



**Written Testimony of New Bedford Mayor Jon Mitchell  
For The U.S. Conference of Mayors  
Before the House Energy and Commerce  
Subcommittee on Environment and the Economy  
Thursday, February 16, 2016**

**“Modernizing Environmental Laws: Challenges and Opportunities for Expanding  
Infrastructure and Promoting Development and Manufacturing”**

**INTRODUCTION**

My name is Jon Mitchell. I am the Mayor of New Bedford, Massachusetts, where I have served since 2012. I’m pleased to be here to testify on behalf of the U.S. Conference of Mayors where I serve as Chair of the Energy Committee. Mr. Chairman and members of the Committee, I would like to officially submit my written testimony for the record.

I am pleased to speak before you today to examine potential reforms to environmental statutes to promote infrastructure, development, and manufacturing. My testimony will focus on the reauthorization of the Brownfields Law with its national and local impact to infrastructure, economic development, and job creation.

In particular I will describe how New Bedford has pursued renewable energy as one creative solution to the redevelopment of brownfield and Superfund sites, and in the process, turned environmental liabilities into economic assets for the community.

If Congress is interested in giving economic development tools to communities, especially those that are economically struggling, reauthorizing and modernizing the Brownfields Law should be a cornerstone in that effort.

## **HISTORY**

Since the early 1990s, the Conference of Mayors made the redevelopment of brownfield properties one of its top priorities. At that time, the Government Accountability Office (GAO) estimated there were anywhere from 400-600,000 brownfield properties. Brownfields are defined as abandoned or underutilized property whose redevelopment is hindered due to real or perceived environmental contamination.

Developers and business owners were unwilling to touch these properties out of fear of liability. These concerns were the result of the joint, several, and strict liability provisions in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), a 1980s law more commonly known as Superfund, which made an innocent developer just as responsible for the cost of cleanup as the actual polluter.

As a result, these potential businesses would develop on greenfields rather than take a risk on a brownfield property. This has contributed to urban sprawl and left abandoned or underutilized sites in just about every community in the United States. New Bedford alone has several hundred brownfields and two Superfund sites.

As former Chicago Mayor Richard Daley said at the time, “As a nation, we recycle aluminum, glass, and paper, but we don’t recycle our most valuable commodity, our land.”

The Conference of Mayors worked with Congress and the EPA to formulate legislation and a program that provided some liability relief for innocent developers as well as money to do assessments and cleanup.

This was legislation had strong bipartisan support. The fact that the Small Business Liability and Brownfields Redevelopment Act passed in the Senate with a 99-0 vote and

was put on the unanimous consent calendar in the House and then signed by President Bush, demonstrates the vast bipartisan appeal of this issue.

And you can understand why: This is a win for the community, the environment, and the business community.

### **NATIONAL IMPACT OF BROWNFIELDS**

The Brownfields Law and the EPA Program that resulted has had a very positive impact on many communities throughout the nation. According to EPA, since the inception of the program, they have awarded nearly \$600 million in assessment money which has resulted in over 24,000 brownfield assessments. They have also awarded about \$215 million for cleanup grants resulting in over 1,200 cleanups completed. This has created over 113,000 jobs and nearly \$22 billion dollars leveraged.

In fact, each EPA dollar spent leverages approximately \$18 in other investments. Another added bonus is that by developing on brownfield sites, you are also reutilizing or refurbishing already existing infrastructure.

However, resources have been limited, and EPA has had to turn away many highly qualified applicants due to lack of funding. EPA estimates that for the past 5 years, over 1,700 requests for viable projects were not awarded money because of limited funding. EPA estimates that if they were able to provide funding to those turned away applicants, an additional 50,000 jobs would have been created along with an additional \$12 billion of leveraged funding.

In the last Conference of Mayors survey, 84 percent of cities said that they have successfully redeveloped a brownfield site with 150 cities successfully redeveloping nearly 2,100 sites, comprising more than 18,000 acres of land. And, at that time, there were over 1,200 sites comprising of another 15,000 acres that were in the process of

being redeveloped. 106 cities reported that 187,000 jobs have already been created through the redevelopment of brownfield properties with 71,000 jobs in the pre-development stage and 116,000 permanent jobs.

These new developments have resulted in an increase in tax revenues at the local, state, and federal level. 62 cities reported that their actual tax revenues from redeveloped brownfield sites totaled over \$408 million with an estimate of potential revenues ranging from \$1.3 - \$3.8 billion.

And, it should be noted that in every survey that the Conference of Mayors ever conducted, the top three impediments to brownfields redevelopment were always the same-- lack of clean up funds, the need for more environmental assessments, and liability issues.

### **BROWNFIELDS REDEVELOPMENT IN NEW BEDFORD**

Moving from a national perspective, I want to tell you about this program at the local level. First of all, I want to give you a little background on my community. New Bedford is port city located sixty miles south of Boston with a population of roughly 100,000. It is most widely known as the world center of the whaling industry in the 19<sup>th</sup> century, featured prominently in the premier American novel, Melville's *Moby Dick*. Later a national center of cotton textile manufacturing, the City today has recaptured its national leadership in the maritime sector, as the number one commercial fishing port in the United States for the past sixteen years.

To be sure, my City has struggled with a high unemployment and demographic challenges like most other older urban areas. That said, the City and region are in the midst of a noticeable transformation: Not once, but twice in the past two years the New Bedford area has seen the sharpest year-over-year drop in unemployment of all 387

metropolitan areas studied by the Bureau of Labor Statistics. When I came into office, our unemployment rate hovered around 14%; today it is 3.7%.

This recent success aside, our primary local economic development goal is to build a permanent foundation for economic prosperity that isn't subject to the vagaries of business cycles or any one industry, but instead builds on our many underlying assets.

As Mayor, I can tell you that, as I survey all the impediments to achieving our overarching economic goal, no factor is more fundamentally constraining than the lack of suitable land for future development. As a result of our industrial past, New Bedford, like many communities throughout the nation, lives today with an environmental legacy that takes off the table too many sites that could otherwise accommodate new business expansion or infrastructure investments.

With two major Superfund sites and hundreds of brownfield sites, we in New Bedford have come to recognize that our path to prosperity lies in unlocking the potential of contaminated sites through creative, innovative new local policy approaches. My hope is that Congress can likewise adopt creative, new strategies that will allow the federal government to become an even stronger partner with cities like New Bedford.

I would like to highlight for the Subcommittee two of our local redevelopment projects – a traditional brownfield site and a redeveloped Superfund site. What these two projects have in common is that, in both cases, the City has found ways to unlock underlying economic potential and turn an environmental liability into environmental and economic asset.

#### **THE RIVERWALK AND RESIDENTIAL MILL RE-USE PROJECTS**

New Bedford's upper harbor is host to dozens of historic mill buildings built alongside the Acushnet River. Our mills date to the period around the turn of the 20th century when New Bedford's cotton textile mills dominated the industry.

What the builders of these magnificent brick, stone, and lumber structures could hardly have imagined was that today they represent a unique opportunity for residential living and recreation along the water's edge.

With a healthy real estate market and spectacular views of tidal marshes and wildlife in the midst of an urban center, private sector investors have recognized the potential for conversion of these mills to residences. Moreover the City has signaled its commitment and moved forward with plans to construct a public recreational path called "The Riverwalk" that would follow the shoreline between the mill buildings and water's edge.

Make no mistake: The story of our mill conversions is a demonstration of the importance of having solid economic fundamentals in place. In this case, an underlying market demand for housing, attractive historic structures in an appealing location, and a publicly-funded recreational amenity that creates additional value.

What I would like to suggest to the Subcommittee is that all of these factors should be seen as necessary but not sufficient.

An important, often under-appreciated, factor underlying all of this economic activity has been brownfield grant funding. In key instances, grants have helped catalyze and support New Bedford's mill conversion projects. Targeted brownfield funds have been used creatively to fill important gaps and cover assessment and remediation costs that were problematic for the city or its private development partners to assume.

One recent example is illustrative: The City was recently awarded two \$200,000 brownfield clean-up grants that paid for the remediation of two 75,000-gallon underground storage tanks containing 30,000 gallons of No. 6 fuel oil at a key waterfront location. These grants were themselves preceded by a brownfield

assessment grant. Addressing this serious environmental hazard was essential to all the nearby development projects.

Today I can report that just west of the remediated tanks stands the new Cliftex Lofts, a market-rate/ affordable age 55+ housing complex. Just south is the Whaler's Cove complex which was successfully developed as 55+ and assisted living units. The City's new Riverwalk will pass just east of the tanks.

All told, multiple mill buildings have been converted at a cost of tens of millions of dollars in investment, and hundreds of residents now fondly call these buildings home.

#### **SULLIVAN'S LEDGE SUPERFUND SITE RE-USE**

It may surprise some to learn that the Wall Street Journal reported not long ago, that the City of New Bedford had the distinction of having the most installed solar capacity per capita of any municipality in the continental United States.

I will refrain today from delving into how and why a medium-sized city in the Northeast came to pursue such an ambitious solar energy initiative, but I would like to highlight our flagship solar project, the Sullivan's Ledge Solar Project.

Sullivan's Ledge, once the site of one of the country's most high-profile "Superfund" hazardous waste sites, was recently converted by the City to a 1.8 megawatt solar farm with more than 5,000 solar panels spread across ten acres, and producing enough electricity for 226 homes.

This accomplishment was the result of years of work to steadily navigate through considerable legal, regulatory, engineering, and financial hurdles. In all, the project required strong cooperation from multiple state and federal agencies, the solar

industry, and fourteen private parties responsible for the underlying environmental liability.

It was far from easy, but it was well worth the effort. Sullivan's Ledge is a great example of our "liabilities-into-assets" mindset and the creative re-use of a contaminated site in manner that has helped support local jobs and delivered bottom-line benefits to city government and taxpayers.

Some background is useful: Sullivan's Ledge operated as a granite quarry until about 1932. Between the 1940s and the 1970s, local industries used the quarry pits and adjacent areas for disposal of hazardous material and other wastes. Beginning in the 1980s until 2000, the site was cleaned up in three stages which included excavation and capping among other remedies. It continues to be closely monitored. The cleanup solution meets all EPA and Massachusetts Department of Environmental Protection standards and ensures the health and safety of residents.

The Massachusetts Department of Environmental Protection had made it a priority to support the siting of renewable energy installations on contaminated lands and landfills, so Sullivan's Ledge was welcomed by state environmental leaders as a project that demonstrated the energy, environmental, and economic benefits to be gained from the state-level strategy.

Power generation began in 2014 and soon afterward the Project began to receive recognition for its innovative approach to a complex environmental challenge. The City's effort at Sullivan's Ledge drew special praise from the EPA as an example to the nation of how solar energy production can become a redevelopment strategy for contaminated sites.

There are two aspects of Sullivan's Ledge worth consideration by the Subcommittee:



First, to state the obvious, the clean-up of the property made all else possible. Without successful remediation, there would be no solar park and none of the associated benefits.

Second, with regard to the benefits, I want to emphasize that the rationale for pursuing the solar project was as much about local jobs and local fiscal benefits as anything else.

Due to renewable energy incentives, Sullivan's Ledge alone is projected to save New Bedford city government \$2.7 million over the next twenty years in utility costs. The ten solar projects and one wind project in the City's renewable energy power program together are projected to save city government nearly \$30 million over the next twenty years. With the City spending \$6-7 million annually in electricity bills, these savings are not insignificant and are major help in reducing the burden on local taxpayers.

As important, Sullivan's Ledge, along with several of our other solar projects, was installed by a New Bedford-based solar company with a history of hiring local residents. As a result, we were able to advance important local job-creation/retention goals. In all, roughly a dozen of our own residents were on site at Sullivan's doing the work of installing and wiring panels.

This project was a win on so many levels – it created local green construction jobs, it redeveloped a severely contaminated property, it saved taxpayer money, it helps fight climate change, and it helps make us more energy independent. It also serves as a model for other communities throughout the nation.

#### **WAYS TO IMPROVE THE PROGRAM**

The Brownfields Law has a proven track record of leveraging private sector investment, creating jobs, and protecting the environment. It also reuses and, in many cases,

modernizes infrastructure that is already in place as opposed to building out new infrastructure that will need to be maintained and eventually replaced.

The Brownfields law provided some liability relief for innocent purchasers of brownfield properties and provided resources to conduct environmental assessments and cleanups. However, there is much more work to be done. As mentioned earlier, GAO estimated there are between 400-600,000 brownfield sites throughout the United States.

The challenge that communities face now is that many of the “easy” brownfield sites have been developed and now what remains are the more difficult brownfield sites – the, what we would like to call, the medium to dark brown brownfield sites. The Conference of Mayors, along with many others, believe that with some changes to the Brownfields Law would help spur on additional redevelopment projects and economic growth.

I would like to highlight some of the key recommendations that the Conference of Mayors believe would make a significant difference with redeveloping even more properties.

**Full Funding of the Brownfields Program** – I know budgets are tight and we are all doing more with less. However, this program has a proven track record of leveraging private sector money, putting people to work, and taking formerly contaminated properties and putting them back into productive pieces of land that increases all of our tax bases. At the current funding levels, which are far below the authorized level, EPA only funds (roughly 30 percent) of the applications that make it to headquarters. The mayors of this nation believe this is a good investment that pays for itself and not only should be fully funded at the previously authorized levels of \$250 million but, in fact, the authorized and appropriated levels should be increased.

**Creation of a Multi-Purpose Grant** – The way the program works currently is that a city applies for various grants and identifies the properties where the money will be spent. The only problem with that scenario is that this is not flexible enough for real marketplace situations. A city may have multiple developers and businesses who are interested in several brownfield properties. What many cities could use is the ability to assess a number of properties and provide cleanup grants and loans depending on which site or sites are chosen for redevelopment. It hinders that opportunity if a city has to apply for a grant and wait six months to a year to see if they get funding. The Conference of Mayors would like to see the establishment of a multi-purpose grant to be given to communities that have a proven track record of fully utilizing their brownfield money. We believe by giving us that flexibility will make the program even more useful to not only us but our business community as well.

**Increase Cleanup Grant Amounts** – As I mentioned earlier, many of the “easy” brownfield redevelopment projects are already underway or have been completed. What we have left are brownfields that are more complicated due to the level of cleanup that is needed, market conditions, location of the site, or a combination of these factors. The Conference of Mayors would like an increase in the funding ceiling for cleanup grants to be \$1 million and in special circumstances, \$2 million. This would give some additional resources to conduct cleanup at the more contaminated sites and bring these properties back into productive use.

**Allow Reasonable Administrative Costs** - Brownfield grant recipients should be allowed to use a small portion of their grant to cover reasonable administrative costs such as rent, utilities and other costs necessary to carry out a brownfield project. As far as I know, this is the only program that prohibits administrative costs entirely. As a result, smaller communities and non-profits sometimes do not bother to even apply for these grants due to the cost burdens associated with taking a federal grant.

**Clarify Eligibility of Publicly-Owned Sites Acquired Before 2002** – The Conference of Mayors and the Brownfields Coalition believes that as long as a local government did not cause or contribute to the contamination of the property but just happened to own the property prior to 2002, when the law was enacted, they should be allowed to apply for EPA funding for that property. It took Congress nine years to pass the original law and in that time, many communities took it upon themselves to take ownership of contaminated properties so that they could potentially turn these properties around. These same communities have now found themselves ineligible to apply for any funding for those properties to assist them with their efforts.

**Remove Barriers to Local and State Governments Addressing Mothballed Sites** – The Act should exempt local and state government from CERCLA liability if the government unit (a) owns a brownfield as defined by section 101(39); (b) did not cause or contribute to contamination on the property; and (c) exercises due care with regard to any known contamination at the site.

Local governments throughout the country have long recognized the harm abandoned and underdeveloped brownfield properties can pose to their communities. Properties that lie idle because of fear of environmental contamination, unknown cleanup costs, and liability risks can cause and perpetuate neighborhood blight, with associated threats to a community's health, environment, and economic development.

Local government property acquisition authority is one of the key tools to facilitate the redevelopment of brownfields. Through voluntary sales or involuntary means including tax liens, foreclosures and the use of eminent domain, local governments can take control of brownfields in order to clear title, conduct site assessment, remediate environmental hazards, and otherwise prepare the property for development by the private sector or for public and community facilities.

Although property acquisition is a vital tool for facilitating the development of brownfields, many local governments have been dissuaded by fears of environmental liability.

**Encouraging Brownfield Cleanups by Good Samaritans** – The Act should provide an owner-operator exemption from CERCLA liability for non-liable parties that take cleanup action or contribute funding or other substantial support to the cleanup of a brownfield, in conformance with a federal or state cleanup program, but do not take ownership of that site. Groups such as Ducks or Trout Unlimited have wanted to clean up properties and restore them to their natural habitat but because they have no protection under the law, they could be held as liable as the person who polluted the property. We need more, not less, people and organizations to help clean up these sites.

### **Closing**

I wish to thank the Subcommittee for having me testify today. Brownfields redevelopment is a win-win for everyone involved. It creates jobs, it cleans up the environment, and it's pro-business and pro-community. The reauthorization of this law should be a top priority for this Congress and I urge you to pass a reauthorization bill and appropriate the necessary funds to jump start the development in communities throughout the nation. Thank you again for this opportunity.