Thomas A. Schweich
Missouri State Auditor

CITIZENS SUMMARY

Findings in the audit of the Brownfield Remediation Tax Credit Program

Background

The Brownfield Remediation Tax Credit (BRTC) Program was established in 1995. The Department of Economic Development (DED) manages this program, which provides financial incentives for the redevelopment of commercial/industrial sites that are contaminated with hazardous substances and have been abandoned or underutilized for at least 3 years. To be eligible for BRTCs, the Missouri Department of Natural Resources (DNR) must accept the project into the Voluntary Cleanup Program (VCP) and approve the applicant's remedial action plan. Applicants cannot have intentionally or negligently caused the release or potential release of hazardous substances at the project. The DED must project at least 10 new jobs will be created or at least 25 jobs will be retained as a result of the completed BRTC project. Applicants may receive BRTCs for up to 100 percent of the eligible costs of demolition and remediation, but under state law BRTCs are limited to the least amount necessary for the project to occur and limited to the projected state economic benefit as determined by the DED. BRTCs are non-refundable but transferable and may be carried forward for 20 years. The DED authorized over $185 million in BRTCs for 115 projects during fiscal years 2003 to 2013. Audit staff reviewed 15 BRTC projects and interviewed DED staff involved in those projects.

Program Administration and Oversight

The DED has not conducted a formal evaluation of the BRTC to determine whether authorizing BRTCs for 100 percent of eligible costs is the most advantageous to the state, and this practice results in developers having little incentive to minimize remediation and demolition costs. In addition, the DED has not (1) designed a formal procurement process that requires the lowest and best bids to be accepted and restricts conflict of interest situations, (2) compiled a historical listing of reasonable prices for various remediation activities, and (3) required an engineer, architect, or certified public accountant to certify eligible project costs. These weaknesses provide little assurance that projects are completed at a fair and reasonable cost to taxpayers.

For one project, the DED reduced the amount of authorized BRTCs after discovering the developer had obtained, but not submitted to the DED, a lower bid. For that same project, the DED did not reduce the authorized BRTCs for the proceeds from the sale of scrap materials generated during demolition. For another project, the DED issued BRTCs for activity not included in the remedial action plan, and the DNR did not conduct independent verification and testing prior to certifying remediation activities were properly completed.

Program Efficiency and Effectiveness	The DED does not always require developers to enter into clawback agreements in the event the project does not create the projected number of jobs. Audit staff reviewed 15 projects and found, for the 10 projects with completed remediation activities, developers projected 2,500 jobs would be created, but only 116 full-time and 322 part-time jobs were actually created. Because the DED uses these job creation estimates in the annual cost-benefit analysis submitted to the General Assembly, the state economic impact of the BRTC program is significantly overstated. The General Assembly has not established annual or cumulative limits on BRTCs, or a sunset provision for the BRTC program. State law does not prohibit claiming the same project costs under two or more tax credit programs. This "stacking" of tax credits can be lucrative for developers without generating additional economic activity or state benefit. Previous DED and DNR officials did not require parties responsible for environmental damage to be fully responsible for remediation costs. As a result, state taxpayers will end up primarily funding the remediation costs for a project through the issue of $12.275 million in BRTCs. The DNR also did not hold previous owners responsible for environmental damages for 4 additional projects where some hazardous materials were likely generated by former owners.

In the areas audited, the overall performance of this program was **Poor***

*****The rating(s) cover only audited areas and do not reflect an opinion on the overall operation of the entity. Within that context, the rating scale indicates the following:

Excellent: The audit results indicate this entity is very well managed. The report contains no findings. In addition, if applicable, prior recommendations have been implemented.

Good: The audit results indicate this entity is well managed. The report contains few findings, and the entity has indicated most or all recommendations have already been, or will be, implemented. In addition, if applicable, many of the prior recommendations have been implemented.

Fair: The audit results indicate this entity needs to improve operations in several areas. The report contains several findings, or one or more findings that require management's immediate attention, and/or the entity has indicated several recommendations will not be implemented. In addition, if applicable, several prior recommendations have not been implemented.

Poor: The audit results indicate this entity needs to significantly improve operations. The report contains numerous findings that require management's immediate attention, and/or the entity has indicated most recommendations will not be implemented. In addition, if applicable, most prior recommendations have not been implemented.

All reports are available on our Web site: auditor.mo.gov