



ASTSWMO, Providing Pathways to Our
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ASTSWMO POSITION PAPER

128(a) "Brownfields" Grant Funding

INTRODUCTION

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (Pub.L.No. 107-118, 115 stat. 2356, "the Brownfields Law"). The Brownfields Law amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) by providing funds to assess and clean up brownfields; clarified CERCLA liability protections; and provided funds to enhance State and tribal response programs. Other related laws and regulations impact brownfields cleanup and reuse through financial incentives and regulatory requirements.

Since the Brownfields Law was signed in 2002, funding to States, Territories and Tribes, via the 128(a) Brownfield Grant, has been essential for States and Territories (States) to build and maintain successful State brownfield programs. The funding that States and Territories receive each year provides an incredible number of benefits to local units of government, corporations, and other organizations, who oversee the day-to-day cleanup and redevelopment of blighted, underutilized, and contaminated properties.

Some of these benefits include:

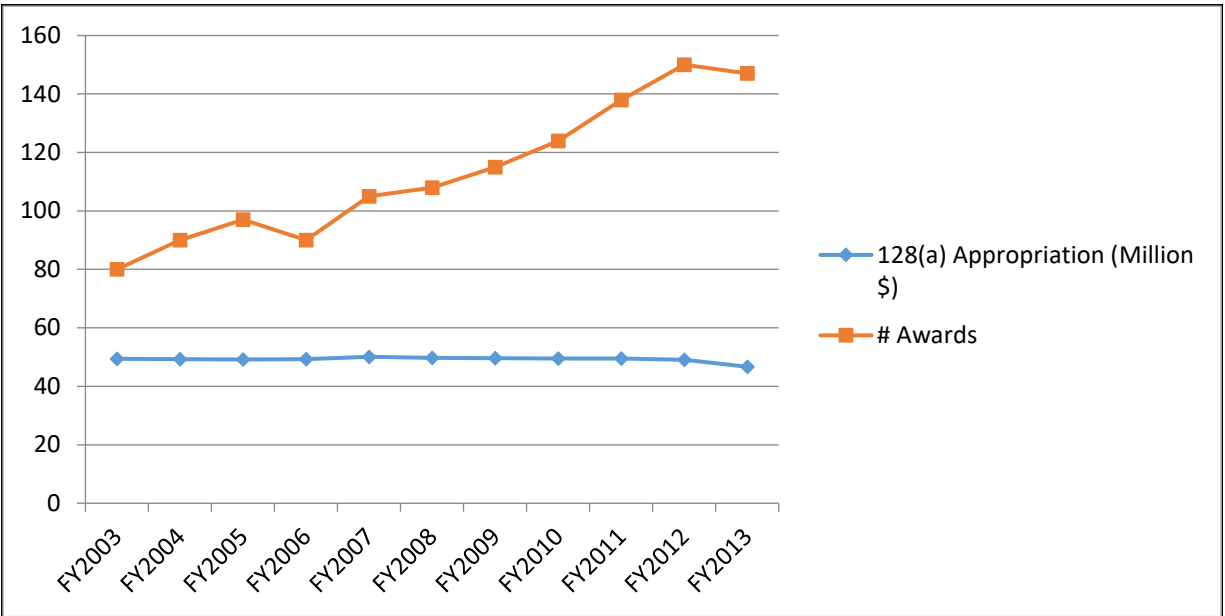
- Providing funds to complete environmental assessments of properties to meet all appropriate inquiry (AAI), as well as Phase II sampling and asbestos and lead inspections and, in some cases, ecological assessments, as needed;
- Supporting community officials in the preparation of grant applications for brownfield assessments, cleanups or revolving loan funds;
- Providing workshops for organizations, communities and others in order to educate them about the many brownfield issues and the incentives that are available at the State and Federal level;
- Meeting with community officials and others to assist them in working through assessment and cleanup of brownfield properties, as well as providing technical support and recommendations; and
- Supporting voluntary cleanup programs, which provide the foundation for setting remediation goals and institutional controls.

Unlike many other environmental programs which began at the Federal level, with States taking over authority to run various aspects, States and Territories are primarily responsible for the development and maintenance of brownfields cleanup and redevelopment programs. States have developed their own, unique State-specific statutes, rules and regulations to govern voluntary cleanup of contaminated sites and provide liability releases or letters of comfort to fit the needs of each individual State. However, the individual programs are sufficiently consistent to allow 25 States to execute a voluntary cleanup program (VCP). Memorandum of Agreement (MOA) with their respective EPA Regional authorities. These MOAs promote State-Federal coordination, define general roles regarding the cleanup of sites and provide predictability and consistency for those completing a cleanup under State authority...

The States have also developed a variety of incentives to encourage cleanup and redevelopment of contaminated/potentially contaminated sites such as tax incentives, low-interest loans, grants and liability protections. For example, Virginia provides a tax exemption for increases in property taxes which can cap taxes for up to 5 years. Ohio provides grants and low-interest loans for assessment and cleanup as well as offering a 10-year property tax abatement on the increased value of the site as a result of the cleanup. Wisconsin offers low-interest loans and grants to local units of government so they may conduct assessments of their brownfield properties. Idaho has a Community Reinvestment Pilot Initiative, which for 10 sites rebates up to 70% of approved remediation costs up to a maximum rebate of \$150,000. Massachusetts' MassDevelopment Brownfields Redevelopment Fund was capitalized by the legislature in 1999 with \$30 million to support brownfield cleanup and redevelopment and recapitalized the program in 2006 with an additional \$30 million. Because States have primary responsibility for operating brownfield/VCP programs, the key to continued success of brownfields cleanup and redevelopment in the nation is the economic health and viability of State programs. The brownfields program at all levels is one of the few programs which has successfully bridged the gap between environmental cleanup and economic development by often integrating cleanup with redevelopment.

BACKGROUND

Since the Brownfields Law's beginnings, 128(a) funding has been provided to States, Territories and Tribes with the national funding level remaining at just under \$50 million for over 14 years, whereas the number of applicants has continued to rise to nearly double. The graph below illustrates the changes in funding awards, from a static pot of funding over the years. In FY2003, 80 States, Territories and Tribes received funding from a total appropriation of \$49.4 million. By FY2013, 150 entities requested funding including 50 States, 4 Territories, the District of Columbia and 95 Tribes, 3 of which were new applicants. The total funding requested in FY2013 was \$54.8 million and the total budget allocated in FY2013 was \$48.08 million. The awards in FY2003 averaged \$618,000, however, by FY2013 the average award had dropped to \$318,000, nearly half of what had been awarded in FY 2003. This dramatic decrease in award amounts is directly attributable to the steadily increasing demand and competition for these essential funds.



As a result of this increasing demand on 128(a) funds, the vast majority of States are receiving less funding each Federal fiscal year. Although most States do not rely solely on 128(a) funding alone to support their brownfields and State response programs, 128(a) funds are an essential component of each State’s program. The additional funding many States utilize includes program fees, special cleanup funds and, in some cases, general revenue funds; however, most of these sources have either decreased or remained flat, particularly during the recent recession. Few of the States receive sufficient State funding to cover all program costs. As a result, States have had to resort to cost saving measures, such as reducing staff dedicated to brownfield functions, cutting or eliminating the amount of assistance provided to local communities and reducing the number of 128(a) funded assessments.

Many States use their 128(a) funding to conduct site-specific activities such as Phase I and Phase II Environment Site Assessments or cleanup planning to assist economically disadvantaged or remote communities or those with issues such as environmental justice, health risks related to hazardous substances, and/or limited experience in working with government agencies. Often this work is the only readily available funding for conducting all appropriate inquiry on brownfields properties in order to obtain Federal liability protection and to facilitate acquisition of these sites. The 128(a) funding also allows the States to provide technical, administrative and public outreach to these communities in support of these site specific activities. In light of the current economic situation, some States have eliminated all direct funding assistance to their local communities or have been unable to recapitalize State-administered brownfield funds and have redirected that funding into staff salaries.

Over the last 10 years the 128(a) funding appropriations have remained just below \$50M, while the number of applicants has nearly doubled thus decreasing total funding awarded to each applicant. At a time when most States are struggling to meet their State’s brownfields basic revitalization needs there is an increasing workload placed on the States as developers and

bankers turn to State brownfield and voluntary cleanup programs as a cost effective means to promote property revitalization projects. In addition, State programs are increasingly dealing with more complex sites with multiple exposure pathways and ever expanding contaminant concerns which add to an already overburdened State program. The 128(a) funding forms the foundation on which many State programs are developed, and, without sufficient funding, a gap remains that is difficult to bridge regardless of other funding sources. Brownfield/voluntary cleanup programs are geared towards revitalization. If these programs become ineffective due to lack of funding, confidence in the program will erode and resurrecting these programs will be difficult if additional funding ever does become available.

Conducting studies to effectively and accurately document and quantify the full impact of brownfields funding has been a challenge due to the numerous factors affecting outcomes, the widely varying conditions and demographics across the county, and the specific objectives and graphics of individual States. However, all studies have shown brownfields funding, and particularly 128(a) monies, play a vital role. It has been demonstrated repeatedly the tremendous value Federal brownfields money has on the State programs, local communities, the leveraging of State- local community funding, economic development and the increase in tax base. Even more challenging to demonstrate are the socio-economic values of brownfields revitalization which include the decrease in crime as redevelopment occurs, the creation of more livable communities, increase in wages with revitalization, and overall community health and welfare as environmental conditions improve. The University of Delaware has published two well respected studies: the first *Economic Impact of Delaware's Economy: The Brownfields Program* dated January 5, 2010; and *Beyond Natural and Economic Impact: A Model for Social Impact Assessment of Brownfields Development Programs and a Case Study of Northeast Wilmington, Delaware* dated February 2013. The economic study found that every nominal dollar spent through the brownfield program generates a \$17.50 return on the State's initial investment.

ASTSWMO POSITION

States have faced significant funding challenges over the last 5 to 6 years given the recession, and their brownfields programs are no exception. Since the recession, States have allocated their 128(a) funds for staffing to administer their voluntary cleanup or brownfields programs. Without these programs, or if the programs are insufficiently staffed, there are fewer resources to ensure that 1) cleanups meets State risk standards and, 2) when non-permanent remedies are employed, that institutional controls critical to protecting future users of the property are in place and monitored regularly to ensure compliance. Without sufficient funds, States cannot ensure that sites meet EPA's goal of "ready for reuse". Additionally, the 128(a) funds have been an important leveraging tool for State programs with trickle-down benefits for their communities.

Sufficient funding for State brownfield/voluntary cleanup programs via the 128(a) Brownfields Grant process is essential for developing and maintaining a successful brownfield cleanup and redevelopment process throughout the nation. Since 2007, the number of 128(a) applicants (States, Territories and Tribes) has increased by 3 to 10 or more per year while available funding has remained somewhere between \$47 to \$50 million annually. As brownfield cleanup and redevelopment becomes ever more important to the nation's economic growth, the need for this funding will become increasingly critical. Without increased funding, many States may be forced to cut back their already underfunded brownfields and voluntary cleanup activities as well as assistance to municipalities. This will impact all communities, but particularly the small and rural communities that need brownfields redevelopment assistance so desperately.

ASTSWMO believes a robust brownfields program, at all levels of government and working in concert with the private sector, is essential to the nation's environmental, economic and social health, and without adequate funding for State, Territorial and Tribal brownfield and voluntary cleanup programs, brownfield program goals cannot be achieved. The current funding level is inadequate and should be increased to reflect and accommodate the steady increase in applications for 128(a) grant funding that has occurred over the last 14 years.

Approved by the ASTSWMO Board of Directors on April 22, 2014 in Virginia Beach, VA.