



CREATING GOOD JOBS, A CLEAN ENVIRONMENT, AND A FAIR AND THRIVING ECONOMY

Testimony of the BlueGreen Alliance Before the Joint Legislative Hearing on the Environmental Conservation Portion of the Executive Proposed Budget for New York State Fiscal Year 2023

February 1, 2022

The BlueGreen Alliance is a partnership of labor unions and environmental organizations working collaboratively to solve the climate crisis and income inequity. BGA was founded on the principle that good jobs and a healthy environment must be intertwined goals, that our economic and environmental problems must be addressed together to truly be solved. The New York State Brownfield Tax Credit Program is an incredible opportunity to do this.

A brownfield site is any real property where a contaminant is present at levels exceeding health-based or environmental standards that are applicable based on the anticipated use of the property.¹ The Brownfield Tax Credit Program is a voluntary program aimed to increase the remediation and development of abandoned contaminated sites by rewarding developers with valuable tax credits. Since its inception in 2003, the Department of Environmental Conservation has approved 1,156 applications to the program, and issued Certificates of Completion (COCs) to 543 formerly contaminated properties statewide.² The program has been criticized for rewarding developers with large tax credits without the guarantees of comprehensive-clean up, community participation, and family sustaining wages for remediation workers.^{3 4} Overall the program has dispersed a total of \$2.77 billion in tax credits, and the majority of accepted applications receive approximately \$5 million in total credits.⁵ A COC also allows the applicant

¹ Department of Environmental Conservation Brownfield Cleanup Program. Available online: <https://www.dec.ny.gov/chemical/8450.html>

² Department of Environmental Conservation. January 20, 2022. Available online: <https://www.dec.ny.gov/press/124600.html>

³ Buffalo Niagara Waterkeeper, Position Statement: Brownfield Cleanup at the site formerly known as GM/American Axle and Manufacturing September 13, 2020. Available online: <https://bnwaterkeeper.org/position-statement-brownfield-cleanup-at-the-site-formerly-known-as-gm-american-axle-and-manufacturing/>

⁴ Buffalo News, May 2019, Tonawanda Coke's future: Superfund or Brownfield? Available online: https://buffalonews.com/news/local/tonawanda-cokes-future-superfund-or-brownfield/article_55250b5f-aa21-5c8d-a757-2d3c0424fa1e.html

⁵ New York City Brownfield Partnership. New York State Brownfield Cleanup Program and Tax Credits: Analysis of a Three Generation Program October, 2021.

to receive a limitation of liability to the State of New York which applies to contamination identified by the remedial program.⁶

The BlueGreen Alliance supports the language in the Governor's budget proposing to incorporate environmental justice, job growth and climate resilience into the purpose of this program. We highly recommend that the program add stronger language in order to actualize these goals.

Public subsidies must come with public responsibility. Decades of research indicates that contaminated land and polluting industries are more likely to be located in predominantly communities of color and low-income communities.⁷ Biomonitoring data consistently shows that people of color, especially women of color, have higher levels of pesticides, parabens, phthalates, mercury, and arsenic in their blood and urine.⁸ Despite previous reforms of the BCP program, sites can sit in limbo for years, while community health may be compromised due to continued exposure. Furthermore, though this program is funded by the public, it does not require developers to pay family sustaining wages because it is currently not included in the definition of "public work.

We urge New York State to add the following language to the Brownfield Tax Credit Program to guarantee stronger investments in our communities:

- 1) A requirement for developers to include a plan to establish a Community Advisory Group (CAG) for the site. A CAG is made up of representatives of diverse community interests and designed to serve as the focal point for the exchange of information among the local community, the developer and the Department of Environmental Conservation. The use of community advisory groups have prescient in New York State remediation programs and are also included in the EPA's Superfund Program.⁹
- 2) A clause that any site would be ineligible for the program if there is a liable Potentially Responsible Party (PRP) able to provide cost recovery. A PRP is a person, firm or unit of government that may be financially responsible for site remediation. Although applicants are ineligible for the program if under a current consent order¹⁰, the program allows a

⁶ New York State Department of Conservation. The Brownfield Cleanup Program. Available online: <https://www.dec.ny.gov/chemical/8450.html>

⁷ Environmental Research Letters, Which came first, people or pollution? November 18, 2015. Available online: <https://iopscience.iop.org/article/10.1088/1748-9326/10/11/115008>

⁸ 55 Environment International, "A comprehensive analysis of racial disparities in chemical biomarker concentrations in United States women, 1999–2014" April 2020. Available online: <https://reader.elsevier.com/reader/sd/pii/S0160412019335317?token=EF6389B67565A763C61E999A20DAA4D90DAFD401373E6FB438F8F15C0D2FF6B5E5D44AABF29A8A239B8E3C4575C91334&originRegion=>

⁹ WBFO, State agrees to community advisory group for former American Axle cleanup. April 2, 2021. Available online: <https://www.wbfo.org/environment/2021-04-02/state-agrees-to-community-advisory-group-for-former-american-axle-cleanup>

¹⁰ Wythe Berry, LLC v. N.Y. State Dep't of Env. Conservation, 137 N.Y. S. 3d 91 (2d Dep't 2020).

loophole for PRP's to minimize enforcement action through the transfer of site ownership.¹¹ This clause would reduce the potential of responsible parties avoiding clean up liability and cost recovery, thus reducing the burden on taxpayers.

- 3) Define the Brownfield Tax Credit Program as 'public work'. We have a responsibility to ensure that projects that receive publicly supported tax credits are providing good paying jobs. Defining the program as public work will attach labor standards to the program, and better support New Yorkers and New York State's long-term goals. Studies also show that labor standards provide social benefits from higher wages and better workplace safety, increased government revenues, and elevated worker skills in the construction industry.¹²

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To conclude, the Brownfield Tax Credit program must assure higher standards for our communities and include commitments to explicitly achieve environmental justice, job growth and climate resilience. Without such clarity, achieving the purpose of the program will not be guaranteed. I may be reached at either Rnowatchik@bluegreenalliance.org or at 716-523-1264 should either of your committees want more information.

Sincerely,

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¹¹ WRGZ Buffalo, Part of Tonawanda Coke property accepted into Brownfield Cleanup Program. Feb 14, 2020. Available online: <https://www.wgrz.com/article/tech/science/environment/part-of-tonawanda-coke-property-accepted-into-brownfield-cleanup-program/71-301f9140-d646-45c9-981e-6a656a9f9dea>

¹² Economic Policy Institute. Nooshin Mahalia. Prevailing wages and government contracting costs, a review of the research. July 3, 2008.

¹³ Kotler, Fred, New York State Prevailing Wage Law: Defining Public Work, March 8, 2018. Available online: <http://faircontracting.org/wp-content/uploads/2018/05/fulltext.pdf>