

10 YEAR EXTENSION OF THE NYS BROWNFIELD CLEANUP PROGRAM!

Hodgson Russ Brownfield Redevelopment Alert
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The New York State Legislature passed budget legislation that includes an extension and various other changes to NY's Brownfield Cleanup Program ("BCP"), one of the state's largest and most generous tax credit incentive programs. Part LL of [Assembly Bill A9008C/Senate Bill S8008](#) extends the program for an additional ten years, providing a measure of certainty to developers contemplating projects in the state. Here is a recap of other significant changes:

- First and foremost, the legislation extends the BCP, which was set to expire at the end of this year, for an additional ten years to 2032. Projects can submit applications to participate in the program through December 31, 2032. Projects must receive a Certificate of Completion ("CoC") by December 31, 2036 (Section 31).
- Projects that received a CoC between July 1, 2015 and June 24, 2021, may now claim additional site preparation credits and on-site groundwater remediation credits for seven years following the issuance of the CoC. Previously the credits had to be claimed within five years of the issuance of the CoC (Sections 4, 5, 7 and 8).
- For sites that received a CoC between March 20, 2010 and December 31, 2015, the tangible property credits ("TPCs") will be allowed for 180 months after the issuance of the CoC. Previously such sites were limited to TPCs claimed within either 120 months or 144 months of the date of the CoC (Section 9).
- Unlike BCP sites located elsewhere in the state, BCP sites located in New York City are not entitled to TPCs related to development on the site unless they satisfy additional requirements or "gates." The legislation expands the number of gates that will allow TPCs for NYC sites. These new "gates" include: (1) the project is a disadvantaged community, within a designated Brownfield Opportunity Area and meets applicable conformance requirements, and (2) the project is being developed as a renewable energy facility (Section 2).

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- Under the current BCP, the applicable percentage for calculating TPCs starts at 10%. However, this percentage can be increased (but not to exceed 24%) by various factors. The budget legislation adds the following new factors that may increase the TPC applicable percentage by 5 percentage points for projects accepted into the BCP after January 1, 2023: (1) sites located in a disadvantaged community, and (2) sites developed as renewable energy facilities (Section 6).
- The budget legislation clarifies that, beginning in 2022, for sites remediated to Track 1 (the highest standard), the TPC calculation can include costs paid for stadiums (Go Bills!), baseball parks, basketball courts, and other athletic facilities and material, including sports field turf, site lighting, sidewalks, access and entry ways, and other improvements (Section 9).
- Finally, and perhaps least welcome, the budget legislation institutes a new, nonrefundable program fee of \$50,000.00, payable once the project is admitted into the BCP. The fee may be waived upon a showing of financial hardship by the applicant. The legislation also includes additional factors that the NYS Department of Environmental Conservation shall consider when determining financial hardship, such as: (i) whether the applicant has waived its rights to the tax credits, (ii) whether the location of the proposed brownfield site is situated in a disadvantaged community or the proposed brownfield site is being developed as an affordable housing project, (iii) the assets and income of the applicant, and (iv) any other factors deemed relevant. The new program fee cannot be used to calculate tax credits under the program (Section 3).

These new changes take effect immediately. Most of these changes were expected and initially detailed in our [early review of the proposed legislation](#). But the extension of time to claim the TPCs for certain projects (i.e., sites that received a CoC between March 20, 2010 and December 31, 2015) and the inclusion of costs relating to athletic-related developments are welcomed additions.

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