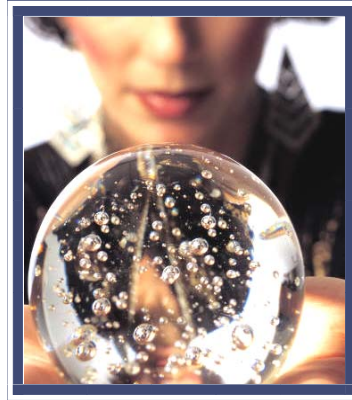


The Future of the NY State Brownfield Cleanup Program

By Richard J. Izzo, CPG

The New York State Brownfield Cleanup Program (BCP) in its present form is scheduled to sunset at the end of the 2015 calendar year. Just about everyone involved in the BCP agrees that some form of the Program will be re-authorized, however, questions remain including when that reauthorization will occur, and more importantly what changes should be made on the legislative level to produce a new-and-hopefully-improved BCP.

These topics were the subjects of discussion at a recent New Partners for Community Revitalization (NPCR) networking roundtable meeting attended by



this author. Participants at the roundtable are a veritable Who's-Who in brownfield redevelopment and included representatives of the New York State Department of Environmental Conservation (NYSDEC), The New York City Mayor's Office of Environmental Remediation (NYCOER), along with

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Cleaning Up the Lingering Effects of Sandy

By Jason Cooper

Not so long ago many of us were impacted by a storm not often seen on Long Island. While the effects may just be a memory for some who have cleaned up and moved on, there are others still coping with the aftermath of the storm.

Some of the most severe impacts occurred along the south shore of Long Island. The tidal surge caused by the intense sustained winds coupled with the long duration of the storm caused the ocean water to pile up along the south shore with little relief coming with low tide. These ingredients combined together became the recipe for massive flooding.

As a result of flooding, many objects were picked up by the ocean and carried inland with the tidal surge. Aboveground fuel oil tanks were no exception. CA RICH was contacted by an insurance company in February 2013 to investigate a report of fuel oil contaminated soils resulting from an overturned fuel oil tank at a residential home in Freeport.

The inspection revealed that a 275-gallon above-ground fuel oil tank had been bouyed up by the flood water during the storm. Sometime during the storm, the tank tipped over and fuel oil spilled out of the vent pipe and onto the tank owner's and neighbor's rear



yard and side walkway. As a result, a State-regulated Spill occurred, generating a New York State Department of Environmental Conservation Spill number.

Even though four months had passed since the storm, the fuel oil contamination remained very evident. The contamination could be seen in the brown staining of the grass and soil, discoloration of home's vinyl siding, and dead/stressed landscaped areas. In addition, a strong fuel oil odor was prevalent.

CA RICH, working with the New York State Department of Environmental Conservation (NYSDEC) and the homeowners insurance company developed the best approach for cleaning up these two properties. The approach included determining the extent of the fuel oil contamination, the removal of the fuel oil-contaminated soil with confirmatory endpoint samples, and backfilling the excavated areas with clean topsoil .

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(The Future... Continued from page 1)

notable brownfield attorneys, developers and consultants.

A primary focus of the roundtable discussion was how the Brownfield Tax Credits should be apportioned in the new BCP. Every site accepted into the BCP is eligible for refundable Brownfield Tax Credits (BTCs) of up to 50% of the cleanup costs (Environmental Cleanup BTCs) and up to 24% of site redevelopment costs (Tangible BTCs).

Currently, there are no criteria (short of acceptance into the Program) to establish the planned development's need for the BTCs, the level of blight (how seriously the

contamination complicates the development process) or public benefit, as contingent in awarding tax credits. As such, many involved in the BCP believe that tax credits are potentially being wasted on projects that would be developed anyway or are

not in the best interests of the community. Conversely, some redevelopments that actually need and deserve higher tax credits based upon the above criteria may have been shortchanged.

Another issue is the criteria for acceptance into the BCP. Because the BCP tax credits are publicly funded, the acceptance criteria are somewhat stringent and many sites do not qualify for the Program. This includes some sites that are currently under enforcement actions (i.e. Class II Sites) or sites that are not deemed dirty enough for the planned redevelopment to be sufficiently complicated by environmental concerns.

When the BCP was first enacted in 2004 it replaced the NY State Voluntary Cleanup Program, which had no financial incentives and, therefore accepted a wider range of sites. As such, the BCP is currently the only private-sector voluntary program in existence in NY State for State oversight of environmental cleanups. This means that if a site is not accepted into the BCP, there is oftentimes no other program for the applicant short of a Consent Order and potential listing on the State Registry of Inactive Hazardous Waste Sites. The recent advent of the NY City Voluntary Cleanup Program has provided a home for some of these sites within the five Boroughs, but many still slip through the cracks.

Val Washington, Esq. and Dale Desnoyers, Esq. (former NYSDEC BCP attorneys) have come up with

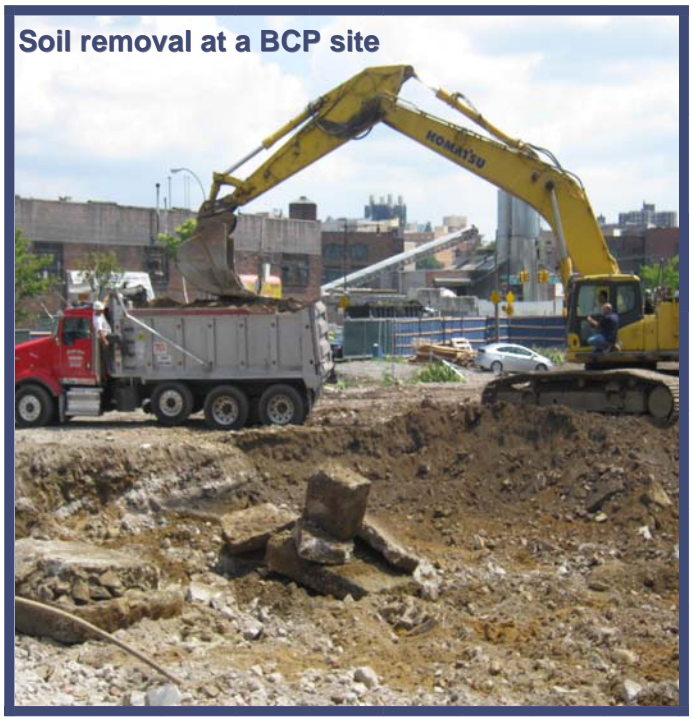
an approach to address these issues and, along with NPCR, are in the process of refining it and lobbying the State Legislature to consider their ideas when re-authorizing the BCP. The approach includes a two-tiered or "Two-Gates" program for BTC eligibility.

The first gate would provide that every site accepted into the BCP would be eligible for Environmental Cleanup BTCs in a similar fashion to the current program only with better defined and more generous BTCs. The second gate would include a review of the project to determine Tangible BTC eligibility and award Tangible BTCs based upon the project's need, public benefit and level of blight.

By providing a second gate or review of Tangible BTC eligibility, the criteria for acceptance into the BCP could be relaxed so more sites could get in. In addition, the State would have a say in which projects receive Tangible BTCs and how much, thus steering the eligibility towards projects that need and deserve the money based upon the needs of the public.

As to when the BCP reauthorization will occur, not much is certain. However, based upon the normal pace at which the cogs of the New York State Legislature move, an eleventh hour solution would not be surprising. In addition, because the average timeframe for a site to get through the program is 2.5 years, NYSDEC recommends that anyone who wishes to participate in the BCP in its current form get their applications in and begin the process by no later than this Fall.

“many involved in the BCP believe that tax credits are potentially being wasted...”



Cleaning... Continued from page 1)



Removal of impacted soils

The extent of the fuel oil contamination was determined by visually examining the homes for evidence of fuel oil staining, stressed vegetation, and utilization of a photoionization detector (PID). The PID is a meter capable of sensing airborne volatile organic compounds, some of which are found in fuel oil. As expected, the extent of the fuel oil contamination was concentrated along low lying areas that included a common fence, depressions in each yard, and associated landscaping.

Once the extent of the contamination was delineated, the impacted soils were removed by using hand tools such as shovels and picks. Following careful digging and loosening of the dirt by hand, the soils were then vacuumed up by a hose connected to a vacuum truck parked on the street. All contaminated soils were removed in this fashion to limit further impact to the lawns and landscaping on both properties. Endpoint soil samples were collected at the end of soil removal activities to confirm thorough removal of all the contaminated soils.



Backyard area with new topsoil

Endpoint sample results confirmed successful removal of all contaminated soils. Clean topsoil was then brought in to fill in the excavated areas. Upon completion of the topsoil placement, a Report was prepared and submitted to NYSDEC for Spill Closure on behalf of the homeowner.

The cleanup took approximately one week with a total cost of around \$45,000.

COURTLANDT CRESCENT wins the New York City Brownfield Partnership Big Apple Brownfield Award!



For the 4th sequential year, CA RICH is proud to announce receipt of yet another BABA Award. On April 24th, the Courtlandt Crescent Development Team was the recipient of the 2012 New York City Brownfield Partnership Big Apple Brownfield Award for Affordable Housing. Our team includes Phipps Houses, Dattner Architects, Monadnock Construction, and CA RICH.

Courtlandt Crescent, located in the South Bronx, is a sustainable residential development designed to be affordable to low and very-low income households. The development includes 217 residential units as well as a 10,000 square-foot, independently-operated early childhood day-care center. Sustainability features include: well-insulated building envelope, high-performance windows, energy-efficient heating system, low-flow plumbing fixtures and recycled/low-VOC building materials.

CA RICH successfully and expeditiously steered the project through New York State’s Brownfield Cleanup Program with the investigation and remediation of residual contaminants associated with the Site’s former industrial usage. Congratulations Team!



Courtlandt Crescent during construction

What's new at CA RICH

Congratulations to Jason Cooper, Proj. Mgr., who was recently featured in the Long Island Business News April 19th Issue of Who's-Who in Environmental Consulting and Engineering on Long Island.

CA RICH continues to participate in the New York City Office of Environmental Remediation's Turbo Training Certification Program convened at the CUNY Graduate Center in Manhattan. Participation further advances the Firm's technical qualifications in providing remediation services for E-Designated Sites and the City's Voluntary Cleanup Program.

The Firm commends our own Victoria Whelan, Proj. Hydrogeologist, for volunteering her valuable time on weekends and after hours to assist homeowners affected by Sandy throughout the Long Beach, NY community. Aside from her humanitarian efforts, she is assisting affected folks with technical advice on responsive environmental testing and cleanup procedures.

*For more information about CA RICH or the **ENVIRONMENTAL BULLETIN**, please call (516) 576-8844 or write to:*

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