



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

James L. Oberstar
Chairman

John L. Mica
Ranking Republican Member

David Heynsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

February 8, 2008

James W. Coon II, Republican Chief of Staff

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Water Resources and Environment

FROM: Subcommittee on Water Resources and Environment Staff

SUBJECT: Hearing on the Revitalization of the Environmental Protection Agency's Brownfields Program.

PURPOSE OF THE HEARING

The Subcommittee on Water Resources and Environment is scheduled to meet on February 14, 2008 at 2 p.m., to receive testimony on Federal, State, and local efforts to address the nation's brownfields, and on reauthorization of the "Brownfields Revitalization and Environmental Restoration Act of 2001" (Pub. L. 107-118). The Subcommittee will hear from representatives of the Environmental Protection Agency ("EPA"), local governmental officials, non-profit organizations, academia, and other stakeholders.

BACKGROUND

Brownfields are properties, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Types of brownfields include inactive factories, gas stations, salvage yards, or abandoned warehouses. These sites drive down property values, provide little or no tax revenue, and contribute to community blight. There are estimated to be between 450,000 to one million brownfields sites in the United States. Redevelopment of these abandoned sites can promote economic development, revitalize neighborhoods, enable the creation of public parks and open space, or preserve existing properties, including undeveloped green spaces.

Prior to enactment of the Brownfields Revitalization and Environmental Restoration Act in 2002, many potential lenders, investors, and developers were reluctant to become involved with brownfields sites because they feared financial liability through laws such as the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund). This uncertainty over liability protection and standards for cleanup was identified as a

hindrance to the redevelopment of brownfields. As a result, investors and developers often turned to undeveloped “green spaces” outside of urban centers for new development opportunities. This development practice tends to encourage sprawl, and potentially strands blighted neighborhoods that already may be experiencing declining tax-bases from underdeveloped properties.

EPA began to issue demonstration grants for brownfield assessments in 1995 utilizing funding from the Superfund Trust Fund. However, at that time there was no specific authority for a comprehensive brownfields program to encourage the redevelopment of these contaminated sites so that towns could realize the economic, environmental, and social benefits of reclaimed land.

BROWNFIELDS REVITALIZATION AND ENVIRONMENTAL RESTORATION ACT

In 2001, Congress created specific authority to address brownfields with the Brownfields Revitalization and Environmental Restoration Act, which was title II of the Small Business Liability Relief and Brownfields Revitalization Act. This became Public Law 107-118 in January 2002. This legislation amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), more commonly known as the Superfund law, to authorize funding through EPA for brownfields assessment and cleanup grants, provide targeted liability protections, and increase support for State and tribal voluntary response programs. The authorization of appropriations for EPA’s brownfield program expired at the end of Fiscal Year 2006.

The Brownfields law provides grant authority totaling \$250 million annually. This includes \$200 million annually for assessment, cleanup, revolving loan funds, research, and job training. Of that amount, \$50 million, or 25% of appropriated funds if less than the fully authorized level, is set aside for assessment and cleanup of petroleum contaminated sites. Assessment grants are limited to \$200,000 per site except in some cases, where due to size and contamination level, the limit is \$350,000. The cleanup grants can be used to capitalize a revolving loan fund or used directly to remediate sites. Each cleanup grant is limited to \$1 million.

\$50 million of the \$250 million authorized each year is for state and tribal response programs. States may use this assistance to establish or enhance individual state response programs, capitalize existing revolving loan programs, and develop risk-sharing pools, indemnity pools, or insurance mechanisms to provide financing for remediation activities. Only one state, North Dakota, does not currently have a voluntary state response program; however, the state of North Dakota plans on moving such a program through its state legislature in the Fall of 2008.

The law also provides targeted protection from Superfund liability for innocent landowners, owners of property contaminated by a source on contiguous property, and for prospective purchasers of property which may be contaminated. The Brownfields Revitalization and Environmental Restoration Act clarified Superfund’s “innocent landowner” defense against liability for a person who unknowingly purchased contaminated land, provided the person made “all appropriate inquiries” prior to the transaction. The brownfields law did not define what constitutes “all appropriate inquiries,” but directed EPA

to establish by regulation the standards and practices which would satisfy the “all appropriate inquiries” requirement. On November 1, 2005, EPA issued a final rule establishing the standards and practices which would satisfy the “all appropriate inquiries” requirement. (70 Fed. Reg. 66070).

The brownfields program generally has been well received by EPA, states, communities, investors, and developers. Since its inception, the Environmental Protection Agency has awarded 1,067 assessment grants totaling more than \$262 million, 217 revolving loan fund grants totaling more than \$201.7 million, and 336 cleanup grants totaling \$61.3 million. In addition, according to EPA, Federal brownfields assistance has leveraged more than \$10.3 billion in additional cleanup and redevelopment funding. This is consistent with the intent of the brownfields program to provide vital Federal “seed money” for redevelopment, and to leverage this money in conjunction with funding from state, local, private, and other federal sources to address brownfield sites. According to EPA, its brownfields program has resulted in the assessment of more than 11,500 properties and the cleanup of 239 properties, and helped create more than 47,000 jobs. According to a 2001 study conducted by George Washington University, every acre of brownfields redevelopment saves more than four acres of greenspace.

For fiscal year 2007, the Environmental Protection Agency received 801 proposals requesting \$236.3 million in funding. On May 14, 2007, the Environmental Protection Agency announced that 202 applicants were selected to receive 294 assessment, revolving loan fund, and cleanup grants totaling \$70.7 million. \$36.8 million in grants went for 189 site assessments, \$17.9 million went for 92 remediation or cleanup grants, and \$16 million went to States to capitalize 13 revolving loan programs. The list of FY 2007 grants and the Environmental Protection Agency press release can be accessed at the follow web address: <http://yosemite.epa.gov/opa/admpress.nsf/e87e8bc7fd0c11f1852572a000650c05/c7251cab903bd8b9852572db0064a83d!OpenDocument>.

FUNDING OF EPA’S BROWNFIELDS PROGRAM

EPA’s brownfields program has an authorized funding level of \$250 million annually (which expired at the end of fiscal year 2006). In FY 2008, Congress appropriated \$164.3 million for the brownfields program, of which \$93.5 million was for brownfields site assessment and cleanup grants, \$48.7 million was for State voluntary cleanup programs, and \$22.1 million was for EPA’s administrative expenses for the program. In the fiscal year 2009 budget request, the administration has requested a total of \$165.8 million for the brownfields program, of which \$93.6 million is for brownfields site assessment and cleanup grants, \$49.5 million is for State voluntary cleanup programs, and \$22.7 million is for EPA’s administration of the brownfields program. At the administration’s funding levels, only about one-quarter of eligible applicants could receive grants.

REAUTHORIZATION ISSUES

Although, generally speaking, the brownfields program has been effective at expanding the redevelopment of former-brownfields sites, some stakeholders have suggested changes be considered along with reauthorization of the funding. These include expanding the eligible uses for brownfields grants beyond site assessments and cleanup to include other

purposes, such as demolition costs (which are currently not eligible under the Brownfields law). In addition, the grant limits per site could be raised, although without additional funding, even fewer than one-fourth of eligible recipients could receive funding if grant limits increase. In addition, some have suggested eliminating the 25% funding set aside for petroleum site grants letting them compete with other sites for priority and funding.

Brownfields stakeholders also advocate for increasing the overall authorization of appropriations for the brownfields program beyond the \$250 million annual level. As stated earlier, currently EPA receives 4-times as many grant applications as can be funded under current appropriations. Assuming full funding of the brownfields program, there would still likely be a shortfall between the amount requested through grant applications and annual appropriations. Accordingly, stakeholders advocate for increasing the overall authorization of appropriations for the brownfields site assessment and cleanup grant component of the program commensurate with the apparent needs.

Another issue related to the program is that there are no effective performance measures available to determine the extent to which the program is achieving its goals. While the Environmental Protection Agency does report on the cumulative sites addressed, jobs generated, and the cleanup and redevelopment funds leveraged, there has been little reporting on cleanup and redevelopment activities, which is one of the primary objectives of the program. In addition, the Environmental Protection Agency has not developed measures to determine how the Brownfields Program has reduced environmental risks, thereby meeting the agency mission to protect human health and the environment.

On a related matter, as the program begins to mature, it is possible to begin reviewing the performance of the brownfields program in equitably promoting economic development goals throughout the nation. Although brownfields are typically thought of as solely urban sites, brownfields properties can be found in large urban centers, small rural communities, and suburban neighborhoods. Limited funding of the brownfields program has restricted the ability of the brownfields law to address all of the site assessment and cleanup grant applications proposed in any one year. Yet, there has never been a formal review of the types of brownfields properties that have been addressed through the EPA program, and whether the current selection process, when combined with a lack of sufficient Federal funding, results in equitable distribution of brownfields redevelopment grants.

AGENDA

PANEL I

The Honorable Susan Parker Bodine
Assistant Administrator for Solid Waste and Emergency Response
U.S. Environmental Protection Agency
Washington, D.C.

The Honorable Vonciel Jones Hill
Council Member, City of Dallas
Dallas, Texas

Mr. Matthew Zone
National League of Cities
Council Member, City of Cleveland
Cleveland, Ohio

PANEL II

Mr. Mark Albrecht
National Brownfields Association
Brownfields Manager, Mayor's Office of Economic Development
City of Akron
Akron, Ohio

Mr. Steven McCullough
President / CEO
Bethel New Life, Inc.
Chicago, Illinois

Dr. Nancey Green Leigh
Professor, College of Architecture
Georgia Institute of Technology
Atlanta, Georgia

Mr. Jerome Leslie Eben
Immediate Past President
America Institute of Architects New Jersey
Trenton, New Jersey

Mr. Gary Silversmith
President
P&L Investments, LLC
Washington, D.C.