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Brownfields
Demise of New York Brownfield Project Signals Fallout of State Program Expiration


By Matthew Berger

Feb. 25 — Plans for a manufacturing plant on a reclaimed industrial site in Newburgh, N.Y., have been abandoned due to the looming expiration of state tax credits for brownfields development, city officials told Bloomberg BNA Feb. 25.

The announcement highlights the potential impact to redevelopment plans across the state from the program's expected expiration at the end of the year, advocates said.

Hudson Valley Lighting had been set to build a \$16 million facility on the site of a former landfill, but delays over the past year meant the project wouldn't be able to complete enough construction to qualify for tax credits under New York's Brownfield Cleanup Program before the program expires Dec. 31.

People who work on brownfield redevelopment in New York said it's the first, but not the last, project to be abandoned due to the BCP's expiration and cited it as an example of the need to extend the program as soon as possible.

"The demise of this project is the publicly visible tip of the iceberg of projects that have been delayed or abandoned because of uncertainty over the future of the [BCP]," David Freeman, a lawyer at Gibbons PC law firm in New York City, told Bloomberg BNA.

"Companies need to plan years ahead for major construction and development projects. At this point such planning is impossible, because companies don't know whether there are going to be tax credits available after the end of this year—and, if so, what those tax credits will be and which projects will qualify for them," he said.

Proposal Comes Too Late

Gov. Andrew Cuomo (D) vetoed a bill in December that would have extended the BCP, citing his preference for extending the program as part of the budget process and for implementing "appropriate reforms" in the program (01 DEN A-3, 1/2/15).

On Jan. 21, he proposed an extension of the BCP, with reforms, as part of his 2015-2016 budget proposal (15 DEN A-13, 1/23/15).

New Limits Proposed on Eligibility

That proposal would limit which projects would be eligible for tax credits to projects classified as affordable housing projects and those either on land for which the cleanup cost exceeds the property value or where half the site is on land where the poverty rate is 20 percent and the unemployment rate 25 percent above the state average.

The current BCP provides those tax credits to all BCP sites. Under the proposed changes, sites accepted into the program by April 1, 2015, would be subject to the current rules.

The site of the proposed Hudson Valley Lighting facility, which is owned by the city of Newburgh's Industrial Development Agency, was accepted into the BCP in 2013, but Newburgh Mayor Judy Kennedy

BNA Snapshot

New York Brownfields Tax Credit Program Expires at Year-End

Key Development: Plans for a proposed new plant on a brownfield site in upstate New York were abandoned due to the expiration of a state-run Brownfield Cleanup Program at the end of 2015, which would have provided tax credits to help fund the project.

Wake-Up Call: The decision highlights the potential impacts of Gov. Cuomo's decision to veto a last-minute extension of the BCP in December, which created uncertainty over funding incentives for brownfield redevelopment projects.

What's Next: Legislators in Albany are negotiating a proposed overhauled BCP as part of the governor's budget proposal this month. There is hope an extension can be worked out by the end of March.

told Bloomberg BNA that, regardless of whether the site would be eligible for tax credits under a potential extended BCP, there was too much uncertainty over whether the program—whether the current or an overhauled one—would exist going forward.

She said Hudson Valley Lighting needs to expand beyond its current facility as soon as possible and can't afford to wait to see what happens in Albany. "They can't make a business decision based on what the legislature might or might not do. It's just too much of a business risk," she said.

Rough winter conditions delayed the project and pushed back construction plans enough that the December 2015 deadline became impossible, Kennedy said. "The project was being squeezed by the weather on this side and, on the other end, we weren't sure if the program was still going to be there."

Positive But Uncertain Outlook

The prospects for extending the BCP—whether in its current form, with Cuomo's reforms or something in between—were unclear, but advocates appear confident that something will get done, probably soon.

"Anybody who is saying they're not going to do a project because the tax credits aren't being renewed is just trying to put pressure on the legislature," Jeff Jones, of New Partners for Community Revitalization, which advocates for redevelopment of New York brownfield sites, told Bloomberg BNA from the state Capitol building. "They're jumping the gun—because there's a very good chance they will be renewed by the end of March."

"There's a lot of people that want it renewed. It's going to go through some changes, though, and those negotiations have not really started," Jones said.

What changes will ultimately stick is still very much unknown, Freeman said. "The governor's proposal is just one of the proposals out there. We're all going on speculation at this point as to what the final outcome will be."

Freeman Unsure About March Deadline

Freeman said he is less sure about getting the program extended or reformed by the end of March, which is New York's budget deadline, but hopes Albany won't wait "until the last possible minute."

"The fate of the Newburgh facility is a wake-up call—to the extent that any was needed—as to the critical importance of addressing these issues immediately," he said.

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