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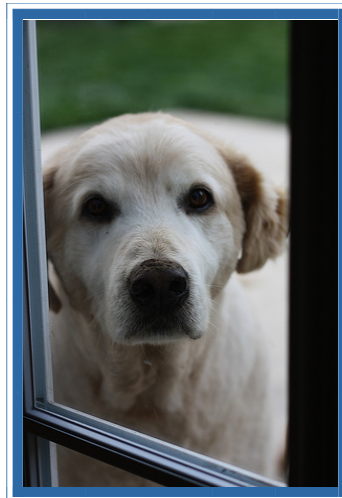
Summer 2009

A Home for City Brownfields

Since the New York State Department of Environmental Conservation (NYSDEC) replaced the Voluntary Cleanup Program with the Brownfield Cleanup Program, developers, consultants, and attorneys alike have been trying to find a home for certain properties requiring environmental cleanup and regulatory sign-off that are not viable candidates for other existing NYSDEC Programs.

These 'orphan' sites normally do not qualify for the Petroleum Spills or Brownfield Cleanup Programs and because it is usually not beneficial to have them 'Listed' on the hazardous waste registry, a Consent Order is not necessarily an attractive option for the redeveloper or the real estate community.

Until now, many of these properties were either forced into a program that didn't really fit the needs of the applicant (usually the 'Consent Order' route) or they had to be cleaned up 'at peril' without the benefit of regulatory oversight and sign-off. The latter approach oftentimes results in problems for lenders who seek official regulatory 'sign off' before they agree to provide financing.



However, if the property is located within the five boroughs of New York City, the recently created New York City Office of Environmental Remediation (OER) may just be able to 'adopt' your 'orphan' site.

On April 22, 2009, the New York City Council unanimously approved the New York City Brownfield and Community Revitalization Act" (note: the Bill was

signed by Mayor Bloomberg on May 11, 2009).

The recent passage of this legislation enables OER to develop a comprehensive City-wide Local Brownfield Program that includes a "Clean Property Certification Program" for the remediation and reuse of brownfields within New York City.

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'One' with the Community

By Richard J. Izzo

During the late 1980s, I was at a former industrial site in East New York where our firm was performing remedial action in preparation of a City-sponsored residential redevelopment project, when a local youth (we'll call him Sparky) rode by on a bicycle and asked if we were building "those new affordable houses". Before I had time to respond, Sparky added "well, you build 'em and we'll burn 'em down".

I'll admit that was a pretty harsh 'community' response to a planned brownfield-like redevelopment, even by 1980's East New York standards, and little Sparky's opinion was likely not fully representative of the local community at large, but that experience, al-



beit extreme, reminds us of how much the 'Citizen Participation' portion of today's popular Brownfield Cleanup Program (BCP) has changed over the years and, in fact, continues to evolve.

When New York State's BCP was signed into law back in 2003, it contained provisions for community involvement that were above and beyond those in pre-existing voluntary or mandated

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Soil Removal at a NYC Brownfield Site

The City-based Brownfield Program will:

- 1) utilize established New York State BCP Cleanup Standards;
- 2) facilitate community planning for areas affected by clusters of brownfields through the State's Brownfield Opportunity Area (BOA) Grant Program;
- 3) allow the City to provide liability protection for program participants through agreements with the State and Federal government as well as limited City liability protection for completed projects;
- 4) provide small grants using City funds to stimulate Brownfield projects;
- 5) give priority to environmental justice communities in the grant program and for technical assistance; and,
- 6) issue a "Clean Property Certification".

The Clean Property Certification (CPC) will represent the City of New York's acknowledgement that a property was investigated and cleaned up and the property is

protective of both public health and the environment. This Certification will be awarded to all properties that enroll and successfully complete the Program.

The CPC will also be awarded to projects that successfully complete the equivalent New York State Brownfield Cleanup Program. Two levels of certification are

anticipated. Gold Certification will be awarded to all properties that receive a Certificate of Completion from the City or State Brownfield Cleanup Program. Platinum Certification will be awarded to all properties that receive a Certificate of Completion from the local or

State Brownfield Cleanup Program and also incorporate green building design sufficient to achieve a minimum LEED Certification.

A record of Clean Property Certifications will be listed on a registry and on a "Clean Map" of New York City. If desired, building foundation plaques and Certificates suitable for public display will also be available to owners of certified properties. These are intended to provide property owners and developers with a means to formally advertise the property's participation and successful completion in a rigorous cleanup program.

In addition, OER plans to make NYC Brownfield Investigation Grants available for new development projects. The hope is that these grants will assist land purchase agreements by helping to identify potential or existing environmental problems on a property, so the problems can be valued, and enable developers to determine the cost and time associated with brownfield cleanup.

These grants will enable the requisite (brownfield) investigation by providing funds during the earliest stage of development. The projects receiving the financing for the investigation would then be candidates for enrollment into the NYC Local Brownfield Cleanup Program.

CA RICH is currently working with developers needing agency sign-offs to receive financing from the Department of Housing and Urban Development (HUD) or other lenders for their redevelopment projects, which currently do not qualify for any NYSDEC Program. These developers have entered into this Program as 'pilot' projects.

While no tax credits are associated with the Local Brownfield Cleanup Program, implementation of this 'pilot' Program is allowing these redevelopment projects to move forward in a timely and predictable manner with regulatory sign-off and providing a much-needed home to these orphan sites which, until now, have been on the outside, looking in.

"...implementation of this 'pilot' program is allowing these redevelopment projects to move forward in a timely and predictable manner ..."



Mayor Bloomberg signing the NYC Brownfield and Community Revitalization Bill

(One... Continued from page 1)

State Remediation Programs. This included: a shift in responsibility from the Regulators to the Volunteer or Participant for public notifications; as many as seven opportunities for public comment throughout the process; and, at least one public meeting.

A Citizen Participation Plan (CPP) was required (much like those developed for Superfund projects) including things like: establishment of Document Repositories where the concerned public can review project-related information; creation of a mailing list for the potentially affected/interested public; identification of the NYSDEC and NYSDOH Project Managers for the project and the ways for the public to contact them; and, a schedule for publication of notice in local newspapers and mailings to identified concerned parties. The CPP traditionally also included a brief description of the BCP project with emphasis on the testing and planned remedial activities.

“...we are seeing an increased shift within the BCP toward community awareness...”

Fast forward to mid -2009... With controversy surrounding the apportioning of Tax Credits and the related 2008 Brownfield Law Amendments, (not to mention the

current economic climate) the general public is becoming increasingly concerned about how their tax dollars are being spent. As a result, we are seeing an increased shift within the BCP toward community awareness and participation in, not only the cleanup itself, but the entire redevelopment process.

The Citizen Participation Plan is now required to contain sections describing how (remediation aside), the planned development project will benefit the local community. This may include discussions of ‘green’ technologies employed, plans for community centers or related facilities, and public-accessible open space, as well as general discussions of how the redevelopment will improve the current community environment.

Our experience has been that it is best to involve the developer and/or their engineer, architect or planner in crafting the language in this section to be almost like a commercial message about the project’s planned community benefits.

In addition to the ‘commercial message’, NYSDEC has added a section to the CPP entitled “Major Issues of Public Concern” and developed a Scoping Sheet for the consultant to utilize in preparing this section. The consultant must now investigate and anticipate potential public concerns and provide ex-

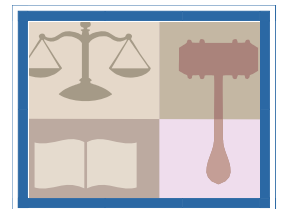
planation of how those concerns may be resolved. This may include discussions with local Community Boards and other local government/quasi-government entities as well as citizen groups and local media to develop a genuine feel for what the public is thinking.

With a shift of emphasis toward community awareness, CA RICH is helping to ensure that our BCP projects will not only provide a safe environmental cleanup for redevelopment, but also that they will be a good fit for the local community. This approach will likely foster greater support and less opposition to the related redevelopment projects.

Who knows?... if our friend Sparky had known that the planned East New York development was to have a community gymnasium, it may have softened his stance on the project. Anyone for a game of hoops?

Compliance with Changes in PBS Law Required by July 21, 2009

Last summer, modifications were made to NY State Petroleum Bulk Storage (PBS) Regulations that must be complied with by July 21, 2009.



Specific changes include a broadening of the definition of the term ‘Petroleum’ to include all fractions of crude oil. In addition, the definition of a regulated ‘Facility’ has been modified to include underground storage tanks (USTs) greater than 110 gallons in capacity (where 10% or more of the tank is underground).

It is noted that a property that contains a heating oil tank less than 1,100 gallons in capacity that is solely used for on-site consumption is not a ‘Facility’ unless the site also contains another tank or tanks which store other petroleum and are greater than 1,100-gallons in capacity (combined) or the site has an additional single underground petroleum tank in excess of 110 gallons. This also applies to a farm or residence with tanks that store less than 1,100 gallons of motor fuel for non-commercial purposes so long as the farm or residence does not store other petroleum that would cause it to meet the definition of a Facility.

The new definition of ‘Petroleum’ now includes crude oil or any fraction thereof and also includes mineral and synthetic oils.

What's new at CA RICH

President **Charles Rich**, in his capacity as Vice-Chair of the NYS Council of Professional Geologists, was pleased to recently meet with the Chair of the State Assembly's Higher Education Committee, Assemblyperson Deborah Glick, to promote the professional licensing of geologists now pending before the State Legislature.

Vice President, **Eric Weinstock's** article "Sub-slab Depressurization – A Necessary Part of the Final Remedy" was published in the American Institute of Professional Geologists' Winter 2009 Issue of 'TPG'. Contact CA RICH for more information or to request reprints .

Deborah Shapiro served on the Awards Subcommittee for the Big Apple Brownfield Awards in April 2009 at the Museum of the City of New York, honoring development teams for outstanding achievements in Brownfield Site projects. **Steve Malinowski** is continuing the Firm's work with the NYC Housing Authority and developers for new affordable housing within East New York and the Bronx.

On June 16th, **CA RICH** will sponsor the 2nd Big Apple Brownfield Workshop entitled "Where is the Money?". The Workshop will be held at the CUNY Graduate Center in Manhattan and will provide timely presentations by the NYCOER and industry experts on the wide range of financial resources available to assist your next brownfield project. Please stop by to discuss your next project, learn what we are up to, or simply say hello.

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

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CA RICH CONSULTANTS, INC.

A full-service environmental consulting firm providing strategic consulting and on-site support to help business owners manage all their environmental issues. CA RICH, independently-owned since 1982, is staffed by experienced environmental professionals skilled at understanding the intent behind environmental regulations, balancing business needs with environmental practicalities.

The Company supplies environmental consulting; Phase I & II assessments; audits; investigation; remediation; groundwater resource management; storage tank, indoor air quality & hazardous waste management; soil vapor intrusion mitigation; brownfield redevelopment; expert testimony; strategic thinking; and all other professional services related to meeting evolving environmental regulations.

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