

Attachment—Additional Questions for the Record

**Subcommittee on Environment and Climate Change
Hearing on
“Back from the Brink: Restoring Brownfield Sites to Economic Engines”
February 15, 2022**

Mr. Patrick B. Ford, Business Development Director, Frontier Group of Companies

The Honorable Debbie Dingell (D-MI)

1. Cleaning up contaminated brownfield sites is only half the battle. Finding a productive use for these sites after they are cleaned up is the other half. These sites could be ideal locations for clean energy development, including solar farms. This would not only restore the former brownfield property to beneficial environmental and economic use, but it would also leave greenfield property available for farming and other best uses.
 - a. Would you agree that solar farms would be a good use for brownfield properties?

RESPONSE:

I am confident that solar arrays would be a great use for brownfield properties. There are some portions of brownfields that simply are cost prohibitive to repurpose for active uses (ie. Industrial, commercial, residential, and recreation). In other cases, solar arrays help offset operating costs for end users. While, in other cases, an end user will choose to locate on our brownfield sites simply because it is within their corporate mission.

Our company, The Frontier Group of Companies, recognizes this opportunity and has a division solely focused on including the construction of solar arrays on all our brownfield sites. This division, Frontier Solar Holdings, is a renewable energy company that is committed to transforming outdated industrial sites into green energy power generating facilities. We leverage expertise in industrial site clean-up and brownfield redevelopment to acquire and remediate viable sites and then construct utility-grade photovoltaic power systems generating clean energy that can be transmitted back to the power grid. We are currently developing six (6) green energy

sites (also referred to as solar farms) throughout the northeastern and southwestern United States.

- b. What policies would be necessary to encourage this practice, particularly if there are additional costs involved compared to locating on a greenfield property?

RESPONSE:

It is important to recognize that brownfield development presents a unique opportunity for solar energy generation onsite. Brownfield sites are usually located proximate to substations, transmission and distribution lines, waterways, rail, and roads; all which can save the construction costs of building access roads, or costs associated with the construction of a long interconnect route. Redeveloping a brownfield with a solar array improves the local tax base, can create energy savings, create jobs, and turn a brownfield into a brightfield. Following are a few policy initiatives to consider.

- ***Permit financial agreements in which a third-party developer installs, owns, and operates a solar array on a host customer's site. The host buys the electricity generated by the solar array from the third party, for a fixed price over a predetermined period. These agreements allow hosts to receive stable, low-cost energy, without having to pay the full up-front cost of a solar array.***
- ***Incentivized solar arrays on reclaimed coal mines.***
- ***Offer reimbursement of assessment, remediation, demolition, cleanup, and site preparation costs through grants and/or no-interest loans.***
- ***Offer liability protection for those companies repurposing brownfields.***
- ***Offer tax incentives for those companies repurposing brownfields.***

The Honorable Cathy McMorris Rodgers (R-WA)

1. How important is it that the brownfields program can successfully leverage private investment dollars?

RESPONSE:

Private investment brings in taxes to local, state, and federal coffers. Private investment creates jobs. Jobs bring disposable income. Disposable income drives housing starts and retail development. An expanded tax

base means more services for residents. Remove the private investment and you might as well roll the EPA into another federal agency.

If we remove the push to leverage private investment, the brownfield program will follow the trajectory of past discontinued federal programs. Next year, this same subcommittee will see the EPA leverage \$15 private dollars for every public dollar. The following year, they will see the EPA leveraging \$8 for every public dollar. The budget will be cut, then there won't be enough money to turn the tide. The third year will see the EPA leverage \$3 for every public dollar. After the fourth year, the Brownfield Program will be on the same track as other discontinued federal programs. One would think that it could not possibly fall that fast. Well, yes it will. Because the communities that will be receiving the federal money, without having to illustrate leveraged private investments, will not have the capacity to perform the reporting and, in fact, will struggle to find a benchmark to illustrate that the program is successful. Without requiring the leveraging of private investments, the program would generate the startup of several parks and income-neutral or tax base-depleting properties with high vacancy rates, minimal use, little or no plans to cover operating costs, and no job creation.

What has made our grant applications in the past so enticing is that we illustrated the leveraged private investments and jobs that would be realized by the implementation of our plan. Then, to ensure future funding, we illustrated that, in fact, private investment and jobs were realized. The tax base generated from these leveraged private investments make it possible for local and state governments to fund housing developments, parks, and infrastructure improvements.

I feel so strongly about the importance of leveraging private investment that I believe the EPA should allow the private sector to meet threshold criteria to be eligible to take EPA funding or technical assistance directly. It could start by creating a comparable program to the TBAs (Targeted Brownfield Assistance) for access to cleanup grants (rolling deadlines and funding cycles).

2. You have been involved on both the public and private side of developing brownfield sites. Would you please speak to how the defenses to liability are crucial to getting investors to commit to assessing, cleaning up, and redeveloping these sites?

RESPONSE:

A RCRA designation results in automatic legal landowner liability under the federal Superfund statute (CERCLA, 42 USC §9601 et seq) for any potential purchaser of the property. The RCRA site designation chills and inhibits

potential purchasers from considering the property for any project they may have.

The bona fide prospective purchaser (BFPP) provision in the 2002 amendments to CERCLA, changed the liability landscape for landowners, so long as that party meets specific statutory criteria. This provision made it possible for government and non-profits, for whom which I was an executive director, to acquire and repurpose our brownfields. In fact, we (or they) still hold title to these properties, while leasing to private industries, to shield said industries from the environmental liability. The EPA additionally gives us financial resources to assess and remediate prior to repurposing.

My only thought, with regards to both RCRA and Brownfields, is that at some point, the federal government needs to let go of these sites (Brownfields and RCRA's); particularly if the violators or contributors to the contamination are bankrupt, closed, or no longer in existence. The feds lost their ability to collect. Putting future buyers on the hook, if a box isn't checked during the acquisition stage, further adds to the stigma of Brownfields and RCRA's and prevents some tenants and most purchasers from locating on a brownfield/RCRA site.

3. Please speak to the societal benefits within a community regarding brownfields redevelopment projects that reclaim, restore, and redevelop idled legacy manufacturing sites.

RESPONSE:

A critical component to every brownfield that is repurposed should be to build off the industrial heritage that has been in the DNA for the site for generations. Fundamental to the success of the brownfield program are two-fold:

- ***By returning the site to its intended industrial use, the site can be remediated more quickly and affordably, and***
- ***We need to leverage the improvements our forefathers, captains of industry, made to the sites that made them into the economic powerhouses they were. We should be required to keep the industrial infrastructure on these sites (rail, river mooring cells, roads, power substations, water and sewer infrastructure, etc.). We are in an industrial renaissance; we need to stop being so quick to erase our proud industrial heritage and the infrastructure from which we need to sustain our industrial renaissance.***

Additionally, the broader labor shed in the regions where we have these large brownfields and RCRA sites, are where we draw our workforce. The blue-collar ethos here, unrivaled across the country, includes a distinct

pride of workmanship. Coal, petro-chemicals, and steel forged a heritage that continues to be the core competency in these regions. We need to make our repurposed industrial parks a place where our workforce, and future generations, are proud to return. Our company, The Frontier Group of Companies, leaves reminders of the industrial heritage of our brownfield sites and folds smokestacks, ovens, or other remnants as memorials and landmarks for which we are proud.

4. Are there lessons from the brownfields program that could be applied to Superfund or RCRA corrective actions cleanups?

RESPONSE:

There are three main types of federally governed cleanups. RCRA corrective actions, Superfund cleanups, and brownfields cleanups. There are, in fact, lessons from the brownfields program that could be applied to Superfund or RCRA corrective actions cleanups.

Potential buyers, industry and business prospects, and developers (and their lenders) simply see a STOP SIGN on properties with the RCRA designation. RCRA designation makes it challenging for a site to be financed. RCRA designation creates a stigma that runs people off. We know this from experience.

RCRA was set up as a tool for the government and NOT a tool for the developer or the prospective purchaser.

We purchased the former Arcelor Mittal plant property in Weirton, WV. It has been designated a RCRA Corrective Action facility site since 1996. Over time, Arcelor Mittal completed extensive environmental investigation and remediation at the site, yet most if not all the property remains listed as a RCRA site at the time of the purchase of the property by us. Because the RCRA designation would result in automatic legal landowner liability under the federal Superfund statute (CERCLA, 42 USC §9601 et seq) for any potential purchaser of the property, the RCRA site designation chills and inhibits potential purchasers from considering the property for any project they may have. And without the ability to clear portions of the property of the RCRA designation (and the legal liability and stigma associated with it), re-development efforts are critically hampered. We need to be able to obtain the release of Correction Action Areas as we are able to and not wait until the entire site is cleared of RCRA issues or CAA's - otherwise, potential buyers and developers (and their lenders) simply see a stop sign, as I wrote earlier, with the RCRA designation.

It was with these concerns in mind that we attended a meeting on March 5, 2018 at EPA in Philadelphia with EPA RCRA and Brownfield staff. We openly discussed these issues and received commitments that the agency would, in fact, provide one-off approvals or NFA letters for CAA's located in priority redevelopment areas. This was a major accomplishment for the redevelopment project and represented a regulatory breakthrough for the brownfields redevelopment of a RCRA-designated site. We are working now with EPA and our consultant in triaging the property and determining how best to accomplish these goals to "open up" areas of the property to redevelopment to encourage investment and re-use. This month, we will be receiving our Certificate of Completion from the WV DEP for the most developable portions of our site that were once under a corrective action order. WE OWE A GREAT AMOUNT OF GRATITUDE, THANKS, AND APPRECIATION TO THE USEPA AND WVDEP FOR COLLABORATING AND MAKING THIS BREAKTHROUGH POSSIBLE.

This approach, which was a major breakthrough, needs to be standard practice. We need to be able bifurcate CAAs and clean up one area at a time and EPA Brownfield Program money should be able to be used for the assessments and remediation of these CAAs. We need to apply a business mindset to the threshold criteria and eligibility of recipients of EPA program dollars.

We should also, similar to brownfields, have the option to enter RCRA sites into state VRP programs to assess and remediate (as we are currently doing in West Virginia). VRPs provide more practical clean-up standards and timetables to remediate. Both RCRA and Brownfields require the same approach: investigate, remediate, develop.

With regards to Superfund cleanups, I just touched on this issue. The automatic legal landowner liability under the federal Superfund statute (CERCLA, 42 USC §9601 et seq) for any potential purchaser of the property throws up another STOP SIGN for investment.

This fund was set up as a tool for the government and NOT a tool for the developer or prospective purchaser. This funding mechanism was set-up specifically for orphan sites. When no company is held liable for the cleanup or the company can't afford it, the government funds the cleanup process. However, no one wants to touch it because of the superfund liability. This fund needs to be adjusted to help the developer and/future property owner.

5. Please speak to the important role brownfields cleanup and redevelopment plays in reinvigorating former supply chains and recreating the manufacturing businesses along existing infrastructure – conserving greenfield development,

building local tax bases and economies while saving tax dollars, and making American more globally competitive.

RESPONSE:

Remove the important role brownfields cleanup and redevelopment plays in reinvigorating former supply chains and stimulating the return of manufacturing in areas saturated with the necessary existing infrastructure to support modern industry and you will have a federal program set up to fail. I have seen federal money invested in communities for decades and I continue to witness these neighborhoods spiral in decline with no sign of improvements. Federal money has funded new streetlights and sidewalks in downtowns and the storefronts are still vacant. Federal money has been used to improve parks and families still don't use the playground equipment.

Economic Development HAS to be the emphasis of the brownfields programs. Only then will industry and business return, roads will become congested, parks will fill up with families, on-street parking will become a good problem to have, and businesses will return to storefronts.

Repurposing brownfields for industrial and business development does not raise property values or eliminate affordable housing. Repurposing brownfields to parks and housing eliminates opportunities for job creation, constricts real estate supply for industrial and commercial development, makes it cost prohibitive to attract industrial and business development, and raises taxes on a growing residential population with no business income tax revenue to offset the cost of services for residential housing.

The EPA should be readying sites for economic development with front-end money and the EDA should be providing back-end money to secure industries and businesses on these same sites.