

Seeing Green: New York's Reformed Brownfields Cleanup Program Creates Opportunities for Redevelopment to Generate Refundable Tax Credits

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Now is the time to begin brownfield redevelopment projects in the State of **New York**. [Reauthorization of and reforms to New York's Brownfields Cleanup Program](#), which provides tax credits to redevelop contaminated properties, came into effect on July 1, 2015. The program has been reauthorized until 2026, giving businesses and developers a chance to remediate brownfields while generating millions of dollars in refundable credits.

State brownfield tax credit programs encourage remediation of contaminated property that might otherwise remain abandoned. New York, with its industrial heritage, has more than its share of such locations. The Brownfields Cleanup Program was started in 2003 as a way to encourage redevelopment of these properties. Once a participating project is granted a certificate of completion, it generates credits calculated as percentages of the site preparation costs and groundwater remediation costs, and of the costs of tangible property (buildings and capital equipment). The site preparation and groundwater remediation costs are the environmental expenses, which generate credits ranging from 22 to 50 percent of costs. The tangible property costs are the redevelopment (generally non-environmental) expenses, which generate credits ranging from 10 to 24 percent of costs. Tangible property credits are capped as a multiplier of site preparation and groundwater remediation costs: three times the costs for most projects and six times the costs for manufacturing projects. All brownfields credits are refundable to the extent that they exceed the taxpayer's income tax or franchise tax otherwise due. Essentially, under the Brownfields Cleanup Program, New York will pay for up to half of a project's environmental remediation costs and a quarter of other redevelopment costs.

In recent years, the program came under criticism for allegedly excessive credit awards, which sometimes exceeded the overall costs of remediation. The program had been scheduled to expire at the end of the year, and a short-term extension of the program through March 2017 [was vetoed by Governor Cuomo](#) as not providing needed reform. The reforms package and reauthorization were enacted with the FY 2016 budget. L. 2015, ch. 56, pt. BB (S. 2006-B / A3006-B). With proposed regulations for some definitional terms pending, the reformed law came into effect for projects approved by the Department of Environmental Conservation on or after July 1, 2015. Preexisting projects are grandfathered in under the old provisions as long as they are completed by the end of

2019 (and projects approved before June 23, 2008, must be completed by the end of 2017). New projects will have until March 31, 2026, to obtain certificates of completion under the reformed Brownfields Cleanup Program.

Key reforms coming into effect include the following:

- To address a sense that projects do not need as many incentives in the tight New York City real estate market, projects in the city now have to meet one of three special criteria to qualify for the tangible property component of the credits. This special requirement is for tangible property credits only; site preparation and groundwater remediation credits are unrestricted. The three ways to qualify are:
 - Locating the project within designated environmental zones.
 - Having a property that is “upside down” or “underutilized.” “Upside down” means that remediation costs exceed 75 percent of property value. Under the proposed regulatory definition, “underutilized” property must be more than 50 percent vacant for the past five years, require government assistance for redevelopment to be feasible and meet other criteria for being distressed.
 - Proposing an affordable housing project for the redeveloped brownfield, which generally means that the project will qualify for a federal, state or municipal affordable housing program.
- The criteria for accepting a project into the Brownfields Cleanup Program now require that there be contamination measured at levels exceeding applicable soil cleanup objectives or other health or environmental standards. This test replaces a more subjective standard of whether development was complicated by the presence or potential presence of a contaminant.
- The definitions of eligible site preparation costs and groundwater remediation costs now are only those necessary for investigating the property, remediating the contamination and obtaining a certificate of completion, and the definitions include numerous specific examples of qualifying costs. Essentially, these classifications are intended to reflect environmental costs only. Non-environmental costs that previously were considered site preparation costs (g., foundations) instead may count toward the tangible property credit.
- The definition of qualifying tangible property costs was narrowed. Now, qualifying property must have a useful life 15 years or more or be non-portable equipment or structures.
- A “BCP-EZ” program will be offered for streamlined review of remediation projects for developers that agree to waive the brownfield tax credits but want the environmental liability release of the Brownfield Cleanup Program.

Even with these reforms, New York continues to have a very attractive brownfield redevelopment program. As brownfield redevelopment is a process that lasts years, businesses interested in participating should contact their advisers about getting started on potential projects.

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