

US EPA ARCHIVE DOCUMENT

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U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE SUBCOMMITTEE ON
FEDERALISM AND THE CENSUS
COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES**

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INTRODUCTION

Good morning, Mr. Chairman, and members of the Subcommittee. My name is Tom Dunne. I am Deputy Assistant Administrator for EPA's Office of Solid Waste and Emergency Response. I am appearing today to discuss EPA's Brownfields Program and address the recommendations made in the Government Accountability Office (GAO) Report to Congressional Requesters entitled "Brownfield Redevelopment: Stakeholders Report that EPA's Program Helps to Redevelop Sites, but Additional Measures Could Complement Agency Efforts."

Brownfields are all around us, in the smallest towns and largest cities -- empty warehouses, decrepit factories, vacant corner gas stations, and junk-strewn lots. Brownfields are defined by statute as "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant." In other words, properties where environmental concerns are a barrier to reuse. Estimates of the number of brownfields across the country range from 450,000 to more than a million properties.

Ten years ago, EPA initially provided seed money to communities for inventorying brownfields and assessing contamination. In response to community requests, additional tools

were added to the brownfields' effort. Grants were made to capitalize revolving loan funds for cleanup. Brownfields job training grants were developed to promote employment in brownfields communities. A tax incentive was enacted to encourage private sector investment. States, Tribes, local governments and non-governmental organizations began to focus on brownfields, creating local and regional approaches to revitalizing properties.

The national brownfields effort has produced successful results. As of March 2005, EPA and its grant recipients have performed more than 6,800 assessments. Brownfields grantees have leveraged \$6.6 billion in cleanup and redevelopment dollars, leveraging more than 30,000 jobs. Brownfields have proven to be a good public investment, with every public dollar spent on brownfields leveraging about \$2.50 in private investment. Brownfields revitalization also produces long-term sustainability benefits, with every acre of brownfields reused saving 4.5 acres of greenspace. The brownfields initiative has become a national effort, linking environmental protection, economic development and community revitalization.

Congressional support of brownfields cleanup and redevelopment culminated in the passage of the Small Business Liability Relief and Brownfields Revitalization Act, also known as the Brownfields Law. Signed by President Bush on January 11, 2002, the Brownfields Law provided EPA with a clear Congressional mandate on brownfields. The Brownfields Law expanded EPA's Brownfields Program, boosted funding levels, expanded the entities, properties and activities eligible for funds, clarified and strengthened liability protection for certain property owners and provided increased support to state and tribal response programs.

EPA has taken great efforts to implement the new law. EPA developed and published guidelines for the many new grant programs for assessment, revolving loan fund and cleanup

grants; state and tribal response program grants; and, research, training and technical assistance grants. These new programs required application guidelines, funding competitions and selection processes – and they were completed and grants awarded in the first fiscal year following the passage of the new law. EPA has awarded more than 480 brownfields grants in both FY2003 and FY2004 totaling more than \$145 million.

EPA'S BROWNFIELDS PROGRAM

Brownfields Grants

I would like to describe the Brownfields Program components in greater detail. Assessment grants provide funding to inventory, characterize, assess, conduct planning and community involvement related to brownfields. Environmental site assessments provide the information that communities and property owners need to move forward with reuse. In fact, up to one third of the sites assessed show little or no contamination, freeing the site for redevelopment through a relatively small public investment. Over the years, EPA has awarded hundreds of assessment grants, generally \$200,000 each, to communities large and small. The Brownfields Law expanded the eligibility to new entities such as redevelopment authorities and allowed additional assessment-related activities such as planning to be done by grant recipients. Over the past two years under the new law, EPA has awarded 270 assessment grants for \$67.9 million.

In addition, EPA has the authority to provide Targeted Brownfields Assessments. These single-property assessments are designed to help communities on a more direct basis, especially those lacking EPA assessment grants. EPA provided \$6.6 million for Targeted Brownfields Assessment in fiscal years 2003 and 2004.

Under its new authority, EPA may now provide direct cleanup grants of up to \$200,000 per site to public sector and non-profit property owners. In the past two years, EPA has awarded 143 cleanup grants for \$25.5 million. In Buffalo, New York, a non-profit developer is using a Brownfields Cleanup Grant to cleanup the Union Ship Canal property, an old iron production facility contaminated with hazardous waste and petroleum. Working closely with EPA Region 2 and the State of New York, Development Downtown has already completed cleanup and is moving forward to reuse.

The Brownfields Program also supports property cleanup by providing grants to capitalize cleanup revolving loan funds. The Brownfields Revolving Loan Fund grants provide state and local governments with capital to make sub-grants or low or no interest loans to finance brownfields cleanup. Over the past two years, EPA has awarded 43 revolving loan fund grants for \$47.3 million.

Recently, a successful collaboration occurred with one of our early revolving loan fund grants to Aurora, Colorado. The City made a loan of \$471,000 that is now being combined with a subgrant for approximately \$100,000 from the Colorado Coalition revolving loan fund. The Colorado Coalition is made up of five cities and two state agencies. They are using the initial loan and the subgrant for a landfill cleanup and planned redevelopment will include additional park space for the City of Aurora as well as low and middle income housing.

The Union Ship Canal project points to another feature of EPA's brownfields authority, the eligibility to cleanup sites contaminated with petroleum, a major portion of the brownfields universe. The Brownfields Law directs 25% of assessment and cleanup grant funding be directed to sites with petroleum contamination. Indeed, since passage of the law, EPA has

awarded 212 assessment, cleanup and revolving loan fund grants totaling \$44.8 million for petroleum contaminated brownfields.

The Brownfields Law also broadened the definition of what could be considered a brownfield, thus making eligible for grants, mine-scarred lands and sites contaminated by controlled substances (often these sites are drug labs found in residential areas). We have seen an increased number of proposals from states, tribes and communities working on these kinds of sites.

In reviewing proposals and awarding grants, EPA has found that brownfields come in a range of sizes and types. Brownfields are often stereotyped as large industrial sites in urban areas. The reality is that the majority of brownfields are small properties like dry cleaners, vacant lots and gas stations. More than half of the grants have gone to communities of less than 100,000 people.

The grant selection and award process for fiscal year 2005 is currently underway. The application deadline was November 12, 2004 and we received more than 500 applications. The proposals are under review and we anticipate announcing more than 200 new grants later this Spring.

In addition to assessment and cleanup funding, EPA also funds brownfields training, research and technical assistance. As communities engage in cleaning up of brownfields, EPA recognizes the need for a workforce with environmental cleanup skills. To date, EPA has awarded 82 job training grants, including 26 grants since passage of the law, resulting in the placement of more than 1400 individuals with an average wage of \$13.00 an hour.

State and Tribal Programs

The high demand for brownfields cleanup and redevelopment in communities throughout the country, coupled with increasingly limited state and tribal resources, makes access to federal funding critical. The development of successful state and tribal programs is essential to insuring the successful implementation of the brownfields program, since they are the environmental regulators of brownfields cleanups.

Under section 128(a) of the Brownfields Law, EPA provides financial assistance to establish or enhance state and tribal programs so they can meet the challenges of brownfields cleanup and redevelopment. In fiscal year 2004, EPA provided \$49.7 million to all 50 states, 37 tribes, the District of Columbia, and 3 territories (Guam, U.S. Virgin Island, and the Northern Mariana Islands). This funding is helping states and tribes to develop or enhance their response programs' infrastructure and capabilities.

For some recipients, the funding provides an opportunity to create new response programs to address contaminated properties. States and tribes also can use the funds to capitalize a revolving fund for cleanup, purchase environmental insurance, or develop other insurance mechanisms to provide financing for cleanup activities. In addition, the funds can be used to establish or maintain the statutorily required public record, to oversee cleanups, and to conduct limited site-specific activities. Providing financial assistance to states and tribes increases their capacity to meet brownfields cleanup and redevelopment challenges. It also helps to ensure that properties are cleaned up safely, in accordance with state and tribal standards.

EPA also partners with states to develop Memoranda of Agreement (MOAs) that clarify program roles and responsibilities. EPA has signed 22 MOAs and is working on additional new and expanded MOAs.

Liability Protection

A final element of the Brownfields Program focuses on providing landowner liability protections. These protections increase comfort and certainty regarding the purchase and redevelopment of brownfields. EPA has worked to clarify federal liability, particularly under CERCLA. EPA has streamlined administrative practice and issued guidance and enforcement discretion policies to encourage brownfields cleanup and redevelopment. For example, EPA has used liability management tools such as “comfort/status” letters and prospective purchaser agreements that help provide the certainty that lenders, investors and developers need to overcome the liability concerns.

The Brownfields Law provides additional landowner liability provisions that protect bona fide prospective purchasers, innocent landowners and contiguous property owners from CERCLA liability. To qualify for liability protection, these property owners must satisfy certain statutory requirements. For example, prior to acquiring a property, purchasers must meet environmental due diligence requirements by undertaking “all appropriate inquiries” into the condition of the property. EPA is developing a regulation establishing standards for conducting “all appropriate inquiries.” The Agency did this through a collaborative stakeholder negotiated rulemaking. The proposed rule was published in August 2004 and the Agency is currently evaluating comments submitted with the expectation that a final rule will be published in January 2006.

To achieve and maintain their liability protections, property owners must comply with continuing obligations, including taking “reasonable steps” with regard to contamination at the site. EPA issued policies and guidance documents explaining how EPA intends to implement

the landowner liability protections, in order to provide additional certainty and understanding of the issue.

The Brownfields Law also provides federal CERCLA liability protection for parties who conduct a cleanup of certain brownfields properties under state response programs. EPA issued guidance that explained which properties currently in the CERCLA system would be eligible for federal liability protection.

EPA's RESPONSE TO GAO'S RECOMMENDATIONS

Performance Measures

GAO recommended EPA continue to develop additional measures to gauge the achievements of the Brownfields program. Since the initial pilots awarded prior to the law, EPA has collected data from its grant recipients and sought ways to use that data to evaluate the impact of the program and assess the successes and achievements of the program at brownfields sites nationwide.

Building on our past experience, EPA's Strategic Plan for FY 2003-2008 focuses on the: (1) assessment, clean up and redevelopment of sites; (2) leveraging of brownfields grant funding in cleanup and redevelopment funding; (3) leveraging the creation of both temporary and permanent jobs; and, (4) the number of properties cleaned up and the number of acres available for reuse.

To enhance EPA's ability to develop more meaningful measures of Brownfields program accomplishments, the Agency:

- developed a data collection instrument – a Property Profile Form – to collect information from site assessment, cleanup and revolving loan fund grant recipients. A nationwide

data collection effort is underway that will collect data from 2003 and 2004 brownfields grantees. We believe that effective and continuing use of the Property Profile Form will enable us to better tie program results to property-specific activities and gauge the progress of the brownfields program;

- works with State and Tribal officials to develop performance measures gauging the impact of EPA funding on the results of state and tribal voluntary cleanup programs. This ongoing work on measures ties performance to the number of acres available for reuse and anticipated reuse; and
- works with the Office of Management and Budget to develop measures addressing the Program Assessment and Rating Tool review. This ongoing effort with OMB is designed to provide EPA with a way to reflect the changes that occur at a specific property following the award of a brownfields grant.

As EPA moves forward to collect additional information on the results of brownfields activities, we are mindful of the data quality issues that accompany the collection of such data. To that end, EPA is also addressing ways to minimize the impact of these information requests and reporting requirements on recipients while helping us to fully realize and accomplish our program goals.

Legislation

GAO recommended that EPA weigh the merits of revising the Brownfields Law to eliminate statutory restrictions on pre-January 2002 eligibility of purchasers of brownfields property. EPA has requested a change to expand the number of brownfields sites eligible for

funding under the Brownfields Assessment, Revolving Loan Fund and Cleanup grant provisions in the President's FY 2006 Budget. EPA has supported similar changes in the Consolidated Appropriations Act of Fiscal Years 2004 and 2005. Such a measure expands potential applicants for brownfields grants to include those owning properties acquired prior to the enactment of the Brownfields Law.

Revolving Loan Fund

GAO recommended closely monitoring Brownfields Revolving Loan Fund grants to determine why they have been underutilized and to encourage changes to facilitate use of these funds. In addition, GAO recommended determining the advantages and disadvantages of giving priority to coalitions and other entities with proven revolving fund administrative expertise when awarding grants and, if found to be beneficial, adopt this as a key criterion for selecting grant recipients.

In looking at Revolving Loan Fund grants, EPA acknowledges GAO's recommendation which is, in part, the result of stakeholder interviews. Managing a revolving loan fund successfully requires a unique confluence of skills which include both loan and grant management to ensure that loans are in accord with prudent lending practices and environmental expertise. The Revolving Loan Fund program requires financial, analytical, legal and record keeping activities as well as the skills to market such loans and subgrants. The other important focus, however, is the ability of a grantee to ensure that cleanup planning and execution under a loan or subgrant ensures protection of human health and the environment. We agree that efficiency and economies of scale often can be achieved by Revolving Loan Fund entities with proven track records that build upon administrative expertise. To date, EPA has invited

coalitions of eligible entities to pool their Revolving Loan Fund grant requests and submit a single grant application for consideration. EPA is also adjusting ranking criteria for Revolving Loan Fund applicants, giving more weight to ranking factors which demonstrate an applicant's ability to manage a fund and make loans.

EPA also agrees with the recommendation that EPA closely monitor the Brownfields Revolving Loan Fund grants to determine if they have been underutilized and what, if any, changes are needed to facilitate or encourage grant recipients' use of these funds. As part of an on-going Agency effort, regional and headquarters staff regularly close out brownfields grants. In the case of the Brownfields Cleanup Revolving Loan Fund grants awarded prior to passage of the Brownfields Law, pre-existing grants can transition to the new law's authority. To encourage either closeout or transition of these older Brownfields Cleanup Revolving Loan Fund grants, I advised EPA regions in a September 2004 memorandum to request 1997, 1999, and 2000 grant recipients to choose to transition or become subject to closeout.

This memorandum was followed by further communication to the regions in October 2004, providing each region with region-specific brownfield grant information on grants which might be candidates for closeout. The Brownfields Program's tracking of grant closeouts is ongoing. EPA prepared a report for Congress in September 2004 which detailed activity regarding the Revolving Loan Fund grants and addressing GAO's concerns.

CONCLUSION

EPA's Brownfields Program serves as an innovative approach to environmental protection, spurring environmental cleanup, reducing neighborhood blight, generating tax revenues, and creating jobs. It has become increasingly clear, however, that successfully addressing

brownfields in this country will require ever more interaction and collaboration among all levels of government, the private sector and non-governmental organizations.

As GAO's report indicates, we must continue to take every opportunity to improve the Brownfields Program. EPA is fully committed to seeing that the GAO report's recommendations are addressed. EPA will continue to implement the program to protect human health and the environment, enhance public participation in local decision-making, build safe and sustainable communities through public and private partnerships, and recognize that environmental protection can be the engine that drives economic redevelopment.