



April 19, 2016

TO: Members, Subcommittee on Environment and the Economy  
FROM: Committee Majority Staff

RE: Hearing entitled “The EPA Brownfields Program: Empowering Cleanups and Encouraging Economic Redevelopment”

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## I. INTRODUCTION

On Thursday, April 21, 2016, at 10:00 a.m. in 2123 Rayburn House Office Building, the Subcommittee on the Environment and the Economy will hold a hearing entitled “The EPA Brownfields Program: Empowering Cleanups and Encouraging Economic Redevelopment.”

## II. WITNESSES

- Mathy Stanislaus, Assistant Administrator for the Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency;
- Mead Anderson, Brownfields Program Manager, Virginia Department of Environmental Quality, *on behalf of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO)*;
- J. Christian Bollwage, Mayor, City of Elizabeth New Jersey;
- Clark Henry, Owner, CIII Associates, LLC;
- Amy Romig, Partner, Plews Shadley Racher & Braun, LLP; and,
- Veronica Eady, Vice President and Director, Conservation Law Foundation.

## III. BACKGROUND

According to the Environmental Protection Agency (EPA) a brownfield is “a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”<sup>1</sup> It is estimated that there are more than 450,000 brownfields in the United States.<sup>2</sup> Brownfields are often abandoned, closed, or under-utilized industrial or commercial facilities, such as an abandoned factory in a town’s former industrial section, a closed commercial building or warehouse in a suburban setting, or former dry cleaning establishments and gas stations.<sup>3</sup> Because of their prior

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<sup>1</sup> <https://www.epa.gov/brownfields/brownfield-overview-and-definition>

<sup>2</sup> *Id.*

<sup>3</sup> [http://brownfieldaction.org/brownfieldaction/brownfield\\_basics](http://brownfieldaction.org/brownfieldaction/brownfield_basics)

use, these sites often show evidence of contamination, which triggers regulatory issues and points to potentially high costs associated with remediation. The presence of contamination may inhibit the owner from selling the site because of uncertainty regarding liability for the contamination and may result in difficulty with securing financing in order to proceed with cleanup and reuse. Industrial properties that have even small amounts of environmental contamination, even though they often could easily be remediated, are placed at a considerable disadvantage in the real estate market, compared to clean locations. For example:<sup>4</sup>

- A property owner – unable to sell a contaminated property – may simply abandon it, undermining the local tax base;
- Vacant facilities deteriorate and invite abuse, including unsupervised stripping of parts or material, vandalism or arson, and “midnight” dumping;
- Unintended pollution may worsen and spread, further diminishing the property value and adding to its cleanup cost, as well as threaten the economic viability of adjoining properties; and
- The site becomes an unwanted legal, regulatory, and financial burden on the community and its taxpayers.<sup>5</sup>

As a result, these sites are often not cleaned up and they become a blight on the local community and depress real estate values and incentives for economic growth.<sup>6</sup> This situation has posed a major challenge for localities seeking to revitalize distressed neighborhoods and attract new investment to sites with prior uses. Remediation and redevelopment of these brownfields is often the key to creating jobs, expanding the tax base, and revitalizing the economy of local communities.<sup>7</sup> The lack of large tracts of empty land and the inability to annex adjacent areas is forcing some cities to look closely at reusing these old factory complexes and abandoned shopping centers.<sup>8</sup> Older industrial and commercial buildings have the advantage of location in areas already developed, often close to town centers, and their reuse helps reduce suburban sprawl, with its land use and environmental impacts.<sup>9</sup>

Beginning in the mid-1990s, EPA began providing small amounts of seed money to local governments that launched hundreds of two-year brownfield “pilot” projects and developed guidance and tools to help States, communities, and other stakeholders in the cleanup and redevelopment of brownfield sites.<sup>10</sup> The 2002 Small Business Liability Relief and Brownfields Revitalization Act (the “Brownfields Law”) codified many of EPA’s practices, policies, and

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<sup>4</sup><http://www.nemw.org/wp-content/uploads/2015/06/2006-Getting-Started-with-Brownfields.pdf>

<sup>5</sup>*Id.*

<sup>6</sup>[http://brownfielddaction.org/brownfielddaction/brownfield\\_basics](http://brownfielddaction.org/brownfielddaction/brownfield_basics)

<sup>7</sup>[http://brownfielddaction.org/brownfielddaction/brownfield\\_basics](http://brownfielddaction.org/brownfielddaction/brownfield_basics)

<sup>8</sup><http://www.nemw.org/wp-content/uploads/2015/06/2006-Getting-Started-with-Brownfields.pdf>

<sup>9</sup>*Id.*

<sup>10</sup><https://www.epa.gov/brownfields/brownfield-overview-and-definition>

guidance.<sup>11</sup> The Brownfields Law expanded EPA's assistance by providing new tools for the public and private sectors to promote sustainable brownfields cleanup and reuse.<sup>12</sup> Brownfields grants continue to serve as the foundation of EPA's brownfields Program. These grants support revitalization efforts by funding environmental assessment, cleanup, and job training activities.<sup>13</sup>

### **WHAT DOES THE EPA BROWNFIELDS PROGRAM DO?**

The EPA Brownfields program provides technical assistance, regulatory guidance, liability protection, tax incentives, loans, as well as funding for environmental site assessments, and cleanup in order to address contamination and return property to beneficial reuse.<sup>14</sup> The EPA's brownfields program also works with State brownfields programs and provides direct funding for brownfields assessment, cleanup, revolving loans, and environmental job training.<sup>15</sup> To facilitate the leveraging of public resources, EPA's Brownfields Program collaborates with other EPA programs, other Federal partners, and State agencies to identify and make available resources that can be used for brownfields activities. In addition to direct brownfields funding, EPA also provides technical information on brownfields financing matters.<sup>16</sup>

### **WHAT ISSUES ARE ASSOCIATED WITH THE BROWNFIELDS REDEVELOPMENT?<sup>17</sup>**

- **Environmental Liability Concerns:** The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) has strict, joint and several retroactive liability provisions that make the purchaser of any real property potentially liable for any contaminants found on the property. Developers and property owners want to manage past and future liabilities associated with the property's environmental history. Even with liability clarifications for prospective purchasers and others put in place in the 2002 brownfield statute, uncertainty over liability remains a concern. The prospect of liability potentially drives prospective redevelopers away and keeps companies from being able to borrow enough to clean up properties and modernize operations.
- **Financial Barriers:** Private lenders are often reluctant to give loans for potentially impaired lands. In some cases, cleanup costs for a property may ultimately be more than the property's value. In most areas, adequate private financing to carry out both cleanup and redevelopment activities is simply not available, and even with lender liability addressed, financiers are still concerned about the impacts of contamination on collateral

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> <https://www.epa.gov/brownfields/types-brownfields-grant-funding>

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> [https://www.epa.gov/sites/production/files/2015-09/documents/anat\\_bf\\_redev\\_101106.pdf](https://www.epa.gov/sites/production/files/2015-09/documents/anat_bf_redev_101106.pdf)

value and the ability of borrowers to repay their notes.<sup>18</sup> These risks have made lenders reluctant to provide the resources needed to carry out site reuse projects.<sup>19</sup>

- **Cleanup Considerations:** A brownfields redevelopment timeline may take longer than typical real estate development due to environmental assessment and cleanup activities.
- **Reuse Planning:** A reuse plan based on community goals or sound economic and environmental information (e.g., market potential) may be lacking.

Revitalization of brownfields has become an important issue for Federal, State, and local governments, as well as for real estate developers, law firms, and banking and insurance interests and relies on strong coordination among stakeholders. Successful development of brownfields can be enabled or accelerated when these stakeholders work together to assess and clean up the property and pursue a common redevelopment goal.

#### IV. ISSUES

The following issues may be examined at the hearing:

- How grants from the EPA's Brownfields Program benefit states and local communities.
- Are there aspects of the current EPA Brownfields Program that could be improved upon?
- The role of property owners, public-sector stakeholders, and other parties such as developers, urban planners, attorneys, and regulators in brownfields cleanup and redevelopment efforts.
- What barriers exist for the cleanup and redevelopment of brownfields?
  - *Eligible entities* – Are there entities not currently eligible to receive brownfields grants that should be eligible?
  - *Liability issues* – Does the potential for liability deter municipalities and private entities from undertaking cleanup and economic redevelopment? What can be done to address this issue?
  - *Cleanup issues* – Redevelopment of Brownfields will likely take longer than a typical real estate development project because of the need for environmental assessment and cleanup. Is there a way to streamline the assessment and cleanup process?

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<sup>18</sup> <http://www.nemw.org/wp-content/uploads/2015/06/2006-Getting-Started-with-Brownfields.pdf>

<sup>19</sup> *Id.*

- *Financial barriers* – Lenders are often reluctant to loan money for contaminated property, is there a way to alleviate the concerns of the lenders?
- How can brownfields grant money be leveraged most effectively.

**V. STAFF CONTACTS**

If you have any questions regarding this hearing, please contact Dave McCarthy or Tina Richards of the Committee staff at (202) 225-2927.