



In Plain English


WINTER 2004

Landmark Environmental Legislation Enacted in New York State

Governor Pataki recently signed landmark legislation that amends not only New York's Environmental Conservation Law, but also its Public Health Law, General Municipal Law, Real Property Tax Law and the Tax Law, to name a few. The new law will refinance the State's Superfund Program and significantly change the way contaminated properties in New York State are remediated, redeveloped and handled by the New York State Department of Environmental Conservation.

The new law forms the Brownfield Cleanup Program, which provides a statutory vehicle to facilitate the clean-up of contaminated properties in New York State. A "brownfield" is any real property whose redevelopment or reuse may be complicated by the presence (or potential presence) of a hazardous waste, petroleum, pollutant or contaminant.

The law establishes significant financial incentives – in the nature of state assistance grants and tax credits – to enter into the Brownfield Cleanup Program.



Franklin Properties, LLC selects brownfield site located in Franklin Square in Syracuse for redevelopment. The 2-acre abandoned brownfield site (Photo, upper right) was used for decades as a manufacturing and industrial facility.

The Franklin Square brick building (rendering above) with its unique architectural features will be restored for use as an office building.

This sweeping legislation also establishes defenses to environmental liability, including lender and municipal liability exemptions, which should encourage development of contaminated, blighted areas within cities in upstate New York. We discuss significant tax implications of the new law (see reverse side), the new state exemption allowed to lenders and municipalities and, finally, grants available to assist in the investigation and remediation of contaminated properties. **H&E**



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Brownfield Clean-Up Program Provides Participants a Limited Release from Future Liability

The Brownfield Clean-Up Program rewards voluntary participants with a statutory release by the State from future hazardous waste claims following completion of the program. The release, however, does contain certain limitations and exceptions including specifically enumerated subsequent events – referred to as "re-openers" – that would allow the State to potentially override a previously granted release.

Additionally, the offered releases differ in scope depending on the status of the participant. For example, the release provided to municipalities may offer more protection against third-party claims than the release provided to private participants.

In order to make maximum beneficial use of this statutory release opportunity, potential program applicants should fully consider the benefits and limitations of this provision prior to participation.



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Estabrook, LLP

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