



Statement of

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Before

Transportation and Infrastructure Committee
Water Resources and Environment Subcommittee
U.S. House of Representatives

Hearing on

“Cleaning Up the Past, Building the Future: The Brownfields Program”

May 7, 2025

Congressional Research Service

7-5700

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Chairman Collins, Ranking Member Wilson, and Members of the Subcommittee, my name is Lance

Larson. I am an Analyst in Environmental Policy for the Congressional Research Service (CRS). Thank you for inviting me to testify on behalf of CRS regarding the federal Brownfields program.

In serving Congress on a non-partisan and objective basis, CRS takes no position on these issues. I have been asked by the Subcommittee today to provide a broad overview of the federal Brownfields program, including a brief history of the program, some liability considerations, and other policy matters for Congress. CRS remains available to assist the Subcommittee with these and related issues.

History of Brownfields Program

Enacted in 1980, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),¹ otherwise known as the “Superfund Law”, authorizes environmental cleanup and enforcement actions to respond to actual or threatened releases of hazardous substances, pollutants, or contaminants into the environment. Under CERCLA, the U.S. Environmental Protection Agency (EPA), in coordination with the states, prioritizes the cleanup of contaminated sites on non-federal lands under the federal Superfund Program.

¹ P.L. 96-510.

In 1993, EPA established a pilot initiative under the Superfund program to assist communities with the remediation of certain lower risk contaminated sites to encourage or facilitate economic redevelopment or reuse. EPA referred to these properties as “brownfields” to distinguish them from both higher-risk contaminated sites designated on the National Priorities List under the Superfund program and from other sites where federal response actions were taken to address emergency situations. In 2002, Congress amended CERCLA to authorize EPA to administer a dedicated Brownfields program separately from the Superfund program.²

In 2018, Congress enacted the BUILD Act, which amended CERCLA to reauthorize the Brownfields program.³ The BUILD Act extended the authorizations of appropriations through FY2023, expanded the eligibility criteria for non-profit organizations, and increased the maximum dollar limit for individual remediation grants, among other statutory changes to the program.

Overview of Brownfields Program

As it functions today, the federal Brownfields program provides grant assistance to state, local, and tribal governments and non-profit organizations for the assessment and cleanup of potentially contaminated

² Title II of the Small Business Liability Relief and Brownfields Revitalization Act of 2002; P.L. 107-118.

³ Consolidated Appropriations Act, 2018, P.L. 115-141; Division N - “BUILD Act.”

sites. CERCLA defines eligible brownfields sites as “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”

CERCLA generally excludes sites from Brownfields grant eligibility that are addressed under the Superfund program or other related federal cleanup programs or authorities. These exclusions generally are intended to avoid potential overlap or duplication of cleanup resources.

Subject to the availability of appropriations, the federal Brownfields program provides two types of grants—those that EPA awards on a competitive basis for the assessment and cleanup of eligible brownfields sites and those that are noncompetitively awarded on a formula basis to assist states and tribes in carrying out their own cleanup programs. Congress funds these grants annually through the discretionary appropriations process.

The Brownfields program’s statutory authorities do not have a sunset date. However, authorization of appropriations for the Brownfields program grants expired at the end of FY2023, and Congress has continued to appropriate funding annually to implement the Brownfields program. From FY2019 to FY2024, annual appropriations were generally less than the authorized amounts of \$200 million for competitive grants and \$50 million for state and tribal formula grants. Appropriations have remained relatively constant in nominal terms since FY 2003. In addition to prior appropriations, the Infrastructure

Investment and Jobs Act⁴ provided a total of \$1.5 billion over a 5-year period from FY2022 through FY2026. Of that amount, \$1.2 billion would be provided for the competitive grants and \$300 million for state and tribal formula grants.

Liability

CERCLA provides a mechanism to compel “potentially responsibility parties” (PRPs) to perform or pay for a cleanup of hazardous substances. CERCLA established financial liability for PRPs, which may include the current or former owner or operator of a facility; generators and parties that arranged for the transport, disposal, or treatment of hazardous substances; and transporters of hazardous substances to a facility. PRPs are generally prohibited from obtaining a Brownfields grant in order to hold liable parties responsible for the costs of cleanup and to minimize burden on the federal taxpayer.

In response to CERCLA liability concerns over acquiring and redeveloping certain properties, Congress amended CERCLA to provide certain liability exemptions designed to work in tandem with the Brownfields program. For example, Congress provided a liability exemption for “bona fide” prospective purchasers if the property is acquired in a contaminated condition, the purchaser is not otherwise a liable

⁴ P.L. 117-58.

party at the site, and the purchaser conducted “All Appropriate Inquiries” into the prior uses of the property prior to the acquisition to determine whether contamination may be present. Additionally, Congress clarified that state or local governments that acquire a property involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances are exempt from owner or operator liability under CERCLA, so long as the state or local government did not cause or contribute to the contamination.

Considerations for Congress

Congress may consider whether funds going towards the Brownfields program have achieved the intended purpose of the program. If Congress considers reauthorization in this session, as it has done in the past, Congress may consider certain elements of the Brownfields program, such as the duration of reauthorization, statutory caps on grant amounts, criteria for assessing grant applications, and past and future expected program outcomes.

This concludes my prepared statement. Thank you for the opportunity to appear before the Subcommittee today. I would be happy to address any questions you may have.