

“Revitalizing America through the Reauthorization of the Brownfields Program”
ADDITIONAL QUESTIONS & ANSWERS FOR THE RECORD

The Honorable Bill Johnson

1. The Discussion Draft contains language that would permit a private, for-profit limited liability corporation that has its project approved by a “general purpose unit of local government”, a state government, or a redevelopment agency chartered or approved by a state, to become an eligible entity under CERCLA section 104(k). During the hearing, a few witnesses and some members of the panel were negative in their views about allowing any private sector parties to become eligible entities under CERCLA section 104(k). Yet, in your written testimony you stated:

“When a private corporation is the first to the table, investing the first dollar toward repurposing a brownfield and even assuming environmental liability, their efforts, in the eyes of the USEPA, are overlooked. Private companies, even those who are qualified redevelopers, who put the first “skin in the game,” are ineligible to seek USEPA funding as a part of the funding streams to repurpose a brownfield – even though that first private dollar is the investment that provides security, comfort, and confidence for others to share the risk. This private “someone” still speaks to former mill workers and members of the US House of Representatives, a community groups and city and county councils, landowners, economic development organizations, housing authorities, special interest groups and small business owners. The private sector engages all constituents, attorneys, environmental engineers, and government officials just like their counterparts in the public sector but remains the ONLY entity not eligible to apply for federal money. Access to USEPA dollars would allow more qualified companies to assemble funding streams that would result in additional and accelerated acquisition and repurposing of brownfields properties in communities both large and small seeking new opportunities, jobs and investment.”

- a. Do other Federal agencies provide grants or tax dollars to private parties for development activities? If yes, please provide examples.

ANSWER: YES—Examples include the Department of Energy (DOE), Small Business Administration (SBA), Health & Human Services (HHS), and United States Department of Agriculture (USDA).

- b. Why do you think making this change to the law is a good use of brownfields grants?

ANSWER: There was a time when it was challenging to get an entity to acquire, remediate, and repurpose a brownfield. There were no regulatory protections and financial assistance. So, the government stepped up to fund the initiative. In effect, they funded themselves and other like, government, entities to acquire, remediate, and repurpose brownfields.

That evolved to private, not-for-profit, entities being eligible for the brownfield programs. The unforeseen problem, that has been created, is that the EPA has given the public and non-profits the capacity to acquire and remediate a brownfield, BUT NOT TO develop the brownfields UNLESS they continue to receive additional capacity, in the form of local, state, and financial assistance to complete the project. AND, if they do

develop, their development is tax-exempt. There is NO exit strategy to wean these entities from this assistance and grow their capacity to function as a private business. These agencies rely on some form of public money for operations, development, and maintenance.

The private sector views the EPA assistance in its purest form. It is simply gap funding for the portion of the project for which no other assistance is available—demolition, remediation, and site preparedness.

The EPA already permits private, non-for-profit, agencies access to this assistance and funding. Why should the private, for-profit, companies be denied and held to a different standard and have an unfair disadvantage? Why should the services of one of the most successful programs in the history of our federal government be administered with prejudice? Those of us, in the brownfield development business, in the private sector, are on the front lines holding brownfields, investing in brownfields, remediating brownfields, developing brownfields, or investing adjacent to brownfields. We assume the environmental liability. We can't obtain conventional financing for acquisition, demolition, remediation, or development until we have a Certificate of Completion or No Further Action from a state or federal agency. This takes years! The federal government, with a stroke of a pen, could reduce this time to months if the private sector had access to the same technical assistance and funding as non-profit and government agencies.

- c. What do you think the results will be for brownfields redevelopment? Please provide specific examples.

ANSWER: The federal government could reduce the time from years to months to curate a brownfield site for redevelopment if the private sector had access to the same technical assistance and funding as non-profit and government agencies. This accelerates the time it takes to return these abandoned or tax delinquent sites to the tax roles. It also accelerate the number of sites that are returned to use because you would have the private and public sectors

- d. Is this new eligibility too broad as it relates to a private, for-profit entity with support from a government or non-profit party? What cautions, if any, would you suggest regarding making private, for-profit entities eligible for funding?

ANSWER: Establish threshold criteria for the private, for-profit entities, just as you do for non-profits and government agencies. We should be required to self-perform the work (to avoid the briefcase crowd from acting the part). We should be required to illustrate a track record or acquisition, demolition, remediation, and development. We should have to illustrate experience with working, transparently and earnestly, with local economic development agencies or their equivalent.

- e. Some would argue that it's better to have only non-profit entities, including those representing or applying on behalf of a limited liability corporation, make a grant request from EPA and then partner with the private party. Why is this not a realistic solution, and what problems do you see with that?

ANSWER: The eligible non-profits, administering the brownfield grants, are governed by a board of directors comprised of public officials and members appointed by the public officials. It is unrealistic to expect the board to administer differently than if the public entity were directly administering. The framework would inherently be inclined to be saddled with the same challenges of the public or non-profit agency. The public and non-profits would be establishing the guardrails on the private sector and their risks would be carried by the private sector. Furthermore, the development would still be tax-exempt.

2. You talked about the importance of having “skin-in-the-game” when it comes to brownfield awards and projects. Please explain what it means to you when you say that statement.

a. Why is it important for all partners in a brownfields project to have “skin in the game?”

ANSWER: For projects to be successful, EVERYONE needs to have a stake in the project. That “stake” is their feeling in the project. Their emotions. Their heart. They need to have something at risk; that they will feel if they lose. They need to have something tangible, in the deal, that they can’t lose. If someone has skin in the game, they will think, act, and react differently. Their stake is now sharing the risk.

b. What would happen if only certain parties were financially invested in the cleanup and redevelopment? Could it incentivize some to walk away from a project?

ANSWER: If an entity, which is seeking funding, doesn’t have skin in the game, or stake in the project, they have nothing to lose, nothing to work for, nothing to leverage. They can walk away without consequence. Furthermore, I would argue that the EPA would go through their money twice as fast with a fraction of the outcomes. Applicants would have no skin in the game, would not have any risk, and no incentive for rewards. It might as well be a lottery.

3. Some people believe that the Federal government should give a brownfield award to every person that wants one. Mr. Breen, on the first panel, argued that increased competition for grants is a negative because some parties may not obtain assistance. You have argued that competition – whether between private parties and non-private ones or just amount public and non-profit entities – is essential and must not be sacrificed as part of this program.

a. Should the Federal government provide so much brownfield grant money that everyone who applies gets an award?

ANSWER: No.

b. Why do you believe competition is so essential for this program?

ANSWER: The competitive nature of the award program is essential for the long-term success of the brownfields programs. You remove competition and you risk giving communities money with no capacity to come up with a project, manage the money, spend the money, and track the money. The EPA would simply become the LOTTERY COMMISSION. In effect, you are giving a random organization, on a first come first serve basis, a large sum of money with no strings attached. That is a lottery. You might as well give 20,000 families \$5. History will prove it had the same impact.

- c. Do you have an example of places where quality suffered because competition was lacking?

ANSWER: Our rural areas. We have been draining rural areas of resources and wealth for decades; primarily due to a lack of a competitive playing field. Historically, agriculture, manufacturing, and mining have been the mainstays of our rural economy, primarily due to the concentration of these industries. However, this is no longer the case. In fact, the largest sector in rural communities, in terms of employment, is the service sector, specifically in health, education, and social services.

The contributions of rural America's industrial heritage are invaluable to the economy, but they must be reimagined, and we must circulate wealth through these rural communities to promote vibrant, sustainable local economies. We do this by breathing life into the former industrial sites, now brownfields, in these rural areas. We will find some of largest brownfields economic development opportunities (decommission power plants, chemical plants, steel mills, paper factories, etc.) in these rural areas. Rural areas must be allowed to compete, on a level playing field, for these brownfield dollars.

- d. Is this program the only way to get funding for environmental cleanup or economic redevelopment?

*ANSWER: The EPA Brownfield Program is the only agency that funds assessment and cleanup. **The grants and assistance offered by the EPA are the last federal program, of all federal programs, that can be characterized as "FRONT END" money, or "site-ready" money, that can be accessed to PREPARE brownfield sites for economic development, private investment, and job creation. No agency or corporation can apply for development funds from other federal agencies unless the sites have been assessed (Phase 1 and Phase 2 Environmental Site Assessments), cleaned up (or remediated), and have a "no further action" or "certificate of completion" issued. The ONLY money available from the federal government to work toward getting that "no further action" or "certificate of completion" issued is from the USEPA.***

There are a number of other federal agencies that fund economic redevelopment of brownfields and greenfields. These agencies include the USEDPA, DOE, SBA, HUD, and the ARC to name a few.

4. Your written testimony discussed the many different streams of funding that are used to fund the assessment, cleanup, and redevelopment of a brownfield site. Some want to see the threshold for size of a federal brownfield award increase exponentially, to two or three times the current grant maximum. Considering your concern about "skin-in-the-game" and multi-party commitment to see a project through to completion, is it a wise idea to make the Federal government pick up much larger amounts of a project's costs?

ANSWER: No.

- a. What would happen if the waiving of cost-share requirements for the Brownfields Program under the Infrastructure Investment and Jobs Act was made permanent?

ANSWER: By waiving of cost-share requirements, an applicant has nothing to lose, nothing to work for, nothing to leverage. They can walk away without consequence. Furthermore, I would argue that the EPA would go through their money twice as fast with a fraction of the outcomes. Applicants would have no skin in the game, would not have any risk, and no incentive for rewards. It might as well be a lottery.

5. The last time you testified, you mentioned that every dollar of brownfields investment by the federal government leverages \$182 in private investment. Your testimony mentions that every dollar invested by the EPA in the West Virginia panhandle resulted in \$419 of investment.

a. Can you expand on the importance of public and private investment through brownfields for communities?

ANSWER: The beauty of public and private investments sharing a space is that both share the risk AND both share the rewards. Incentivize the private sector to invest in brownfields by assisting with the cost of remediation and site preparation, while we cover the cost of acquisition and development, both share in the rewards: profits to invest and develop other projects and job creation and tax revenue generation in the communities for which we invest. I will also add that the leveraged investment, mentioned above, has more than doubled due to the efforts of the private sector.

The Honorable Russ Fulcher

1. Do you have anything to add on the importance of flexibility?

*ANSWER: EPA grants are the most flexible of all federal grants. **This flexibility is critical; particularly for brownfields. The EPA programs are flexible for the recipients** (small non-profits and economic development agencies as well as large cities and developers). They are **flexible for a variety of sites** (industrial sites, parks, libraries, gas stations, river terminals, etc). They have **flexibility in the way they are distributed** in dollar amount, match amount, and technical assistance (both direct and through a third party like a brownfields assistance center or organization like the NJIT). They are **flexible for programming** (assessment, planning, cleanup, team-building, public participation, consensus building, workforce development).*

***Why flexibility contributes to the success of the EPA brownfield programs?** Because the EPA's brownfields program is one of the few, if not only, economic development tool that allows rural economic development officials to be on a level playing field in the competition with urban economic development officials, with the trophy being a cleaner, healthier environment that offers new employment opportunities to our underserved communities.*

2. As a very rural state with a lot of land but not a lot of people, tell me about some of the challenges you see with small government and rural states when it comes to obtaining grants through the Brownfields Program? In your testimony, you mentioned that EPA encourages fair competition and technical analysis. Has EPA provided technical analysis fairly across communities? Does the discussion draft promote a competitive, collaborative, and efficient Brownfields Program?

***ANSWER:** We have been draining rural areas of resources and wealth for decades. Historically, agriculture, manufacturing, and mining have been the mainstays of our rural economy, primarily due to the concentration of these industries. However, this is no longer the case. In fact, the largest sector in rural communities, in terms of employment, is the service sector, specifically in health, education, and social services.*

The contributions of rural America's industrial heritage are invaluable to the economy, but they must be reimagined, and we must circulate wealth through these rural communities to promote vibrant, sustainable local economies. We do this by breathing life into the former industrial sites, now brownfields, in these rural areas. We will find some of largest brownfields economic development opportunities (decommission power plants, chemical plants, steel mills, paper factories, etc.) in rural areas.

***EPA is a gateway grant.** The EPA dollars are a gateway grant, the grant for second chances. Federal funding programs at DOE, EDA, DOT, SBA, and USDA are used as "MEZZANINE" or "BACK END" money to complete the infrastructure into a site, finalize work on a building that is already site-ready, finance operations and equipment, fund training for a business already making the decision to locate in an area or expand, or add much needed capacity to a new idea or technology. A brownfield doesn't even become eligible for EDA or USDA money unless it is assessed and cleaned up (or remediated). In rural and economically depressed communities, brownfields are among the last properties to be repurposed and most would not be repurposed without EPA programs, technical assistance, or grants.*

Even when a private corporation is the first investor and holds the vision for a brownfields site in a challenged community with a frontline population, they do not always fully possess the financial or technical capacity to assess, clean up, and repurpose contaminated, dilapidated and/or abandoned properties to prepare them for economic development. Here again, access to EPA programs, technical assistance and grants would expand the field of qualified developers working in frontline communities, resulting in the additional and accelerated acquisition and repurposing of brownfields properties, creating jobs and putting dilapidated, abandoned sites back on local tax rolls.

*For the last two decades, I served as an economic development executive that utilized EPA and EDA grants and technical assistance programs to repurpose dozens of abandoned steel mills, decommissioned coal-fired power plants, pottery factories, and strip mines. The first, and possibly highest, **impact of our collaboration with the USEPA** was the reduction and elimination of toxic substances that were released into the air and water of our communities. Substances removed included petroleum, lead, asbestos, benzene, hexavalent chromium, uranium, cobalt, and arsenic. Testing before and after the application of EPA monies was one clear indicator of the success of this program.*