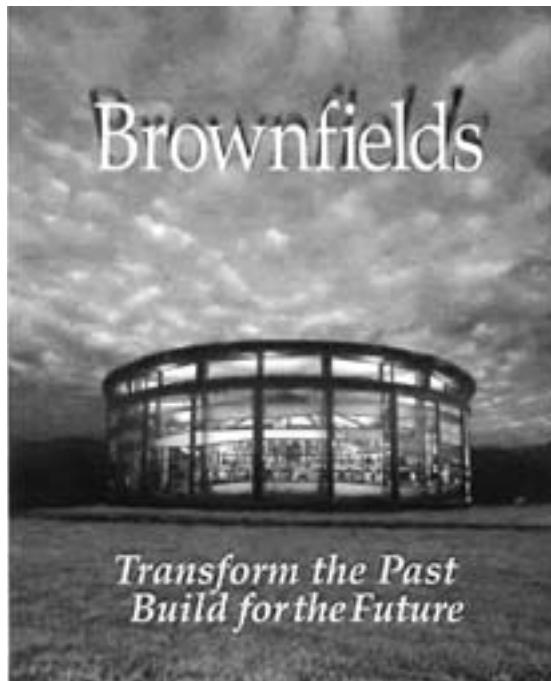


new york state's

BROWNFIELD CLEANUP TAX CREDIT PROGRAM

By Kevin Hurley, CED

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The NYS Department of Environmental Conservation describes the Brownfield Tax Credit Program in this brochure.

INTRODUCTION

The industrial Northeast of this great country continues to face many obstacles in its efforts to retain and grow its resident industry as well as in its efforts to attract new businesses. A new culprit has emerged in recent years as a major impediment to such activities – the costs (both immediate and potential) of the redevelopment of brownfields. The situation repeats itself on a continual basis:

A NEW TOOL FOR THE ECONOMIC DEVELOPER

In 2003, New York State created the new Brownfield Cleanup Program (BCP). The goal of the BCP is to enhance private-sector cleanups of brownfields and to reduce development pressure on open spaces. Under the BCP, cleanups continue to fully protect public health and the environment based on appropriate cleanup plans and objectives overseen by the New York State Department of Environmental Conservation. When the site has been successfully remediated, the applicant receives a Certificate of Completion. The certificate triggers liability protections provided by statute and allows parties to apply for tax credits, helping to offset the cost associated with brownfield redevelopment. Since the program's creation in 2003, 169 sites have been approved under the new BCP.

manufacturing companies, located in the same location for often multiple decades, flee to areas of lower cost production only to leave behind properties that are long since contaminated and of little use due to the potential liability that comes along with them. Statewide environmental enforcement agencies all too often find themselves in acrimonious situations with businesses and property owners in their efforts to get these companies to step up and clean up the messes they made. Any potential new businesses/developers balk at the potential risks associated with such situations.

This situation is very prevalent in New York State. New York's motto, "The Empire State," comes from George Washington's description of the state as "The cradle of the empire." Home to some of the oldest industries in the country, New York State has companies that have operated throughout the past centuries with little or no environmental regulation. The Erie Canal, which opened the shipping of goods from the Great Lakes to the Atlantic Ocean, spawned tremendous industrial growth along its shores. A great deal of this land is now contaminated, the results of companies operating their own landfills. Major industrial cities like Buffalo, Rochester, Syracuse, Utica, and Albany face the real problem of long defunct industry that has left behind a legacy of contaminated industrial property.

This situation is just another in a list of issues with which the rust belt must deal. New York State has, in response to this continuing problem, responded with an innovative new program. New York State established its Brownfield Cleanup Tax Credit Program in 2003. This program offers exciting new opportunities for redevelopment of brownfield

properties and has already had some significant successes to date. It has also changed the relationship between the state's Department of Environmental Conservation and businesses from an adversarial to a cooperative one, and also has been an integral component of many companies' decisions to stay, invest, and grow in New York State.

BROWNFIELD CLEANUP PROGRAM

New York's Brownfield Cleanup Program (BCP) was signed into law on October 3, 2003 and was also amended one year later. The stated goal of this program is to enhance private-sector cleanups of brownfield sites and to control sprawl by reducing the development pressure on greenfield sites. The program provides individuals and businesses with consistency and finality needed in order to make cleaning up a brownfield a logical and sound investment.

With specific and tangible benefits to businesses in the program, the BCP allows for significant refundable tax credits to be made available to these entities who voluntarily cleanup and redevelop these sites. It also can be a significant tool for economic developers as these cash refunds can be substantial elements of a deal structure and project finance scenario.

BCP REFUNDABLE TAX CREDITS

The chief element of interest from a business/economic development perspective in the BCP is the availability of refundable tax credits that are available to the entities involved. These credits are calculated using not just the identification and costs associated with a cleanup program, but also include the costs of the development project that results from the cleanup. Should a redevelopment project cost reach certain levels, this refundable tax credit can often pay for all of the remediation costs and more, providing crucial financial incentives that make a project not only feasible but profitable.

There are three potential credits available under this program:

- The **Brownfield Redevelopment Tax Credit (BRTC)** is a fully-refundable tax credit available to businesses and individual taxpayers who have satisfactorily cleaned a brownfield site and have been issued a Certification of Completion by the New York State Department of Environmental Conservation. This credit is



Garlock Sealing Technologies' 700,000-square-foot campus in Palmyra, New York, as it looks today. It is a series of interconnected buildings and tunnels, some constructed over 100 years ago, on a site now contaminated from years of use.

computed in a range of 10 percent to 22 percent of the total costs associated with identification, remediation, and redevelopment of the qualified brownfield site. The credit starts at 10 percent for individual tax payers, increases to 12 percent for corporate tax payers, increases by an additional 8 percent for projects located in Environmental Zones* (sites designated as such by New York State), and finally increases by an additional 2 percent for projects cleaned to an unrestricted standard.

**A listing of the existing Environmental Zones located across New York State can be found on the websites of both the Department of Environmental Conservation (www.dec.state.ny.us) as well as Empire State Development (www.nylovesbiz.com), further illustrating how this program exists as both a clean up program and a significant economic development tool.*

It is important to know that these credits apply not only to the clean up costs but the redevelopment costs as well, AND that these credits can be available to both the entity responsible for the original contamination as well as a third party coming in to acquire and redevelop an already contaminated parcel of property. This can allow for responsible parties as well as volunteer entities to clean past transgressions and receive financial considerations for their efforts. It also allows for significant financial assistance for the new development. A company may have the need to rebuild its antiquated facilities on the land upon which it has

resided for decades only to find out that there are environmental issues that resulted from as far back as 50-100 years ago. The cost of such a remediation is now added on to its other investments, which can lead said company to look elsewhere and relocate this business.

Brownfield Redevelopment Tax Credit Percentages			
Applicant	Minimum	Project Located in Environmental Zone (+8%)	Cleaned to Unrestricted Usage (+2%)
Individual	10%	18%	20%
Corporation	12%	20%	22%

- The **Tax Credit for Remediated Brownfields (TCRB)** can, under certain circumstances, provide a refundable tax credit of up to 100 percent of a brownfield site's real property taxes. A developer of a brownfield can potentially enjoy this credit for up to ten consecutive years. This credit is calculated by a formula which includes the new jobs of both the developer and any tenants along with a benefit period factor and the actual real property tax liability. Location in an Environmental Zone also plays a role in such calculations.
- The **Environmental Remediation Insurance Credit (ERIC)** is the third component here, and can credit a developer/taxpayer for a portion of environmental remediation insurance costs that may be required in such cleanup projects.

BROWNFIELD CLEANUP PROGRAM PROCESS

The process for a potential applicant can be tedious and complicated, but such is the situation when balancing the public benefit of cleaned up properties with the lost tax revenues that will eventually result. The process can be broken down into these six areas:

- 1) **Formal Application** – Beginning with a face-to-face with DEC's Brownfield staff, a formal written application is completed and submitted to DEC. The review process for this will include a 30-day period by which interested parties may submit comments, pro or con, concerning the project. A BCP agreement is signed by all parties which leads to...
- 2) **Investigation Work Plan** – The development of a plan to investigate the site in question which again includes a mandatory 30-day comment period. DEC and applicant work together to approve a remedial investigation work plan. Once approved, we move to...
- 3) **Investigation** – The actual site investigation takes place, from which a report is written and analyzed to verify conditions and/or discuss newly-found site contamination. After much scrutiny, the DEC then formally approves the investigation report and then moves to...
- 4) **Remedy** – A complete scoping of all remedies is considered, which leads to a formal remedial-work plan. A determination is made as to the severity of the problem(s), with DEC and the company then coming to terms on appropriate remedies. Following a 45-day comment period, actual cleanup construction commences.
- 5) **Construction** – This is the time when the actual re-development project begins. Given a go-ahead by DEC that the site has been remedied of any environmental issues, the associated new project can commence.

- 6) **Release** – This is the final step and, for the developer, clearly the most important. DEC issues a "Certificate of Completion" which will then (and only then) allow for the applicant to enjoy the substantial tax credits that are derived from the applicable percentage of the costs of remedy and construction.

A TOOL FOR THE ECONOMIC DEVELOPER

Soil and groundwater contamination are a continual impediment to economic development projects, especially in the areas of the country that have housed manufacturing industries for multiple generations. The potential liability for an entity that caused the problem, for a prospective purchaser that will need to deal with such problems, and for financial institutions that may be considering lending against such projects often are deal breakers. This leads to abandonment of properties in both urban and rural settings as well as urban sprawl and inner city decay. Properties deemed contaminated for too long have sat idle with developers neither willing nor able to initiate redevelopment activities.

New York State is home to the oldest of companies in America. From Buffalo to Albany, some of the first manufacturing companies settled along the banks of the famous Erie Canal. The Erie Canal opened up the flow of goods from the Hudson River and New York City all the way to Buffalo and the Great Lakes. During the 19th and early 20th century, companies sprung up like weeds along the banks of the canal. Such companies often operated in a time when their wastes were simply placed in a company-operated "dump" located somewhere on their property. These sites now carry some heavy contaminated baggage which for years has hindered companies from reinvesting and creating jobs. Likewise in the inner cities, where heavy manufacturing drove the economy of upstate New York, companies operated for years without the environmental safeguards of today. Many of these companies have fled the cities for newer, more modern operations in the suburbs and/or other parts of the country and world. Left in their wake are inefficient facilities and contaminated properties. All of these issues have long stifled the economic development community's ability to retain and create employment. This problem is then exacerbated by properties that do not create the income and tax revenues that are required to maintain services, which only hinders the areas' economic development efforts.

This is where the Brownfield Cleanup Program shines as a progressive economic development tool. Where in the past a contaminated label would drive away any investors from an investment project, there are now redevelopment companies looking for such situations where they have found ways to potentially profit from such activities. Properties that were once untouchable now have a new lease

Where in the past a contaminated label would drive away any investors from an investment project, there are now redevelopment companies looking for such situations where they have found ways to potentially profit from such activities. Properties that were once untouchable now have a new lease on life, and companies who once gave no thought to cleanup and new construction now have that alternative in front of them.

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In New York State, economic developers now have this tax-credit tool to use in this effort. Several major project announcements have resulted with many other projects now getting into this pipeline. Following are several examples of some successful efforts using the BCP and also a company considering a project that before was impossible.

Garlock Sealing Technologies

Garlock Sealing Technologies (GST) has been operating in the same location, directly on the Erie Canal in the Wayne County town of Palmyra, for over 100 years. The industrial gasket and seal manufacturer originally located at this site because it used the canal for transportation purposes. GST currently employs 600 people and operates out of a 700,000 sf plant which includes 22 different add-ons and still relies on steam for processing and for powering its production equipment.

GST is owned by the publicly-traded EnPro Industries, which recently determined that the current facility was unsuitable for a quality production facility and began a process to determine its future. The company could either rebuild a new modern plant or it would vacate and leave its original home for a greenfield site far outside New York State. A crucial element to this decision-making process was the yet-to-be-determined environmental situation. After all, a heavy rubber and plastic manufacturer which has been in the same spot and has operated back in a time where environmental restrictions were almost nil was bound to have trouble spots. A preliminary phase 1 study had determined over two dozen locations on its 130-acre site which had potential environmental issues.

GST laid out an ambitious plan to demolish, reconstruct, and re-equip its operations with a projected investment topping \$35 million. This project would certainly be less expensive in another location, and having to justify this to its corporate board in North Carolina would be difficult. EnPro had begun to investigate sites in several southern states, closer to its customers and all brimming with local and state incentives. New York State along with Wayne County worked to assemble a package of incentives in order to entice EnPro to allow Garlock to stay and reinvest. Key to this effort was the Brownfield Cleanup Tax Credit Program. Garlock would be able to enjoy refundable tax credits at least 12 percent of its *total project cost*. This would mean the company could get back cash from the state which would far exceed the actual costs of



Garlock Sealing Technologies. Phases 1 and 2 include building demolition and the construction of two new free-standing manufacturing buildings.

cleanup, and in the process level the playing field between sites. Based upon the state/local incentives, the workforce concessions, and the Brownfield Tax Credits, EnPro has decided to stay in Palmyra, New York, and to invest upwards of \$35 million in the effort. Without question, the Brownfield Cleanup Refundable Tax Credits tipped the scale in favor of New York State.

Barthelmes Manufacturing

Barthelmes Manufacturing Co. is another textbook example of mature manufacturing businesses that must deal with environmental issues in their investment decision-making process. Barthelmes Manufacturing Co. has operated on the same parcel of industrial land in the city of Rochester's west side for over 80 years. The privately-held metal-fabricating business once sold to the Eastman Kodak's and Xerox's of the area, but has had a migration of customers to locations outside the Northeast. The company faced a crossroads with its facility, needing to renovate and expand its plant to keep up with demands from customers and to keep pace with



Garlock's Phase 3 will include substantial building demolition and cleanup measures.

technology. The company explored its options, which included a relocation to the mid-Atlantic area to be close to its major customers. A major obstacle to its Rochester project was the environmental condition of its property.

Barthelmes entered into a Brownfield Cleanup agreement with the NYSDEC, which allowed for the company to consider staying and building

here in the inner city. The agreement and the refundable tax credits will now allow for property once thought unusable to be cleaned and redeveloped. This company hopes to begin a facilities expansion in the near future. None of this could possibly happen without the Brownfield Tax Credits.

Bethlehem Steel Site, Lackawanna

The city of Lackawanna rests on Lake Erie just south of the city of Buffalo. Twenty-five years ago, the Bethlehem Steel Co. operated a steel mill in Lackawanna that employed 25,000 people. Much of the abandoned property has sat idle for 15 years as proposed development projects failed to materialize. The massive complex covered 1100 acres and stretched over two miles along every inch of lakefront property in Lackawanna.

Bethlehem stopped making steel many years ago and left behind a massive industrial complex with significant environmental problems. Contaminants found on the Bethlehem property range from solid waste sites to acid tar pits to polluted slag areas to old tank farms.

In April 2005, Tecumseh Redevelopment Inc., a subsidiary of International Steel Group which had acquired Bethlehem just two years earlier, signed an agreement with Erie County and Lackawanna to remediate and redevelop the former Bethlehem site. Key to this decision is Tecumseh's ability to access Brownfield Cleanup Tax Credits which made this

anticipated 10-year \$64 million cleanup effort feasible from a financial standpoint. Proposed elements of the redevelopment plans include three separate business parks along with mixed-use recreational and waterfront access projects. Tecumseh/ISG plans to clean the huge site piece by piece with the hope of redeveloping and selling 1000 acres of prime lakefront property.

PROBLEMS TO OVERCOME/FUTURE CHANGES

The Brownfield Cleanup Program has been universally hailed as a tremendously innovative program and a very real departure from the historical relationship between the state's businesses and the entity charged with protecting its environment. It is this historical relationship that has been one of the program's obstacles from the start. The Department of Environmental Conservation has always been the state's environmental policeman. Businesses did not deal with it unless it was necessary or because they were forced to do so. In brownfield situations, the DEC was the enforcer, and the cost of such enforcement came from the company/property owner. The

DEC had no ability to add enticements and financial incentives in such projects, only the ability to force the issue. This led initially to some natural skepticism when the BCP came into being. For some, it was difficult to believe that they could enter into a profitable partnership with the DEC and that it would actually be in the company's best interest to initiate a dialogue with the DEC. With the help of the economic development community and the legal expertise in New York State, both

of which have been out front educating our companies, this mind set has been slowly changing.

The second issue with which the state's business/developer community has had to deal is that of timing. A company must take a giant leap of faith in the fact that it will not be able to enjoy any of these refundable tax credits until the DEC has issued a certificate of completion. This all-important document comes only after all cleanup work and redevelopments are completed, and also when the DEC signs off that all is completed to its satisfaction. Due to the timing of such projects, this could come sometimes years after the initial agreements are in place. A company/developer must be able to live with the comfort level of such timing in participating in this new innovative program.



Phase 4. What remains is a leaner, more efficient business on a property that meets environmental standards. Garlock then enjoys the financial benefit of refundable tax credits on the entire development project.

As far as the future goes, the program is still in its infancy. The DEC is working through a huge number of projects that are all at various points in the process. The state will, in the very near future, come to the conclusion of many projects and then will be able to evaluate the process and successes/shortfalls thereof. Until that time, New York State will continue on with this new and innovative program.

CONCLUSION

New York State has begun to address a difficult situation that has plagued economic developers for years. The Brownfield Cleanup Program has been instituted to address cleanup of contaminated property as well as to become a financing tool in such situations. The program is still very young, but the New York State Department of Environmental Conservation has accepted over 150 applications to date. It has become very apparent in such a short time that this new tool for the economic developer will continue to be extremely valuable as New York State rebuilds and redevelops its former industrial properties. Companies and developers, who once shied away from all the negative aspects of brownfield redevelopment, now have a vehicle in place that can provide assurance and compensation to them for their efforts.

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