

Testimony of Gerald L. Pouncey, Jr.
Before the U.S. House of Representatives
Energy and Commerce Committee
March 4, 2026

Introduction

Chairman Guthrie, Chairman Palmer, Ranking Member Pallone, Ranking Member Tonko, and Members of the Committee, thank you for the opportunity to appear before you today. My name is Gerald Pouncey, and I am appearing in my personal capacity as a practicing Environmental Lawyer. The views and opinions expressed and discussed with the Committee are mine alone and do not represent any other organization or legal client.

For more than thirty years, as a lawyer focusing on Environmental Law and Real Estate Development, I have led efforts across the country to redevelop Brownfield properties, including some of the largest and most complex Brownfield projects undertaken in the United States. Brownfield redevelopment is central to restoring land to commercial use and to helping improve surrounding communities. The private commercial real estate sector is often the sector most capable of transforming contaminated or abandoned parcels into community assets that generate jobs, tax revenue, and long-term economic growth while at the same time undertaking cleanup of these parcels.

I appreciate the Committee's focus on the potential of America's Brownfield sites and the opportunity to discuss how federal policy can strengthen, rather than hinder, the redevelopment of these properties. The hearing announced by the Committee this week underscores the importance of ensuring that federal programs, including the EPA Brownfields Program, remain effective, predictable, and aligned with the realities of redevelopment.

The Consequences of Failing to Redevelop Brownfield Properties

Brownfield properties are often large, centrally located, and deeply intertwined with surrounding communities. As I have testified previously, these properties have often been completely abandoned or severely underutilized, with only skeletal operations remaining to avoid certain EPA permitting requirements. They frequently exceed 100 acres and may sit adjacent to or in the middle of existing neighborhoods. In that condition, they present safety concerns, especially for children, and can serve as magnets for criminal activity. They also pose environmental risks due to deteriorating building materials and exposed conditions in soil or stormwater.

Leaving these properties idle imposes real costs on communities. They depress surrounding property values, limit economic opportunity, and create long term environmental uncertainty. Redevelopment, by contrast, restores economic vitality, improves public safety, and provides new opportunities for housing, retail, industrial, and mixed-use development. In addition, these properties often have tremendous access to

critical infrastructure, including power and natural gas and development of such parcels can reduce development of greenfield sites thus preserving open space.

The Challenges of Brownfield Redevelopment

The challenges associated with redeveloping Brownfield sites are significant and often underestimated. As I have previously explained, redevelopment typically requires substantial upfront capital outlays for environmental testing and records review that would not be necessary on a Greenfield site. These up-front due diligence costs can be five to ten times higher than those associated with Greenfield development, and they are entirely at risk because test results may ultimately show that redevelopment is not viable. Even when redevelopment proceeds, cleanup costs and delays due to existing contamination add further uncertainty.

These realities shape the decisions of developers, lenders, and investors. Without predictable liability protections, clear regulatory pathways, and targeted financial incentives, many Brownfield projects simply cannot move forward.

The Importance of State Programs and Liability Protections

One of the most important steps Congress can take to support Brownfield redevelopment is to strengthen and expand the role of state voluntary cleanup and Brownfield programs. As I testified before the Senate in 2022, moving sites from federal EPA oversight to state programs is essential. Most states now operate voluntary cleanup and Brownfield programs that provide liability protections for purchasers and future owners, as well as lenders. These protections are critical because Brownfield purchasers did not cause the contamination and did not own the property when contamination occurred. Without such liability protections, prospective purchasers often have no incentive to go forward with purchase and redevelopment.

State programs also offer financial incentives that help offset the additional costs of Brownfield redevelopment. These may include property tax abatements, ad valorem tax relief, state income tax relief or the ability to deduct cleanup costs from increased property taxes. Without these incentives many Brownfield redevelopments do not underwrite financially because of the added cost of cleanup. Many programs are fee based, allowing developers to pay for expedited review and oversight. Developers overwhelmingly support these fee-based systems because they increase staffing and accelerate cleanup timelines.

The success of these programs is well documented. In Georgia alone, it is estimated that more than 1500 properties have entered the Brownfield program since 2004, and more than 800 have completed cleanup and achieved final closure.

The Role of Federal Brownfields Grants

Federal Brownfields grants play a role in supporting state programs and enabling local governments to partner effectively with private developers. As I have noted, these grants are awarded primarily to municipalities and nonprofits. Because most municipalities lack the resources to undertake full redevelopment themselves, the most successful projects

occur when a municipality or economic development authority partners with a private developer to conduct targeted testing and cleanup. When sampling is unfocused or overly broad, grants often result only in reports that sit unused. I support the recent increase in federal cleanup grant limits, particularly as it relates to coverage of cleanup costs. These expanded limits will allow redevelopment to occur in areas where it otherwise would not be economically feasible.

In my professional experience, there could be an opportunity now for the Committee, EPA, and community stakeholders to prioritize certain types of Brownfield grants. One such prioritization would be to increase grant funding to state Brownfield Programs that are working with developers to implement the Brownfield redevelopment efforts described above. This is where much of the work on the ground occurs. Another such prioritization for grants would funding related to testing and cleanup of National Priorities List sites such that all or significant portions of the property could be removed from the NPL, thus making such properties eligible for state Brownfield programs described above. Further prioritization could be directed to those properties (including closed military bases) with critical infrastructure exist that would support development of industry designated as critical for the country. Data Centers may be a good example.

The Intersection of Brownfields Policy and CERCLA Liability

Although today's hearing focuses on Brownfields, it is important to acknowledge the broader liability framework in which property redevelopment occurs. As the Committee heard in recent testimony, *Comprehensive Environmental Response, Compensation, and Liability Act's* (CERCLA's) strict, joint and several liability framework creates significant uncertainty and risk that further complicates the Brownfield redevelopment for commercial real estate owners and developers. PFAS contamination has introduced even more risks that complicate due diligence, financing, and redevelopment. The Innocent Land Owner defense and Bonafide Perspective Purchaser defense should be reexamined and clarified to remove ambiguity and provide the broad base protections originally intended.

Finally, a legitimate question exists as to whether passive property owners who did not cause contamination should face unlimited CERCLA liability. A passive receiver exemption, similar to the secured creditor exemption already in CERCLA, would provide needed clarity and allow redevelopment to proceed without exposing innocent parties to disproportionate liability. This is particularly the case with PFAS, which is so widespread and ubiquitous. Further, the Committee should work with EPA and other stakeholders to help facilitate faster identification of parcels that can be transitioned out of the CERCLA program and into the Brownfield program so redevelopment and community benefits can be realized sooner.

Recommendations for Strengthening Brownfield Redevelopment

Below are some of my recommendations to enhance Brownfield redevelopment through the Brownfield reauthorization:

1. Continue the effort to transition CERCLA sites and NPL sites to state Brownfield Programs where liability protection and financial incentives are available to incentivize redevelopment of such sites.
2. Increase federal support for targeted Brownfield cleanup grants and ensure that grant funded sampling is aligned with specific redevelopment opportunities.
3. Provide statutory clarity regarding CERCLA liability for passive property owners, particularly in the context of PFAS contamination.
4. Encourage public private partnerships (including through the grant program) that leverage municipal authority and private sector expertise to achieve efficient and effective cleanup.
5. Support the use of intergovernmental financial incentives, including opportunity zones and new market tax credits, to offset the additional costs of Brownfield redevelopment and to incentivize redevelopment.

Conclusion

Brownfield redevelopment is one of the most effective tools available to revitalize communities, expand economic opportunity, and return underutilized land to productive use. The private sector plays a central role in this work, but it cannot succeed without predictable liability protections, targeted financial incentives, and strong state and federal partnerships.

The biggest hurdle in redevelopment of Brownfield sites is always the cost of cleanup and the CERCLA and third-party liabilities assumed by taking title to the property. The increased federal grant cleanup limits, combined with strong state programs and clear federal policy, can unlock redevelopment in areas where it otherwise could not take place.

I am happy to work with Congress, EPA, state agencies, and local communities to ensure that Brownfield redevelopment continues to deliver economic, environmental, and social benefits across the country. Thank you for the opportunity to testify. I look forward to your questions.