

NEW POLICIES DESIGNED TO IMPROVE APPLICATION PROCESS FOR BROWNFIELD CLEANUP PROGRAM

Environment & Energy Alert
January 19, 2010

The New York State Department of Environmental Conservation (NYSDEC) has issued two program policies aimed at improving the efficiency of the state's Brownfield Cleanup Program. Both policies attempt to streamline the process for a private party to undertake the cleanup and redevelopment of a contaminated site in exchange for tax credits and liability protection.

DER-30. The first policy, DER-30, outlines the circumstances under which the NYSDEC will issue an opinion on the eligibility of real property for participation in the Brownfield Cleanup Program. The policy also sets out the requirements to be followed when requesting such an opinion, and it allows for a "preapproval" option to help accelerate an early step in the process.

When a request is submitted in accordance with DER-30, the NYSDEC will issue an eligibility opinion on whether the real property in question satisfies the definition of a "brownfield site" as set forth in the New York Environmental Conservation Law. This new policy allows prospective developers and communities to receive early notification that a site is eligible for the Brownfield Cleanup Program even before an application is submitted.

DER-32. The second policy, DER-32, attempts to make the Brownfield Cleanup Program application process more predictable with the goal of shortening the time it takes to finalize and execute a Brownfield Site Cleanup Agreement.

New requirements under this policy include the following:

- Applications must be submitted only after all such matters as funding, access, and contracts are in place to advance the remediation
- Applications must include a statement acknowledging and agreeing to the general terms and conditions set forth in DER-32
- Brownfield Cleanup Agreements must include a provision incorporating the general terms and conditions set forth in DER-32
- Signed Brownfield Cleanup Agreements must be returned within 60 days after receipt of the NYSDEC's approval letter; agreements returned later will cause the application to be considered withdrawn and the offer to enter the Brownfield

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By implementing these new procedures, the NYSDEC is attempting to standardize the Brownfield Cleanup Agreement process and to reach an agreement's approval and execution more quickly. The NYSDEC's goal is to reduce the period between site approval and execution of the cleanup agreement from several months to approximately 45 days.

Hodgson Russ has extensive experience helping clients take advantage of tax credits, manage brownfield projects, and navigate environmental laws and regulations.