



Committee on Transportation and Infrastructure
U.S. House of Representatives

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July 20, 2015

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment
FROM: Staff, Subcommittee on Water Resources and Environment
RE: Hearing on “Helping Revitalize American Communities Through the Brownfields Program”

PURPOSE

On Wednesday, July 22, 2015, at 10:00 a.m. in 2167 Rayburn House Office Building, the Subcommittee on Water Resources and Environment will meet to receive testimony on “Helping Revitalize American Communities Through the Brownfields Program.” Witnesses will include representatives from the Environmental Protection Agency (EPA), a state brownfields agency, a municipal official, environmental engineering firms, and an environmental consultant.

BACKGROUND

Brownfields are properties where 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 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 of 2001, many potential lenders, investors, and developers were reluctant to become involved with brownfields sites because they feared environmental 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. Investors too often instead turn to green spaces on the outskirts of cities for new development opportunities. This tends to encourage sprawl.

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

BROWNFIELDS REVITALIZATION AND ENVIRONMENTAL RESTORATION ACT OF 2001

In 2001, Congress created specific authority to address brownfields with the Brownfields Revitalization and Environmental Restoration Act of 2001, which is 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 (Superfund) to authorize funding through EPA for brownfields assessment and cleanup grants, provide targeted liability protections, and increase support for state and tribal voluntary cleanup programs. The authorization for brownfield grants under this law expired at the end of fiscal year 2006.

Though its authorization has expired, Congress continues to provide funding for the Brownfields Program. In fiscal year 2014 the Brownfields Programs received \$137.7 million, and in fiscal year 2015 it received \$127.7 million. The President's fiscal year 2016 request is for \$187.5 million. Only about one-third of eligible applicants receive grants. EPA typically receives between 800-900 proposals, and is only able to fund between 200-300.

The Brownfields Revitalization and Environmental Restoration Act provided grant authority totaling \$250 million annually. This included \$200 million annually for assessment, cleanup, revolving loan funds, research, and job training. Though the authorization has expired, program still receives appropriations and issues grants. Of that amount, \$50 million, or 25 percent 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 or anticipated 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 previously authorized for each year is for state and tribal response programs. States may use this assistance to establish or enhance their response programs, capitalize existing revolving loan programs, and develop risk-sharing pools, indemnity pools, or insurance mechanisms to provide financing for remediation activities.

The law continues to provide protection from Superfund liability for certain owners of property contaminated by a source on contiguous property and for bona fide 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 inquiry” prior to the transaction. The brownfields law clarifies what constitutes “all appropriate inquiry.”

The Brownfields Program has been well received by the EPA, states, communities, investors, and developers. Through fiscal year 2014, for each EPA Brownfields Program dollar expended an average of \$17.79 was leveraged. EPA is often just one of several funding sources for brownfields assessment and cleanup. These grants are used in conjunction with funding from state, local, private, and other federal sources to address brownfield sites. As of April 2015, this investment has leveraged \$22.6 billion in cleanup and redevelopment dollars. The program has resulted in the assessment of more than 24,000 properties and readied nearly 50,000 acres of land for reuse.

Additionally, the program creates jobs and revenue for municipalities by redeveloping land for a variety of new uses including commercial and residential development, as well as recreation and educational facilities. In fiscal year 2015, the goal of the program is to successfully complete 120 cleanups, 71 of which have been accomplished as of April 2015, and to conduct 1,300 assessments, 811 of which have been accomplished as of April 2015. Given how many remaining brownfield sites there are, further job creation and revenues can be expected in communities all around the country. Since the start of the program nearly 106,000 jobs have been leveraged, with an average starting hourly wage of \$14.12. Property owners in areas surrounding brownfields have also enjoyed the benefits of this program, as their property’s value increased by 5.1-12.8 percent once the nearby brownfield was assessed and cleaned up. This program also incentivizes success by requiring that the local community where the site is located to provide 20 percent of the funding for the assessment and cleanup.

In 2014, the Environmental Protection Agency announced its grants for fiscal year 2014. A total of \$67 million was issued to 43 states and one territory for 264 grants to 171 communities.

ISSUES

Although the Brownfields Program is generally well received, some have suggested that changes be considered along with reauthorization of the funding. These include allowing the grants to be for multiple purposes so that they are not just for assessment or cleanup. Multiple purposes could include assessment, cleanup, and demolition. In addition, the grant limits per site could be raised, although without additional funding even fewer than one-third of eligible recipients could receive funding if grant limits increase. In addition, some have suggested eliminating the 25 percent funding set aside for petroleum site grants, letting them compete with other sites for priority and funding.

Another issue related to the program is the lack of performance measures available to determine the extent to which the program is achieving its goals. While the EPA 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 EPA 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.

WITNESSES

Panel I

The Honorable Mathy Stanislaus
Assistant Administrator, Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
Washington, D.C.

Panel II

Ms. Cindy Hafner
Chief Legal Counsel
Ohio Environmental Protection Agency
Columbus, Ohio

The Honorable J. Christian Bollwage
Mayor of the City of Elizabeth
Elizabeth, New Jersey

Ms. Kelley C. Race, PG, LSP
Brownfields Program Manager
TRC

Mr. Paul Gruber
On Behalf of the National Ground Water Association

Ms. Vernice Miller-Travis
Vice Chair, Maryland Commission on Environmental Justice and Sustainable Communities
Member, National Environmental Justice Advisory Council to U.S. EPA