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BEFORE THE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
OF THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
HEARING ON PROMOTING ECONOMIC AND COMMUNITY REDEVELOPMENT AND ENVIRONMENTAL JUSTICE IN THE REVITALIZATION AND REUSE OF CONTAMINATED PROPERTIES.
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Chairman Napolitano, Ranking Member Rouzer, and members of the Subcommittee, thank you for the invitation to testify today on promoting economic and community redevelopment and environmental justice in the revitalization and reuse of contaminated properties. I am currently a partner with the firm Earth & Water Law. I previously worked on Superfund and Brownfields legislation while serving on the staff of the House Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee. I also previously implemented these programs while serving as an Assistant Administrator of two different EPA offices, the Office of Solid Waste and Emergency Response and the Office of Enforcement and Compliance Assurance.

My goal today is to help the Subcommittee understand EPA's Superfund and Brownfields programs. As I will discuss, both of these programs have been tremendously successful in helping communities adversely affected by contamination.

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EPA's Brownfields Program

Congress authorized EPA's brownfields program in January 2002 in title II of the Small Business Liability Relief and Brownfields Revitalization Act (P.L. 107-118). That law authorizes funding for environmental assessment and cleanup on property "the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant." It also authorizes funding for property that otherwise meets the definition of "brownfield" and is contaminated with controlled substances, petroleum or petroleum products, or is mine-scarred land. As amended by the 2018 Brownfields Utilization, Investment, and Local Development (BUILD) Act (Division N of P.L. 115-114) both governmental and nonprofit entities are eligible for funding. Brownfields grants provide "seed money" that can leverage other investment. According to EPA's Justification of Appropriations Estimates for Fiscal Year 2022 (relying on EPA's ACRES database), as of April 2021, brownfields grants have led to more than 142,000 acres of idle land made ready for productive use and more than 176,800 jobs and have leveraged $34.5 billion in private investment.

Brownfields grants can be used for programs to inventory, characterize, assess, and conduct planning related to one or more brownfield sites or for the remediation of contaminated property. A grant recipient may use up to 5 percent of the grant for administrative costs. In addition, a local government that receives a brownfields grant can use up to 10 percent of those funds to

monitor the health of populations and to monitor and enforce institutional controls. The BUILD Act raised the cap on some individual grants.[2]

Congress has established ranking criteria for EPA to evaluate grant applications. Those criteria include both potential to stimulate additional investment[3] and economic development as well as criteria directly related to environmental justice, including the extent to which the grant would address or facilitate the:

- reduction of threats to human health and the environment, including threats in areas in which there is a greater-than-normal incidence of diseases or conditions;
- the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community; and
- the identification and reduction of threats to the health or welfare of children, pregnant women, minority or low-income communities, or other sensitive populations.[4]

EPA's Brownfields program funds job training cooperative agreements to allow members of the community gain jobs associated with grant funded activities. EPA also funds a contract for the Technical Assistance to Brownfields Communities Program. This contract pays for independent

[2] Grants for site assessment are now authorized up to $500,000 for community wide grants ($2 million if a state or tribe) and up to $350,000 for individual sites. Grants for site remediation can be up to $650,000. New (BUILD Act) multi-purpose (planning, assessment, and remediation) grants are authorized up to $1 million.
[3] According to EPA's grant guidelines: "Leveraging may be met by funding from another federal grant, from an applicant's own resources, or resources from other third-party sources. This form of leveraging should not be included in the budget and the costs need not be eligible and allowable project costs under the EPA assistance agreement."
[4] CERCLA 104(k)(6)(C).

sources of technical assistance for communities, at no cost to them. It helps low-income, underserved, rural, and small communities address their brownfields.

Grants awarded by EPA's Brownfields Program provide communities across the country with an opportunity to transform contaminated sites into community assets. For example, Brownfields Program grants have been shown to increase local tax revenue and residential property values. According to EPA's 2020 Year in Review, a study of 48 brownfields sites found that an estimated $29 million to $97 million in additional local tax revenue was generated in a single year after cleanup. This is two to seven times more than the $12.4 million EPA contributed to the cleanup of these sites. Another study found that property values of homes near revitalized brownfields sites increased between 5 percent and 15 percent following cleanup.

The success of the Brownfields program is in large part because it is locally driven. EPA does not select remedies, does not control land use, and provides only seed money that can be leveraged with other funding sources. EPA's grant funds can only be used for the purposes authorized by Congress. There is no limitation on the use of other funds leveraged by EPA's investment.

EPA's Superfund Program

Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) in 1980. The Act authorized federal agencies to respond to releases of hazardous substances. This authority was supported by taxes levied on chemicals, petroleum and corporate environmental income, a trust fund to receive those tax dollars (subject to

appropriation), rules for how those funds could be spent, rules for selecting remedies, and an extensive liability system.

The 1986 Superfund Amendments and Reauthorization Act added remedy selection rules related to compliance with applicable and relevant and appropriate state standards as well as requirements for increased state and local involvement in remedy selection. For example, the 1986 amendments added section 117 to CERCLA, setting out requirements for public participation in remedy selection and authorizing technical assistance grants to help community groups obtain technical assistance to help them participate in remedy selection and other Superfund site processes. EPA calls these Community Assistance Groups or "CAGs".

Superfund is one of only a handful of EPA programs that is carried out federally – states cannot be authorized or delegated to carry it out. That means EPA decides which sites get funding and selects the remedies. While EPA does not decide land use, it does take reasonably anticipated future land use into account when selecting remedies. Community groups have input into this process. In addition to the technical assistance grants for community groups EPA also funds a contract for the Technical Assistance Services for Communities Program. Like the Brownfields technical services program this contract provides independent technical assistance for communities to understand and participate in the Superfund process. EPA also uses this contract to fund the Superfund Job Training Initiative to provide free cleanup related training and employment opportunities for people living in communities affected by Superfund sites. Many of these are Environmental Justice communities. Nationally, about 400 of people have received training. For example, in 2020, 20 people living near the San Gabriel Superfund Site in La

Puente and Industry, California, graduated from this training program. Eighty percent of trainees have been placed into cleanup related jobs upon completion of their training.

Like the Brownfields program, Superfund monies may only be spent for authorized purposes, *i.e.,* responding to a release of a hazardous substance through removal and remedial actions. Superfund dollars cannot be used for "betterments." For example, Superfund dollars cannot provide upgraded housing or infrastructure. Superfund cannot improve property beyond what is needed to address hazardous substance exposures to bring it to a higher and better use.

Superfund's liability provisions were amended in title I of the 2002 Small Business Liability Relief and Brownfields Revitalization Act (P.L. 107-118). These amendments were intended to liability protections for bona fide prospective purchasers, contiguous property owners, and innocent landowners. The liability protections for municipalities were clarified in the 2018 BUILD Act.

The Superfund program has always been funded though annual appropriations and so competes with other programs for federal dollars. Most of the annual Superfund appropriations are used to fund EPA staff. The majority of the dollars used for actual cleanup comes from private parties who are responsible for cleanup costs under CERCLA's liability provisions. According to the 2020 Superfund Accomplishments Report, through 2020 private parties have funded over $46.3 billion in cleanups. EPA has recently established policies to speed up negotiations with responsible parties, to accelerate the benefits of cleanup. EPA also has taken steps to speed up the resolution of disputes with other federal agencies at federal facility sites.

The Superfund taxes expired at the end of 1995, but the chemical excise taxes were reinstated recently in the Infrastructure Investment and Jobs Act (the Bipartisan Infrastructure Bill or "BIB"). Significantly, the BIB also included a provision that directly appropriated all taxes deposited into the Superfund Trust Fund. Before the BIB, any Superfund taxes that were collected were appropriated into the Superfund Trust Fund but were not necessarily appropriated out of the Fund and made available to EPA. As the Superfund Trust Fund is part of the Unified Federal Budget Superfund taxes could offset any federal spending. That changed with the BIB. Under the BIB, going forward every tax dollar collected is automatically appropriated both into and out of the Superfund Trust Fund and is made available to the EPA Superfund program to be used for the purposes authorized in CERCLA. Those taxes can no longer offset other spending (including the spending authorized in the Build Back Better (BBB) bill).[5]

Like the Brownfields program, the Superfund program provides economic as well as public health benefits. A 2013 study conducted by researchers at Duke University and the University of Pittsburgh found that residential property values within three miles of Superfund sites increased between 18.7 and 24.4 percent when sites were cleaned up and deleted from the NPL.[6] According to EPA's 2020 Superfund Accomplishments Report, in 2020, EPA collected economic data on 632 Superfund sites that had been redeveloped. At those sites there are 9,900 businesses operating that employ 227,000 people who have earned $16.3 billion in income.

[5] The CBO score for the BBB counted the proposed reinstatement of the petroleum Superfund taxes as an offset for the spending proposed in that bill because the score was prepared before the BIB became law.
[6] Shanti Gamper-Rabindran and Christopher Timmons. 2013. "Does cleanup of hazardous waste sites raise housing values? Evidence of spatially localized benefits," Journal of Environmental Economics and Management 65(3): 345-360.

EPA also encourages private investment in cleanups by providing either "comfort letters" or "prospective purchaser agreements" to new owners who are afraid of incurring liability if they get involved in the cleanup and redevelopment of contaminated property. For example, at the Conroe Creosoting Superfund Site in Conroe, Texas, EPA entered into a prospective purchaser agreement that paved the way for the cleanup of the property and its redevelopment into a Home Depot distribution center that will create hundreds of construction jobs and at least 50 direct permanent jobs, adding more than $80 million into the local economy.

In San Jose, California, two former asbestos containing landfills have been turned into an office park, trails, and open space, providing economic, recreational, and social benefits to the community. In April 2019, the corporate headquarters of Hewlett Packard Enterprise opened on the property, employing over 1,000 people. The new facility includes sports fields, a gym, cafeteria, and an open roof-top area.

In Medley, Florida, the former Pepper Steel & Alloy Site was vacant for 20 years, even after it was cleaned up. EPA worked with a local company on an agreement to address liability concerns. Several companies have now purchased site parcels for redevelopment including a custom boat manufacturing and sales facility that added 100 jobs in the community.

In St. Louis, the Carter Carburetor Superfund site was contaminated with PCBs and TCE. Located next to a Boys and Girls Club, the site was the subject of significant community concern about potential exposures to area children and residents. Now the site's remedy is complete and

the property will be transferred to the Boys & Girls Clubs of Greater St. Louis which will facilitate the development of a golf training facility for youth on the property by a local nonprofit. EPA also is helping the City of St. Louis Land Reutilization Authority restore pollinator and bird habitat on part of the site.

Additional Examples of Locally Driven Remediation and Revitalization.

In 2020, Region 1 launched a new initiative to support remediation and reuse of historic mills. Leveraging Brownfields funds, Opportunity Zone incentives, Superfund removal program assistance, and other technical assistance programs, historic mills around the region are being rebuilt to provide new housing, jobs, and industries. In Biddeford, Maine, reuse of historic mills saw $10 million in EPA funds generate over $224 million in private investment.

In Portland, Maine, EPA Brownfields grants facilitated a series of successful waterfront revitalization projects. At Thompson's Point, a former railyard, $1.8 million in Brownfields funds leveraged over $30 million in additional private investments in redevelopment, opening the door for several new enterprises and providing the community with an ideal new location for the Children's Museum and Theatre of Maine. In 2020, EPA joined the Maine Port Authority to tour the site of a planned new cold storage and seafood processing facility where a former manufactured gas plant had operated for several decades.

The City of Orlando, Florida partnered with federal, state, and local stakeholders at the former Naval Training Center (NTC) Orlando. Having served as an Army and Navy air training facility since the 1940s, this 2,000-acre site closed in 1999 under the Base Realignment and Closure

program. The team's efforts in promoting public and private investments resulted in a renewed area consisting of a mixed-use, master-planned community, industrial facility, and recreational spaces. Due to collaborative efforts, the former NTC Orlando site has become an economic asset to the City of Orlando and the partnership between agencies was awarded an EPA 2020 National Federal Facility Excellence in Site Reuse Award.

In Austin, Texas, a property was evaluated using an EPA Brownfields site assessment that cleared the way for the property to be donated for a Salvation Army shelter for Women and Children in Austin, Texas.

In Tulsa, Oklahoma, the Evans-Fintube site was contaminated with asbestos, PCBs, and lead. It is currently owned by the Tulsa Redevelopment Authority. After the City of Tulsa received an area-wide planning Brownfields grant from EPA, redevelopment is finally occurring on this property through about $23 million in private investment.

In Des Moines, Iowa, EPA recently negotiated a settlement agreement among the liable parties and the City of Des Moines under which the City will take ownership of the now cleaned up Dico site (also known as the Des Moines TCE Superfund Site) and direct its reuse.

EPA's Region 8 focuses many of its targeted brownfields assessment on tribal lands. The assessments cleared the way for non-profit organizations to develop affordable housing and food banks, and new community gardens, including urban gardens in the Denver area and a vegetable garden at a tribal assisted living facility. EPA Region 8 also focuses its cleanup grants on tribal

lands. In June 2020, the Standing Rock Sioux Tribe completed the cleanup of asbestos and mold contamination at the Old Sitting Bull College in Fort Yates, North Dakota. The tribe used a $200,000 EPA Brownfields grant to pay for the cleanup. The tribe will safely demolish the building to make way for redevelopment.