. "We have no way of knowing that if the owners hadn't taken advantage of the tax credits, the site would have been cleaned up anyway," she said.

After reviewing 25 sites that have been through the program and received certificates of completion, costs are estimated at \$1 billion in tax credits, with four projects accounting for more than half of that sum, Washington said.

"It doesn't sound like a very good use of the money if our goal is to get brownfield sites cleaned up. While these projects might have spurred a significant amount of economic development, and there is a lot of return on that investment, is that the purpose of this law? There are other economic development programs," said Washington.

Change is on the Way

The good news is that reform efforts are under way, and Governor [Eliot] Spitzer's budget bill contains a proposal that addresses the fiscal concerns of the current program. The proposal bases tax credit eligibility on an "as needed" premise, said Dale Desnoyers, director of the DEC's Division of Environmental Remediation.

However, the DEC has also developed a "programmatic proposal" that goes beyond the fiscal proposal. In addition to basing tax credit eligibility on need, it also offers bonus tax credits as incentives for better quality cleanups, expands program eligibility by providing liability release only for projects likely to be developed without tax cred-

its, prevents the majority of benefits from going to a small number of high cost projects, and redirects money to small and mid-sized projects, he said.

"We think that offers the greatest promise to really address the issues that have come up in the last three or four years in the context of this program," said Desnoyers.

Partnership with ESDC

One of the highlights of the BCP reform efforts has been an enhanced partnership between the DEC and the Empire State Development Corporation. The two entities are working together to restructure tax credits and target incentives based on need, said Christine Costopoulos, director of environmental policy for the ESDC.

In assessing an applicant's economic need for tax credits, Costopoulos said, "We take into account the extent and difficulty of the remediation, the impact of remediation on land value, and the economic circumstances of the community in which the property is located."

Louis A. Alexander of Albany, NYS-DEC, is section chair. Program chairs were David J. Freeman (Paul, Hastings Janofsky & Walker, LLP); Joan Leary Matthews (NYSDEC); Lawrence P. Schnapf (Schulte Roth & Zabel, LL) and E. Gail Suchman (Stroock, Stroock & Lavan), all of New York. ♦

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