Ripe for Reform
An Environmental Advocates of New York Analysis of the Brownfield Cleanup Program
Introduction: A Broken System

Cleanup and Redevelopment Costs

Reforms

Destiny USA: A Case Study

Regional Overviews
  - Erie County vs. Manhattan

Progress Made

Author: Travis Proulx

Editors: Max Oppen, Nicholas Moore, Elizabeth Moran and Peter Iwanowicz

Layout & Design: Travis Proulx

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This is Environmental Advocates of New York's fourth analysis of tax incentives paid out to developers under the New York State Brownfield Cleanup Program.

Brownfields cleanup should be a critical component of the state's environmental and economic development programs, but structural problems within state law hinder progress. Data reviewed in this analysis proves that the existing brownfields program has cost taxpayers far too much to clean up far too little.

“Program for polluted sites needs overhaul.”
- Poughkeepsie Journal

As of January 1, 2015, the state has paid out **$1.4 billion** toward the remediation and development of just about **170 brownfields**, at an **average cost of $8.2 million per project**. Sites may collect tax credits as their projects are built out for up to 10 years under the current program, meaning the costs paid to some of the already completed sites will grow. At this time, the public has no way of knowing precisely what the final cost of these 170 projects will be.

A 2013 report from the Office of the State Comptroller estimates that sites currently enrolled in the program – which are in varying stages of completion and credit collection – carry a liability to the state of **$3.3 billion**.

Several projects, like the Destiny USA shopping mall in Syracuse, have far exceeded the average, with taxpayers on the hook for millions more in the years ahead. Additionally, the Comptroller notes that spotty, inconsistent reporting on project data has made it difficult to assess whether the program is funding sites that occurred because of the incentives offered by the Brownfield Cleanup Program, or whether the projects would have been developed regardless of the offer of tax credits.

While the Legislature passed reforms in 2008 by placing caps on the amount of assistance that could be paid to an individual project, based on a variety of factors it barely scratched the surface of the reforms needed; **the 2008 reforms are estimated to have lowered the state's overall liability for existing projects by a mere $300 million**.

Environmental Advocates urges the Legislature to support and build on Governor Andrew Cuomo’s 2015 proposed budget reforms – an overview of which can be found on page 5 – to ensure the Brownfield Cleanup Program becomes the centerpiece of the state's environmental and economic development programs.

1) http://www.poughkeepsiejournal.com/story/opinion/editorials/2015/01/07/program-polluted-sites-needs-overhaul/21400227/
2) Sites with Certificates of Completion; projects cannot collect credits prior to receipt.
3) Due to incomplete data, the number of projects complete and collecting credits may be fewer while the average cost higher. This is because, in part, an unknown number of sites claimed credits in 2006 and 2007.
Currently, developers receive tax credits for both the cleanup of a brownfield and for redevelopment (known as tangible property credits). It is the redevelopment credits that, by far, incur the greatest costs of this program. They are a needless giveaway to developers who do not need further encouragement to build in already competitive real estate markets.

Since 2008, tax credits awarded solely for site cleanup assistance totaled $122,257,583.\(^7\) Comparatively, $797,946,541 (86-percent of total payouts) has been paid to developers as a percentage on the development value on the remediated sites.\(^8\)

The structural deficiencies within existing law favor costly developments in the state's most competitive real estate markets over communities that are most in need of these public incentives.

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<th>Cleanup</th>
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Encouraging development is crucial. However, encouraging development in areas that do not need public incentives is wasteful, particularly when 86-percent of the cost of this program is paid out for build-outs unrelated to cleanup.

Additionally, $445,100,593 of all funds paid to developers since 2009 was for the cleanup and redevelopment of projects in communities least in need, in other words not located in Environmental Zones (“En-Zones”).\(^9\)

“Reform New York’s Bloated Brownfield Cleanup Program.”—Syracuse Post Standard\(^10\)
Recognizing the need for improving the Brownfields Cleanup Program, Governor Andrew Cuomo has proposed broad reforms in his 2015 Executive Budget. Most of these changes have been welcomed by both the environmental and business community, and largely align with the goals urged by Environmental Advocates in prior analyses.

“They did a pretty fair job in making changes to a program that’s helped Buffalo a tremendous amount, without killing it.”

- Marc A. Romanowski of Harter Secrest & Emery

**Key reforms include:**

- Targeting tax incentives to communities most in need of public investment, through different gateways, to drive development to areas with high unemployment rates and those desperate to turn an abundance of brownfields into an economic engine.

- Establishing the following redevelopment tax credit eligibility criteria: a site must be located in an economically disadvantaged area, cleanup costs must exceed the post-cleanup value of the property, or the project must provide a substantial amount of affordable housing.

- Separating eligibility for state certified cleanup credits from eligibility for redevelopment tax credits.

- Extending the program for 10 years to provide certainty for developers.

**Concerns**

While Environmental Advocates supports the Governor’s proposal, certain areas are in need of improvement. For instance, under the current program there is an added 2-percent tangible property tax credit for developers to clean sites to the highest standard of health and safety. Under the Governor’s proposal, that incentive is eliminated for the development credits in the name of accelerated development. While such expediency may ensure more sites are cleaned up, if sites are used for housing purposes instead of manufacturing or retail establishments, this could also mean those sites are cleaned to a lesser standard.

Additionally, the Brownfields Opportunity Areas (BOA) program – which is unique to New York and served as the model for the federal program – is meant to attract development in the most economically challenged neighborhoods. It is a potentially transformative tool for bringing communities together to produce the kinds of pre-development activity that will spur growth on an area-wide basis. However, further work must be done. While there is some bureaucratic streamlining proposed in the Governor’s plan, it has been defunded, undermining municipalities’ ability to attract development to some areas, particularly those blighted with clustered brownfields.

7) Includes site preparation and on-site groundwater remediation credits
8) $797,946,541 is 86.719-percent of $920,144,126
9) Claims are calculated based on calendar year rather than tax year, which is not expected to dramatically alter figures.
10) En-Zone designation is determined through a combination of high poverty and unemployment rates. Visit http://esd.ny.gov/_private/BusinessPrograms/Data/BrownfieldCleanup/NYSEnvironmentalZones.pdf
11) http://www.syracuse.com/opinion/index.ssf/2014/03/ny_brownfield_cleanup_program_cuomo_proposes_reforms.html
Destiny USA: A Case Study

While projects like Syracuse-area Destiny USA shopping mall were grandfathered into the egregious giveaways prior to the 2008 reforms, reviewing the ongoing costs and burden to taxpayers is critical to understanding the need for finally implementing a brownfields program which limits timeframes for collecting credits, ensures projects collecting credits wouldn’t have occurred even without the program, knowing the full cost to taxpayers from the start, and smartly capping the value of credits paid out per project.

The current brownfields program allows developers to collect tax incentives for up to 10 years which disproportionately benefits large-scale projects like Destiny USA, a project which bills itself as a six-story super-regional shopping and entertainment complex in Syracuse.

It is the largest shopping center in New York State and the sixth largest in the country.

To date, the mall developer has collected a total of $67,630,889 in brownfields tax incentives from taxpayers.¹³

Assuming the mall continues to expand, this total payout will climb for up to seven more years. Destiny USA collected $56,143,114 in 2012 alone, half of that year’s total payout of $113,364,175 for all projects in the program.

Destiny USA’s tax incentives are not limited to the Brownfields Cleanup Program.

For instance, the Syracuse Post Standard wrote in March, 2014, that “Onondaga County’s industrial development agency added a 20-year, no-tax deal to its repertoire of business incentives last summer just as Destiny USA was starting to look for tax exemptions for a planned 255-room hotel.”¹⁴

Governor Cuomo’s reforms include limiting the payout to a total of five years; that won’t affect Destiny USA, as prior projects are grandfathered under the current system so long as they receive a certificate of completion by 2017.
14) http://www.syracuse.com/news/index.ssf/2014/03/was_20-year_no-tax_deal_created_for_proposed_destiny_usa_hotel_agency_developer.html
Since 2008\textsuperscript{15} just 27 of the state’s 62 counties have had projects receiving credits in the brownfields program; leaving well over half of the counties in the state, located predominantly in regions with highest need – the North Country, Southern Tier – without any economic benefit from the program to date.\textsuperscript{16}

This is a result of a variety of factors. On one end of the spectrum, some counties do not have a significant number of brownfields, or local leaders do not consider brownfields cleanup and redevelopment a priority. One the other end, the likelihood of lower post-development property values in many of these areas deters developers who benefit from the current program’s imbalance favoring high property value communities.

**North Country.** The North Country has experienced virtually zero benefit from the state’s brownfields program. The following counties – many of which are home to former manufacturing industries – have no sites which have claimed tax credits since at least 2008: Clinton, Essex, Franklin, Fulton, Hamilton, Jefferson, Lewis, Saratoga, St. Lawrence, Warren, and Washington. Herkimer County has had one project located in the southernmost area of the county southeast of Utica.

**Capital Region/Northern Catskills.** This is another region which has been largely shut out of the brownfields program. The following counties have had no projects collect credits since at least 2008: Columbia, Delaware, Greene, Montgomery, Otsego, and Schoharie. Albany, Rensselaer and Schenectady have had just one project each.

**Central New York/Southern Tier.** Onondaga has had several projects, most notably Destiny USA (see case study for more information), Cortland, Madison, and Oswego counties have had no projects collect credits since at least 2008. Cayuga and Oneida County were home to one project each. In the Southern Tier, Chemung, Chenango, Seneca, Steuben, and Yates have had no projects since at least 2008. Broome County has had three projects while Schuyler and Tompkins counties had just one apiece.

**Lower Hudson Valley.** Though Westchester County has benefitted significantly from the program, the rest of the region has not fared so well. Orange, Putnam and Sullivan counties have not had any projects collect credits since at least 2008. Ulster and Dutchess counties have had just one project each, while Rockland has had two.

**Erie County vs. Manhattan**

In many ways, the projects which have taken place in Erie County are a demonstration on how the program can work effectively. That’s because, in part, Erie County officials have embraced the program as integral to their economic development work by actively identifying potential development. Unfortunately, Erie County trends do not carry statewide.

Since 2010, credits paid out for development projects in Erie County have totaled $15,562,827 for 17 projects; the average cost per project was $915,460 with 100-percent of projects receiving credits below the statewide average. Comparably, credits paid out for just six total projects in Manhattan since 2010 was $186,618,573, a 1,200-percent difference. Additionally, those six projects had an average cost of $31,103,096. All but one exceeded the statewide average.

\textsuperscript{15} It has been virtually impossible to access public data of projects from 2006 and 2007.\textsuperscript{16} Counties may have projects eligible for credits, but due to a variety of factors, such as non-completion, no credits have been paid out\textsuperscript{17} 29 in 2008; 52 in 2014.\textsuperscript{18} Includes all sites in the program, not only those claiming credits after receiving a certificate of completion\textsuperscript{19} http://www.dec.ny.gov/chemical/8444.html\textsuperscript{20} http://www.dec.ny.gov/press/100242.html
The state Department of Environmental Conservation (DEC) – which administers the Brownfield Cleanup Program – has made progress in moving sites through the program more quickly. While the DEC does not pick projects, data shows that more sites are located in En-Zones, meaning more developers are using the program in areas where public incentives are most needed. While the numbers remain small compared to the thousands of sites awaiting remediation, every year since 2008 there has been a steady increase in the number of sites claiming credits.

The percentage of those sites within En-Zones has grown from approximately one-third in 2008 to two-thirds in 2014. Still, to date, approximately 49-percent of all projects funded were not located in En-Zones.

### Cost-Effective Brownfield Cleanups

The Environmental Restoration Program (ERP) was initiated with $200 million in funding from the Clean Water/Clean Air Bond Act of 1996. DEC has not accepted any new applications since the original funding ran out in 2008, removing a critical tool for municipalities to get zombie properties they took control of during the recession back into productive use.

However, in January, 2015, the DEC announced that 13 municipally-owned contaminated sites – which were already considered “shovel-ready” and applied for prior to 2008 – were headed for cleanup at a cost of $8.4 million with capital funding through the NY Works II program.

These cleanups averaged $646,000/site as compared to $8.1 million for the current brownfields program.

### Conclusion

The need for brownfields reform could not be more obvious. While developers in Erie County can proudly point to the effectiveness of the program in moving local projects forward, unfortunately that success is not seen across-the-board statewide.

In fact, areas of the state that would benefit most from an effective Brownfields Cleanup Program have been left out in the cold, while taxpayers foot the bill for a few high-end luxury developments in areas that would have already been cleaned up and redeveloped anyways.

This program cannot remain a taxpayer-funded giveaway. New Yorkers simply cannot afford it. Environmental Advocates urges state legislators to partner with Governor Cuomo, further improve upon his proposals, and finally turn this critical program into the environmental and economic development engine it can be.