



March 31, 2017

TO: Members, Subcommittee on Environment

FROM: Committee Majority Staff

RE: Hearing entitled “Discussion Draft: Brownfields Reauthorization”

I. INTRODUCTION

The Subcommittee on Environment will hold a hearing on Tuesday, April 4, 2017, at 10:00 a.m. in 2123 Rayburn House Office Building. The hearing is entitled “Discussion Draft: Brownfields Reauthorization.”

II. WITNESSES

- Robert Martineau, Commissioner, Tennessee Department of Environment and Conservation, on behalf of the Environmental Council of States (ECOS);
- Meade 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, on behalf of the U.S. Conference of Mayors;
- Salvatore J. Panto, Mayor, City of Easton, Pennsylvania, on behalf of the National League of Cities; and
- Parris Glendening, President, Smart Growth America’s Leadership Institute.

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.”¹ EPA estimates that there are more than 450,000 brownfields in the United States.² 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. Because of their prior

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

² *Id.*

use, these sites often show evidence of contamination, which triggers regulatory issues and 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 possible difficulty in securing financing for cleanup and reuse. As a result, these sites are not cleaned up and they become a blight on the local community and depress real estate values and incentives for economic growth.

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. 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. Older industrial and commercial buildings areas are often in desirable locations because these areas are already developed, often close to town centers, and their reuse helps reduce suburban sprawl and its attendant land use and environmental impacts.

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.³ The 2002 Small Business Liability Relief and Brownfields Revitalization Act (the “Brownfields Law”) codified many of EPA’s practices, policies, and guidance.⁴ The Brownfields Law expanded EPA’s assistance by providing new tools for the public and private sectors to promote sustainable brownfields cleanup and reuse.⁵ Brownfields grants continue to serve as the foundation of EPA’s Brownfields Program by funding environmental assessment, cleanup, and job training activities.⁶

EPA’s Brownfields Program empowers states, communities, and other stakeholders to work together to safely clean up and sustainably reuse brownfields. Brownfields grants from EPA provide essential funding for assessment, cleanup, area-wide planning, and revolving loan funds. However, cleaning up brownfields sites still requires securing adequate resources to complete brownfields revitalization projects. Cleanup costs can be substantial; expensive infrastructure upgrades may be needed to support revitalization efforts, design and engineering costs can be daunting, and redevelopment costs may be prohibitive, especially in distressed or small communities with weak markets and at sites with limited reuse potential.⁷ Strategic use of brownfields grant money for redevelopment and for infrastructure projects can attract outside investors and lead to additional funding. Through fiscal year 2016, on average, \$16.11 was leveraged for each EPA Brownfields dollar and 8.5 jobs leveraged per \$100,000 of EPA brownfields funds expended on assessment, cleanup, and revolving loan fund cooperative agreements.⁸

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ https://www.epa.gov/sites/production/files/2016-04/documents/final_leveraging_guide_document_4-19-16.pdf

⁸ <https://www.epa.gov/brownfields/brownfields-program-accomplishments-and-benefits>

The [Committee](#) and the [Transportation and Infrastructure Committee](#) recently examined the Brownfields Program and the Brownfields Law. Witnesses agreed that the Brownfields Program would benefit from full funding and they identified several areas for legislative improvement.

IV. DISCUSSION DRAFT

The Committee has been working to develop legislation to reauthorize the EPA Brownfields Program and to make statutory improvements to the brownfields law in CERCLA. The Discussion Draft is a work in progress and the objective of the legislative hearing is to analyze the provisions in the Discussion Draft and to explore whether additional revisions to the law are necessary. Currently the Discussion Draft includes the following provisions:

Section 1. REDEVELOPMENT CERTAINTY FOR GOVERNMENTAL ENTITIES. This section amends the definition of “owner or operator” in section 101(20)(D) of CERCLA by removing the term “involuntarily” which means that a unit of State or local government that acquires ownership or control involuntarily is not an “owner or operator” under CERCLA. Section 1 also makes a conforming change in the definition of “contractual relationship” in section 101(35)(D).

Section 2. PETROLEUM BROWNFIELD ENHANCEMENT. This section amends the definition of “brownfield site” in section 101(39)(D) to clarify that a petroleum site is eligible to be a brownfield site if there is no viable responsible party and if EPA or the State determine that the site will be assessed and remediated by a person who is not potentially liable to clean up the site.

Section 3. CLARIFICATION OF LEASEHOLDER INTEREST. This section clarifies the existing definition of a “bona fide prospective purchaser” in 101(40) of CERCLA with respect to a tenant or person who holds a lease hold interest but who otherwise meets the requirements to be a bona fide prospective purchaser. This section also defines a “leaseholder.”

Section 4. EXPANDED ELIGIBILITY FOR NONPROFIT ORGANIZATIONS. This section makes certain non-profit entities [501(c)(3) organizations, limited liability corporations and limited liability partnerships (the members of which are non-profit organizations), and qualified community development entities] “eligible entities” under 104(k)(1).

Section 5. TREATMENT OF PUBLICLY OWNED BROWNFIELDS SITES. This section provides that an otherwise eligible entity may receive a brownfields assessment or remediation grant even if the brownfields property was acquired prior to January 11, 2002.

Section 6. REMEDIATION GRANT ENHANCEMENT. This section increases the limit for remediation grants from \$200,000 to \$500,000 and allows EPA to waive that limit up to \$750,000 based on the level of contamination, the size or ownership status of the site.

Section 7. MULTIPURPOSE BROWNFIELDS GRANTS. This section allows EPA to issue multipurpose grants to inventory, characterize, assess, plan, provide technical assistance, and remediate one or more sites in an area proposed by the eligible entity. The grants may be up to

\$1,000,000. This section also establishes criteria and conditions for the award of the multipurpose grants.

Section 8. ADMINISTRATIVE COSTS FOR GRANT RECIPIENTS. This section allows eligible entities to use up to 5% of a grant to pay administrative costs. The section also restricts what may be considered as an administrative cost.

Section 9. RENEWABLE ENERGY ON BROWNFIELDS SITES. This section directs EPA to include in the ranking system for grant applications, the extent to which a grant would facilitate the production of renewable energy on the brownfields site.

Section 10. BROWNFIELDS FUNDING. This section is the authorization for appropriations of the brownfields program under section 104(k) of CERCLA.

Section 11. STATE RESPONSE PROGRAM FUNDING. This section is the authorization of appropriations for state response grants under section 128(a) of CERCLA.

V. ISSUES

The objective of the hearing is to:

- Review the provisions of the Discussion Draft;
- Determine whether additional improvements to the Brownfields Program and changes to the Discussion Draft and the Brownfields Law are necessary; and
- Consider what else can be done to facilitate additional site clean up and whether further statutory changes to the program are necessary to encourage more parties to participate in the cleanup process;

VI. STAFF CONTACTS

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