



Committee on Transportation and Infrastructure
U.S. House of Representatives
Water Resources and Environment Subcommittee
Helping Revitalize American Communities Through the Brownfields Program
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**Commentary from Kelley Race, PG, LSP
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Introduction

Good morning Congressman Gibbs, and honorable members of the Water Resources and Environment Subcommittee. Thank you for allowing me to testify about this important program. My name is Kelley Race. I am a Brownfields Program Manager for TRC Companies, Inc. (TRC), a national engineering, environmental consulting and construction management firm that provides integrated services to the real estate, energy, environmental, and infrastructure markets.

TRC is headquartered in Windsor, Connecticut, and is comprised of over 3,500 technical professionals and support personnel at more than 100 offices throughout the U.S and the UK. TRC serves numerous public and private clients operating across the U.S. Our network of offices and experts enables TRC to understand the technical aspects of projects as well as local sensitivities and regional needs that can be integral to the success of a project.

Nationwide, TRC serves a broad range of clients in industry and government. We manage our business under three operating segments: Energy, Environmental, and Infrastructure, offering a wide variety of services, many of which relate to Brownfields – from grant support, planning, permitting and stakeholder engagement to conducting due, diligence, site investigations, cleanup planning and engineering, through cleanup and redevelopment assistance

Basis of Testimony

As a brief overview to my background with regard to Brownfields, I am an environmental consultant with over 25 years of experience, have a BS and MS in Geology, and have worked on contaminated sites for my entire career. Over the last decade, I have managed and coordinated community outreach activities, assessment, cleanup, and remediation activities for hundreds of Brownfields sites across the country, often strategizing with communities, regional planning commissions, nonprofits, and developers on Brownfields redevelopment to support repurposing and adaptive reuse. Many of the sites have been funded through EPA Brownfields Assessment, Cleanup, and Revolving Loan Fund (RLF) monies. I also coordinated with grantees, EPA, and state regulators on Brownfields strategies to incorporate sustainable and green initiatives during the assessment, remedial, and reuse process. I have assisted numerous communities in developing funding strategies for Brownfields sites utilizing EPA Brownfields dollars to leverage additional public and private financing and have presented at several national Brownfields conferences and have lead Brownfields economic development seminars.



To understand the basis of my testimony and TRC's experience, I should point out that TRC has managed over 100 Brownfields programs across the country. Many of our EPA-funded Brownfields projects are located in the Northeast (Massachusetts, Maine, New Hampshire, Connecticut, New Jersey, and Pennsylvania) as well as in the Midwest and California. We have also provided environmental services on many other State and private Brownfields sites. TRC has dedicated, experienced Brownfields professionals at multiple locations and has been involved with EPA-funded Brownfields programs since 1995, essentially since the initiation of the EPA funding.

Brownfields Funding – A Program that Works

We are passionate about the redevelopment of Brownfields and the impact EPA Brownfields funding has had on communities. EPA estimates Brownfields projects have leveraged \$17.79 for every EPA dollar expended. We have seen firsthand how a single site using a few thousand EPA Assessment Brownfields dollars can be transformed into a community icon and how a portfolio of sites can result in the rebirth of a downtown, in both instances leaving a lasting legacy and infusing millions of leveraged dollars into a community. The EPA Brownfields program works so well and has become so successful, that the application process for EPA Brownfields funding has become fiercely competitive with considerably more projects and applicants than funding. We are excited to support the EPA Brownfields Reauthorization effort and encourage continued funding of the program.

My testimony today will highlight EPA-funded Brownfields successes, highlight some challenges, and offer some considerations that we think would help make the program more versatile.

Key Points in my testimony will include the following:

- EPA Brownfields Grant funding has led to many successful cleanups and redevelopments, has leveraged millions of dollars in private funding, and has provided flexibility in redevelopment options, allowing sustainable initiatives and innovative reuse of properties.
- EPA Brownfields Grants have expanded into several different types of programs, such as job training and area-wide planning initiatives, resulting in less money for the core assessment and cleanup programs. Multiple EPA-funded grant programs while potentially useful to a wider audience, have somewhat weakened one of the initial tenants of the Brownfields program at its outset, that is to assess and clean up contaminated properties.
- An \$8-10M decrease (FY 15 -\$59.5M from FY14 - \$67M and FY12 - \$69.3) in EPA-Brownfields funding for Assessment and Cleanup Grants and Revolving Loan Funds has resulted in fewer grantees being awarded. An EPA goal to award 50% of EPA Brownfields funding to "new grantees" limits an existing grantee's ability to be awarded additional funds as competition for available funding is decreased, reducing that grantee's ability to sustain a long term successful program.
- Grantees who were not awarded additional Assessment grant funding may need to "update/redo" Phase I Environmental Site Assessments (ESAs) completed under earlier awards to comply with CERCLA liability defenses. Once the grantee does receive a new Brownfields award, "updating" an existing Phase I ESA may entail a duplication of dollars and could limit the number



of new sites that can be “assessed” under a new award, potentially creating inefficiency in the program.

- The statutory framework of EPA Brownfields Petroleum funding requires 25% of EPA Brownfields funds to be allocated to Petroleum funding, limiting monies available for hazardous substances, a more common suite of contaminants. The Brownfields Petroleum funding eligibility determinations are approved on a state-by-state basis which can add layers of complexity and state variability. Based on the complexities associated with Petroleum funding eligibility determinations, grantees with prior Petroleum funds may not be able to fully utilize the monies, thereby stranding untold Federal dollars that could be used to assess and/or cleanup sites elsewhere.

What are Brownfields?

“A brownfield site means 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”.

But what are Brownfields to a community? Brownfields are opportunities to:

- Eliminate risk and the unknowns associated with a property;
- Spur economic development;
- Create new revenue streams;
- Create jobs;
- Return a neighborhood and/or town/city to economic stability;
- Create a sustainable environment; and
- Reduce the development of “green space”, thereby curtailing urban sprawl.

Many Brownfields sites are located in economically depressed and visually unattractive areas of a neighborhood, downtown, or community. But cleanup and redevelopment of these stigmatized sites can encourage and stimulate higher property values and create jobs, as well as positively impact the community by developing safer and healthier spaces to support future businesses and housing. Brownfields redevelopment engages a variety of private and public sector organizations to play a role in the assessing, cleaning up, and redeveloping Brownfield sites.

Why is EPA Brownfields Funding Critical?

EPA Brownfields funds are critical to promote the redevelopment of impaired sites and provide community benefits such as an increased tax base, creation of new jobs, utilization of existing infrastructure, and the removal of contaminants further protecting human health and the environment. They do so primarily through redevelopment planning and by helping eliminate the uncertainty about environmental conditions and liability that might otherwise hamper investment in communities and projects.

EPA Brownfields Grants funds are often the seed monies for municipalities, counties, regional councils of governments, regional planning commissions, economic development entities, and other eligible organizations to assess, cleanup, and sustainably reuse Brownfields. Many eligible entities have limited



resources to address and facilitate redevelopment of Brownfields sites, as communities are tasked with doing more with less.

EPA Brownfields funds are one of the only dedicated sources of funding that allows for the creation of administrative management and infrastructure, specifically focused around perceived or contaminated sites. Once a community Brownfields program has been established, the goal of the program is to identify and prioritize brownfields opportunities and pave the path for successful redevelopment and associated economic development. With administrative management and infrastructure in place, a Brownfields program can leverage other sources of federal, state, and local funding into specific projects to compliment AND develop viable reuse initiatives that allow for replicable success on a sustainable basis.

Without these funds – without reauthorization the EPA estimated 450,000 Brownfields sites will languish. The Brownfields monies spent in these communities represent not only dollars of investment but are directly tied to the people in the community and their success, health, and well-being. Investment in Brownfields produces measureable environmental benefits by cleaning up the environment and improving public health.

Brownfields Grantee Awards – The Process

EPA has developed several Brownfields-related grant programs including:

- Area-Wide Planning Grants,
- Environmental Workforce Development Job Training Grants,
- Assessment Grants,
- Cleanup Grants,
- Revolving Loan Funds (including subgrant and loan programs),
- Multi-Purpose Grants (Assessment and Cleanup),
- Training, Research, and Technical Assistance Grants, and
- Targeted Brownfields Assessments.

For this testimony, I'll highlight the EPA-funded Brownfields grants that focus on the core programs- Assessment, Cleanup, and Revolving Loan Funds.

EPA Brownfields Assessment funds include up to \$200k for sites contaminated with hazardous substances and/or up to \$200k for sites contaminated with petroleum. For Brownfields Cleanup Grants, up to \$200k is available with a 20% grantee match. Revolving Loan Funds can include funding of up to \$1M of which 50% can be subgranted and 50% loaned and also includes a 20% grantee match.

Once a new grantee is awarded EPA Brownfields Assessment monies, the grantee begins programmatic activities including contracting with a Qualified Environmental Professional (QEP). The QEP along with EPA helps the grantee understand the EPA Brownfields program and eligible activities. The general steps of an Assessment Grant include:

- Establish a Brownfields Advisory Committee (to review potential sites)
- Conduct Community Outreach (throughout the grant period)
- Establish an Inventory of potential brownfields sites (usually 10- 100+ sites)



- Conduct Phase I Environmental Site Assessments (ASTM 1527-13/All Appropriate Inquiry-AAI)
- Conduct Phase II Environmental Site Assessments (including testing)
- Cleanup Planning

Many Brownfields grantees accomplish creating an inventory, conducting numerous Phase Is and a limited number of Phase II ESAs during their initial grant period and with the available funding. Once the Brownfields funding is expended, the grantee can apply for another grant during the application competition.

As examples of how EPA Brownfields monies have created success stories and utilized innovative applications of Brownfields program funding, I have highlighted a cross-section of sites from our recent experience across the country. Many EPA-funded Brownfields sites are the result of an initial infusion of a few thousand dollars for a Phase I Environmental Site Assessment and result in the leveraging of millions of dollars in public and private funding.

Transit Oriented Development (TOD), Haverhill, Massachusetts – EPA Brownfields Assessment Grant Funds managed through the City of Haverhill utilized **a \$3,000 Phase I Environmental Site Assessment** and a \$35,000 Phase II to leverage a \$200,000 **EPA Brownfields Cleanup Grant**, paired with a \$1M state agency cleanup loan and **\$15M in Federal infrastructure funding which facilitated \$100M of private developer investment in the area**. Overall, the project included the construction of a pedestrian-friendly parking garage connecting the Massachusetts Bay Transit Authority (MBTA) Commuter Rail Train Station, the Amtrak Downeaster, and the local transit station with former shoe manufacturing mills, newly renovated to housing and retail. The project added more than 300 badly needed parking spaces to the City’s fledgling downtown retail and social scene, making possible **over 340 housing units, 75 of which are set aside for low income individuals and families**. The project created a lifestyle for walkable transit commuting and urban living, while preserving the historic character of the downtown.

Residential/Retail – Reuse of a Former Textile Mill , Sanford, Maine – Several EPA Brownfields Funding sources were cobbled together to revitalize a former mill that once produced armed service uniforms. EPA Brownfields monies included an **EPA Area-Wide Planning Grant**, an **EPA Brownfields Assessment Grant**, **EPA Brownfields Cleanup Grants**, **EPA Brownfields Cleanup Revolving Loan Fund (RLF) Subgrants (through the Regional Planning Commission) and EPA Brownfields Cleanup RLF Loans** to the town and the private developer. For this site, the RLF loan to the developer was a critical funding element to initiate the project. Without the RLF loan, the developer would have walked away. The EPA funds for this project further leveraged state monies as well as private monies from the developer and others. **From a \$4,000 EPA-funded Brownfields Assessment, over \$16M of investment was secured** resulting in **274 construction jobs, 36 affordable housing units** and several retail/commercial ventures.

Retail/Residential – Lycoming County, Pennsylvania – An **EPA Brownfields Assessment Coalition Grant**, including Williamsport, Muncy Borough, and Lycoming County was utilized to conduct numerous Phase I Environmental Site Assessments and Phase IIs which has led to the construction of housing and retail. For example, a former furniture manufacturing facility has been replaced with **40 apartments** which will **help the housing shortage created by Marcellus Shale gas boom and bring more taxpayers** into Williamsport. Another former brownfields site utilizing EPA-funded assessment dollars is now the location of a



Williamsport Kohls Department store. In Muncy, EPA assessment dollars are being used to assess an unsafe dilapidated building prior to demolition to support intersection improvements that are desperately needed for community safety. The EPA assessment dollars spent **enabled the Borough to apply for supplemental funding to support a transportation corridor study and land use planning.**

Redevelopment of 100+ Acre Former Steel Facility, Jefferson County, Ohio - EPA selected the Jefferson County Regional Brownfields Coalition including Steubenville, Toronto, and Mingo Junction for a \$1M **EPA Brownfields Assessment Coalition Grant**. The Steel Valley community was faced with the daunting challenge of how to inventory, prioritize, and implement a brownfields revitalization program for communities devastated by the economic recession and the shrinking steel industry, spur property redevelopment, and job growth. An inventory to identify and prioritize brownfield sites was developed and followed by environmental assessments and remediation action plans which further leveraged an **additional \$6.5M in state and private brownfield funding, returning 9 vacant properties to beneficial re-use, and creating over 150 new jobs**. The Jefferson County Coalition grant program was recognized as the USEPA Region 5 Success Story Award at the 2013 National Brownfield Conference. EPA Brownfields monies have supported the redevelopment of the RG Steel Facility as a multi-modal transfer and support station for the shale gas industry.

The Landing, Mt. Shasta Commerce Park, Mt. Shasta, California – EPA selected Mt. Shasta and Siskiyou County Economic Development for an **EPA Brownfields Multi-Purpose Pilot Assessment and Cleanup Grant** (\$200,000 for assessment and \$200,000 for cleanup). Mt. Shasta, an alpine community at the base of Northern California’s majestic peak, once known for timber harvesting and mills struggled with legacy petroleum and hazardous materials. The timber industry remnants, now remediated and revitalized is a hub for outdoor enthusiasts. The Landing, a 127 acre former lumber mill close to downtown and bordered by the National Forest, Union Pacific rail line, and the West Coast’s N/S transportation corridor had **over \$1M dollars targeted towards site remediation** including property certification, assessments, cleanup, and redevelopment to re-use land and existing infrastructure protecting the environment and limiting sprawl. Today, **70% of the property is ready for redevelopment** including public-space, recreation areas, and a performing arts center.

Grantee Application Process

As someone who assists communities in preparing applications, the application process can be challenging but also rewarding when a community must think outside the box on how they will utilize the funds and turn a story of despair into sustainable reuse and opportunity. There are so many worthy projects and communities where numerous industrial legacies have plagued cities and small towns that are now littered with abandoned buildings, boarded up windows, chain-link fences with barbed wire, and properties with illegal dumping. But the grantee project plan in their grant applications offer visions for renewal and an improved quality of life.

As previously mentioned, the EPA Brownfields application process is extremely competitive. As program funding has decreased, the applications have increased. For example, in FY 2015 \$59.5M was allocated to Assessment (\$34M), Cleanup (\$18.1M) and Revolving Loan Funds (\$5.8M). This is a decrease of approximately \$8M from FY 2014 of \$67M and \$10M from FY 2012.



In FY 2015, \$54.3 M was awarded to 147 communities resulting in 243 assessment or cleanup grants, however 446 grant applications were received by EPA, resulting in almost 300 applicants who did not receive Brownfields funding. Based on the number of applications, the projects far outweigh the available funding.

Based on EPA's posted FY15 Guidelines for Brownfields Assessment Grants (EPA-OSWER-OBLR-14-07), EPA's Office of Brownfields and Land Revitalization (OBLR) prepared two ranked lists of eligible applications for evaluation and selection purposes. One list was comprised of "new applicants" for Brownfield agreements, defined as:

- Applicants who have never received an EPA brownfields grant, or
- Applicants who were awarded a brownfields grant that closed in 2007 or earlier

A second list was comprised of "existing and recent recipients", defined as:

- Applicants who have a current brownfields grant, or
- Applicants who were awarded a brownfields grant that closed in 2008 or later

Based on the EPA FY 15 Brownfields Guidelines for Assessment, approximately 50% of the total amount of funding available under the announcement was to be used for grants to "new applicants." However, EPA did qualify the language as being an estimate and subject to change based on funding levels, the quality of proposals received and other applicable considerations.

While dedicating 50% of funding to new applicants creates a base of new eligible entities, it also limits the funding available for existing grantees who may have a long established program, spent a considerable amount of time creating an inventory and conducting Phase I ESAs and Phase IIs to ready the properties for redevelopment. Existing grantees who may have submitted multiple applications, only to lose "again" may result in a disincentive to compete, leaving a program with a large inventory of potential sites, stagnate.

Many existing grantees have spent tens of thousands of dollars conducting Phase I ESAs utilizing existing program dollars. But those Phase I ESAs have a "shelf life" of 180 days to ensure liability defenses and to be eligible for additional brownfields funding such as Cleanup Grants and Revolving Loan Funds. If the sites assessed using brownfields dollars are not acquired within the 180 days, and are left on the sidelines, a Phase I ESA "update" will need to be conducted to ensure liability protections. Updating the Phase I ESA will result in utilizing brownfields dollars twice for the same site. However, for many existing grantees, a viable Phase I ESA could be the difference between a developer buying the property or moving on to another property without the risk of being held accountable for future remediation efforts.

Obtaining Liability Defenses/What is AAI?

The Small Business Liability Relief and Brownfields Revitalization Act required EPA to develop federal standards and practices for "All Appropriate Inquiries- AAI" and requires parties receiving Brownfields Assessment Grants to use AAI. All Appropriate Inquiries (AAI), also called "due diligence", is the process of evaluating a property for potential environmental contamination and assessing potential liability for contamination present at the property. AAI provides CERCLA liability defenses for landowners who qualify



as innocent landowners, contiguous property owners, or bona fide prospective purchasers to understand the potential environmental risks associated with a property prior to purchase.

The liability defenses can be established during the Phase I ESA process (utilizing ASTM 1527-13) and All Appropriate Inquiry (AAI) and must be documented in the Phase I ESA to assert these defenses, at the time of property acquisition. However, as previously discussed, the AAI Compliant Phase I ESA has a ticking clock of 180 days. For a potential Brownfields site purchaser to gain the liability protections, they must acquire the property within the 180 days or have the Phase I ESA “updated” (new interviews, title searches, visual inspections) which results in an expenditure of funds that might have been used on a different site.

Municipalities are excluded from owner/operator liability under Superfund where the contaminated property was involuntarily acquired, for example obtained through bankruptcy, tax delinquency, abandonment, etc. However, if a municipality voluntarily acquires a property, they would be held to the standards as previously discussed.

Hazardous Substances vs Petroleum Assessment Funding

Based on EPA Brownfields Application Guidance, EPA must expend 25% of the amount appropriated for Brownfields grants on sites contaminated with petroleum. The Brownfields Law outlines specific criteria by which petroleum sites may be eligible for Brownfields grant funding if EPA or the State makes a petroleum eligibility determination.

EPA or the state must determine the following:

- Is the site of “relatively low risk” compared with other “petroleum-only” sites in the state; and
- There is no viable responsible party; and
- Funding will be used by a party that is not potentially liable for the petroleum contamination to assess, investigate, or clean up the site.

If an applicant is identified as being responsible for the site and that party is financially viable, then the site is not eligible for petroleum Brownfields grant funds. State petroleum site eligibility determinations can be time consuming based on the requirements of evaluating past ownership, acquisition, responsibility, risk, financial liability of responsible parties, among other criteria.

Because of the eligibility determinations listed above, petroleum brownfields funding is harder for grantees to utilize and is more complicated as it is a “case by case” state agency determination. The additional information needed to make a state determination adds layers of complexity and results in existing grantees not utilizing the funding. The state by state determination also introduces variability in approvals. Therefore, brownfields petroleum funding may be sitting on the sidelines, stranded.

Reducing the 25% allocation specifically designated for petroleum funding may create an opportunity for more money to be utilized for hazardous substances. Many grantees we assist in writing Brownfields applications struggle with whether to apply for petroleum funding because of the strict eligibility determinations. Unused existing Petroleum funding also impacts a community’s financial need when applying for Brownfields monies. A grantee will have a harder time justifying why they need additional



funding when they have \$150,000 of unused Petroleum funding even if the future need is for hazardous substances funding.

Summary and Closing

The EPA-funded Brownfields Program works. And it works on a scale of success that has generated fierce competition with considerably more applicants and projects than funds available.

As previously discussed, we believe there may be considerations in the EPA Brownfields Funding that provide versatility and flexibility to the program. One of the considerations would include reviewing the goal of funding 50% of new grantees in an effort to provide flexibility to existing grantees for continued funding and to maintain a sustainable program. A second consideration would be to provide flexibility in the requirement to allocate 25% of funding to petroleum sites. Both of these considerations may provide more funding avenues for future and existing grantees.

I and TRC on behalf of the many municipalities, non-profits, regional councils of governments, economic development commissions, and others who have received EPA Brownfields monies, look forward to the reauthorization of the Brownfields program and the continued success of reusing, revitalizing, and readapting underutilized sites to create jobs, economic vitality, sustainable solutions, and eliminate properties that have been languishing because of a perceived stigma of contamination.

Thank you for this opportunity to share TRC's experience and insights on the EPA-funded Brownfields programs. I am honored the Subcommittee provided me the opportunity to provide testimony in support of a program that has had such a meaningful impact on the communities who have been the recipients of federal brownfields funds. I would be happy to answer questions or provide further insights at this time or at a later date.