

US EPA ARCHIVE DOCUMENT

**STATEMENT OF SUSAN PARKER BODINE
ASSISTANT ADMINISTRATOR
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES**

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INTRODUCTION

Good morning, Mr. Chairman, and members of the Subcommittee. My name is Susan Parker Bodine. I am the Assistant Administrator for the EPA's Office of Solid Waste and Emergency Response. I am appearing today to discuss EPA's Brownfields Program.

As you know, brownfields are all around us, in the smallest towns and largest cities -- empty warehouses, abandoned and deteriorating 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." These are properties where real or potential environmental concerns pose a barrier to reuse. Estimates of the number of brownfields across the country range from 450,000 to more than a million properties.

EPA's Brownfield Program began over a decade ago, when the Agency began providing 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 impressive results. Since the first grants were awarded, EPA and its grant recipients have performed more than 8,000 assessments. We continue to see progress in the clean up of brownfields. Brownfields grantees have leveraged \$8.2 billion in cleanup and redevelopment dollars, leveraging more than 37,000 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. Working with communities, states, tribes and other federal agencies, the brownfields initiative has become a coordinated national effort, linking environmental protection, economic development and community revitalization.

Strong support by President Bush and Congress for brownfields cleanup and reuse 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 the entities, properties and activities eligible for EPA funding, clarified and strengthened liability protection for certain property owners and provided increased support to state and tribal response programs.

EPA has taken great strides 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. Since the start of EPA’s brownfields program, EPA has awarded 1323 brownfields grants totaling more than \$454 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, and assess properties; develop cleanup plans; and conduct community involvement activities 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 reuse 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 three years, EPA has awarded 446 assessment grants for a total of \$102.3 million across the country.

For example, a \$400,000 EPA Brownfields Assessment grant awarded to Clearwater, Florida, in 2003 revealed contaminated soil and groundwater on the 4.2-acre site of a former auto salvage yard. A city-funded cleanup of the property removed more than 200 tons of contaminated soil and established institutional controls to limit groundwater exposure. In

August 2004, the property became home to Clearwater's Northwest Fire and Rescue Station, providing quicker emergency response times to the surrounding area. The remainder of the site will eventually be used as a community park.

In addition, EPA has the authority to conduct Targeted Brownfields Assessments (TBAs). These single-property assessments are designed to help communities on a more direct basis, especially those lacking EPA assessment grants. EPA allocated \$13,200,000 nationally for TBA support in fiscal years 2003 through 2006.

Since the beginning of the program, targeted brownfields assessments have been conducted at 1,430 properties. Just one example of the assistance the TBA program provides is the former Swan Engraving manufacturing facility in Bridgeport, Connecticut. With EPA's TBA funding as the catalyst, the City of Bridgeport has leveraged assessment and other federal, state, city and private funding for approximately \$4 million. This site is now part of Went Field Park, a nationally recognized brownfield to greenfield project.

EPA may provide direct cleanup grants of up to \$200,000 per site to public sector and non-profit property owners to carry out cleanup activities at brownfield sites. In the past three years, EPA has awarded 238 cleanup grants totaling \$42.7 million nation-wide. As an illustration, in Taunton, Massachusetts, a \$52,000 EPA Brownfields Cleanup grant to the non-profit Weir Corporation helped remove lead and other contaminants from the 6.5-acre former Robertson Mill property, which had operated for a century before lying dormant for more than ten years. Using additional brownfields cleanup loans from the City of Taunton, and more than \$15 million leveraged from local, state, and other public-sector entities, the Weir Corporation has redeveloped this historic property into affordable rental housing, commercial space that

created 40 jobs, and a new riverfront park for the surrounding community to enjoy. This commercial-residential complex opened in October 2005.

The Brownfields Program also supports property cleanup by providing grants to capitalize cleanup revolving loan funds. The Brownfields Revolving Loan Fund (RLF) grants provide state and local governments with capital to make sub-grants or low or no-interest loans to finance brownfields cleanup. The 2002 Brownfields Law was pivotal in the continued success of the RLF program. It provided new flexibility to the program because it expanded properties and activities that are eligible for funding, provided the capability to make sub-grants as well as loans for cleanup, and streamlined technical requirements while still ensuring public health and the environment are protected. Over the past three years, EPA has awarded 59 revolving loan fund grants nation-wide for \$72.1 million, and we look forward to even greater momentum in making loans against these grants in the coming years.

In August 2005, the State of Washington made the largest loan in RLF program history, totaling \$2.4 million. This loan was awarded to clean up the Kendall Yards site, located in the City of Spokane's empowerment zone. At final build-out, the 77-acre locomotive repair site, which has sat idle for 20 years, will be transformed into a mixed-use center. Redevelopment plans include 1,000 new homes and 1 million square feet of commercial space with connections to downtown parks and trails. The State estimates that the loan will leverage up to 2,500 permanent jobs as well as \$750 million - \$1 billion in redevelopment investment. The project is expected to generate up to \$32.5 million in State taxes annually, and \$750,000 annually in local taxes.

Under EPA's brownfields authority, sites contaminated with petroleum are now also eligible for assessment and cleanup grants. The Brownfields Law requires 25% of assessment and cleanup grant funding be directed to sites with petroleum contamination. Indeed, since passage of the Brownfields Law, EPA has awarded 312 assessment, cleanup and revolving loan fund grants totaling \$66.4 million for petroleum contaminated brownfields.

The Brownfields Law also broadened the definition of what could be considered a brownfield, thus making mine-scarred lands and sites contaminated by controlled substances eligible for grants. We have seen an increased number of proposals from states, tribes and communities working on these kinds of sites. In the Agency's most recent grant competition for example, 13 proposals for brownfields assistance at mine-scarred sites were approved for a total of \$2.7 million in funding.

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 2006 was recently completed. The application deadline was December 14, 2005, and the Agency received almost 700 applications. On May 12, 2006, the Agency announced that \$69.9 million would be available to fund 292 grants to communities in 44 states and 2 territories. The Agency announced the selection of 184 assessment grants totaling \$36.6 million, 96 clean up grants totaling \$18.3 million and 12 revolving loan fund grants totaling \$15 million.

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 nation-wide, EPA has awarded 106 job training grants, including 49 grants since passage of the law, resulting in the placement of more than 1,600 individuals with an average wage of \$13.00 an hour.

State and Tribal Programs

State response programs are at the forefront of brownfields cleanup and reuse, particularly as both the public and private market recognizes the responsibilities and opportunities given to states in the Brownfields Law. As Congress recognized in the legislative history of the Brownfields law, the vast majority of brownfields cleanups will be overseen by state response programs. EPA estimates 48,000 properties have been cleaned up through state response programs and over 53,000 properties are currently enrolled in state response programs.

Similarly, tribal response programs, although newer in development, are also taking on a more active role in determining the cleanup and reuse of contaminated property on tribal lands. Tribes are developing and enhancing response programs to combat environmental issues prevalent on tribal lands, while creating a self-sufficient organization for environmental protection that may not have existed before. Tribal response programs are, among other things, conducting assessments, creating ordinances, and educating their community about the value and possibilities of brownfields cleanup and reuse.

The development of successful state and tribal programs is essential to ensuring the successful implementation of the federal brownfields program, because states and tribes are the frontlines of effective brownfields cleanups. Providing financial assistance to states and tribes increases their capacity to meet brownfields cleanup and reuse challenges. It also helps to ensure cleanup and reuse plans are safe and appropriate and that cleanups are protective and in accordance with federal, state and tribal standards.

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 reuse. In fiscal year 2006, EPA plans to provide \$49.3 million to 47 states, 41 tribes, and 2 territories (U.S. Virgin Island and the Northern Mariana Islands).

EPA awards funds through a non-competitive, allocation process. Grant funds are awarded through a national process in which EPA holds states and tribes accountable for the timely use of the grant funds. EPA reviews the level of funds remaining on prior years' grant awards and reduces new awards accordingly. States and tribes that use their funding in a timely manner are seeing funding levels hold steady or increase; those with unspent funds are receiving less. Through this effort, EPA hopes to encourage the appropriate and timely use of grants funds, ensure effective planning and development of response and voluntary cleanup programs, and provide for a measure of accountability that is transparent.

States and tribes are using the grant funding for a variety of activities. For some, the funding provides an opportunity to create new response programs to address contaminated properties, while for others it allows them to enhance existing programs with innovative new tools. Some states, like Colorado, are using the funds to bolster cleanup revolving loan funds,

while others, like Wisconsin, are using the funds to maintain a “one cleanup” approach to assessment and cleanup. Many are using the funds to conduct site-specific activities, such as the assessment and cleanup of brownfields sites. Since section 128 funding was awarded in FY03, States and Tribes have voluntarily reported more than 420 site assessments performed on brownfields sites. As with the competitive grants, states are increasing activity in cleanups. To fully quantify the results in this area, the Agency has recently revised its data collection questionnaire, and an amended Information Collection Request form is pending with the Office of Management and Budget.

Liability Protection

A critical element of the Brownfields Program focuses on providing important liability protections and clarifications for certain landowners who are not responsible for site contamination. These protections increase comfort and certainty regarding the purchase and redevelopment of brownfields. EPA has worked to clarify federal liability, particularly under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA has streamlined administrative practice and issued guidance and enforcement discretion policies to encourage brownfields cleanup and redevelopment. In fact, many of the protections in the Brownfields Law are essentially statutory codifications of existing EPA enforcement discretion policies.

The Brownfields Law also clarifies the landowner liability protections of bona fide prospective purchasers, innocent landowners and contiguous property owners under CERCLA. 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 has developed a regulation establishing standards for conducting “all appropriate inquiries.” The Agency did this through a collaborative stakeholder negotiated rulemaking. The final rule was issued in November 2005 and goes into full effect in November 2006.

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.

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. Continuing our success will require ever more interaction and collaboration among all levels of government, the private sector and non-governmental organizations. EPA is dedicated to continuing our efforts to reach out to our partners and the Administration is committed to continuing strong funding for the program.

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.