

**New York State Brownfield Cleanup Program and Tax Credit Analyses
2015 Update**

April 15, 2015

Sponsored by NYC Brownfield Partnership



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The initial report dated January 2014 on the New York State Brownfield Cleanup Program on behalf of the New York City Brownfield Partnership utilized data from inception of the program through December 2013ⁱ. This update incorporates additional information reported by New York State for the year ending December 31, 2014. As in the initial study, the data are from New York government sources, (the complete updated database is available), and no extrapolations or multipliers are utilized. Updated charts have been included to illustrate change and the complete updated database used for this evaluation is available. This presentation attempts to incorporate information most relevant to decision-makers and practitioners, regarding the future of the New York State Brownfield Credit Program tax credits. The following categories of information were reviewed and are included in this Report:

1. **2014 Program Statistics**
2. **Tax Credits per Project**
3. **Geographic Distribution of Brownfield Tax Credits**
4. **Tax Credit Distribution by Type of Credit**
5. **En-Zones and Brownfield Opportunity Areas**
6. **Length of Time for Remediation**
7. **New Completions, Federal Tax Updates and Trends**
8. **Conclusion**

Addendum



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1. 2014 Program Statistics

The New York State Department of Environmental Conservation (NYSDEC) reports that, as of December 31, 2014, 752 projects had been accepted into the Brownfield Cleanup Program (BCP) and 196 projects had received Certificates of Completion (COCs). Thirty-four new Brownfield Cleanup Agreements (BCAs) and forty-three COCs were completed between January 1, 2013 and December 31, 2014. NYSDEC estimates that approximately 170 projects will be seeking COCs in 2015. The BCP continues to grow, perhaps influenced by the potential expiration or revision of the Brownfield Tax Credits (BTCs) by the end of 2015.

New York State issued \$96-million in tax credits in 2014, for tax year 2013, based upon a total of \$572 million of costs eligible for BTCs in all categories. The total value of the BTCs since inception of the Program in 2003 is \$1.2 billion. The amount of tax credits for projects filing for tax credits in 2014 will not be known until after 2014 tax returns are submitted and analyzed, probably in mid-2015. There remain approximately one hundred "legacy" (pre-2008 amendment) projects, approved and still under the original law, including uncapped BTCs. Note that a BCP applicant has ten years after receipt of a COC to claim tangible property tax credits (TPCCs), so the total cost to the State of the BTCs will not be known for some time.

Overall, the 2014 data further supports one of the initial study's key findings that the 2008 amendments significantly changed the BCP. Specifically, the high proportion of tangible as compared to site preparation, groundwater and other tax credits was reduced, mean project size was almost halved, remediation times were reduced, geographic distribution was somewhat altered, and a higher proportion of post 2008 sites were in En-Zones.

2. Tax Credits per Project

Post-2008 amendments projects receiving BTCs averaged just more than half the mean value of credits for legacy projects, as shown on the chart below. No individual project received more than \$17.6M, which is less than half the \$35-million overall cap; the three times remediation cap appears to be the critical limitation. When comparing post-2008 amendment projects to legacy projects, the distribution of the type of credits was markedly different. Legacy project received approximately 6% site prep and groundwater remediation credits versus approximately 94% tangible credits, while post-2008 projects received 34% site prep and groundwater remediation credits and approximately 66% tangible credits.

Table 2A: Average (Mean) Value of Credit and Type of Credit				
	Site Preparation	Tangible Property Component	On-site Ground Water Remediation	Total Credit
Overall for program to 2014	1,209,079	9,459,830	66,823	10,735,729
Legacy Projects to 2014	759,330	12,585,955	27,945	13,373,224
Post-2008 Projects to 2014	2,018,627	3,832,804	136,805	5,988,236
All Projects that received credits in 2014	1,640,603	11,543,049	135,533	13,319,185

Several of the “new” projects receiving tax credits since issuance of our initial report entered the list of top 20 largest recipients. All were post-2008 amendment projects. The projects are:

- The former Avis property in Garden City mixed use development;
- Two large mixed income residential buildings in Queens West and: and
- Via Verde, the affordable New York Housing project in the Bronx;
- In addition, several legacy projects received additional credits; including Destiny Mall in Syracuse, (\$9-million in addition to \$56-million received earlier). This raised the median value for all projects that received credits in 2014.

The 20 largest projects accounted for \$962-million of credits, or 80% of the total tax liability of the program. Of these, 15 were legacy (pre-2008) projects. Eight of the twenty were less than two acres, and the total for all twenty was 172 acres. The overall average site size in the BCP is over 6 acres and the total land area remediated under the BCP is approximately 1,200 acres.

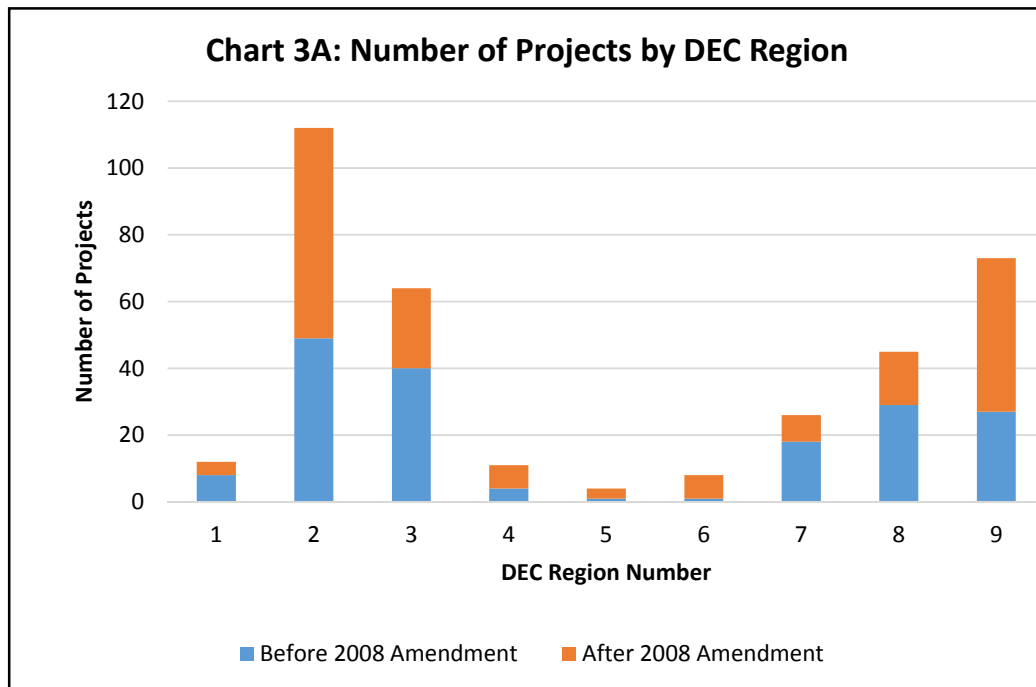
Chart 2B: Twenty Largest Brownfield Tax Credit Recipient Projects

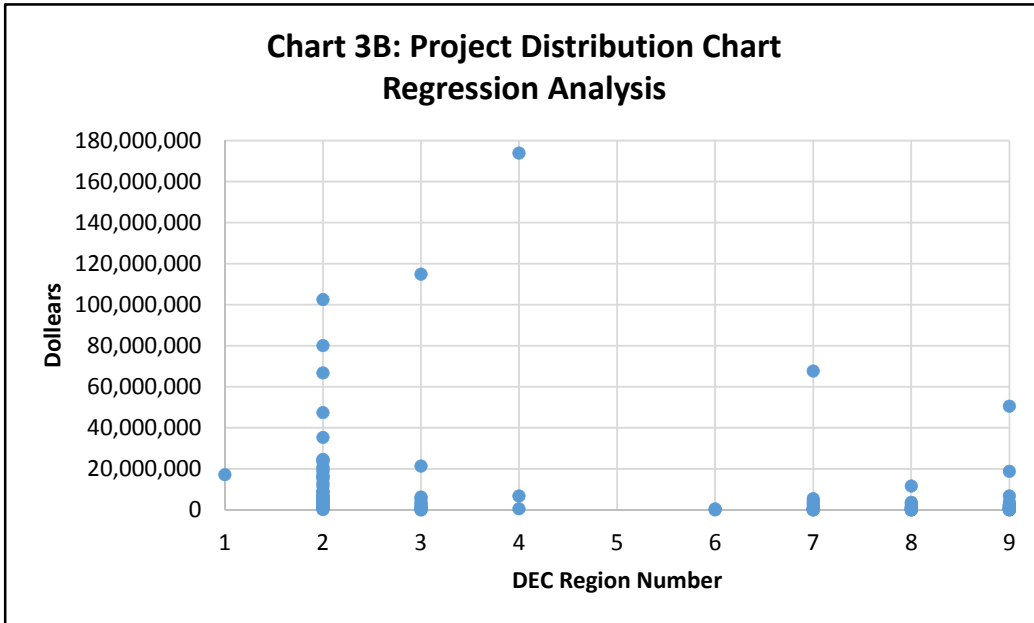
DEC No.	Project Name	Executed Before 6/23/08	DEC Region	County	Acreage	Project Type	En-Zone	Cost of Site Preparation Component	Credit of Site Preparation Component	Cost of Tangible Property Component	Credit of Tangible Property Component	Cost of On-site Groundwater Remediation Component	Credit of On-site Groundwater Remediation Component	Total Costs	Total Credit
C442035	BASF Corporation South 40 Site	Yes	4	Rensselaer	34.000	I	No	45,026,383	5,403,166	1,404,205,546	168,504,666	0	0	1,449,231,929	173,907,832
C360073	221 Main Street	Yes	3	Westchester	2.600	H	Yes	0	0	574,380,325	114,876,064	0	0	574,380,325	114,876,064
C231012	River Place II West 42nd St. Gas Works	Yes	2	New York	1.100	R	Yes	24,433,785	4,398,081	545,237,090	98,142,677	0	0	569,670,875	102,540,758
C241078	Flushing Town Center, L.P.	Yes	2	Queens	6.990	C	No	142,136,276	14,213,627	658,537,143	65,853,715	0	0	800,673,419	80,067,342
C734104	Oil City/Carousel Center - Phase 1	Yes	7	Onondaga	10.130	C	No	27,479,234	2,747,923	648,829,656	64,882,966	0	0	676,308,890	67,630,889
C231045	East River Plaza	Yes	2	New York	4.500	C	Yes	2,347,962	422,633	340,576,714	66,367,099	0	0	342,924,676	66,789,732
C932150	Former Mill No.2	No	9	Niagara	18.520			35,970,753	9,712,103	226,814,516	40,826,613	0	0	262,785,269	50,538,716
C231011	Clinton Green Development Project	Yes	2	New York	1.480	R	Yes	0	0	236,981,724	47,396,344	0	0	236,981,724	47,396,344
C241095	Queens West Waterfront Development - 00505D	No	2	Queens	4.745	R	No	15,423,597	4,318,607	310,019,146	31,001,915	0	0	325,442,743	35,320,522
C241096	Queens West Waterfront Corporation - 00505C	No	2	Queens	4.649	R	No	23,944,527	6,704,468	177,918,032	17,791,804	0	0	201,862,559	24,496,272
C231040	West 17th Street and 10th Ave.	Yes	2	New York	1.213	R	No	7,004,615	700,462	237,853,822	23,785,382	0	0	244,858,437	24,485,844
C231043	West 61st Street (Track 1 Area)	Yes	2	New York	1.090	R	No	4,368,078	524,169	183,371,132	22,015,217	8,650,847	1,038,102	196,390,057	23,577,488
C360071	Yonkers Parcels B and C	Yes	3	Westchester	4.450	R	Yes	0	0	118,511,813	21,332,126	0	0	118,511,813	21,332,126
C231017	West 19th Street Development Site	Yes	2	New York	0.680	O	No	0	0	174,223,088	20,906,771	0	0	174,223,088	20,906,771
C224043	U.S. Dredging Shipyard Site	Yes	2	Kings	48.060	C	No	8,569,155	1,028,299	156,854,460	18,822,535	0	0	165,423,615	19,850,834
C915194	Former Buffalo Service Station	Yes	9	Erie	4.900	O	Yes	0	0	93,934,229	18,786,846	0	0	93,934,229	18,786,846
C241049	Queens West (Hunter's Point) Parcel 9	Yes	2	Queens	1.790	R	No	0	0	154,813,570	18,577,628	0	0	154,813,570	18,577,628
C130206	Former Avis Headquarters Property	No	1	Nassau	21.858		No	22,707,447	11,353,724	41,541,100	5,815,754	0	0	64,248,547	17,169,478
C231047	Astor Substation	Yes	2	New York	0.600	I	No	42,675,951	5,974,634	76,422,001	10,699,080	440,000	61,600	119,537,952	16,735,314
C203043	New Housing New York Legacy Project	No	2	Bronx	1.410	A	Yes	7,530,497	2,108,539	77,933,038	14,027,947	144,129	40,356	85,607,664	16,176,842

3. Geographic Distribution of Brownfield Tax Credits

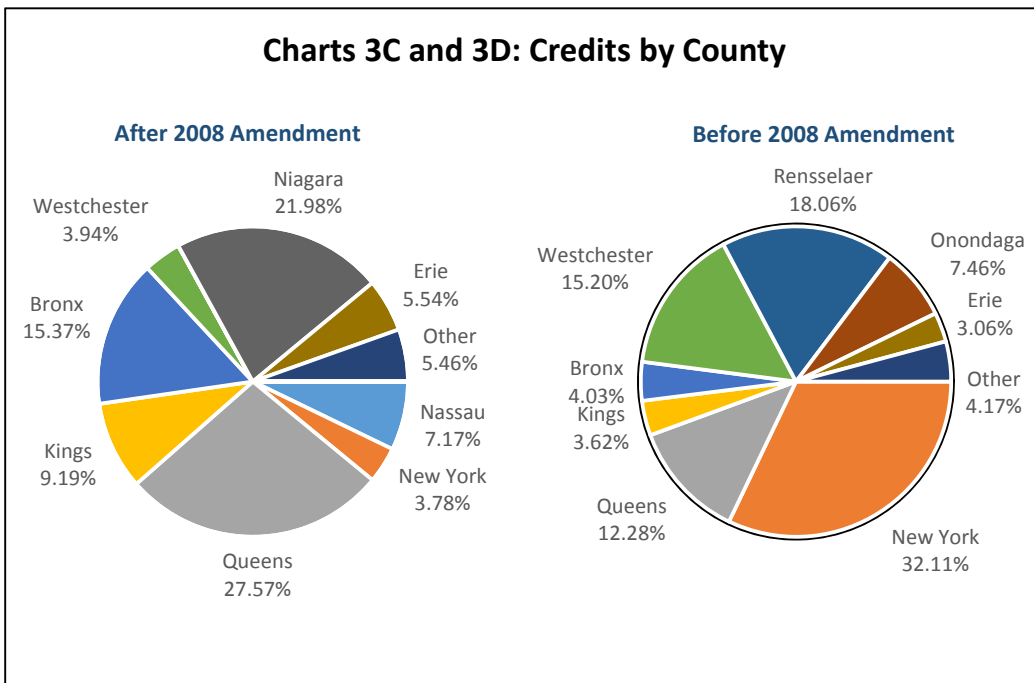
The following charts illustrate the geographic distribution: of projects that have received tax credits. Chart 3A illustrates the distribution of tax credits by NYSDEC region for both legacy and post-2008 projects. Chart 3B is a regression analysis distribution (“scatter”) chart analyzing project size in terms of credits correlated to NYSDEC region; and Charts 3C, 3D and 3E show the distribution of all, legacy and post-2008 projects by county (omitting counties with less than .5% for readability).

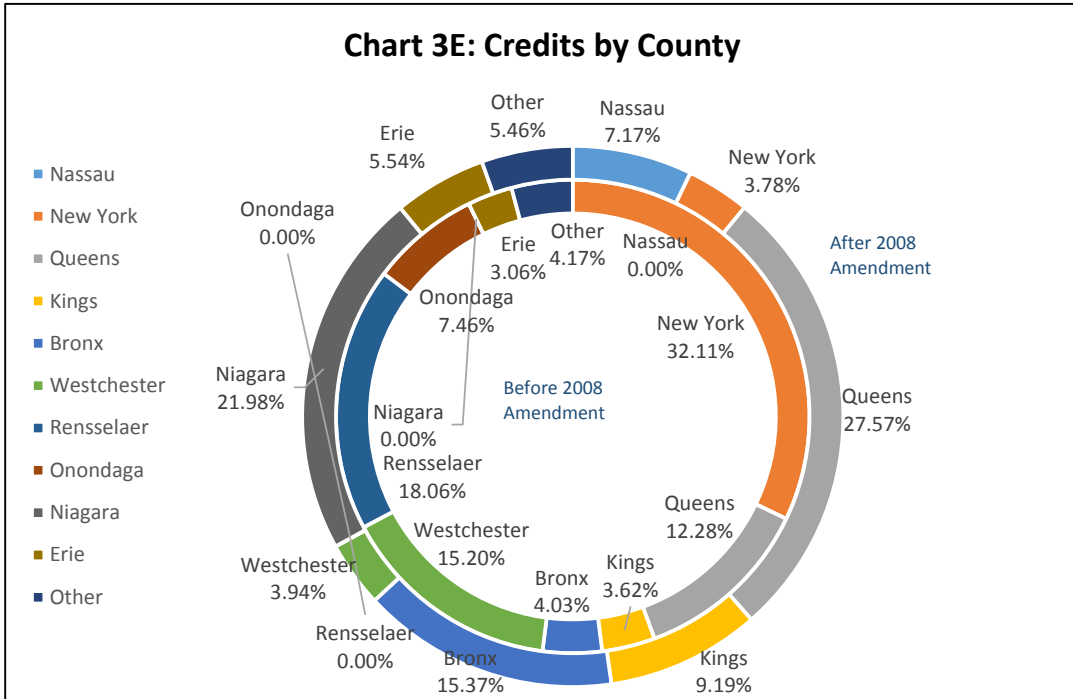
Key findings include that downstate (NYSDEC Regions 1, 2 and 3) received more than 60% of credit dollars through 2014, with Region 1 benefitting from the Garden City project, and Region 2 (New York City) receiving more credits recently in the outer boroughs and for affordable housing and less for market rate residential in Manhattan. This is shown most clearly in the pre and post 2008 Credits by County pie charts below. Legacy projects included several large recipients in Manhattan, and individual projects in Rensselaer, Westchester and Onondaga counties. As discussed in the initial study, there has recently been more activity in Region 9 (which includes the Buffalo area) in terms of number of applications (111 projects accepted in the program as compared to 508 in the five NYC counties), and a higher proportion of credits. Projects in New York City, especially Manhattan, are often extremely complex with costly hi-rise construction, while projects upstate have generally lower costs and therefore lower tax credit value.



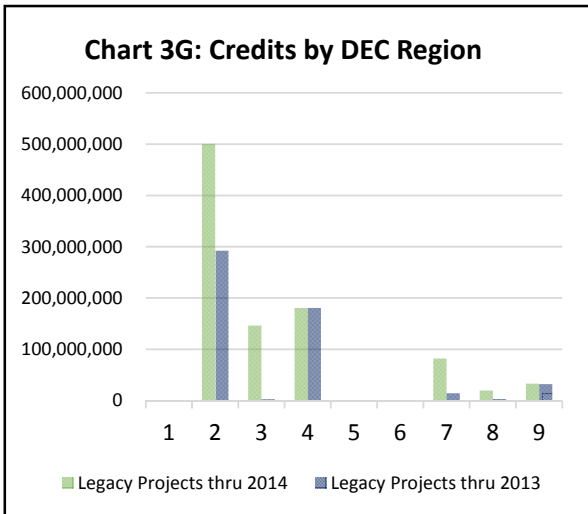
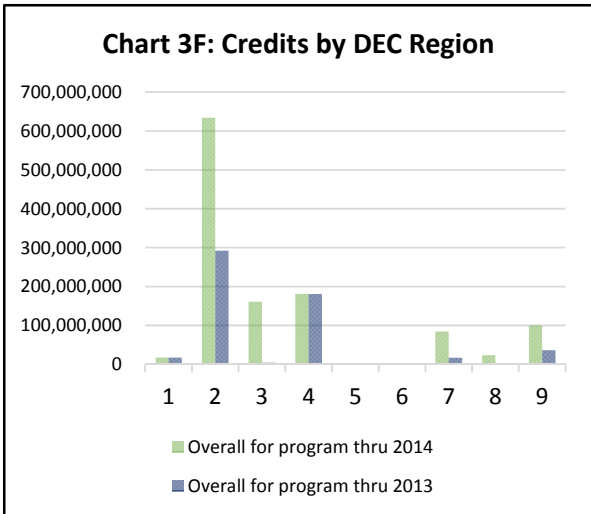


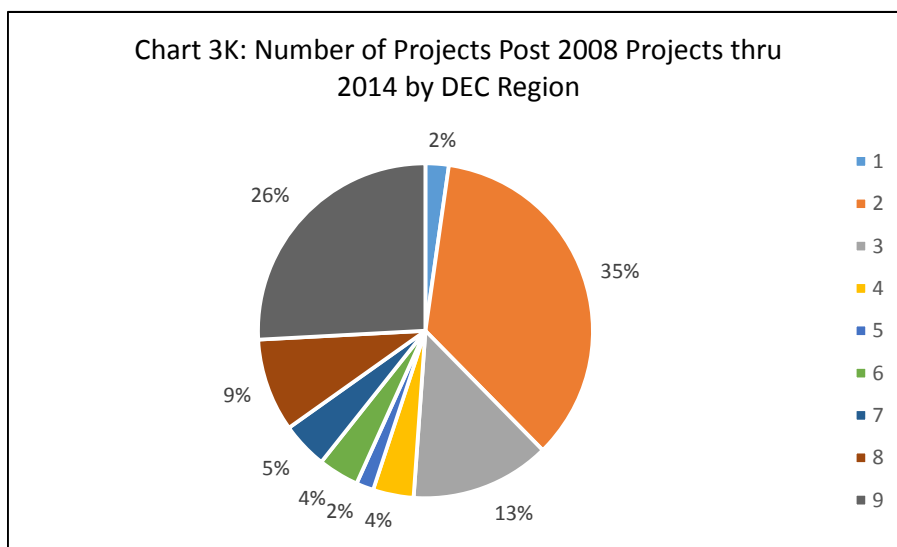
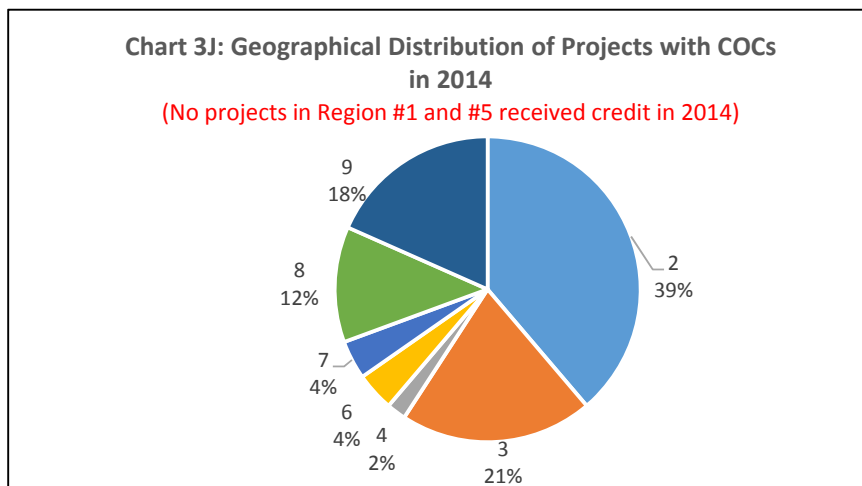
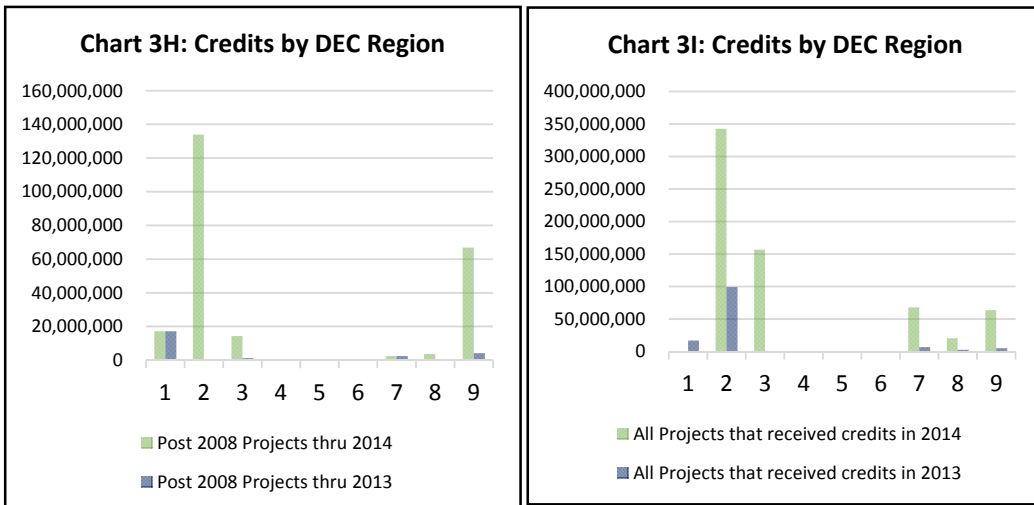
The regression analysis “scatter” chart 3B illustrates the correlation between DEC region and dollar value of credits per project; several large legacy projects in upstate regions reduce the statistical significance, but the correlation is evident.





Charts 3C, 3D and 3E show total distribution of credits for pre and post 2008 for the life of the program. Charts 3F illustrate the tax credits have been distribution by NYSDEC region over the past two years and 3G the different geographic distribution of credits for legacy projects and post-2008 amendment projects. Chart 3H and 3I shows the trend in credit geographic distribution by NYSDEC Region for post 2008 and all projects through years 2013 and 2014. Chart 3J is the distribution of projects receiving COCs in 2014, and Chart 3K for just post 2008 projects.



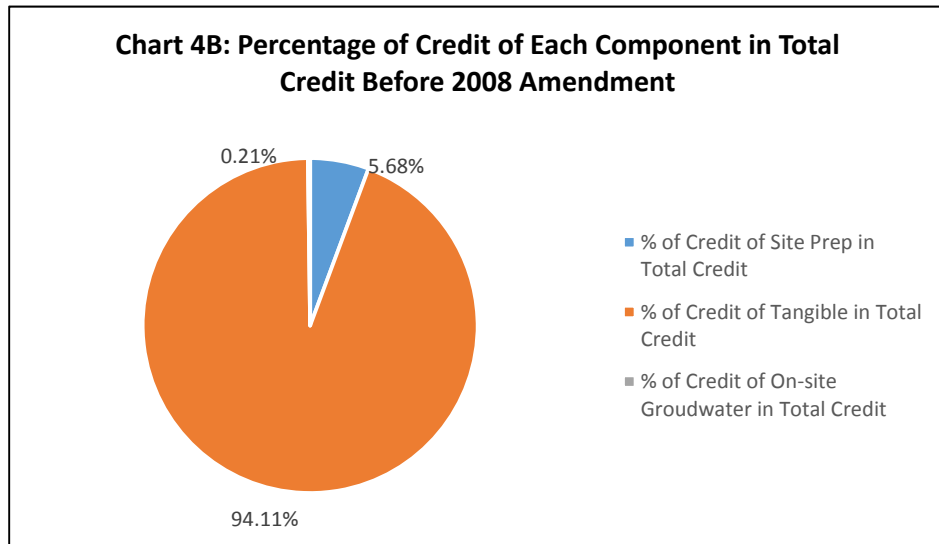


4. Tax Credit Distribution by Type of Credit

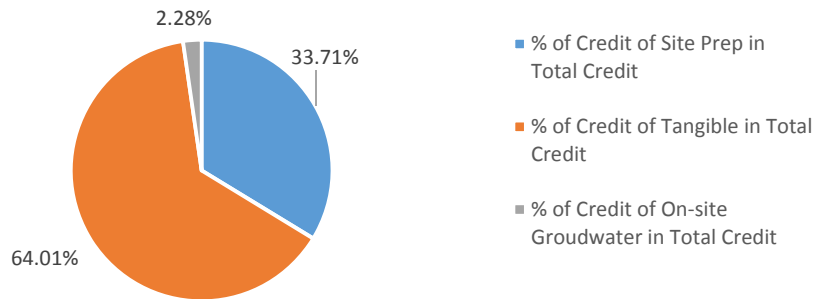
In 2014 (tax returns for 2013), more post-2008 projects received credits and this larger sample shows a lower standard deviation (more tightly grouped projects) in terms of costs. The mean (average) amount of credits received by “legacy” projects was \$13.5-million, post-2008 projects average credit value was \$7.5-million.

The updated data shows that in 2014, a distribution of 95% tangible credits for legacy projects as compared to 50% tangible, 45% remediation and 5% other for the 2014 group of post 2008 projects. So through 2014 for the entire program, credits have been distributed 75% for tangible costs (10% lower than through 2013), 24% for site preparation/remediation costs (higher) and following the mandated formulas, the ratio of costs to credits decreased slightly to 6:1 thru 2014 based upon the formulas in the statute. Projects upstate, particularly DEC Region 9, made proportionately greater use of site preparation and groundwater credits.

	Site Prep Credits	Tangible Credits	Groundwater Credits	Total Credits
Credits Received 2005-12	17,825,013	399,874,708	7,028,864	784,246,925
Credits Received 2013	37,202,314	94,016,806	387,761	131,606,881
Credits Received 2014	80,389,533	565,609,408	6,641,103	652,640,044
Grand Total	135,416,860	1,059,500,922	7,484,231	1,202,401,600



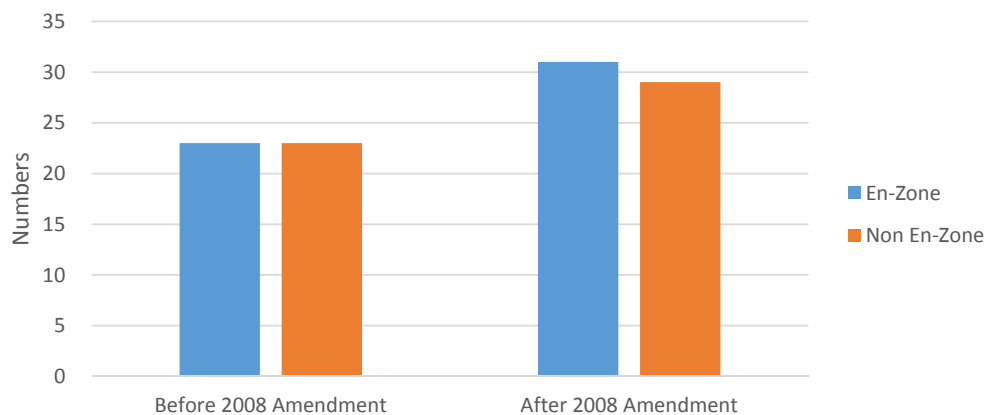
**Chart 4C: Percentage of Credit Types for Post 2008 Amendments
(From Inception through 2014)**



5. En-Zones and Brownfield Opportunity Areas

Roughly 40% of BTCs went to projects located in En-Zones, economically disadvantaged communities where projects received additional credits. There was a slightly higher proportion of post-2008 projects located in En-Zones than for legacy projects. No additional credits were earned using the statutory Brownfield Opportunity Areas (BOAs); no BOAs were certified as of 2014. There remains great potential for community-wide, multi-site brownfield redevelopment. While BOA has not been funded for two years, the program remains in the law. A more nimble, focused BOA program could enable low income communities with numerous brownfield sites to coordinate redevelopment and projects would be eligible for greater BTCs, further targeting the brownfield cleanup resources.

Chart 5A: Number of En-Zone Projects



6. Length of Time for Remediation

An additional measure looked at more carefully in this update is the length of time for remediation, between acceptance into the BCP and the issuance of (a COC). The median was 4.8 years, but there were relatively large groups of projects approved in 2-4 years and another significant group, mostly legacy projects, some impacted by economic slowdowns, that took 8 years or longer to receive a COC. The chart below shows numbers of projects by, duration of cleanup (i.e., the time between acceptance into the BCP and issuance of a COC).

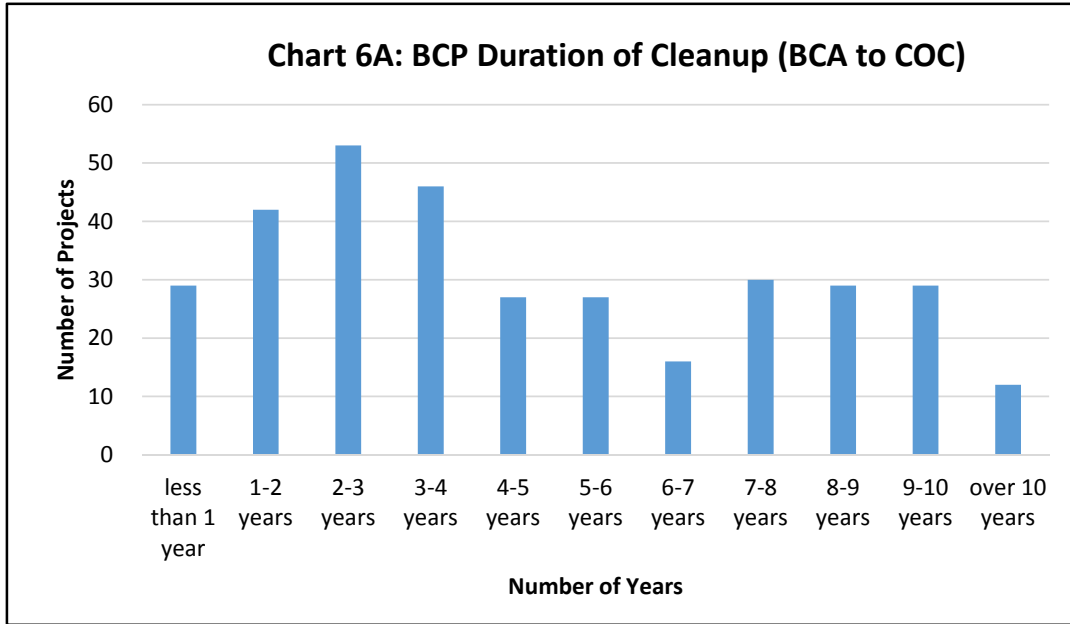


Table 6B further demonstrates the difference between post-2008 amendment projects and the earlier legacy projects. Legacy projects have taken an average of 6.3 years for approval while post-2008 projects have taken an average of 3.2 years to receive a COC. Both charts suggest that there are likely a significant number of market-driven projects that could be attracted to a voluntary, faster, non-tax credit program. The initial study cited the use of earlier and current voluntary programs in New York.

Amendment	Values			
	Average Time	Max Time	Min Time	Median Time
Pre-2008 Amendment	6.29	12.21	1.00	7.65
Post-2008 Amendment	3.23	7.98	0.54	3.00
Grand Total	4.82	12.21	0.54	

7. New Completions, Federal Tax Updates and Trends

Among the 2014 COCs were two for the former GM plant in Sleepy Hollows, legacy projects accepted into the program in 2005 and now scheduled to start vertical construction in 2015. The former Concord Hotel and Resort was accepted into the program in 2009 and also received a COC 2014.

The treatment of the BTCs under federal income tax regulations has not been well understood by applicants but is a significant issue. State tax refunds, including the BTCs, are fully taxable as federal income, so as much as 20% (corporations) and 39% (high income individuals) of tax credits go to the IRS. In addition, non-profit organizations have had to find creative partnerships in order to benefit from the BTCs. A proposed change in the New York State statute is intended to at least partially remedy the federal tax concern.

Separately, the New York Division of Tax Appeals in a December 2014 determination denied a \$675,000 tax refund, holding that environmental remediation costs that were deducted under the federal Brownfield Tax Incentive were not eligible for the New York BTCs.ⁱⁱ To be eligible for TPCCs, expenses must be charged to a capital account, and costs expensed under the now expired Internal Revenue Code section 198 provisions are by definition not chargeable to a capital account.

8. Conclusion

The pre-2008 amendment New York State Brownfield Cleanup Program provided major resources to a limited number of projects that varied widely in efficacy. The 2008 amendments lowered program costs in part by capping credits, placed more emphasis on remediation, and improved geographic dispersion. The BTC program remains a significant potential exposure for state resources, particularly for legacy projects. An improved BTC applicable to all projects, a program that is more targeted; and focuses on timely environmental remediation, on communities that need help, providing marketable credits less subject to federal tax, and on working with rather than separately from economic and development programs, could maximize the benefits of the program.

Addendum

All of the data utilized in this report is from the New York State Department of Environmental Conservation and the New York State Department of Taxation and Finance. The databases used are available upon request to the NYU Schack Institute of Real Estate.

The US EPA Brownfields Program is comparable in both costs (\$1.1-1.2-Billion) and duration (EPA started a pilot program in 1995 and by statute in 2002, and NYS BTC statute in 2003, preceded by administrative voluntary program). There have been recent studies of the federal brownfields program, which has provided over 20,000 projects with relatively small (generally \$200,000-\$1,000,000) front-end assessment, remediation, revolving loan and training grants; helping to cleanup 24,000 acres. Using the more conservative federal Bureau of Economic Research multipliers resulted in \$17B of economic impact, even after accounting for projects that do not go forwardⁱⁱⁱ, greater than claimed in a study supported by advocates for the NYS BTC^{iv}. The EPA program also has also been found to result in increase in property values, as well as environmental and community benefits; the relatively new federal area-wide program, done jointly by EPA, HUD and DOT have gained more traction than the stand-alone NYS BOA program.

ⁱ NYU Schack Institute of Real Estate, New York State Brownfield Cleanup Program and Tax Credit Analyses, New York City Brownfield Partnership, January 28, 2014, http://www.nycbrownfieldpartnership.org/pdf/NYSBTC-Jan_28_revised.pdf

ⁱⁱ Matter of Coltec industries, Inc., DTA No. 825211 (N.Y.S. Div. of Tax App., Dec. 31, 2014). Facts.

ⁱⁱⁱ National Bureau of Economic Research; Kevin Hannigan, Lala Ma, Christopher Timmins, The Value of Brownfields Remediation, NBER Working Paper No. 20296, July, 2014 <http://www.nber.org/papers/w20296>

Final Report Verifying the Social, Environmental, and Economic Promise of Brownfield Programs Brownfields

^{iv} Redevelopment Economics, New York State Brownfield Cleanup Program, New York Developers Brownfield Alliance, 2013.

http://www.redevelopecon.com/yahoo_site_admin/assets/docs/BCP_Report_FINAL_R.6481345.pdf

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