



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

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March 24, 2017

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment
FROM: Staff, Subcommittee on Water Resources and Environment
RE: Hearing on “Building a 21st Century Infrastructure for America: Revitalizing American Communities through the Brownfields Program”

PURPOSE

The Subcommittee on Water Resources and Environment will meet on Tuesday, March 28, 2017, at 10:00 a.m. in 2167 Rayburn House Office Building, the Subcommittee to receive testimony on “Building a 21st Century Infrastructure for America: Revitalizing American Communities through the Brownfields Program.” Witnesses will include representatives from a state brownfields agency, two mayors, a city councilman, a county chairman, and a real estate investment expert.

BACKGROUND

Brownfields are properties where expansion, redevelopment, or reuse of may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Types of brownfields include inactive factories, gas stations, salvage yards, or abandoned warehouses. These sites drive down property values, provide little or no tax revenue, and contribute to community blight. There are estimated to be 450,000 to one million brownfields sites in the United States. Redevelopment of these abandoned sites can promote economic development, revitalize neighborhoods, enable the creation of public parks and open space, or preserve existing properties, including undeveloped green spaces.

Prior to enactment of the *Brownfields Revitalization and Environmental Restoration Act of 2001*, which formally authorized a brownfields cleanup and redevelopment grant program at the Environmental Protection Agency EPA, many potential lenders, investors, and developers were reluctant to become involved with brownfields sites because they feared environmental liability through laws such as the *Comprehensive Environmental Response, Compensation, and Liability Act* (Superfund). This uncertainty over liability protection and standards for cleanup was identified as a hindrance to the redevelopment of brownfields. Investors too often instead turned to green spaces on the outskirts of cities for new development opportunities, which tended to encourage sprawl.

EPA began to issue some demonstration grants for brownfield assessments in 1995. These grants allowed for assessments that inventory, characterize, and conduct planning related to brownfield sites. However, at that time there was no specific authority for a comprehensive brownfields program to encourage the redevelopment of these contaminated sites so that municipalities could realize the economic, environmental, and social benefits of reclaimed land.

Brownfields Revitalization and Environmental Restoration Act of 2001

In 2001, Congress created specific authority to address brownfields with the *Brownfields Revitalization and Environmental Restoration Act of 2001*, which was title II of the *Small Business Liability Relief and Brownfields Revitalization Act* (Pub. L. 107-118). This legislation amended the Superfund to authorize funding through EPA for brownfields assessment and cleanup grants, provide targeted liability protections, and increase support for state and tribal voluntary cleanup programs. The authorization for brownfield grants under this law expired at the end of fiscal year 2006.

The *Brownfields Revitalization and Environmental Restoration Act* provided grant authority totaling \$250 million annually. This included \$200 million annually for assessment, cleanup, revolving loan funds, research, and job training. Of the \$200 million, \$50 million, or 25 percent of appropriated funds if less than the fully authorized level, is set aside for assessment and cleanup of petroleum contaminated sites. The assessment grants are limited to \$200,000 per site except in some cases, where due to size or anticipated contamination level, the limit is \$350,000. The cleanup grants are limited to \$1 million per grant and can be used to capitalize a revolving loan fund or used directly to remediate sites.

The remaining \$50 million of the \$250 million annual authorization is for other state and tribal programs. States may use this assistance to establish or enhance their response programs, capitalize existing revolving loan programs, and develop risk-sharing pools, indemnity pools, or insurance mechanisms to provide financing for remediation activities.

The law also provides protection from Superfund liability for certain owners of property contaminated by a source on contiguous property and for bona fide prospective purchasers of property which may be contaminated. The *Brownfields Revitalization and Environmental Restoration Act* clarified Superfund's "innocent landowner" defense against liability for a person who unknowingly purchased contaminated land, provided the person made "all appropriate inquiry" prior to the transaction. This law clarifies what constitutes "all appropriate inquiry."

The brownfields program has been well received by the EPA, states, communities, investors, and developers. Through fiscal year 2016, each EPA brownfields program dollar expended leveraged between \$16 and \$17 in other public and private funding. EPA is often just one of several funding sources for brownfields assessment and cleanup. These grants are used in conjunction with funding from state, local, private, and other federal sources to address brownfield sites. As of January 31, 2017, this program has leveraged \$23 billion in cleanup and redevelopment dollars. The program has resulted in the assessment of more than 25,200

properties and readied nearly 64,000 acres of land for reuse.

Additionally, the program creates jobs and revenue for municipalities by redeveloping land for a variety of new uses including commercial and residential development, as well as recreation and educational facilities. In fiscal year 2017, the goal of the program is to successfully complete 130 cleanups, 64 of which have been accomplished as of February 1, 2017, and to conduct 1,400 assessments, 661 of which have been accomplished as of February 1, 2017. Given the estimated number of remaining brownfield sites, further job creation and revenues can be expected in communities all across the country. Since the start of the program more than 117,500 jobs have been leveraged. Under the Environmental Workforce Development and Job Training (EWDJT) Program, more than 16,000 individuals have completed training, and of those, more than 11,700 individuals have been placed in full-time employment with an average starting hourly wage of \$14.16. This equates to a cumulative job placement rate of over 73 percent of graduates.

Property owners in areas surrounding brownfields have also enjoyed the benefits of this program. A 2015 study concluded that cleaning up brownfield properties leads to residential property value increases of five - 15.2 percent. This program also incentivizes local engagement and success by leveraging other public and private funding, which leads to more successful projects and community benefits.

Though its authorization has expired, Congress continues to provide funding for the brownfields program. In fiscal year 2015, the brownfields program received \$153.3 million and in fiscal year 2016 it received \$151.9 million. The President's fiscal year 2017 request was for \$163.9 million. In the brownfields assessment, Revolving Loan Fund, and cleanup (ARC) grant competition, the EPA only has resources to fund about one-third of eligible projects. EPA typically receives between 800-900 proposals, and is only able to fund between 200-300 resulting in many good projects going unfunded.

In fiscal year 2016, the EPA provided a total of \$116.7 million for more than 400 grants to 182 communities including direct funding to 50 states, 106 tribes, and four territories. The program also funded technical assistance for communities to address their brownfields challenges and performed site assessments through EPA-directed Targeted Brownfields Assessments (TBAs) for communities without the capacity to manage a brownfield grant.

Issues

Although the brownfields program is generally well received, some have suggested that changes be considered along with reauthorization of the funding. These include allowing the grants to be for multiple purposes so that they are not just for assessment or cleanup. Multiple purposes could include assessment, cleanup, and demolition. In addition, the grant limits per site could be raised, although without additional funding even fewer than one-third of eligible recipients could receive funding if grant limits increase. In addition, some have suggested eliminating the 25 percent funding set aside for petroleum site grants which has been waived in recent appropriations bills.

Another issue related to the program is the lack of performance measures available to determine the extent to which the program is achieving its goals. While the EPA does report on the cumulative sites addressed, jobs generated, and the cleanup and redevelopment funds leveraged, there has been little reporting on cleanup and redevelopment activities, which is one of the primary objectives of the program. In addition, the EPA has not developed measures to determine how the brownfields program has reduced environmental risks, thereby meeting the agency mission to protect human health and the environment.

WITNESS LIST

The Honorable J. Christian Bollwage
Mayor
City of Elizabeth, New Jersey
On behalf of The U.S. Conference of Mayors

The Honorable Deborah Robertson
Mayor
City of Rialto, California

The Honorable Matt Zone
Councilmember
City of Cleveland, Ohio
On behalf of the National League of Cities

The Honorable John Dailey
Commissioner
Leon County, Florida
On behalf of the National Association of Counties

Ms. Amanda W. LeFevre
Outreach and Education Coordinator
Kentucky Brownfield Redevelopment Program
On behalf of the Association of State and Territorial Solid Waste Management Officials

Mr. Jonathan Philips
Managing Director
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