



AUGUST 2010

New York City Launches Brownfield Initiatives

New York City recently announced the long-awaited launch of two brownfield initiatives, the Local Brownfield Cleanup Program (Local BCP) and the Brownfield Incentive Grant (BIG) Program.

LOCAL BROWNFIELD PROGRAM

The Local BCP is a voluntary cleanup program aimed at less contaminated, but still challenged, sites, such as those affected by historic, contaminated fill. The Local BCP is administered by the Mayor's Office of Environmental Remediation (OER).

The Local BCP uses roughly the same format as the New York State BCP (State BCP), administered by the State Department of Environmental Conservation (DEC), including the same cleanup standards, "tracks," and guidance. Like the State BCP, there are two types of enrollees, "participants" and "volunteers." A "participant" is an enrollee who (1) was the owner at the time of the disposal or discharge of contaminants or (2) is otherwise a responsible party (unless such liability arises solely as a result of ownership, operation, or involvement with the site after the disposal or discharge). A "volunteer" is an enrollee other than a participant, including those 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 on-site contamination.

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" or COC from 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. More importantly, in a recent memorandum of agreement between OER and DEC, DEC stated that it has "no further interest" and "does not plan or anticipate taking administrative or judicial enforcement action seeking to require a removal or remedial action" under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the New York State Environmental Conservation Law for sites that have completed and are in compliance with the Local BCP.

BROWNFIELD INCENTIVE GRANTS

BIG Program grants are available for a wide range of brownfield activities, for projects enrolled in the Local BCP as well as those that are not. Pre-enrollment grants cover pre-development design activities (for example, Phase I environmental site assessments, title insurance, zoning analyses, surveys, etc.), and environmental investigation (for example, sampling, Phase II environmental site assessment activities, etc.), as well as technical assistance grants for "Preferred Community Development Projects." Preferred Community Development Projects provide specific benefits to local communities, such as affordable housing developments, brownfield projects within Brownfield Opportunity Areas (BOAs), and projects that provide services to local communities

such as open space or community health care facilities. All other projects that are not Preferred Community Development Projects are referred to as "Qualifying Brownfield Projects."

Enrollment grants are available to those parties who have enrolled in the Local BCP. These grants cover environmental cleanup and environmental insurance, with bonus grants available for "Track 1" cleanups and "strategic BOA projects."

Eligible parties may receive grants for a maximum of two Qualifying Brownfield Projects each fiscal year, provided that one of the properties is enrolled in the Local BCP. Maximum grant amounts vary, depending on the type of project (Qualifying Brownfield Projects or Preferred Community Development Projects), and are set as follows:

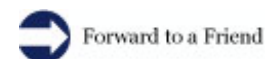
		Preferred Community Development Projects	Qualifying Brownfield Projects
Pre-Enrollment	Pre-Development Design	\$5,000	\$10,000
	Environmental Investigation	\$10,000*	\$25,000*
	Technical Assistance Grant	N/A	\$10,000
Enrollment	Environmental Cleanup and Environmental Insurance	\$60,000*	\$100,000*
*Maximum includes any grant award during pre-enrollment phase.			

Three additional grants are also available to certain parties. BOA grantees are eligible for a BOA Local Match Grant of 10 percent of the total NYS Department of State BOA grant awarded or \$25,000, whichever is less. In addition, BOA Application Technical Assistance Grants of up to \$10,000 are available to Community-Based Organizations interested in applying for a State BOA grant, which can be used to fund services needed for the development of a State BOA grant application. Finally, Hazardous Materials E-Designation or Restrictive Declaration Remediation Grants are available, which provide up to \$5,000 to owners or developers of E-Designation and Restrictive Declaration Hazardous Waste sites that have been cleaned up.

FOR MORE INFORMATION

Robinson & Cole has experienced environmental attorneys who understand that environmental remediation is just one of the complex, multifaceted, and sometimes competing demands made on real estate developers, investors, community organizations, businesses, and other entities. For more information on the Local BCP or other brownfield opportunities in New York City and New York State, please contact [John A. Poakeart \(jpoakeart@rc.com\)](mailto:jpoakeart@rc.com) at 212-451-2948 or [Pamela K. Elkow \(pelkow@rc.com\)](mailto:pelkow@rc.com) at 212-451-2943.

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