

NY's Brownfield Extension and Modification Act (BEMA)

(coming to an underutilized site near you)

By Richard Izzo

After last year's failed attempt by Albany to amend the New York State Brownfield Cleanup Program (BCP), many were uncertain as to what would become of the BCP which was set to sunset in December of 2015. Earlier this year, Governor Cuomo and the Legislature agreed to modifications in the program and in the associated financial incentives (i.e. tax credits). These modifications known as "The 2015 Brownfield Extension and Modification Act" or BEMA were signed into law on April 13, 2015 as part of the 2015-2016 State Budget. The effective date of the new regulations is July 1, 2015.

One of the most significant changes in the BCP under BEMA is the definition of a "Brownfield Site". Until now, an applicant was required to demonstrate that environmental impacts on a candidate site were severe enough to "complicate development". This definition is subjective and oftentimes precipitated lengthy discussion between the applicant and DEC during the BCP application process. Under BEMA, one only has to demonstrate that a candidate site has contamination levels "exceeding DEC soil cleanup objectives or other regulatory/health standards for the anticipated use". In addition, the new program does not require the con-



tamination be solely attributable to an on-site source, leaving the door open for those sites containing contaminated imported urban fill.

Another significant change involves eligibility, which will extend to Class 2 sites and RCRA sites, provided certain stipulations are met. In addition, DEC will be creating a streamlined remedial program for those sites which may not be impacted enough for full BCP eligibility. The program will be called the "BCP EZ" program and will include voluntary cleanup of sites under the auspices of the State with provision of DEC sign-off and liability release, but without tax credits.

And speaking of tax credits, this is the area in which BEMA has made the most changes. Although all program participants will be eligible to receive Remediation and Site Preparation Tax Credits, these will be

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EPA Endorses Fracking

Op-Ed

This month, the Federal Government judged whether fracking potentially threatens our nation's drinking water supplies. This contentious issue has pitted natural gas companies, water purveyors, agricultural interests with property and mineral rights over vast shale formations (Marcellus, Utica), environmentalists, regulators, and consumers against one another's interests.

EPA has just released (in a draft version) an expensive four-year study that concludes that fracking only rarely causes water contamination, and that of those cases cited that have documented problems, most have been



attributable to operator error (negligence) or accidental or incidental fluid spillages or bad practices, NOT to the technologically-innovative new horizontal drilling methodology tapping the buried gas.

The fracking-for-energy-supporters-side (ranging from folks interested in increasing US natural gas and oil production to uninformed extremists drinking the

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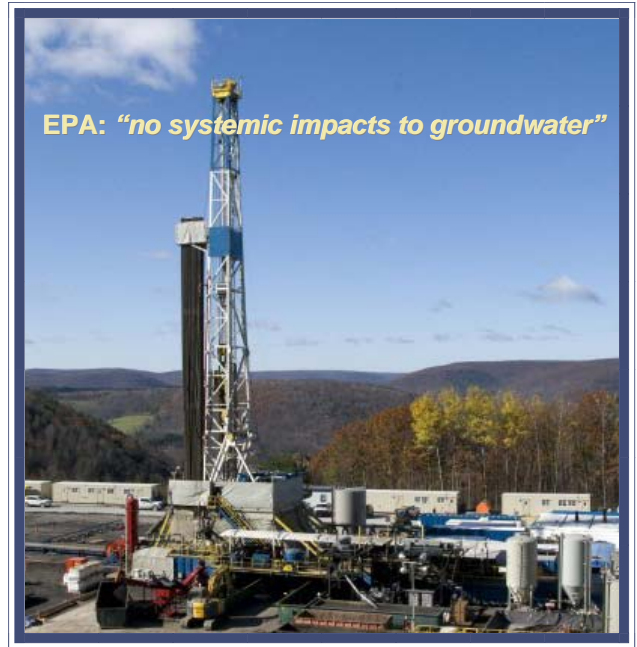
EPA... Continued from page 1)

'drill baby drill' kool-aid), may now become reliably fracking-positive. In short, EPA is vindicating fracking operators, energy companies, and promoters. That is, that hydraulic fracking is now deemed relatively safe, and that the States are effectively regulating the process.

Fracking will spawn sorely-needed jobs, lower energy costs, weaken OPECs power on global oil prices, and in a single bound, perhaps change the course of America's dependency on foreign oil - turning us from a net importer of energy to net exporters of energy. For example, several new terminals capable of LNG export are now nearing their completions. So, kudos to American ingenuity.

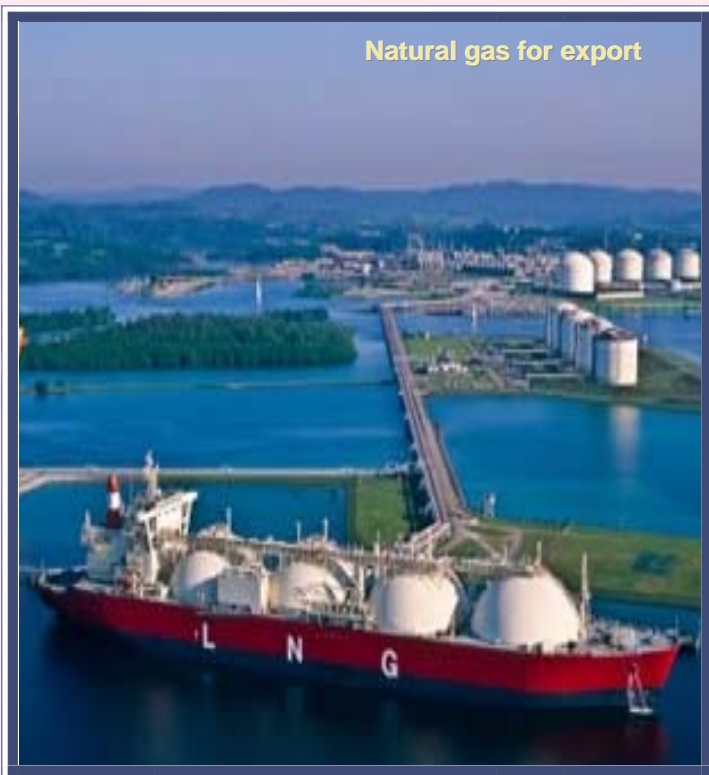
This sea change in our energy resources will counter environmental extremist's watershed doom & gloom, as well as certain attention-attracting celebrity activists exploiting the popularity of the NIMBY media limelight. The reality is that over the past four years, approximately 30,000 new fracking sites have been created. Even traditional older oil & gas wells are being newly-fracked to improve their yields.

EPA indicates that as a result of this new activity, almost 10 million people now find themselves living within only one mile of a drill site, and as many as 6,800 sources of public drinking water are now near fracking sites. The Report concludes that although fracking is widespread in certain regions, there is no evidence of even a single instance where the fracking methodology



resulted in water contamination! EPA did find a few instances where certain activities related to the fracking process impacted water quality but that these may be due to mitigating factors such as the presence of other sources of contamination precluding a definitive causal/effect relationship solely attributable to fracking.

“Out of 151 spills, hydraulic fracturing fluid reached surface water in only 13 instances – and none of the spills of hydraulic fracturing fluid were reported to have reached ground water. “



We find then that fracking risks have been, in large part, overstated, and are instead found to be highly localized. However, sufficient checks and balances are still needed, including:

- ◆ precautionary well permit regulatory requirements such as groundwater monitoring of subsurface conditions;
- ◆ improvements to industry's operational processes such as recycling fracking fluids;
- ◆ Sufficient State inspections and enforcement

With these and other measures in place, then on behalf of our national interests, we will basically ' have our gas, and export it too '.

But, as of this writing fracking is still banned here in New York (and in Maryland). Perhaps Joshua Fox's movie 'Gasland' needs yet another sequel, this one hopefully neither myth nor misconception, instead a science-based production that plays just as well in Albany as it would 'play in Peoria' – dispelling the now-dated notion that fracking is dangerous.

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curtailed to those costs directly associated with necessary investigation and remediation. The best example of this is the consideration of using a building foundation as part of a required composite cover system. Under BEMA, construction of basements and subterranean parking structures will no longer be fully allowed. Rather, tax credits will only cover the components of the building slab necessary for the cover system.

The other side of the tax credit equation is the Tangible Property Credit Component (TPCC). This includes the tax credits awarded to help offset construction costs. In order for sites in New York City to be eligible for the TPCC after the effective date of July 1, 2015, one of the following four situations must apply:

1. At least half of the site is in an En-Zone;
2. The site is "upside down", i.e. the cost of cleanup is at least 75% of the remediated site's value;
3. The site is to be used for "affordable housing"; or,
4. The site is "underutilized".

The definitions of these last two terms were provided by DEC on June 9th and summarized as follows:

"Affordable housing" includes affordable rental units or ownership units that are subject to a Federal, State or local government program or legal agreement dedicating a percentage of the units to tenants or buyers at a pre-defined maximum percentage of area median income.

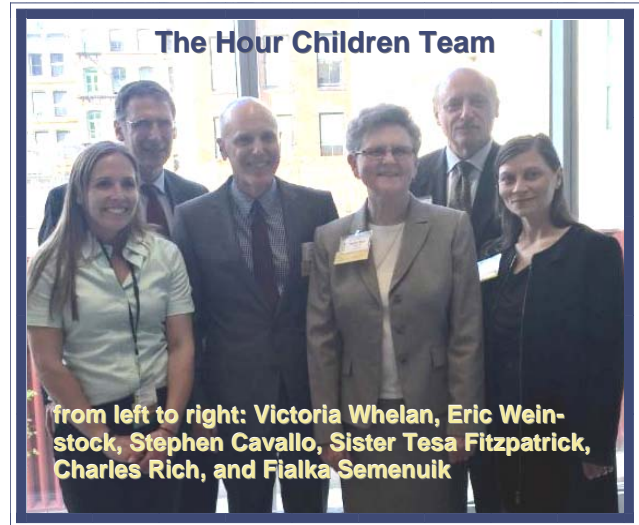
The term "underutilized" would apply to sites that meet all of the following criteria: 1) Contains buildings that are certified by a municipality to have utilized no more than 50% of permissible floor area for a period of at least 5 years; 2) Proposed use is other than residential or restricted residential; 3) Certification by a municipality that the site could not be redeveloped without "substantial government assistance"; and 4) Property taxes have been in arrears for at least 5 years, or the on-site building(s) have been condemned, or the proposed land use is in whole or in "substantial part" for industrial purposes.

In addition, the site cannot have undergone prior cleanup that rendered it developable for its proposed usage, and the site cannot be solely impacted by off-site contamination.

Albany added some additional provisions to soften the cost burden on "Volunteers", including waiving the requirement for Volunteers to pay DEC oversight costs ("Participants" still have to pay) and the exemption of hazardous waste fees and assessments for wastes removed as part of a Brownfield Cleanup.

For more information on the NY State BCP or Brownfield Cleanups, visit NYSDEC's website (www.dec.ny.gov) or to speed the process, simply call CA RICH for your next Brownfield Project.

CA RICH Wins 7th & 8th BABA !



The Hour Children Team

from left to right: Victoria Whelan, Eric Weinstock, Stephen Cavallo, Sister Tesa Fitzpatrick, Charles Rich, and Fialka Semenuik

CA RICH has done it again! We are pleased to announce that we were awarded two separate Big Apple Brownfield Awards this year from the New York City Brownfield Partnership: one) in the 'Green Building' category for Chelsea Park in Chelsea NY, and two) a 'Special' Brownfield Award category for its brownfield work at Hour Children Apartment House III Supportive Living in Queens.

These two BABA Awards are the seventh and eighth consecutive Awards CA RICH has received over the past eight years since inception of the Partnership's Annual Award Ceremony back in 2007.



Installation of a concrete slab as part of a BCP composite cover system

What's new at CA RICH

Congratulations to Victoria Whelan on her recent, well-earned promotion to the position of Associate here at CA RICH. Victoria continues to help the Firm put its best foot forward with her strong project management, leadership and client liaison skills.

CA RICH is pleased to welcome Senior Geologist, Carla Sullivan to the Firm. Ms. Sullivan brings 18 years of progressive professional experience to bear in assisting CA RICH Senior Management with mentoring staff and augmenting the growth of the Firm.

We would also like to welcome intern, Harrison Rose who will be working with us this summer. Harrison is a May 2015 graduate of Stony Brook University with a BA in Environmental Design, Policy, and Planning.

Charles Rich was prominently featured in the April 10-16, 2015 issue of Long Island Business News. Mr. Rich was interviewed in a feature article entitled "Licensed to Dig" on the subject of the new NY State Law requiring Licensure for Professional Geologists.

CA RICH is pleased to announce that, in addition to other notable repeat Clients, The Federal Reserve Bank of New York has once again called upon us to provide our professional services. The Firm is overseeing subsurface geological characterization in connection with their newly-acquired property in lower Manhattan.

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