

BCONE- BROWNFIELD COALITION OF THE NORTHEAST
6th Annual NE Sustainability Communities Workshop
April 15, 2015

8:15 – 10am Welcome and Introduction to Conference- Sue Boyle BCONE
Auditorium Dan Walsh–Director NYC Mayor Office of Environmental
Remediation

Mr. Walsh welcomed everyone to the conference and was enthusiastic about the forum being back in NYC. He spoke about how especially the NYC area was undergoing a land cleanup revolution, as a result of the NY State and Voluntary Cleanup Programs. There were currently at least 400 cleanups in progress, with an estimated \$12B of new private capital being invested. The investors are global, covering all four major continents: Asia, North America, Africa and Europe. The key to making a successful brownfield revitalization is to produce sustainable improvements to a community.

Auditorium – Morning Plenary Session- Important Brownfield Program Reforms in (NY, CT & NJ)

Important Brownfield Program Reforms in the Region (NY, CT, and NJ) The NY/CT/NJ metropolitan area has been an important center of brownfield and sustainable redevelopment for years. All of the states in the region have mature programs that are undergoing exciting upgrades. At the same time, USEPA-the catalyst program for so much of the region's brownfield successes-will emphasize the changes the Agency has made and continues to make to encourage success at the municipal level. Speakers will discuss ways that their programs are being reenergized to better respond to the state's and local government's needs. New infusions of funding for municipalities, a rewrite of the brownfield statute to respond to economies in the state, and a move toward a broader funding program that emphasizes job creation and job retention and deemphasizes the cleanup status of the site will be discussed.

Speakers

Gary Rozmus – GEI Consultants- Chair
Bob Schick – Director NY DEC Division of Environmental Remediation
Tim Bartle, P.E. Section Chief, NJDEP's Office of Brownfield Reuse
Tim Sullivan, Deputy Commissioner, CT Economic Community Development
Terry Wesley, Brownfield Section Chief, USEPA Region 2

Gary Rozmus – GEI Consultants chaired the session. The session highlighted the important Brownfields program reforms in NY, CT and NJ, and how they have been instrumental in providing economic growth and revitalization, with \$36B construction in 2015. One of the biggest challenges is the balancing of Federal funding and opportunities with States specific needs, and very often the very different needs across a specific State.

Bob Schick – Director NY DEC Division of Environmental Remediation
In the ten years since it was established, the Brownfield Cleanup Program (BCP) has cleaned up more than 190 contaminated sites statewide and incentivized redevelopment. However, it has also resulted in the awarding of unnecessary and excessive tax credits. The 2015 BCP reform was established to address these imbalances.

The reforms address many issues with the current BCP to make the process fair to the State's taxpayers. The Reform Specifically targets legislation changes.

The BCP tax credits were scheduled to expire on December 31, 2015. Tax credits will continue under the current reform program. However, under the new law, sites will have until March 31, 2026 to receive a certificate of completion, which will allow successful private cleanups to continue under state oversight and limit the state's expensive cleanup burden while providing certainty to developers.

Under the old rules, all projects get redevelopment tax credits for development costs. Credits were not focused on sites in blighted or low-income neighborhoods or on projects that are otherwise in need of tax credits to advance. In addition, windfalls could go to projects that are in strong real estate markets where state assistance for redevelopment is not necessary.

This reform focuses tax credits on blighted areas and sites by limiting eligibility for redevelopment credits in New York City to:

- Properties which are located in Environmental Zones (En-Zones), which are areas with high poverty and/or unemployment levels;
- "Upside down" properties, where the cost of cleanup is 75 percent or more of the property value as if uncontaminated, or "underutilized" properties, which DEC will define by regulation; or
- Sites that will be redeveloped for affordable housing projects, as defined by DEC, in consultation with the Division of Housing and Community Renewal.
 - Under the old rules, Site Preparation Credits cover more than cost of remediation-any costs associated with preparing a site were eligible for the Site Preparation Credit. In turn, site preparation costs are the basis for calculating an existing cap on the redevelopment credit, so that cap is higher than it should be.
 - The reforms will move costs not associated with investigation, remediation or qualification for a certificate of completion for the site from the Site Preparation Credit to the redevelopment credit, including costs of foundations which exceed the equivalent of a cover system as required by regulations. The credit was expanded to explicitly include the costs associated with remediating asbestos, PCBs and lead in structures which will remain on the site. This will more closely align the credit with cleanup costs and reduce the maximum redevelopment credit since the cap is based on the site's eligible site preparation costs.

The redevelopment credits will be limited to property with a useful life of at least 15 years, and non-portable equipment, machinery, and associated fixtures and appurtenances

on the site. Payments for related party service fees (developer fees) can only be claimed when they are actually paid and cannot be claimed under the site preparation or groundwater credits.

Applicants will now be required to demonstrate that the site is contaminated prior to being accepted into the program. In addition, volunteers may bring orphan Class 2 Superfund and RCRA sites into the BCP.

Currently, BCP is the only path to a liability release from the State. For many sites, a liability release is needed to get financing for redevelopment. Stakeholders have signaled that tax credits are less important than the release of liability at some sites. In exchange for waiving any right to tax credits, lightly contaminated sites would be able to enter a streamlined program, the BCP-EZ option, with State oversight of the cleanup work. Significant threat sites will not be able to participate in this program.

Any site in the BCP prior to June 23, 2008 which has not received a COC by December 31, 2017 or any site accepted between June 23, 2008 and the effective date which has not received a COC by December 31, 2019 will be subject to the new rules, including the test to determine eligibility for the redevelopment credit.

Effective date for brownfields reforms is the later of July 1, 2015 or the date DEC publishes the proposed definition of "underutilized" in the State Register.

Tim Bartle, P.E. Section Chief, NJDEP's Office of Brownfield Reuse

Mr. Bartle referred to the Brownfield Reforms in New Jersey as a continuous reform that started with the Site Remediation Reform Act (SRRA) signed into law in 2009, but really extended prior to as far back as 2006. SRRA made sweeping changes as to the way in which sites were remediated. Some of the key changes were:

- Time periods were established for investigation and remediation's, with the goal to increase the pace of investigations and ultimately cleanups. The time periods range between 7 and 11 years depending upon site specific media affected by contamination.
- Created a category of licensed site remediation professionals (LSRP), whereby the LSRP issues statutory liability protection through the issuance of Response Action Outcome (RAO).
- With limited exceptions all remediation in NJ is required to be performed under the supervision of a LSRP.
- Since the enactment of SRRA, for the first time the number of environmental cases closed exceeded the number coming into the program.
- SRRA also brought a cooperative stakeholder working relationship between the NJDEP, LSRP's, businesses and community, which has resulted in the production of 50 new technical and regulatory guidance documents.

- SRRA has enabled the NJDEP to identify and focus more on environmental cases with immediate environmental concerns (IEC's). These include free product, vapor intrusion and affected potable water sources.

Another area of the State's brownfield redevelopment program that has seen recent reforms includes constitutional amendment for dedicated funding for one of the State's tried and true financial tools and new funding options. The financial tool that was provided with a more predictable cash flow is the State's Hazardous Discharge Site Remediation Fund (HDSRF) established in 1993. The fund targets municipalities to investigate brownfield sites to decrease unknowns that may attract developers. The NJ voters approved the legislation, which has a target value of \$10M starting in July 2015. The new funding became available through the Economic Opportunity Act (EOA) of 2013.

The EOA funds provide economic incentive to cleanup under-utilized urban brownfield sites. The Economic Redevelopment and Growth Grant (ERGG) covers all project costs for redevelopment of contaminated sites with a base grant of 10% of all costs with additives from projects in specific growth zones and specific cities and types of projects getting up to 40% of total costs.

The ERGG is the next generation of gap financing and is based on future realized new taxes. They can be combined with the Growth NJ Assistance Program which is a corporate business tax credit with bonuses based upon job creation and retention, and location.

Tim Sullivan, Deputy Commissioner, CT Economic Community Development

Mr. Sullivan indicated Connecticut's (CT) need for a vibrant brownfield program was due to its historical makeup of being a major industry manufacturer. Unfortunately many of the industries have left, leaving a legacy "market" of failed blighted sites with few responsible parties (RP's).

The CT Brownfield Remediation Program started in the 2006/2007 time frame as cooperative partnership sharing State resources and DEP. The 2013 Reform brownfield Working Group consisted of Private Sector, lawyer, consultants, developers, etc. In an approximate 2 month time period the Brownfield Remediation Program was simplification and strengthened in 2013 (Governor Malloy very active). The Office of Brownfield Remediation and Development (OBRD) serves as the state's central point of contact for all phases of a remediation project, partnering closely with the Department of Energy and Environmental Protection (DEEP). Through the program the following support opportunities exist:

- 1) Grants – municipalities and economic development agencies;
- 2) Loans – developers municipalities and economic development agencies;
- 3) Liability relief for qualified prospective purchasers, innocent property owners or contiguous landowner;
- 4) Tax-increment financing that enables the use of a completed project's new tax revenues to repay the costs incurred to fund brownfield development; and
- 5) Comprehensive permitting assistance support.

There are loans available up to \$2M for potential brownfield purchasers and current brownfield owners (including municipalities and economic development agencies) provided that a current owner did not contribute to any existing environmental contamination.

Since 2013 \$125M in projects has been provided, covering approximately 100 projects. In 2014 approximately \$35M was authorized for projects. Private investors provide approximately \$3.96/private for every \$1 CT invests. Improvements to the Funding Bank approval system and payouts are required, as indicated by a survey of 25 Sites controlled in the program:

Funding – Bank = 2013	642 days
2015	200 days

Two of CT’s successful brownfields projects are the:

- Harbor Point – largest remediation project in CT. This project has reclaimed six-million square feet of floor space — transforming it into 2,300 apartments, premier office space, retail/dining establishments, marinas, a waterfront boardwalk and acres of public parks.
- 2 Roads brewery – Connecticut’s largest craft brewery now operates in nearly 100,000 square feet of remediated space, with over 50 full-time employees. OBRD support included funds for environmental assessment and asbestos/lead paint abatement.

Anticipated reforms/modifications on the horizon include:

- 1) Additional Reform Structuring Authority – technical corrections to regulations;
- 2) Cluster planning vs Industry planning to enable municipalities to consolidate brownfields sites.
- 3) “New Tax Credits”
 - a. Grants for Historic Presentation (8 new grants “Historic Mills”) initiated.
- 4) Competitive Grant Program
 - a. Already thirty applications for \$7.5M, the program is “Over Subscribed”.

Terry Wesley, Brownfield Section Chief, USEPA Region 2

Addressing Brownfield sites is a critical component of a community’s economic redevelopment process, especially in downtowns that have been subject to decline over the years. Through Brownfield grants and technical assistance, EPA is contributing to the economic revitalization of communities while protecting public health and the environment. EPA’s brownfield programs can help be a catalyst for redevelopment and revitalization. On average, more than \$18M in private and public funding is leveraged for every grant dollar expended by EPA’s Brownfield program.

EPA’s Brownfield grants represent a new start for community revitalization that will generate steady jobs as assessed and cleaned up properties are freed from the stigma of suspected contamination. By awarding these grants EPA is making investments in communities and promoting an opportunity to attract jobs and contribute to broader economic development outcomes, while taking advantage of existing infrastructure and capacity. Since its inception, EPA’s Brownfields investments have leveraged more than \$21.6 billion in cleanup and redevelopment. Over the years, the relatively small investment of federal funding has been able to leverage, from both public and private sources, more than 102,740 jobs.

EPA’s Brownfields Program prides itself on flexibility and the ability to adapt in order to better fit the needs of different communities across the nation. As a result of this flexibility, the Brownfield Program modified their RLF policies on property ownership to facilitate the ability of projects to benefit from affordable housing tax credits.

If a non-profit and a for-profit partner on an affordable housing project and the for-profit developer wants to use an RLF subgrant instead of a loan (but does not wish to vest absolute fee simple title in the non-profit entity) the subgrant to the non-profit can be approved if the recipient demonstrates ownership and sufficient control of the property throughout the subgrant and cleanup activity.

Another example of the EPA adapting to better support the needs of differing communities comes from the creation and implementation of the Brownfields Area Wide Planning program.

Last month, EPA's Brownfields Program announced the award of \$4M in new investments to 20 communities across the country. This funding is to assist with planning for cleanup and reuse of Brownfields Area-Wide Planning (AWP) program. This is the third round of AWP grants awarded by EPA's Brownfields program totaling over \$12M invested in communities. The 2010 pilot program, where approximately \$4M was awarded to fund 23 communities, has leveraged approximately \$418M in infrastructure and project development investments.

Many Brownfield properties are located in former economic centers of America including communities impacted by manufacturing plant closures and can be assets for environmental and economic transformations of downtowns. An area-wide planning approach enable local leaders to conduct a community-wide systematic approach to identify uses and improvements in the area to foster public-private redevelopment efforts. This inclusive, locally driven planning approach advances health and equity by fostering plans for livable communities for jobs, recreation, housing and an increased tax base. Recipients engage their communities and conduct Brownfields planning activities which consider Brownfields site reuses in conjunction with community assets such as: housing recreation and open space, employment, education and health facilities, social services, transportation options, infrastructure, and commerce needs. All of which may lead to increased opportunities for leveraging public and private investment.

AWP grantees have also demonstrated a strong vision, and partnership to catalyze brownfield redevelopment as a pathway to transform their communities into vibrant destinations for housing, manufacturing and transit oriented development. EPA's AWP grants recognize that successful, sustained community revitalization particularly in economically distressed communities occurs when neighborhood stakeholders, local governments and the private sector are provide the tools for them to develop a shared plan for redevelopment and community-wide improvement. They leverage partnerships with local universities, community groups, health facilities, local businesses and other neighborhood-based nonprofit groups.

Besides the important local efforts, grantees also take advantage of state and federal partnerships with transportation, housing and economic development agencies. History teaches us that environmental protection can help be the catalyst for economic growth. Expanding the ability of communities of all sizes to recycle vacant and abandoned properties for new, productive reuses can build on the local economic advantages of our industrial legacy communities.

This year EPA will announce further investments in communities through the award of our Assessment, Cleanup, Revolving Loan Fund, and Environmental Workforce and Development Job Training Grants. By working together, with both public and private investments we can continue revitalizing America's communities.

Questions from the audience:

- 1) Is affordable housing underutilized? And if how can it be improved?
 - a. State holders group and the business community need to work together.
 - b. Upstate NY & local communities in the surrounding states outside of NYC are “Under-utilized”. Working on programs to provide dollars to target those areas and projects.
 - c. In CT the 2015 Regulations are addressing this issue, with the comment period, public meetings slated for ~ 7/1/2015 – 10/1/2015. Once finalized they will be issued, around 2016 -DEP EZY.

- 2) New definition of brownfield = 1 standard exceedance, for 1 compound
 - a. Technically, correct, but looking to expand to more impacted Sites.
 - b. Looking for more than 1 sample
 - c. Historical filling – “preparation of table”
PAH’s “Bar not raised too much”
“Orphan Sites” to be added to the program
Lead & RCCA Site with no RP can get in.

- 3) How do regulators work with other regulators?
 - a. Bob Schick = EPA working with communities and specific projects
 - b. CT does not take a regulatory approach; instead they work closely with DEEP “problem solving mind set”. Goal is to get sites cleaned up and is development oriented.

- 4) Licensure of geologists to NY and the impacts that may have?
 - a. Role of Geologist vs. Role of PE unsure
 - b. Reg. 2019 see what happens

- 5) Long Term Institutional Controls – looking for a move to define costs for “Historic Fill”
 - a. Tim Bartle – Undetermined virtual institutional control for GW with historic fill to possibly be maintained by DEP. There was a meeting on 4/16/15 for the soil side of historic fill. Does it need to be part of a deed notice are some of the issues being discussed internally within the Department.
 - b. NYS-environmental easement for historical fill. There will be periodic reviews every 5 years. Reduced already by 5 years forever part of program.
 - c. CT-recognized important comment
 - i. Cost reimburse for monitoring is an issue, however no planned changes are anticipated.

- 6) Number of improperly closed landfill in NJ is 8,000. Will funding or amnesty or an incentive needed to close them?
 - a. Tim Bartle -NJ “NO” They have incentive program for legacy landfills for redevelopment.

- b. CT is working on literature – DEEP –trying to locate solar/wind on brownfield sites such as these.
- c. EPA Pilot America Program – Will look at closed landfills for solar technology. - EPA is targeted to look at the issue both on a local & national effort.