

US EPA ARCHIVE DOCUMENT

**STATEMENT OF
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U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON SUPERFUND, WASTE CONTROL AND RISK ASSESSMENT
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
U.S. SENATE**

JUNE 29, 2000

INTRODUCTION

Good afternoon, Mr. Chairman, and Members of the Subcommittee. I am pleased to have this opportunity today to: 1) share with you the significant accomplishments the Administration has achieved since the 1995 inception of the Brownfields Economic Redevelopment Initiative in helping States, Tribes, local governments, and communities across America to address the problem of brownfields; and 2) comment on the subject of brownfields legislation, in particular S. 2700, "The Brownfields Revitalization and Economic Restoration Act of 2000."

The cleanup of brownfields is important to the environmental and economic health of our Nation. We commend the Committee for their efforts to produce bipartisan brownfields legislation and thank Senator Lautenberg for his tireless leadership on these issues during his many years of public service in the United States Senate. The Administration believes that S. 2700 represents a positive step forward and we support the bill. We look forward to working with the Committee to further improve the bill during the legislative process.

BROWNFIELDS ECONOMIC REDEVELOPMENT INITIATIVE

Brownfields, which are abandoned and contaminated properties once used for industrial and commercial purposes, are found in almost every community in America. The presence of these properties fuels urban sprawl, luring investment and job development farther from city centers and inner suburbs. While the full extent of the brownfields problem is unknown, the United States General Accounting Office (GAO/RCED-95-172, June 1995) estimates that approximately 450,000 brownfield sites exist in the United States. Brownfields represent by far the largest number of properties affected by concerns related to environmental contamination. These sites typically do not pose the type of risks found at Superfund National Priorities List (NPL) sites and best are addressed through local, State, or Tribal authorities. EPA long has realized that the assessment and cleanup of properties with potential or actual contamination is a shared responsibility. What matters most is that these sites are addressed as effectively and efficiently as possible.

The Administration believes that environmental protection and economic progress are inextricably linked. EPA's Brownfields Initiative plays a key role in the Administration's goal of building strong and healthy communities for the 21st century. The Initiative represents a comprehensive approach to empowering States, local governments, communities, and other stakeholders interested in environmental cleanup and economic redevelopment to work together to prevent, assess, safely clean up, and reuse brownfields. In many cases, local government environmental specialists are sitting down together with the city's economic development experts for the first time. Others are joining in -- businesses, local residents, and community activists.

As the former Director of the Portland, Oregon, Brownfields Initiative said, "brownfields renewal is one of the most important environmental and economic challenges facing our nation's communities, calling for partnership among our federal and local governments, businesses and community and environmental leaders. We must work together to build a national brownfields partnership from the ground up." The Agency's multi-faceted initiative represents a significant step forward by the Administration and, according to Renew America, represents "a new paradigm in locally-based environmental protection that forges public-private partnerships, promotes innovation, and relies on market incentives and private sector actions."

Stakeholders tell the Agency that many Brownfields redevelopment activities could not have occurred in the absence of EPA efforts. For example:

- On an abandoned, four-acre railroad site, the city of Emeryville, CA., a development corporation constructed more than 200 units of residential housing. Approximately 100 construction workers were hired to build these housing units. Within the next five years, construction of retail, hotel and office complexes is expected to create as many as 10,600 jobs and nearly 4 million square feet of new facilities, and provide an additional \$6.4 million in annual property tax revenues.
- In Dearborn, MI, an abandoned property was redeveloped into a cardiology clinic valued at \$2.5 million and employing 16 people.
- In Shreveport, LA., as a result of \$1.3 million in cleanup and redevelopment funding, the former HICA steel foundry and upgrade company has been upgraded and renovated into the new HICA Steel Castings, LLC, with owners committed to running an environmentally safe operation in the Cedar Grove neighborhood of the city.

The initial Brownfields Action Agenda, announced on January 25, 1995, focused on the award of Brownfields Assessment Demonstration Pilots; building partnerships with all brownfields stakeholders; clarifying liability and cleanup issues; and, fostering local workforce development and job training initiatives. By mid-1996, EPA completed all of its commitments on the initial Action Agenda, and the Agency continues to move forward. Let me briefly describe what we have done in the last four years.

ASSESSMENT PILOTS

Through pilots, and in partnership with a wide range of stakeholders, EPA provides technical assistance and seed money to local, State, and Tribal entities engaged in the revitalization of brownfields properties. The Brownfields Assessment Pilots have formed a major component of the Brownfields Initiative since its announcement. The Agency has announced 362 Brownfields Site Assessment Demonstration Pilots, funded at up to \$200,000 each, to States, Tribes, and communities.

Selected through a competitive process, Brownfields Assessment Pilots help communities to demonstrate the economic and environmental benefits of reclaiming brownfields properties, to explore ways of leveraging financial resources, and to model strategies for the organization of public and private sector support. Small towns and large cities both have been recipients of the grants. These pilots have resulted in the assessment of 1933 brownfield properties, cleanup of 130 properties, redevelopment underway at 184 properties, and a determination that 617 properties did not need additional cleanup. To date, over 6,400 jobs have been generated as a result of the program. Pilot communities have reported a leveraged economic impact of over \$2.3 billion.

REVOLVING LOAN PILOTS

As EPA works to implement a comprehensive brownfields strategy, the Agency has developed a "second-stage" type of brownfields pilot program. Those pilots, known as the Brownfields Cleanup Revolving Loan Fund (BCRLF) Pilots, are designed to enable eligible States, Tribes, and political subdivisions to capitalize revolving loan funds for use in the cleanup and sustainable reuse of brownfields. EPA's goal for these pilots is to develop revolving loan fund models that can be used by communities to promote coordinated public and private partnerships for the cleanup and reuse of brownfields. Eligible applicants for BCRLF pilots are entities previously awarded brownfield assessment pilots. In addition, coalitions formed among these entities and political subdivisions with jurisdiction over sites that have been the subject of a targeted brownfield pilot are eligible for BCRLF awards.

To date, 98 BCRLF pilots have been announced. These pilots represent 142 communities, and include pilot awards to individual eligible entities and to coalitions. Four BCRLF loans have been made in four communities - Stamford, CT, Las Vegas, NV, Trenton, NJ, and Shreveport, LA. The loan made in Las Vegas has resulted in the first complete cleanup. A \$50,000 loan cleaned up a former National Guard armory for reuse as a community and small business incubator.

JOB TRAINING PILOTS

To help local citizens take advantage of the new jobs created by assessment and cleanup of brownfields, EPA began its Brownfields Job Training and Development Demonstration Pilot program in 1998. To date, EPA has awarded 37 new pilots to applicants located within or near brownfield communities. For example, in Oakland, CA, the Oakland Private Industry Council

has placed 96 participants in private industry jobs. Colleges, universities, nonprofit training centers, and community job training organizations, as well as States, Tribes, and communities, were eligible to apply for these pilots.

BROWNFIELDS NATIONAL PARTNERSHIP

The Brownfields Initiative is clearly about partnerships -- with other Federal, State, and local agencies, and a diverse array of stakeholders. The EPA has undertaken partnership efforts with individual States as well as through broad organizational structures like the U.S. Conference of Mayors, the National Governors Association (NGA), the National Association of Local Government Environmental Professionals (NALGEP), the Council for Urban Economic Development (CUED) and the U.S. Chamber of Commerce. EPA also forged working relationships with a vast spectrum of other stakeholders, including the Environmental Bankers Association, the Irvine Foundation's Center for Land Recycling, the International City/County Management Association (ICMA), to mention but a few.

Federal Partners

Early in the development of EPA's Brownfields Initiative, the Agency recognized the important contribution of many of our Federal partners to brownfields through their participation in the Brownfields National Partnership. Through the Partnership, Federal departments and agencies can offer special technical, financial, and other assistance that can be of great benefit to brownfields communities. More than 20 National partners are committing resources and assistance to brownfields. By the end of 1999, the partners estimate spending more than \$385 million for brownfields work, with another \$141 million in loan guarantees. The Federal Home Loan Bank System, for example, is exploring ways to bring more private investment to redeveloping brownfields properties and, along with the U.S. Conference of Mayors, has selected 50 cities to participate in a project to research opportunities, impediments, and successes by both cities and lenders to address brownfields.

Many of the commitments by our Federal partners were expressed through initial Memoranda of Understanding (MOUs). EPA has signed MOUs with the Economic Development Administration of the Department of Commerce, the Departments of Labor, Housing and Urban Development, and Interior, as well as the U.S. Army Corps of Engineers. EPA also is working with the Agency for Toxic Substances and Disease Registry and county health officials to address the health concerns of brownfields communities. Our partnership with EDA and HUD has been particularly beneficial for brownfields. EDA has provided more than \$178 million for brownfield redevelopment and the HUD Brownfields Economic Development Initiative (BEDI) grants program has provided \$50 million in assistance to cities to redevelop contaminated industrial and commercial sites and \$249 million in economic development loan guarantees to 44 communities. HUD anticipates that this funding will leverage almost \$1.4 billion in private and public funding.

States and Tribes

EPA continues to work closely with States and Indian Tribes as key partners in the cleanup and redevelopment of contaminated properties. The Administration supports the continued growth of the State and Tribal regulated and voluntary programs which have greatly expanded the number of sites cleaned up to protect human health and the environment. To date, 44 States have established voluntary cleanup programs. Recognizing the important role that State environmental agencies have in encouraging economic redevelopment of brownfields, EPA has provided \$28.6 million in funding to States and Tribes to support the development of these programs since FY 1997. EPA plans to continue to provide \$10 million in FY00 to promote the development or enhancement of State programs that encourage private parties to voluntarily undertake early protective cleanups of less seriously contaminated sites, thus accelerating their cleanup and redevelopment. EPA has entered into Memoranda of Agreement (MOAs) with 14 States to facilitate the cleanup of contaminated sites that generally pose lower risks than sites EPA would consider listing on the NPL. A MOA reflects mutual agreement by both the State and EPA with respect to the appropriate roles of these parties in conducting cleanup activities.

Showcase Communities

The centerpiece of the National Partnership is designation of 16 Brownfields Showcase Communities in 1998. These Showcase Communities are distributed across the country and vary in size, resources, and community background. EPA and its Federal partners are in the process of choosing 10 new Showcase Communities in anticipation of announcing their selection this October at the Brownfields 2000 Conference in Atlantic City, NJ. The Brownfields Showcase Communities project is an outgrowth of those early partnership efforts and now forms an important component of the Brownfields Initiative. It represents a multi-faceted partnership among Federal agencies to demonstrate the benefits of coordinated, collaborative activity on brownfields.

The report, *Building A Brownfields Partnership from the Ground Up*, by the National Association of Local Government Environmental Professionals, (February 13, 1997), presented the views of a network of local government brownfields leaders on the value of EPA's brownfields programs and policies. The report calls local government leaders "a key link in the success of brownfields partnerships, for it is the environmental, health, development and political leaders in our cities, counties and towns who can best build a brownfields partnership "from the ground up." For example, through the Showcase Community in Glen Cove, New York, a revitalization plan to convert brownfields and Superfund sites into tourist destinations has been completed. State, Federal, and local agencies have played a crucial role in securing \$18 million in grants from various agencies. In addition, a prospective purchaser agreement was signed between EPA and the Glen Cove Industrial Development Corporation for the LI Tungsten and Captain's Cove Superfund sites. Proceeds from selling the property will go toward repaying response costs.

REMOVING BARRIERS TO REDEVELOPMENT - LIABILITY CONCERNS

Over the past several years, EPA has removed many of the liability uncertainties associated with brownfields properties. EPA is promoting redevelopment of brownfields properties by protecting prospective purchasers, lenders, and property owners from incurring Superfund liability, and by working with States through MOAs to clarify site responsibilities.

Prospective Purchaser Agreements (PPAs)

At some sites, the potential threat of liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) may be a barrier to the reuse of the property. Through agreements known as “prospective purchaser agreements,” EPA assures that prospective purchasers will not be responsible for cleaning up sites, provided they do not further contribute to or worsen contamination. EPA’s PPA guidance was issued in May 1995 (<http://es.epa.gov/oeca/osre/liabil.html>), and has been used to stimulate the development of sites where parties otherwise may have been reluctant to redevelop due to liability concerns. The 1995 guidance expanded the universe of sites eligible for such agreements to include sites where EPA has undertaken, is undertaking, or plans to undertake a response action. Prior to issuance of the 1995 guidance, EPA had entered into only 20 PPAs. In the last five years, EPA successfully has finalized over 100 additional PPAs. Further, in 1999, EPA took several steps to streamline the process of obtaining PPAs, including the appointment of a PPA Expediter, development of a system to track PPA negotiations, and issuance of a model letter to respond to PPA requests.

PPAs have brought about meaningful community benefits through fostering brownfields use. Redevelopment projects cover over 1500 acres, or 80% of the property secured through PPAs. EPA regional personnel estimate that nearly 1700 short-term jobs (e.g., construction) and over 1700 permanent jobs have resulted from redevelopment projects associated with PPAs. An estimated \$2.6 million in local tax revenue for communities nationwide have resulted from these projects.

Comfort letters

EPA has provided over 500 “comfort letters” (or “status letters”) in appropriate circumstances to new owners, lenders, or developers to inform them of EPA’s intentions at a site. The *Policy on the Issuance of Comfort/Status Letters*, issued in 1996 (<http://es.epa.gov/oeca/osre/961108.html>) is designed to assist parties who seek to cleanup and reuse brownfields. EPA often receives requests from parties for some level of “comfort” that, if they purchase, develop, or operate on brownfield property, EPA will not pursue them for the costs to clean up any contamination resulting from the previous use. The policy contains four sample comfort/status letters that address the most common inquiries EPA receives regarding contaminated or potentially contaminated properties.

Property Owner Protections

Other guidance issued by the Agency to benefit brownfields assessment, cleanup and redevelopment have included the “*Policy Toward Owners of Property Containing Contaminated Aquifers*” (<http://es.epa.gov/oeca/osre/950524-1.html>). Prior to the issuance of this guidance in July 1995, people owning property under which hazardous substances had migrated through groundwater also feared liability under the statute. EPA responded by announcing that it will not take enforcement actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) against owners of property situated above contaminated ground water, provided the landowner did not cause or contribute to the contamination. EPA also will consider providing protection to such property owners from third party lawsuits through a settlement that affords contribution protection.

Lender Protections

EPA supported the “Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996,” which clarified the liability of lenders, governmental entities that acquire property involuntarily, and fiduciaries under CERCLA and RCRA. The change in the law is providing significant relief to banks and lending institutions, expanding the availability of credit for small businesses, and greatly facilitating the assessment, cleanup, and redevelopment of brownfield sites. EPA’s lender liability policy, issued in 1997 (<http://es.epa.gov/oeca/osre/970630.html>), clarifies the steps a lender or governmental entity may take after acquiring contaminated property through, for example, foreclosure or involuntary acquisition.

Supplemental Environmental Projects

EPA encourages the use of Supplemental Environmental Projects (SEPs) to facilitate the reuse of brownfields through assessment and cleanup projects at brownfield properties. SEPs are environmentally beneficial projects that a defendant agrees to undertake in settlement of a civil penalty action, but that the defendant is not otherwise legally responsible to perform. SEPs enhance the environmental quality of communities that have been put at risk due to the violation of an environmental law. In September of 1988, EPA issued a fact sheet promoting the use of SEPs at brownfields sites (<http://es.epa.gov/oeca/osre/980930.html>).

SEPs at brownfields sites can be a catalyst to brownfields development. For example, a SEP provision within a consent decree negotiated with Sherwin Williams required the company to contract with the City of Chicago to perform an \$850,000 remediation project at a brownfields site in an Environmental Justice community near the facility.

Removing Sites From CERCLIS

Finally, EPA believes that the removal of sites from the active Federal inventory, the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS), is having positive repercussions for the Brownfields Initiative. To date, EPA has

removed 32,191 sites (more than 75% of the total) from CERCLIS. The removal of these sites eliminates the stigma of potential contamination and fear of liability associated with these sites, and allows stakeholders to focus on the future land use and redevelopment of such sites.

BROWNFIELDS TAX INCENTIVE

EPA is pleased with the passage of the Brownfields Tax Incentive passed in the 105th Congress. Passage of the 1997 Brownfields Tax Incentive has enabled the federal government to level the economic playing field between brownfields and greenfield sites. Under the tax incentive, certain environmental cleanup costs for properties in designated areas are fully deductible in the year in which they are incurred, rather than capitalized. This incentive can reduce the capital cost for these types of investments by more than one half. We regard this tax provision as an essential element of a complete and comprehensive brownfields program and hope it can be made a continuing and broad tool for brownfields redevelopment in the future. Under current law, the incentive will expire on December 31, 2001. The President's FY 2001 Budget request proposes to make it permanent.

The tax incentive is applicable to properties that meet specified land use, contamination, and geographic requirements. Both rural and urban sites qualify for the proposed incentive. Sites on or proposed for EPA's National Priorities List are excluded. In West Chester, Pennsylvania, the tax incentive was used to help a demolition and environmental service company relocate its headquarters at a brownfield. This site was in a part of the town suffering a 29.6% poverty rate, well above the 20% poverty rate threshold set in the guidelines. The company estimates that 100-200 jobs could be created, and that nearly \$42,000 would be returned to the company through the deduction.

BETTER AMERICA BONDS

Innovative approaches and solutions to the problems faced by communities are manifested in every aspect of brownfields. Innovative financing efforts are no exception. Just as the Federal government has helped the brownfields program through the tax incentive, so too, will the Clinton Administration's latest effort through the proposed Better America Bonds program. This proposal for FY 2001 seeks to create \$10.75 billion in bonding authority for state, local, and tribal governments over 5 years. Communities will have access to zero-interest financing because investors who buy these fifteen year bonds will receive Federal tax credits in lieu of interest paid by the bond issuers. The tax credits would total approximately \$700 million over five years. Communities would pay back the principal at the end of the 15-year term of the bond.

To help communities preserve green space for future generations, protect public health, and provide for greater economic development, Better America Bonds can be used for three purposes:

- **Preserve and Enhance Open Space:** State, Tribal and local governments can create, restore, or enhance parks, preserve green spaces, and protect threatened farmland and wetlands. Land can be protected either by acquiring title or purchasing permanent easements.
- **Protect Water Quality:** Rivers, lakes, coastal waters, and wetlands -- and drinking water sources -- can be restored or protected through reducing polluted runoff, the largest remaining threat to the nations' waterways. Eligible projects to curb runoff include purchase of sensitive lands, wetlands restoration, and the creation of planted or forested buffer strips along waterways.
- **Clean Up Brownfields:** Pressure to develop green space can be eased through cleaning up and reusing brownfields. Communities can clean up brownfields for use as open space, or for economic redevelopment.

EPA believes Better America Bonds will further the Brownfields Economic Redevelopment Initiative by providing much needed flexible funding that communities can use for brownfields activities.

BROWNFIELDS LEGISLATION

The Clinton Administration supports the passage of targeted brownfields legislation and views it as an important step toward providing opportunities to local communities and neighborhoods that are struggling to clean up and develop abandoned commercial and industrial sites. We commend the committee for developing a good, bipartisan, bill. We advocate a legislative approach that clarifies liability provisions in the CERCLA statute for:

- prospective purchasers of contaminated property;
- innocent landowners; and
- contiguous property owners.

In addition to these responsible liability provisions, brownfields legislation should provide funding for brownfield assessment and cleanup through grants and loans. Further, the legislation should provide support for effective State Voluntary Cleanup Programs. At the same time, the Federal "safety net" must be preserved to address circumstances which may present an imminent and substantial endangerment to the public and the environment. Such an approach enjoys broad bipartisan support in Congress and would be valuable in speeding the cleanup of brownfields.

The Administration is pleased that S. 2700:

- **Is modeled on the Administration's successful brownfields program.** S. 2700 authorizes the use of brownfield grants for the full range of successful programs currently funded by EPA's brownfields program and improves on earlier proposals in providing EPA with better flexibility to manage this program. S. 2700 also more clearly exempts

Federal facilities, except for facilities on Tribal lands, from the definition of “brownfields site.”

- **Provides liability protection for prospective purchasers and property owners**
S. 2700 clarifies that prospective purchasers of contaminated property, innocent landowners, and contiguous property owners, that meet the requirements of the bill, are not liable under Superfund.
- **Does not undermine Superfund cleanup progress**
S. 2700 does not contain comprehensive Superfund remedy or liability provisions that would delay the current cleanup progress in the Superfund program.

S. 2700 clearly represents a very positive step forward. We support the bill and the efforts of the Committee to draft bipartisan brownfields legislation, consistent with the Administration’s view on brownfields. The funding provisions promote the adoption of EPA/State Memorandum of Agreement (MOAs) or the development of minimum State criteria. Further, the bill requires a State to maintain a publicly available list of planned or completed sites in State Voluntary Cleanup Programs to be eligible for the bar on Federal enforcement authority. The bill has also strengthened the definition of “eligible sites” that are subject to an enforcement bar from prior bills.

While the Administration supports S. 2700, however, we believe there are improvements that need to be made to the bill. S. 2700 bars federal enforcement for response actions. However, the bill does not require minimum criteria for an adequate State program. We continue to believe that States should be required to demonstrate that their programs satisfy minimum criteria before Federal enforcement bars apply. In particular, there is no mechanism to ensure appropriate public participation in State cleanups or provide assurance through State review or approval that site cleanups are adequate. Both public participation and accountability are important to making good cleanup decisions. In addition, although S. 2700 includes a public list of sites at which the State has undertaken or is planning action, a site need not be on that list in order for the Federal enforcement bar to apply, and the list need not be current. A list that is updated more frequently than annually, as well as a clear link between the list and the enforcement bar, would strengthen the requirement.

Further, the “reopener” provision in S. 2700 that defines the circumstances in which Federal enforcement may be appropriate in State cleanup programs, requires the Administrator to determine that a release may present an “imminent and substantial endangerment” AND that additional response actions are likely to be necessary.” This language is more restrictive than “imminent and substantial endangerment” enforcement provisions in other Federal environmental statutes and is likely to generate unnecessary and costly new litigation. It would be preferable to retain the existing CERCLA 106 standard of “imminent and substantial endangerment.” We also believe that adequate protections must remain for situations when properties cleaned up to industrial use are thereafter developed for residential use. EPA must retain authority to respond to these potential threats to public health.

The Administration has other issues and technical comments that we would like to share with the committee as the bill continues through the legislative process. We would also like to work with you on appropriate resource levels consistent with the President's budget

CONCLUSION

The Administration believes that an agreement can be reached with Congress on bipartisan, targeted brownfields legislation to promote the cleanup and reuse of brownfields sites across this country. We believe that S. 2700 represents a very positive step forward toward our mutual goals. We look forward to working with the Committee to enact effective, protective, brownfield legislation this year.