

**MEMORANDUM**

September 23, 2023

TO: Members, Subcommittee on Environment, Manufacturing, and Critical Materials

FROM: Committee Majority Staff

RE: Hearing entitled “Revitalizing American Communities: Ensuring the Reauthorization of EPA’s Brownfields Program.”

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**I. INTRODUCTION**

The Subcommittee on Environment, Manufacturing, and Critical Materials will hold a hearing on Wednesday, September 27, 2023, at 10:00 a.m. in 2123 Rayburn House Office Building. The hearing is entitled “Revitalizing American Communities: Ensuring the Reauthorization of EPA’s Brownfields Program.” Witnesses appear by invitation only.

**II. WITNESSES**

Panel I:

- **Barry Breen**, Principal Deputy Assistant Administrator, Office of Land and Emergency Management, U.S. Environmental Protection Agency

Panel II:

- **Christian Bollwage**, Mayor, Elizabeth, NJ, on behalf of the Conference of Mayors and the National League of Cities
- **Tammy Shifflett Tincher**, Greenbrier County Commission, on behalf of National Association of Counties
- **Lesly Melendez**, Executive Director, Groundwork Lawrence, on behalf of the National Brownfields Coalition
- **Pat Ford**, Director of External Affairs & Business Development, Frontier Group of Companies, Buffalo, NY

**III. SUMMARY OF EPA’S BROWNFIELDS PROGRAM**

According to the U.S. 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> EPA estimates 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 drycleaning establishments and gas

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

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

stations.

Given their prior use, brownfield 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. 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.

EPA's Brownfields Program empowers states, communities, and other stakeholders to work together to clean up safely 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.<sup>3</sup>

Strategic use of brownfields grant money for redevelopment and for infrastructure projects can attract outside investors and lead to additional funding. Through fiscal year 2022, on average, \$19.78 was leveraged for each EPA Brownfields dollar and each \$100,000 of brownfields investment from EPA created 810.6 jobs through the assessment, cleanup, and revolving loan fund cooperative agreements.<sup>4</sup> EPA also reports that since July 1, 2023, the Brownfields Program has assessed more than 37,000 properties, cleaned up 2,531 properties, leveraged more than 270,500 jobs and \$39.7 billion, made almost 10,500 properties ready for reuse, including nearly 163,300 acres of otherwise blighted and fallow property.<sup>5</sup> In addition, EPA reports state and tribal governments track accomplishments using Brownfields state program funds. Since 2006, state and tribes have enrolled over 34,481 properties annually (on average), completed more than 219,956 cleanups, and made over 3,702,889 acres ready for reuse.<sup>6</sup>

#### **IV. STATUTORY BACKGROUND**

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<sup>3</sup> [https://www.epa.gov/sites/production/files/2016-04/documents/final\\_leveraging\\_guide\\_document\\_4-19-16.pdf](https://www.epa.gov/sites/production/files/2016-04/documents/final_leveraging_guide_document_4-19-16.pdf)

<sup>4</sup> <https://www.epa.gov/brownfields/brownfields-program-environmental-and-economic-benefits>

<sup>5</sup> <https://www.epa.gov/brownfields/brownfields-program-accomplishments-and-benefits>

<sup>6</sup> Id.

In the mid-1990s, using its administrative authority, EPA began providing small amounts of seed money to local governments that launched hundreds of two-year brownfield “pilot” projects. EPA also developed guidance and tools to help States, communities, and other stakeholders in the cleanup and redevelopment of brownfield sites.<sup>7</sup>

### **A. Small Business Liability Relief and Brownfields Revitalization Act (2002)**

The 2002 Small Business Liability Relief and Brownfields Revitalization Act (the “Brownfields Law”) formalized and expanded EPA’s assistance and provided new tools for the public and private sectors to promote sustainable brownfields cleanup and reuse. Specifically, the Brownfields Law contained three significant amendments to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) dealing with providing loans and grant funding, as well as liability defenses for eligible entities assessing and cleaning up contaminated properties.

First, the Brownfields law added CERCLA section 104(k) authorized funding. Under section 104(k), EPA can (1) provide grants to eligible entities to conduct environmental assessment or cleanup at a brownfields site; (2) carry out a range of eligible assessment and cleanup activities at one or more brownfields in a targeted area; (3) capitalize revolving loan fund (RLF) programs for brownfields cleanups; and (4) offer technical assistance and job training assistance activities related to brownfields properties.<sup>8</sup>

The 2002 Brownfields Law also provided CERCLA liability defenses to contiguous property owners and prospective purchasers; and clarified appropriate inquiry for innocent landowners from CERCLA Superfund liability.<sup>9</sup> Finally, the Brownfields Law created CERCLA section 128(a), a non-competitive grant program where EPA gives funding to States and Tribes to help them establish or enhance their response programs addressing the assessment, cleanup, and redevelopment of brownfields and other sites with actual or perceived contamination.<sup>10</sup> Of note, CERCLA section 104(k)(9)(B)(iii) requires a 20 percent cost-share (which may include supplies and labor) for recipients receiving funding through a brownfields cleanup grant or a RLF cooperative agreement.<sup>11</sup>

### **B. Brownfields Utilization, Investment and Local Development Act (2018)**

Sixteen years later, Congress reauthorized the statutory Brownfields program at EPA with the Brownfields Utilization, Investment and Local Development (BUILD) Act. Enacted as part of the Consolidated Appropriations Act on March 23, 2018, the BUILD Act reauthorized annual appropriations for CERCLA sections 104(k) (\$200 million) and 128 (\$50 million) for each of FY2019 to FY2023.<sup>12</sup> In addition, the BUILD Act increased eligible uses of, entities qualifying for, and levels of funding that could be awarded for certain types of CERCLA section 104(k) grants; broadened the use of

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<sup>7</sup> *Id.*

<sup>8</sup> [Overview of EPA's Brownfields Program | US EPA](#)

<sup>9</sup> [Summary of the Small Business Liability Relief and Brownfields Revitalization Act | US EPA](#)

<sup>10</sup> <https://www.epa.gov/brownfields/state-and-tribal-response-program-grant-funding-guidance-resources>

<sup>11</sup> <https://www.epa.gov/system/files/documents/2022-06/2022-cost-share-information.pdf>

<sup>12</sup> [U.S. Environmental Protection Agency \(EPA\) FY2018 Appropriations: Congressional Action \(crs.gov\)](#)

Section 128 grants to cover petroleum-contaminated soil cleanups; and addressed ownership and liability provisions under CERCLA for bona fide prospective purchasers and lessees.<sup>13</sup>

### C. Infrastructure Investment and Jobs Act (2021)

Separate from the provisions authorized under CERCLA or appropriated through annual appropriations laws, EPA's Brownfields Program recently received funding and direction from Congress. On November 15, 2021, the Infrastructure Investment and Jobs Act (IIJA; P. L. 117-58)<sup>14</sup> appropriated a total of \$1.5 billion -- or \$300 million annually -- in additional funding for EPA's Brownfields Programs on top of annual appropriations.

Of the \$1.5 billion appropriated in the IIJA, \$1.2 billion was equally divided over fiscal years 2022 through 2026 (\$240 million per fiscal year) for CERCLA section 104(k) programs and \$300 million (\$60 million per fiscal year) was allocated for CERCLA section 128 grants. IIJA also (1) waived cost-share requirements for grants provided by the President to capitalize revolving loan funds or cleanup more than one site;<sup>15</sup> (2) dramatically expanded the limits on the amounts of funding that could be provided for grants under CERCLA section 104(k);<sup>16</sup> and (3) required a determination whether it was "necessary to promulgate regulations or issue guidance in order to prioritize and expedite the siting of clean energy projects on current and former mine land sites."<sup>17</sup>

## V. 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. While the IIJA provided advanced funding for EPA's Brownfields Program, the formal authorization of the program in CERCLA is set to expire in 2023. The Discussion Draft is a work in progress and the objective of this 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:

- **RURAL BROWNFIELDS SHOWCASE**: Amends CERCLA section 104(k)(7) to provide grants in each of fiscal years 2025 and 2026 to five communities – three representing a non-suburban population of 50,000 or less and two representing a non-suburban population of 50,001 to 100,000 persons. It would also provide technical assistance to help those communities secure a CERCLA section 104(k) grant or loan that will promote environmental protection and restoration, economic development, job creation, community revitalization, and public health protection through the assessment, cleanup, or sustainable reuse of brownfields in the community. The program would sunset after a status report in Fiscal Year 2029.
- **BROWNFIELDS PROGRAM OVERSIGHT**: Creates a new requirement for the EPA to conduct an annual internal audit of its Brownfields program and its awards. It would direct EPA to report to

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<sup>13</sup> [BUILD Act Summary Fact Sheet \(epa.gov\)](#)

<sup>14</sup> [H.R.3684 - 117th Congress \(2021-2022\): Infrastructure Investment and Jobs Act | Congress.gov | Library of Congress](#)

<sup>15</sup> Public Law 117-58, Title VI - Department of the Interior, Environment, and Related Agencies, Environmental Protection Agency, State and Tribal Assistance Grants, Paragraph (8).

<sup>16</sup> Id.

<sup>17</sup> Public Law 117-58, Section 40342(d).

Congress on the findings, as well as would require the Office of Inspector General to investigate biennially the EPA brownfields program, to evaluate the operation of the program and the use of Federal funds by it, and report to Congress. One half of one percent of all funding authorized for CERCLA section 104(k) would be allocated to the OIG for oversight activities.

- **LOCAL CONCURRENCE**: Amends CERCLA section 104(k)(5) to make the concurrence of local governing officials in an application a condition of EPA awarding a brownfields site characterization and assessment, cleanup, or multipurpose grant or loan.
- **PRIVATE PARTIES**: Adds a private, for-profit organization that otherwise meets the same qualifications as an eligible entity as an eligible entity under the Brownfields program.
- **FUNDING AUTHORIZATIONS**: Authorizes appropriations for five years, from fiscal year 2024 through fiscal year 2028, for CERCLA sections 104(k) and 128. The Discussion Draft intentionally does not identify a funding amount for either CERCLA sections 104(k) or 128 to permit discussion about what would constitute their appropriate funding levels.

## **VI. ISSUES**

The objectives of the hearing are to:

- Examine the implementation of the Brownfields Program since it was last reauthorized;
- Review the implementation of the Brownfields provisions in the IJA;
- Review the provisions of the Discussion Draft; and
- Determine whether additional improvements to the Brownfields Program and changes to the Discussion Draft are necessary, including whether further statutory changes would be needed to encourage more parties to participate in cleanups; and what else can be done to facilitate additional site cleanup.

## **V. STAFF CONTACTS**

If you have any questions regarding this hearing, please contact Mary Martin, Jerry Couri, or Sarah Alexander of the Committee staff at (202) 225-3641.