

NEW YORK

New York Amends Brownfields Law

With the ink barely dry on the 107-page Brownfields Cleanup Program law approved in October 2003, New York's legislature gave speedy approval on August 11, 2004, to 48 pages of amendments (S. 7726, A. 11802).

The amendments were in the nature of “technical corrections” and are welcome because they clear up some substantive glitches in the law. For example, the amended law provides that:

- Certificates of completion (COCS) can be transferred to a subsequent owner and such transfers no longer trigger a give-back of tax credits.
- Developers have five years, rather than three, to show substantial progress toward redevelopment after issuance of the COC.
- Tangible property has 10 years, rather than three, to be placed in service without loss of tax credits.
- Tax credit eligibility is not lost merely because a COC is issued prior to 2006.
- Lenders have the same liability exemption for oil-contaminated property as for brownfield and Superfund sites.
- DEC has 10 days after it receives requested supplemental information to determine if an application is complete.

- DEC may set a reasonable flat fee that will satisfy a cleanup volunteer's obligations to repay state oversight costs.
- “Municipality” is defined as in the 1996 Bond Act (to include public benefit corporations, such as local industrial development agencies).
- “Environmental Zones” (En-Zones), that give rise to an added 8% tax credit, need not have both a high poverty rate and a high unemployment rate if the area's poverty rate is at least two times that of the county in which it is located.
- Environmental insurance can qualify for tax credits if it includes any of four enumerated coverages.

Although overwhelmingly positive, the amendments carry a few concerns, such as allowing COCS to be revoked based on the actions of subsequent site owners.

KENNETH S. KAMLET IS DIRECTOR OF LEGAL AFFAIRS AT NEWMAN DEVELOPMENT GROUP, LLC, VESTAL, N.Y. AND SERVES AS CO-CHAIR OF THE NBA NEW YORK STATE CHAPTER DEVELOPERS GROUP.

