

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

**MEMORANDUM**

**April 19, 2015**

**To: Subcommittee on Environment and the Economy Democratic Members and Staff**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: Hearing entitled “EPA's Brownfields Program: Empowering Cleanup and Encouraging Economic Redevelopment”**

On **Thursday, April 21, 2016, at 10:00 a.m. in room 2123 of the Rayburn House Office Building**, the Subcommittee on Environment and the Economy will hold an oversight hearing on EPA’s Brownfields program.

**I. LEGISLATIVE AUTHORITY FOR THE BROWNFIELDS PROGRAM**

Originally, the Brownfields program was established by the Environmental Protection Agency (EPA) in conjunction with the agency’s work to implement the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund).<sup>1</sup> On December 20, 2001, the House passed the Small Business Liability Relief and Brownfields Revitalization Act, which granted EPA explicit statutory authority to implement the brownfields program, and authorize appropriations separate from the Superfund program. The Senate followed suit later that day and President Bush signed the bill into law on January 11, 2002.

**II. BACKGROUND FOR THE BROWNFIELDS PROGRAM**

The program was created to assist communities with the cleanup of brownfields properties, defined as “real property, the expansion, redevelopment, or reuse of which may be

---

<sup>1</sup> For more information on Superfund, refer to EPA’s website on Superfund: [www.epa.gov/superfund](http://www.epa.gov/superfund). U.S. Environmental Protection Agency (EPA), *Brownfield Overview and Definition* (Oct. 21, 2015) (online at [www.epa.gov/brownfields/brownfield-overview-and-definition](http://www.epa.gov/brownfields/brownfield-overview-and-definition)).

complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”<sup>2</sup>

Cleanup of brownfields sites encourages economic redevelopment and reduces exposure to harmful contaminants. The program primarily focuses on properties that are abandoned or underutilized, and are not addressed under other federal remediation authorities.<sup>3</sup> At the time the Brownfields Act was adopted, there were an estimated 450,000 brownfields properties. According to EPA figures, throughout the lifetime of the program more than 20,000 properties have been assessed and over 59,000 acres have been revitalized.<sup>4</sup>

As discussed below, the primary components of the federal program have been financial assistance, liability relief, and tax incentives (now expired).

#### **A. Brownfields Revitalization Funding**

The Brownfields program provides both competitive and categorical grants to assist communities with assessment and remediation of contaminated properties. From fiscal years 2002 through 2006, the Brownfields Act authorized appropriations for competitive grants and grants to assist states and tribes at \$200 million and \$50 million annually, respectively.<sup>5</sup>

The program has not been reauthorized. Since the authorization expired, appropriations for competitive grants have steadily declined, while state and tribal grants have remained relatively constant.<sup>6</sup>

Eligible entities, including state and local governments, tribes, redevelopment agencies, and other “quasi-governmental” entities operating under the control of a local government, can apply for competitive grants for assessment and cleanup of individual properties. These grants make up the bulk of competitive grants under the Brownfields program. Potentially liable parties are not eligible for funds under this program.

Individual properties can receive funding for cleanups and assessments at a maximum of \$200,000 per site for remediation or assessment.<sup>7</sup> Assessment grants can be used to inventory,

---

<sup>2</sup> 42 U.S.C. § 9601 (39)(A).

<sup>3</sup> CRS, *Comprehensive Environmental Response, Compensation, and Liability Act: A Summary of Superfund Cleanup Authorities and Related Provisions of the Act* (June 14, 2012) (R41039) (online at [www.crs.gov/reports/pdf/R41039](http://www.crs.gov/reports/pdf/R41039)).

<sup>4</sup> U.S. EPA, *Brownfields Program Accomplishments and Benefits* (Mar. 3, 2016) (online at [www.epa.gov/brownfields/brownfields-program-accomplishments-and-benefits](http://www.epa.gov/brownfields/brownfields-program-accomplishments-and-benefits))

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> U.S. EPA, *Brownfields and Land Revitalization Programs: Changing American Land and Lives* (Oct. 2009) (online at [www.epa.gov/sites/production/files/2015-10/documents/09brochure.pdf](http://www.epa.gov/sites/production/files/2015-10/documents/09brochure.pdf)).

assess, characterize, or conduct planning related to brownfields. An applicant may seek a waiver for the \$200,000 assessment grant limit and request up to \$350,000, based on the anticipated contamination level. Up to \$200,000 can be awarded to assess sites contaminated by petroleum, which was not authorized under CERCLA previously. Multiple site grants of up to \$1 million are available to three or more eligible entities that apply as a coalition and that assess a minimum of five sites. Grants typically require a 20 percent match.<sup>8</sup>

Other types of competitive grants available through the Brownfields program include<sup>9</sup>:

- Revolving Loan Fund Grants, which allow states to make low interest loans for cleanup activities;
- Area-wide Planning Grants (AWP), which provide funding to communities to develop implementation strategies for an area affected by one or more brownfields properties;
- Environmental Workforce Development and Job Training Grants (EWDJT), which allow eligible entities, including nonprofit organizations, to develop an environmental workforce and provide job training, particularly in disadvantaged communities;
- Multi-purpose Pilot Grants, which are not derived from a program fixed in statute, provide single grants that can be used for both assessment and cleanup at a single site; and
- Training, Research, and Technical Assistance Grants, which fund eligible entities to provide training, research, and technical assistance for brownfields redevelopment.

Categorical grants are also available for states and tribes to enhance their response programs.<sup>10</sup> The funds can be used to maintain an inventory, capitalize a revolving loan fund, or conduct site-specific activities, such as assessment or cleanup. To qualify, states and tribes must demonstrate their capacity to administer the program, or enroll in a voluntary agreement with EPA to administer the program. Matching funds are not required for this noncompetitive grant program, except when capitalizing a revolving loan fund.

## **B. Liability Relief**

The Brownfields Act included a limited shield from CERCLA liability for “bona fide” prospective buyers. This shield is intended to encourage potential redevelopers who had no role in contaminating the site. Liability under CERCLA includes response costs for remediation or

---

<sup>8</sup> U.S. EPA, *Summary of the Small Business Liability Relief and Brownfields Revitalization Act* (Sept. 30, 2015) (online at [www.epa.gov/brownfields/summary-small-business-liability-relief-and-brownfields-revitalization-act](http://www.epa.gov/brownfields/summary-small-business-liability-relief-and-brownfields-revitalization-act)).

<sup>9</sup> U.S. EPA, *Types of Brownfields Grant Funding* (April 14, 2016) (online at [www.epa.gov/brownfields/types-brownfields-grant-funding#tab-5](http://www.epa.gov/brownfields/types-brownfields-grant-funding#tab-5)).

<sup>10</sup> U.S. EPA, *Funding Guidance for State and Tribal Programs Fiscal Year 2016*, (Oct. 2015) (online at [www.epa.gov/sites/production/files/2015-10/documents/fy16\\_128a\\_guidance\\_final\\_10.17.15\\_0.pdf](http://www.epa.gov/sites/production/files/2015-10/documents/fy16_128a_guidance_final_10.17.15_0.pdf)).

cleanup, costs of federal public health studies, and costs for damages to natural resources. To qualify as a “bona fide” prospective buyer, an entity must:

- Have purchased the property after January 11, 2002;
- Not be responsible for the contamination of the site;
- Inquire about past uses and owners of the site, and;
- Comply with response actions and land use restrictions.

### **C. Federal Tax Incentives**

Federal tax incentives were established to provide additional assistance in brownfields cleanups. Through 2011, taxpayers could deduct the cost of a site remediation in the year costs were incurred.<sup>11</sup> In 2006, this incentive was extended to petroleum cleanups. Another tax incentive, which was authorized in the American Jobs Creation Act of 2004 and expired at the end of 2009, allowed nonprofit organizations to treat gains from investments in qualified sites as tax exempt.<sup>12</sup> Federal, state, and local tax incentives and credits give redevelopers extra cash flow, which can appeal to lenders and allow a redeveloper to use resources usually spent on taxes for other purposes. These incentives have not been reauthorized.

## **III. PROGRAM ACCOMPLISHMENTS AND SUCCESSES**

As stated above, the Brownfields program has successfully revitalized over 59,000 acres of land. The program has also produced significant economic gains. Every EPA brownfields dollar spent leverages \$17.79, on average.<sup>13</sup> As of March 1, 2016, the program has leveraged nearly \$21 billion dollars and over 100,000 jobs.<sup>14</sup> Cleanup of brownfields properties can also increase nearby property values (between \$0.5 and \$1.5 million for properties within one mile), increase efficiency, and decrease pollution.<sup>15</sup>

## **IV. ISSUES FOR FURTHER CONSIDERATION**

While the program has been successful, a number of issues have arisen during implementation of the program. The primary issue has been the continued availability of funding for all Brownfields grants. Appropriations for the Brownfields program have not been reauthorized in ten years and the tax incentive for redeveloping a brownfields property has

---

<sup>11</sup> U.S. EPA, *Brownfields Tax Incentive*, (Sept. 30, 2015) (online at [www.epa.gov/brownfields/brownfields-tax-incentive](http://www.epa.gov/brownfields/brownfields-tax-incentive)).

<sup>12</sup> CRS, *Comprehensive Environmental Response, Compensation, and Liability Act: A Summary of Superfund Cleanup Authorities and Related Provisions of the Act* (June 14, 2012) (R41039) (online at [www.crs.gov/reports/pdf/R41039](http://www.crs.gov/reports/pdf/R41039)).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

lapsed.<sup>16</sup> Though funds have continued to be appropriated to the Brownfields program, funding levels have generally decreased over recent years. Stakeholders have also suggested changes to the program, to increase eligibility, increase flexibility in the use of funds, and build capacity to implement the program in disadvantaged communities.

## **V. WITNESSES**

The following witnesses have been invited to testify:

### **Panel 1**

#### **Mathy Stanislaus**

Assistant Administrator for the Office of Land and Emergency Management  
Environmental Protection Agency

### **Panel 2**

#### **The Honorable J. Christian Bollwage**

Mayor  
City of Elizabeth, New Jersey

#### **Veronica Eady**

Vice President and Director  
Massachusetts Conservation Law Foundation

#### **Clark Henry**

Owner  
Ciii Associates

#### **Amy Romig**

Partner  
Plews, Shadley, Racher & Braun

---

<sup>16</sup> CRS, *Comprehensive Environmental Response, Compensation, and Liability Act: A Summary of Superfund Cleanup Authorities and Related Provisions of the Act* (June 14, 2012) (R41039) (online at [www.crs.gov/reports/pdf/R41039](http://www.crs.gov/reports/pdf/R41039)).