



Environmental and Utilities Legal Update

New York City Enacts Local Brownfield Program

New York City recently enacted groundbreaking legislation that establishes the nation's first municipal-based brownfield cleanup program. Known as the "Local Brownfield Cleanup Program" ("Local BCP"), it will focus on light to moderately contaminated sites in New York City that may not be addressed under the existing New York State Brownfield Cleanup Program ("State BCP").

Background

Under the Local BCP, the Mayor's Office of Environmental Remediation ("OER"), which was also codified with this legislation, will oversee environmental investigation and remedial selection of contaminated sites in New York City. The Local BCP represents a collaborative effort between OER and the New York City Department of Health & Mental Hygiene to ensure that cleanups are fully protective of human health and the environment. The Local BCP is intended for many properties in New York City that are comprised of historic contaminated fill material.

The Local BCP can also be used to satisfy New York City "E-Designations," which is a zoning map designation indicating the presence of environmental issues, such as hazardous materials contamination, noise, or air quality impacts affecting the particular tax lot. Administration of the E-Designation program was recently transferred from the New York City Department of Environmental Protection to OER.

Local BCP Features

While entrance into the State BCP has become increasingly challenging over the past few years due to changes in the New York State Department of Environmental Conservation's ("NYSDEC") screening criteria, entrance into the Local BCP is expected to be less thorny, since the program is intended to attract sites that pose less serious environmental concerns than more contaminated sites that would ordinarily seek entrance into the State BCP. For example, "significant threat" sites will not be allowed into the Local BCP, but are more appropriate for inclusion into the State BCP. Nevertheless, applicants must meet certain eligibility criteria, which generally relate to the condition and regulatory or legal status of the site with regard to the contamination present.

Cleanup Under the Local BCP

The Local BCP will use the same cleanup standards, "tracks," and guidance currently in use for the State BCP under Part 375 of the NYSDEC's regulations. Also, the Local BCP contemplates two types of enrollees, "participants" and "volunteers," much like the State BCP. A "participant" is an enrollee who (1) was the owner of the site at the time of disposal or discharge of contaminants, or (2) is otherwise a responsible party under statutory or common law, unless such liability arises solely as a result of ownership, operation, or involvement with the site after the disposal or discharge of contaminants. A "volunteer" is an enrollee other than a participant, including a person whose liability at the site arises solely as a result of ownership, operation, or involvement with the site after the disposal or discharge of contaminants, provided the person has exercised "appropriate care" with respect to the contamination there.

Liability Release

Similar to the State BCP, parties will enter into a "Brownfield Cleanup Agreement" and those who successfully investigate and remediate a site under the Local BCP will be issued a "Certificate of Completion" ("COC") by OER, which will run with the land and extend to subsequent owners, developers or occupants of the site. The COC includes a liability release from New York City and New York State is expected to recognize COCs issued under the Local BCP as well, making this an even more valuable instrument.

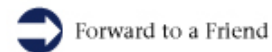
Other Green Opportunities in New York City

Financial grant incentives are also available for activities at contaminated sites, such as (1) pre-development grants for title searches, zoning analyses and "Phase I" environmental site assessments ("ESA"), (2) environmental investigation grants for "Phase II" ESAs, and (3) environmental remediation grants for soil removal, tank removals and placement of remedial caps. The enactment of the Local BCP follows on the heels of other "green" legislation and programs recently introduced. This is the latest step in a recent surge in programs designed to encourage brownfield redevelopment and remediation and to "green" New York City.

For More Information

Robinson & Cole has experienced environmental attorneys who understand that environmental compliance is but one aspect of the complex, multifaceted, and sometimes competing demands made on businesses. For more information on the Local BCP or other brownfield opportunities in New York City and New York State, please contact John A. Poakeart (jpoakeart@rc.com) at 203-462-7524 or Pamela K. Elkow (pelkow@rc.com) at 203-462-7548 in our Metro-New York office, or Earl W. Phillips (ephillips@rc.com) in our Hartford office at 860-275-8220.

Disclaimer: Nothing in the communication constitutes legal advice and shall not be relied upon as such. For legal advice, rely on your attorney. Robinson & Cole LLP provides legal counsel only upon entering a written retainer with an identified client specifying the agreed scope of services.



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