



Department of
Environmental
Conservation

Brownfield Cleanup Program (BCP)

Presented by: Mike Kilmer P.E., Assistant Engineer
Division of Environmental Remediation (DER)

June 2023

Remediation Process

1. Identify the nature and extent of contamination from the remedial investigation
2. Develop remedial alternatives based on the following:
 - a) Protection of Human health and the environment
 - b) Compliance with New York State Standards, Criteria, and Guidance (SCGs)
 - c) Short-term/long-term effectiveness and impacts
 - d) Implementability
 - e) Cost effectiveness
 - f) Land use
 - g) Community acceptance
3. Department issued Record of Decision (SSF), Decision Document (BCP)
4. Oversee remedial action and review final engineering reports





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Impetus for BCP

- Decades of poor hazardous waste management
 - Thousands of contaminated sites across NY
 - Potential impacts on health, environment, property values and economic development
- Cleanup and re-use can be hindered by legal and financial concerns



Creation, Mission and Goal

Creation

- Superfund/Brownfield Law of 2003
- Replaced Voluntary Cleanup Program
- Renewed in 2022 as part of Fiscal Year 2023 Executive Budget

Mission

- Encourage private-sector cleanup and redevelopment
- Revitalize economically blighted communities

Goal

- Remediate sites to protect public health and environment



State Agency Roles

DEC

- Verify application completeness
- Determine Program Eligibility
- Formalize participation with Brownfield Cleanup Agreement (BCA)
- Oversee investigation and remediation work
- Issue Certificate of Completion (COC)

Department of Health

- Ensure program elements are protective of human health

Department of Tax and Finance

- Administer tax credits

Eligible Sites

Any real property (Parcel) where a contaminant is present at levels exceeding the soil cleanup objectives or other health-based or environmental standards, criteria or guidance adopted by DEC that are applicable based on the reasonably anticipated use of the property, except:

Environmental Conservation Law - ENV § 27-1407(1)

Any such person shall submit an investigation report sufficient to demonstrate that the site requires remediation in order to meet the remedial requirements of this title.

- Denial ≠ Can't reapply

Non-Eligible Sites

- Sites listed as Class 1 or 2 in the Registry of Inactive Hazardous Waste Disposal Sites where a viable responsible party has been identified;
- Sites on the USEPA National Priorities List (NPL);
- Hazardous waste treatment, storage, or disposal facilities (TSDF's) permitted under the Resource Conservation and Recovery Act (RCRA) that are owned by a viable responsible party ("interim status" facilities are eligible);
- Sites subject to a cleanup order under Article 12 of the Navigation Law (oil spill prevention, control, and compensation) or under Title 10 of ECL Article 17 (control of the bulk storage of petroleum); or
- Sites subject to any on-going state or federal enforcement actions regarding solid/hazardous waste or petroleum.



BCP Process

➤ Pre-Application Meeting

- Provides an overview of the BCP program
- Review environmental data

➤ Application

- 30-day public comment period (*Public Notice*)
- Internal eligibility review

➤ Brownfield Cleanup Agreement (BCA)

- Participant: an applicant who was an owner or operator of the site at the time of disposal or discharge of contaminants, or who otherwise failed to take reasonable care to stop continuing releases or prevent further releases.
- Volunteer: an applicant whose sole liability resulted from property ownership subsequent to the discharge or disposal of contaminants.



BCP Process

- Citizen Participation Plan (CPP)
 - Outlines the provision for all notices, fact sheets and comment periods
- Remedial Investigation Work Plan (RIWP)
 - 30-day public comment period (*Fact Sheet*)
- Remedial Investigation (RI)
 - Collect environmental data (soil, groundwater, surface water, sediment, soil vapor)
 - Define nature and extent of contamination
 - Volunteer may be required to sample off-site to complete the off-site exposure assessment
 - Participant must complete both on-site and off-site contamination delineation.

BCP Process

- Remedial Investigation Report (RIR)
 - Made available to public (*Fact Sheet*)
- Significant Threat Determination
 - ❖ If positive, DEC selects the remedy to be applied to the site.
 - ❖ If positive and Volunteer, an off-site code is developed.
 - Volunteers are not required to remediate off-site
 - Potentially responsible parties are sought out to address the off-site contamination
 - Technical Assistance Grants: Up to \$50,000 per site for 501(c) not-for-profit groups

BCP Process

- Remedial Action Work Plan (RAWP)
 - Evaluates remedial alternatives
 - 45-day public comment period (*Fact Sheet*)
- Remedy selection and Decision Document (DD)
- Remedial Action (RA)
 - Public notified prior to work commencing (*Fact Sheet*)
- Final Engineering Report (FER)
 - Documents all remedial activities
- Remedial Action complete
 - Public notified (*Fact Sheet*)



BCP Process

- Certificate of Completion (COC) issued
 - Public notified (*Fact Sheet*)
- Site Management (when applicable)
 - Institutional Controls
 - Local Use Restrictions
 - Environmental Easement
 - Site Management Plan
 - Submittal of Period Review Reports (PRRs) certifying engineer controls (ECs)
 - Engineering Controls
 - Active Treatment Systems
 - Site Control: Fencing or Cover system



Major Components

- Protective of human health and the environment with predictable cleanups
 - Use-based
 - Unrestricted
 - Residential
 - Restricted residential
 - Commercial
 - Industrial
- Establishes cleanup tracks and soil cleanup objectives
- More stringent cleanup tracks are incentivized with higher tax credit percentages

Major Components

- Designed as permanent cleanups for proposed site usage
- Investigations and cleanups conducted under DEC oversight
 - Remedial Investigation/Remedial Action
- COC
 - Limitation of liability release from the State
 - Required to qualify for tax credits



2022 BCP Amendments

More Gateways to Tangible Property Credits in NYC

- The project is developed into a renewable Energy Site
- The project is:
 - Within a disadvantaged community (NYSERDA) and
 - in a Brownfield Opportunity Area (NYSDOS), and meets BOA conformance determination

New Program Fee

- \$50,000 non-refundable fee will be collected upon execution of Brownfield Cleanup Agreement (BCA)
- Effective 4/25/22
- Waiver available for demonstration of financial hardship



2022 BCP Amendments

Tax Law Changes

- Prioritize disadvantaged communities and renewable energy project categories
 - 5% increase in tangible property credits for projects of either category
- 10-Year Program Extension
 - Sites will be accepted into BCP until December 31st, 2032
 - Sites must receive COC by December 31st, 2036



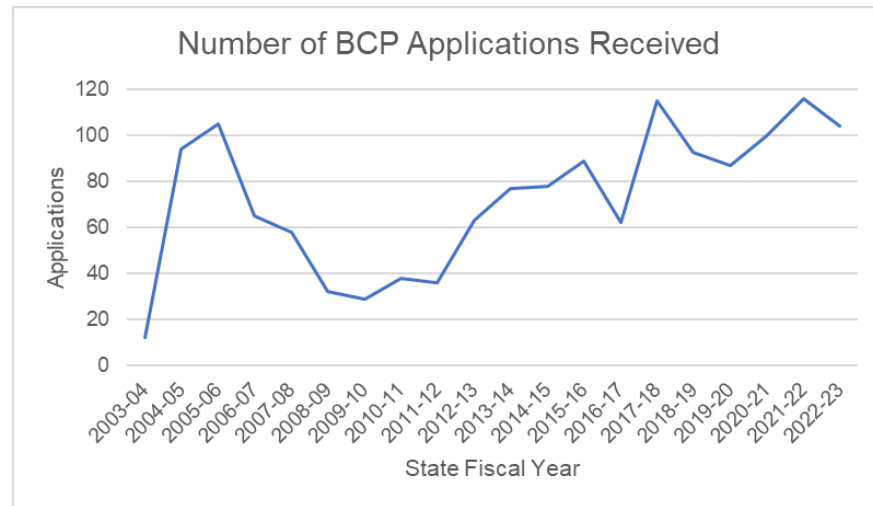
BCP Statistics

Life to Date status (as of 03/31/23):

- 1,552 applications received
- 597 COCs issued

Last Year (State FY 2022-23):

- 104 applications received
- 55 COCs issued
- 75 remedial investigations completed



Sustainable Cleanups

DER 31: Green Remediation

- Reduce environmental impacts from cleanup activities/treatment technologies
- Reduce direct and indirect emissions
- Maximize habitat value, create habitat when possible
- Working landscapes that balance ecological, economic and social goals
- Integration of remedy with the end use
- Encourage green and sustainable re-development
- Applies to all phases of site cleanup process in all remedial programs, including BCP

BCP Project Spotlight

Former Bethlehem Steel, Site C915205

Lackawanna, NY

- Waste (slag) disposal area
- 14 wind turbines constructed, generating an estimated 35 megawatts of clean power
- 13K-panel solar array producing an additional 4 megawatts
- Future development includes walking and cycling trails that would give Lackawanna community first waterfront access in 120 years



BCP Project Spotlight

Harbor View Square, Site C738040 Oswego, NY

- Former manufacturing facility
- Oswego Corridor BOA – designated in 2015
- 18 Townhome Units, 66 designated affordable housing units, 11 units that are accessible for those with a disability
- Each building earned
 - NYSERDA Energy Star Homes designation
 - Leadership in Energy and Environmental Design (LEED) for Homes certification
- Upstate region's 2022 Project of the Year by the New York State Association for Affordable Housing (NYSFAH)



Questions?



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Thank You

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