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BUILDING A 21ST-CENTURY INFRASTRUCTURE FOR AMERICA: REVITALIZING AMERICAN COMMUNITIES THROUGH THE BROWNFIELDS PROGRAM

(115–7)

HEARING

BEFORE THE

SUBCOMMITTEE ON
WATER RESOURCES AND ENVIRONMENT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

MARCH 28, 2017

Printed for the use of the
Committee on Transportation and Infrastructure

Available online at: http://www.gpo.gov/fdsys/browse/committee.action?chamber=house&committee=transportation

U.S. GOVERNMENT PUBLISHING OFFICE

24–789 PDF WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing Office
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PETER A. DEFAZIO, Oregon *(Ex Officio)*

CONTENTS

Page

Summary of Subject Matter vii

TESTIMONY

Hon. J. Christian Bollwage, Mayor, City of Elizabeth, New Jersey, on behalf of the U.S. Conference of Mayors 7
Hon. Deborah Robertson, Mayor, City of Rialto, California 7
Hon. Matt Zone, Councilmember, City of Cleveland, Ohio, on behalf of the National League of Cities 7
John E. Dailey, Commissioner, Leon County, Florida, on behalf of the National Association of Counties 7
Amanda W. LeFevre, Outreach and Educational Coordinator, Kentucky Brownfield Redevelopment Program, on behalf of the Association of State and Territorial Solid Waste Management Officials 7
Jonathan Philips, Managing Director, Anka Funds 7

PREPARED STATEMENTS SUBMITTED BY WITNESSES

Hon. J. Christian Bollwage 48
Hon. Deborah Robertson 58
Hon. Matt Zone 63
John E. Dailey 70
Amanda W. LeFevre 83
Jonathan Philips 93

SUBMISSIONS FOR THE RECORD

Hon. Grace F. Napolitano, a Representative in Congress from the State of California, submission of the following:
- Letter of March 10, 2017, from Hon. Peter A. DeFazio, a Representative in Congress from the State of Oregon, et al., to Hon. Scott Pruitt, Administrator, U.S. Environmental Protection Agency 3
- Report, "CERCLA Lender Liability Exemption: Updated Questions and Answers," July 2007, published by the U.S. Environmental Protection Agency 118
- Report, "CERCLA Liability and Local Government Acquisitions and Other Activities," March 2011, published by the U.S. Environmental Protection Agency 125
- Memorandum on the Revised Enforcement Guidance Regarding the Treatment of Tenants Under the CERCLA Bona Fide Prospective Purchase Provision, from Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance Assistance, and Mathy Stanislaus, Assistant Administrator, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, to Regional Administrators, Regions I–X 137
- "FY17 Guidelines for Brownfields Assessment Grants," RFP No.: EPA–OLEM–OBLR–16–08, Catalog of Federal Domestic Assistance (CFDA) No.: 66.818, published by the U.S. Environmental Protection Agency[1]

Hon. J. Christian Bollwage, Mayor, City of Elizabeth, New Jersey, on behalf of the U.S. Conference of Mayors, submission of letter of March 28, 2017, from Tom Cochran, CEO and Executive Director, U.S. Conference of Mayors, et al., to Hon. Greg Walden, Chairman, Committee on Energy and Commerce, et al. 9

[1] The 74-page "FY17 Guidelines for Brownfields Assessment Grants" published by the U.S. Environmental Protection Agency can be found online at https://www.epa.gov/sites/production/files/2016-10/documents/epa-olem-oblr-16-08.pdf.

Page

Amanda W. LeFevre, Outreach and Educational Coordinator, Kentucky Brownfield Redevelopment Program, on behalf of the Association of State and Territorial Solid Waste Management Officials, submission of ASTSWMO position paper "128(a) 'Brownfields' Grant Funding" 113

ADDITIONS TO THE RECORD

Letter of March 28, 2017, from Kevin McCray, CAE, Chief Executive Officer, National Ground Water Association, to Hon. Garret Graves, Chairman, and Hon. Grace F. Napolitano, Ranking Member, Subcommittee on Water Resources and Environment 142

Letter of March 28, 2017, from Leslie Wollack, Executive Director, National Association of Regional Councils, to Hon. Bill Shuster, Chairman, Committee on Transportation and Infrastructure, et al. 144

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

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Chairman
Mathew M. Sturges
Staff Director

Peter A. DeFazio
Ranking Member
Katherine W. Dedrick
Democratic Staff Director

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 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 League of Cities

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
Anka Funds, LLC

The Honorable Deborah Robertson
Mayor
City of Rialto, California

BUILDING A 21ST-CENTURY INFRASTRUCTURE FOR AMERICA: REVITALIZING AMERICAN COMMUNITIES THROUGH THE BROWNFIELDS PROGRAM

TUESDAY, MARCH 28, 2017

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2167 Rayburn House Office Building, Hon. Garret Graves (Chairman of the subcommittee) presiding.

Mr. GRAVES OF LOUISIANA. The subcommittee will come to order.

Good morning, and thank you for being here. I would like to welcome all of you to our hearing today on "Building a 21st-Century Infrastructure for America: Revitalizing American Communities through the Brownfields Program."

Brownfields are properties where contamination was suspected. These sites include inactive factories, gas stations, salvage yards, and many other previously used properties where environmental liability and cleanup standards prevented their continued use and redevelopment.

Fear of environmental liabilities of these sites caused developers to look outside cities to previously undeveloped properties for new opportunities. This left many sites untouched, driving down property values, contributing to blight, and reducing tax revenues to cities.

In 2001, Congress created specific authority for dealing with brownfields, the Brownfields Revitalization and Environmental Restoration Act of 2001. It amended the Superfund law and authorized funding through EPA to provide grants for assessment and cleanup; provided targeted relief for property owners; and increased Federal support for State and tribal programs that were already underway.

The authorization for brownfields grants, under the Brownfields Revitalization and Environmental Restoration Act, expired at the end of 2006, though Congress has continued to appropriate funds for the Brownfields Program. As of February this year, EPA and State and tribal programs have assessed over 25,000 properties, completed over 100,000 cleanups, and made more than 1 million acres of property ready for reuse.

On average, between $16 and $17 is leveraged for every $1 in Federal funds that is appropriated for the Brownfields Program, and 120,000 jobs have been created or maintained as a result of the program.

Benefits of having these sites redeveloped have increased property values between 5 and 15 percent, and measurable environmental benefits, such as fewer vehicle miles traveled and improved stormwater runoff, have also resulted.

In our home State of Louisiana, our Department of Environmental Quality has passed through approximately $1.8 million to local governments and not-for-profits for cleanup of brownfields sites. These investments have preserved and created 1,400 jobs and leveraged approximately $120 million in funding, significantly surpassing the average that I cited earlier of $16 to $17-to-$1. In this case you are exceeding $65-to-$1.

I want to thank all of our witnesses for being here this morning and taking time out of their schedule.

And I want to recognize our ranking member, Mrs. Napolitano, for an opening statement.

Mrs. NAPOLITANO. Thank you very much, Mr. Chairman. Thank you very much for holding today's hearing on the status of the Environmental Protection Agency's Brownfields Program.

First, I would like to welcome all of our witnesses to the hearing and look forward to your testimony, and to our dialogue on this highly successful program.

I would also like to formally welcome Mayor Deborah Robertson from the city of Rialto, California, to the subcommittee. Rialto has benefitted in the past from the Brownfields Program. Mrs. Norma Torres and Congressman Pete Aguilar represent Rialto, and I look forward to working with them to further brownfield redevelopment in the region.

This is the second time this committee has turned to this subject in as many Congresses. Since we met last on this subject, the program has continued to operate as it has since its creation in 2000, efficiently and successfully.

In fact, the data provided by EPA shows that since its inception the Brownfields Program has leveraged more than 122,800 jobs and over $23.6 billion in cleanup and redevelopment funding.

Nationwide, communities have assessed more than 26,400 properties, cleaned up more than 1,500 sites, and have made 66,800 acres ready for reuse, back on the rolls.

For every $1 of brownfield funding, more than $16 of other public and private dollars are leveraged, and more than eight jobs are leveraged for every $100,000 of EPA brownfields funds expended. It is undeniable that this program is working as it should, and that communities across the Nation are benefitting from the investment of the Federal dollars in the program while effectively turning brownfields into income producers.

I am troubled, however, by the recent press reports that the new administration plans to eliminate nearly 40 separate programs at EPA, including the Brownfields Program. In fact, I, along with Ranking Member DeFazio, Ranking Member Esty, as well as Ranking Members Pallone and Tonko from the Energy and Commerce

Committee, sent a letter to the EPA Administrator on March 10, 2017, on this very subject requesting answers.

Mr. Chair, I would like to ask for unanimous consent to enter this into the record.

Mr. GRAVES OF LOUISIANA. Without objection.

[The letter follows:]

Congress of the United States

Washington, DC 20515

March 10, 2017

The Honorable Scott Pruitt
Administrator, U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., Mail Code 1101A
Washington, D.C. 20460

Administrator Pruitt:

We write to convey our strong support for the Brownfields program within the U.S. Environmental Protection Agency ("EPA") and seek assurances that the Trump Administration will continue to support this demonstrably successful program. We support this program and are concerned about a recent press report[1] signaling the Trump Administration's plans to eliminate Federal funding for the program.

As you are aware, EPA's Brownfields program has been a catalyst for redevelopment and revitalization in communities across the United States. The bipartisan successes of this program have hinged on the Federal government's commitment to assist communities in reclaiming these vacant or underutilized properties, so that they may contribute to the environmental health and economic growth of the communities where they are located.

The Brownfields program is highly successful. In fact, the Honorable Mathy Stanislaus, former Assistant Administrator of EPA's Office of Land and Emergency Management, testified before the Subcommittee on Water Resources and Environment last Congress that, "on average, approximately $18 in private and public funding is leveraged for every grant dollar expended by EPA's Brownfields program."[2] Further, as of 2015, the Brownfields program leveraged approximately 106,000 jobs and $23.3 billion in cleanup and redevelopment through brownfields project funding since the creation of the program.

We recently read in *The Washington Post* that the White House's 2018 budget blueprint will eliminate dozens of programs, including "grants to clean up brownfields."[3] This is concerning to us, particularly given that there are estimated to be more than 450,000 brownfields in the U.S., and there are communities around the country that would benefit from your continued support for EPA's brownfields program.

---

[1] Eilperin, Juliet and Dennis, Brady., "White House eyes plan to cut EPA staff by one-fifth, eliminating key programs", *The Washington Post*, March 1, 2017, https://www.washingtonpost.com/news/energy-environment/wp/2017/03/01/white-house-proposes-cutting-epa-staff-by-one-fifth-eliminating-key-programs/?hpid=hp_rhp-top-table-main_epa-210pm%3Ahomepage%2Fstory&utm_term=.ae81ec839d7f.

[2] *Hearing on Helping Revitalize American Communities Through the Brownfields Program* before the Subcommittee on Water Resources and Environment, House, 114th Cong. 2 (2015).

[3] Eilperin and Dennis, "White House eyes plan to cut EPA staff by one-fifth, eliminating key programs," March 1, 2017.

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The Honorable Scott Pruitt
March 10, 2017
Page 2

In light of this news report, can you confirm the continuing support of this Administration for Federal funding of both the Brownfields categorical and competitive grants program, as has been offered by every Administration since the program's inception? Further, if the Trump Administration intends to eliminate Federal funding for Brownfield grants, please include in your response your justification for doing so, and how this decision is likely to impact the redevelopment of Brownfields in cities and towns across the country.

We respectfully request your reply to these questions no later than Friday, March 17, 2017.

Thank you for your consideration of this request, and for your continued commitment to creating safer and healthier communities across the United States.

Sincerely,

PETER DeFAZIO
Ranking Member
Committee on Transportation and Infrastructure

FRANK PALLONE, JR.
Ranking Member
Committee on Energy and Commerce

GRACE F. NAPOLITANO
Ranking Member
Subcommittee on Water Resources
and Environment

PAUL TONKO
Ranking Member
Subcommittee on Environment
and the Economy

ELIZABETH ESTY
Vice Ranking Member
Committee on Transportation and Infrastructure

Mrs. NAPOLITANO. In this letter, we sought the clarification as to whether or not the administration will support or eliminate this program. I would like to note for the record that as of this date of this hearing we have received no response.

To me the administration's reluctance to publicly support the Brownfields Program is puzzling, especially since by all accounts, this program has been extremely, very, very, very successful. Every witness that testified at the hearing in the last Congress spoke very supportively of the program. In fact, one witness called it "right law for the right reason."

However, this program's successes have been hindered by the lack of funds. By EPA's own estimates, over the past 5 years, funding deficiencies have cost 1,676 viable proposals to go underfunded. These sites are not only sitting idle and unproductive, but we are missing out on the return investment of these sites.

In fact, at these sites proposed to receive funding, it is estimated those grants would have leveraged approximately 54,680 jobs and over $10.3 billion in public and private financing. It begs the question: why are we not investing more in redevelopment of brownfield spaces?

If this is the success rate of an underfunded program, imagine the potential economic impact and potential for job creation that would come from fully funding the program.

Mr. Chairman, this is a program that has received bipartisan support in the past, and I hope it will continue to receive bipartisan support in the future, and we support an increase for the EPA for this program. The program's success speaks for itself.

Again, I welcome our witnesses, and thank you, Mr. Chairman, for holding this important meeting.

And I yield back the balance of my time.

Mr. GRAVES OF LOUISIANA. Thank you, Mrs. Napolitano.

And I would actually like to associate myself with the end of your remarks in regard to the importance of the program's additional funding. So thank you.

Before I begin introducing witnesses this morning, I just need to dispense with a few unanimous—oh, I am sorry. I yield to the ranking member of the full committee, Mr. DeFazio.

Mr. DEFAZIO. Thanks, Mr. Chairman.

I am here because I think this is extraordinarily important and should be a bipartisan effort in reauthorizing the brownfields law, and our colleague, Ms. Esty, will introduce a bill today which I support to do that.

I was here when the original Brownfields bill was approved. It was actually done by a voice vote in the House, and UC [unanimous consent] in the Senate, and signed by President George W. Bush. So this certainly has a bipartisan legacy.

It has been tremendously successful, with one exception, and that exception has already been mentioned by my colleague, the ranking member, Mrs. Napolitano, which is the lack of adequate funding.

I'll just give one quick example of how useful these funds have been. My largest city, Eugene, Oregon, got a $680,000 site assessment grant back in 2013. They assessed 15 specific properties, and

development was planned and redevelopment for all those properties.

And, by the way, this can be obtained locally. The famous Ninkasi Brewing Company which makes Ninkasi beer now marketed in the Washington, DC, area—I am not being Kellyanne Conway here. I am just promoting something that——

[Laughter.]

Mr. DEFAZIO. They are on a former Eugene brownfield, and they have gone from 2 employees to 100.

So, you know, there is tremendous leverage of private investment in recapturing these assets, many of which are urban areas where the property can be very valuable.

Initially, and that was quite some time ago, 15 years ago, we were appropriating $250 million annually. Obviously, there has been inflation since then, but now we have been closer to $160 million annually, and the current administration is perhaps proposing further cuts or elimination of the program.

Mrs. Napolitano mentioned the EPA's estimate that over the past 5 years they have only been able to fund one in four of the applications, and that means we have foregone tens of thousands of jobs and billions, billions of dollars in leveraged private investment.

Now, our former colleague, Mr. Mulvaney, has suggested that the administration will only fund programs that work. Well, I would say that if they want to leverage private investment and they are looking for a program that works, they should be proposing an increase in funding for this program rather than a decrease.

I look forward to the hearing, and I look forward hopefully to bipartisan efforts to reauthorize and enhance this program.

Thank you, Mr. Chairman.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. DeFazio.

Would you like to give the website as well for the beer?

Mr. DEFAZIO. I will post it upstairs.

Mr. GRAVES OF LOUISIANA. I was talking about for the beer. All right.

Again, before I begin introducing witnesses, I need to dispense with a few unanimous consent requests.

I ask unanimous consent that the record remain open for 30 days after this hearing in order to accept written testimony for the hearing record.

Without objection, so ordered.

I ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing.

Without objection, it is so ordered.

Thank you.

I would now like to recognize our first witness, the Honorable Christian Bollwage, the mayor of Elizabeth, New Jersey.

Mr. Mayor, you are recognized for 5 minutes.

TESTIMONY OF HON. J. CHRISTIAN BOLLWAGE, MAYOR, CITY OF ELIZABETH, NEW JERSEY, ON BEHALF OF THE U.S. CONFERENCE OF MAYORS; HON. DEBORAH ROBERTSON, MAYOR, CITY OF RIALTO, CALIFORNIA; HON. MATT ZONE, COUNCILMEMBER, CITY OF CLEVELAND, OHIO, ON BEHALF OF THE NATIONAL LEAGUE OF CITIES; JOHN E. DAILEY, COMMISSIONER, LEON COUNTY, FLORIDA, ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES; AMANDA W. LEFEVRE, OUTREACH AND EDUCATIONAL COORDINATOR, KENTUCKY BROWNFIELD REDEVELOPMENT PROGRAM, ON BEHALF OF THE ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT OFFICIALS; AND JONATHAN PHILIPS, MANAGING DIRECTOR, ANKA FUNDS

Mr. BOLLWAGE. Thank you very much, Mr. Chairman.

Mr. GRAVES OF LOUISIANA. Is your microphone on?

Mr. BOLLWAGE. I lost 5 seconds. No.

Thank you very much, Mr. Chairman, Ranking Member, and Congressman DeFazio.

I was there and testifying back in 2001 and 2000 and 1999, and was pleased to be there in 2002 in Conshohocken, Pennsylvania, when the President signed that bill.

So I have been the mayor since 1993, and I am a trustee of the U.S. Conference of Mayors and the chair of the Brownfields Task Force of the Conference of Mayors. I am pleased to be here today to discuss the role that brownfields can play in our 21st-century infrastructure.

For many people, brownfields are just a neighborhood eyesore of the former industrial site that may exist, but for mayors, as all of you know, they represent unrealized potential for tax revenue, economic development, and jobs.

We see the redevelopment of brownfields as a chance to bring back to a community, to revitalize neighborhoods, and reuse existing infrastructure.

The brownfields law had a very positive effect and not only on our economy, but the Nation's economy. Some of the statistics already mentioned: 26,000 brownfield sites, 5,700 properties, 66,000 acres, over 123,000 jobs, $23 billion leveraged, and the $1 EPA investment generates $16 in other investments.

And the last time I was here before this committee, I talked about the Jersey Gardens Mall, one of our most successful Brownfields redevelopment sites. A former landfill on a 200-acre site now has more than 200 stores, movie theater, 4 hotels, 1,700 construction jobs, 4,000 permanent jobs.

Another successful redevelopment project was our Elizabethport HOPE VI Project. This former industrial spot was historically made up of businesses that focused upon complementing the shipping industry in Port Elizabeth. However, as our city expanded, evolved, and changed, so did the vision and potential of the land use.

So over a new $15 million townhome redevelopment is now made up of 55 market rate luxury housing units with market front views.

A federally funded HOPE VI project in the late 1990s and early 2000s assisted in the removal and replacement of public housing complexes into townhouses. Individuals previously residing in these

old, dilapidated facilities had the opportunity to become homeowners in new residential neighborhoods because of brownfields redevelopment.

And as I mentioned, the Brownfields Program has had a proven track record, leveraging private-sector investment, creating jobs, and protecting the environment. There is much more work that can be done.

As all of you said, due to limited funding, the EPA has had to turn away a lot of highly qualified applicants. The EPA estimates that for the past 5 years over 1,600 requests for viable projects were not awarded money. EPA estimates that if those applicants were funded, an additional 54,000 jobs would have been created with a $10.3 billion of leveraged funding.

I urge Congress to not only reauthorize the brownfields law with some minor changes to make it more effective, but to increase the appropriations. If you are looking to revitalize infrastructure as well and creating jobs, this is one of the best programs to do that.

And on behalf of my colleagues at NACo, NLC and the USCM, we have submitted a letter of organizations that we would like to officially submit for the record, and in this letter we urge Congress to pass a new brownfields law with some changes.

Mr. GRAVES OF LOUISIANA. Without objection.

[The letter follows:]

March 28, 2017

The Honorable Greg Walden
Chairman
Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Frank J. Pallone, Jr.
Ranking Member
Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Bill Shuster
Chairman
Transportation and Infrastructure Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Peter DeFazio
Ranking Member
Transportation and Infrastructure Committee
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Walden, Ranking Member Pallone, Chairman Shuster and Ranking Member DeFazio:

On behalf of the nation's mayors, cities, counties and regions, we strongly encourage you to reauthorize and improve the U.S. Environmental Protection Agency (EPA) Brownfields program, which is key for both economic development and job creation in local communities across the county.

Since its creation, the EPA Brownfields program has provided crucial assistance to local governments for reclaiming hazardous, polluted and underutilized properties. To date, there have been over 26,000 brownfields assessments and 1,200 brownfields cleanups nationally, which has led to over 123,000 jobs. Each of the $22 billion federal dollars that has been invested since the program was established in 2002 has leveraged approximately $16 in other investments, close to $400 billion in total.

While many communities have benefited from brownfields redevelopment efforts under this program, the U.S. Government Accountability Offices estimates there are between 400,000 and 600,000 remaining brownfields sites throughout the United States. To build upon these past successes and assist in the cleanup, reuse and redevelopment of remaining sites, some key improvements to the program are needed.

Increase or Maintain Authorization Amounts

While we understand the fiscal challenges and constraints faced by the U.S. Congress, we strongly encourage you to authorize and fully fund the Brownfields program to at least previously authorized levels. The Brownfields program has a proven track record of leveraging additional investments, creating new jobs, and redeveloping new properties, while creating additional tax revenues.

At current appropriation levels, EPA has had to turn away many highly qualified applicants due to a lack of funding. EPA estimates that for the past 5 years, over 1,700 requests for viable projects were not awarded money because of limited funding. EPA estimates that if they were able to provide funding to those turned away applicants, an additional 50,000 jobs would have been created along with $12 billion of leveraged funding.

Additionally, President Trump has made reinvesting in America and putting people back to work as key priorities for his administration. In order to make this happen and to do so quickly, Congress should utilize existing programs, and we believe that the Brownfields program would be a strong candidate for any type of reinvestment initiative. **That is why we urge Congress to increase or at least maintain the current authorization levels for EPA's brownfields program.**

Increase Overall Grant Funding to Allow Communities to Cleanup More Difficult Sites

Although many brownfield sites have been redeveloped, what remains are brownfield sites that are more difficult to redevelop due to their level of contamination or marketplace conditions. Communities would like the EPA program to be expanded to address the clean up challenges at these more complex sites.

We suggest the following:

- **Increase Cleanup Grant Amounts** – Congress should recognize the complexity of the cleanup process for larger or more complicated sites by increasing the funding limit for cleanup of a single site to $1 million. Under special circumstances, EPA could waive the limit, up to $2 million per site.

- **Establish Multi-Purpose Brownfields Grants** – Congress should allow local governments to have the option to apply for multi-purpose grants that can be used for the full range of brownfields-funded activities (assessment, cleanup, reuse planning, etc.) on a community-wide basis. Applicants should be required to demonstrate a plan and the capacity for using this multi-purpose funding within a set timeline in order to qualify for such funding.

- **Allow Funding for Reasonable Administrative Costs for Local Brownfields Programs** – Congress should allow brownfields grant recipients to use a small portion (10 percent) of their grant to cover reasonable administrative costs such as rent, utilities and other costs necessary to carry out a brownfields project.

Brownfields Liability Concerns are a Disincentive for Local Governments

Local governments face enormous challenges in brownfields redevelopment. One of the most significant challenges is the potential liability for local governments, which creates a disincentive to acquire contaminated property. We encourage Congress to revise the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERLA) to encourage and protect local communities who choose to take ownership of blighted properties for the purpose of brownfields redevelopment where the local government had no role in creating the contamination. These changes should include:

- **Clarify Eligibility of Publicly-Owned Sites Acquired Before 2002** – Congress should allow local governments to be eligible for grant funding for properties that were acquired prior to the January 11, 2002 enactment of the Brownfields Revitalization Act—when there was no required standard for "all appropriate inquiries"—provided that the applicant did not cause or contribute to the contamination and performed "appropriate care." For these sites, applicants would not have to demonstrate that they performed all appropriate inquiry.

- **Remove Barriers to Local and State Governments in Addressing Mothballed Sites** – Congress should exempt local and state governments from CERCLA liability if the government unit (a) owns a brownfields property as defined by section 101(39); (b) did not cause or contribute to contamination on the property; and (c) exercises due care with regard to any known contamination at the site. We suggest language to amend section 101(20) (D) that clarifies that properties acquired through eminent domain qualify for the CERCLA exemption for local governments involved in "Involuntary Acquisitions." Alternatively, we would suggest language that establishes a simplified and clear exemption from CERCLA liability for local governments that acquire brownfields sites.

- **Eliminate Eligibility Barriers for Petroleum Brownfields Sites** – Grantees that seek to use assessment, cleanup or multi-purpose grants on sites with petroleum contamination should not be required to make the difficult demonstrations that the site is "low risk" and that there is "no viable responsible party" connected with the site. We recommend replacing the "No Viable Responsible Party" language in section 101(39)(D) with a prohibition on using funds to pay for cleanup costs at a brownfields site for which the recipient of the grant is potentially liable under the petroleum statutes. This would parallel the language for non-petroleum brownfields sites.

If you have any questions, please contact Judy Sheahan at USCM (jsheahan@usmayors.org), Carolyn Berndt at NLC (berndt@nlc.og), Julie Ufner at NACo (JUfner@naco.org), or Leslie Wollack at NARC (leslie@narc.org). Thank you for your consideration.

Sincerely,

Tom Cochran
CEO and Executive Director
The U.S. Conference of Mayors

Matthew D. Chase
Executive Director
National Association of Counties

Clarence E. Anthony
CEO and Executive Director
National League of Cities

Leslie Wollack
Executive Director
National Association of Regional Councils

Cc: Members of the House Energy and Commerce Committee
Members of the House Transportation and Infrastructure Committee

Mr. BOLLWAGE. I want to mention that the challenge that the communities now face is that many easy brownfield sites have been developed, and what now remains are the more difficult sites, the sites that may be more contaminated or are located with tougher redevelopment markets.

So our recommendations include increasing the grant cleanup amounts from $200,000 to make it more attractive to a developer. We would like to see an opportunity of $1 million and possibly in special circumstances up to $2 million.

Second, creation of a multipurpose grant. The way the program works now is that a city applies for a grant, identifies a property where it will be spent. This program, this problem is not flexible. The development may change. The developer may need a new site. The money is then targeted for the one site. You have got to restart the process, and it just takes too long, maybe up to 6 more months.

Redevelopment of "mothball" sites, a very big problem in some communities where owners are just not willing to sell or give up their land, and one such tool would be to give cities additional liability protections if they want to acquire property through voluntary sales.

Some recommendations include allowing reasonable administrative costs, clarifying eligibility of publicly owned land and sites acquired before 2002, encouraging brownfield cleanups by Good Samaritans.

I would like to thank the Brownfields Task Force and this subcommittee for having me testify here today. I thank you, Mr. Chairman and Ranking Member, and all the members of the committee for making brownfields an important tool for redevelopment.

Mr. GRAVES OF LOUISIANA. Thank you. I appreciate your testimony.

I want to turn to our second witness, the Honorable Deborah Robertson, the mayor of Rialto, California.

Mayor Robertson, you are recognized for 5 minutes.

Ms. ROBERTSON. Thank you.

Councilman Zone. Good morning, everyone. Good morning Chairman Garret Graves and Ranking Member Grace Napolitano, and members of the subcommittee. Thank you for giving me the opportunity to testify and talk about how we can revitalize the American communities through the Brownfields Program.

It is a privilege and an honor for me to participate in this important hearing. I am here today as the mayor of the city of Rialto, and I share strong support, my community support, for the U.S. Environmental Protection Agency's Brownfields Program.

For those of you who are not familiar with Rialto, Rialto is in the eastern part of California's San Bernardino County, east of Los Angeles. We are a vibrant, ethnically diverse working-class community of over 100,000.

The interesting part about Rialto though is that we are only 4 miles wide and 8 miles long, and yet still we have quite a bit of activity going on in our community. It is in the Inland Empire, and we are an environmental justice community.

Like many older communities, we grew up along the railroads. It has a long and colorful history that evolved from an agricultural base into a more urban transportation industrial economy.

Rialto is home to a number of major distribution centers, including the Staples Center, which serves the entire west coast of the United States, Toys R Us, Under Armour, Niagara, Medline, Amazon, and Target for the northern region of our city, and also the western region.

We also are home to the largest fireworks company, Pyro Spectaculars, which is headquarters in Rialto and listed as the world corporate office.

The city hosts the Union Pacific's East Colton classification yard, Kinder Morgan with the big regional petroleum and fuel storage farm, and we also have major trucking companies, such as Old Dominion, Yellow Freight, UPS, and FedEx.

In addition to that, we have a major defense contractor, which is Martinez and Turek, who provides construction of launching pads for the NASA Program, and also we have a major confectioner manufacturer.

We are in the middle of a confluence between three major freeways or highways, Interstate 10, the 210, and Interstate 15, which helps us in conveying a lot of goods movement from the ports of Long Beach and Los Angeles to the rest of the Nation.

And we have over 95 companies that handle hazardous waste. In the State of California, the Water Resources Control Board environmental mapping program, better known as GeoTracker, indicated a significant number of underground storage tanks that are leaking, and EPA, moreover, manages and operates a Superfund site in the northern part of the city.

So while my hometown is a wonderful place to live, work and play, it also confronts many economic and environmental challenges that can best be addressed through the assistance and partnership of local, State and Federal Government.

As an elected official and a public servant for more than 30 years, not just as a local elected official, but also as an official for the Department of Transportation, better known as Caltrans, we view these programs as vital to assisting our community in cleanup, restoring, and reusing the environmentally compromised properties that exist within our communities. The partnership is absolutely critical to the economic revitalization and job growth.

I know in my testimony I submitted, I talked about a number of sites that are currently underway and the fact that in Rialto we have identified over 25 remaining sites that are left to be cleaned up.

But I would like to share one other additional thing. We have an area as a local agency where we inherited or we took over a general aviation airport many years ago. That airport required us to seek Federal legislation to relocate the aviation activity so that we could then take that property, over 953 acres, and be able to redevelop it so that it can bring jobs.

For me, I see the program and the Brownfields Program as the only program probably that helps our communities, all of them, in being able to restore the land and put it into a good economic use, such as bringing about not only the revenue for the community, the revitalization, and the jobs, but also being able to deal with the blight that goes on in our community.

I would encourage you, you know, to really look at this program and support it, but also, as my colleague says, to increase it because we have wo many sites that still need to be addressed, and we will never get ahead of the eight ball if we are only identifying a few at a time.

In Rialto, we have been blessed to be a part of something similar, Chairman, that you have in your district, and that is to be designated as a megaregion, and so we are looking at how, similar to your transit, do we take that and tie the nexus between brownfield cleanup and data analytics, logistics, surveillance and at the same time innovation, things that will bring more jobs into the community of Rialto and in southern California.

Thank you.

Mr. GRAVES OF LOUISIANA. Thank you, Madam Mayor.

Next we have the Honorable Matt Zone, who is a councilmember from Cleveland, Ohio.

I appreciate you being here, Councilmember Zone. You are recognized for 5 minutes.

Mr. ZONE. Thank you.

Good morning, Chairman Graves and Ranking Member Napolitano and members of the committee.

I am Matt Zone. I am a councilmember from Cleveland, Ohio, and president of the National League of Cities. I am here today on behalf of the National League of Cities, which is the oldest and largest organization representing 19,000 cities and towns of all sizes across America.

I appreciate this opportunity to share our perspective on the importance of the U.S. Environmental Protection Agency's Brownfields Program, and discuss how the program contributes to the revitalization of communities, and boosts the localand national economy.

Mr. Chairman, as an older industrial city, Cleveland has had a long manufacturing legacy. Today that legacy has left us with many abandoned factories, vacant commercial spaces, and polluted industrial sites.

These brownfield properties pose environmental and health risks, but redeveloping them has helped to bring new life to Cleveland and to create new opportunities for our residents.

In 2005, the city partnered with the EPA and the State of Ohio, local businesses, and other entities to create the Land Bank Program which is targeting former industrial and commercial properties for rehabilitation. Known as the Industrial-Commercial Land Bank, the program's mission is simple: to invest in redevelopment, redeveloping contaminated properties for productive use.

And to date, Mr. Chairman, our Industrial-Commercial Land Bank has redeveloped 13 sites. We have cleaned up 137 acres. We have invested $40 million in Cleveland, and we have created or retained 2,800 jobs.

In my written testimony, members of the committee, I highlight three projects that our city has undertaken through our land bank, but right now I want to talk just about one in particular, the Trinity Building.

It has been one of the most challenging sites, and I think it illustrates why the Federal support for brownfields redevelopment is so critical

The Trinity Building is a small, 6-acre site, but it posed huge challenges for our city. Today the site is positioned to be the future home of our city kennel, but it took a difficult road and a strong Federal-local partnership to get there.

The Trinity Building was originally a factory that produced aluminum products and employed over 500 Clevelanders, but in 1980 the factory closed, and by the mid-1990s, the abandoned building had become a blight on our community and a public health risk for our local residents.

So in 2004, the city took ownership of the property, and we allocated $2.9 million for remediation. Three years later, the city discovered that the site was contaminated with dangerous PCBs. With such a significant public health risk now in play, the city requested that the EPA investigate the site and assist with an immediate response.

After conducting its response, EPA announced that the city itself, and this is important; the EPA announced that the city itself could potentially be liable for the cleanup. If it had not been the worst-case scenario, that huge cost of treating PCB contamination would have put our Land Bank Program in jeopardy.

Fortunately, the city was able to work with the EPA to prove that the pollution was not the city's fault, but the process took years of litigation and delays, and created substantial uncertainty in the remediation project which ultimately increased our cost to the city.

You know, when you look at the return on that initial investment, Mr. Chairman, as a local government official, I can attest to the fact that the brownfield redevelopment is a powerful economic tool. Turning polluted properties back into productive real estate helps us create jobs in distressed communities, while simultaneously improving public health and safety.

But brownfields redevelopment involves a lot of risk for cities and for developers. You know, projects like the Trinity Building needed public support to compete with newer development sites and overcome the challenges of working with contaminated real estate. Our brownfield challenges and unique opportunities really allowed us to support our cities and towns as we worked to really revitalize our main streets in downtowns across economically challenged neighborhoods in America.

So NLC urges Congress to reauthorize the Brownfields Program and make some key improvements. Our first priority would be we would urge Congress to increase or maintain the current overall authorization level for the program.

My colleagues will discuss some of the other shared priorities like the importance of multipurpose grants and raising the overall cap on the cleanup grants amounts, but I want to take a minute to just talk about the issue of municipal liability.

You know, Cleveland's experience with the Trinity Building highlights one of the greatest challenges that local governments face in redeveloping brownfields, and that is the dangerous liability concerns that can arise when cities acquire contaminated property.

For most brownfield sites, the only chance of redevelopment is through public acquisition. But just like with the Trinity Building, hidden liabilities can arise after cities acquire property, even if the city had no role in creating those contaminations.

The result is that many local governments are unable to acquire property because of the risk of incurring major liability, and Congress can fix this problem by clarifying and expanding the liability protections for public entities that acquire contaminated brownfield sites, especially where that public entity was not responsible for creating that contamination.

In closing, Mr. Chairman, in 2009, I had the opportunity to testify on the reauthorization of this program, and I am grateful that the city of Cleveland has the experience and the resources to start redeveloping many of our brownfields in our neighborhood.

I am joined today by David Ebersole, the director of our Brownfields Program, and our story in Cleveland is no different than any other industrial American city, and our residents are feeling the benefits of turning polluted sites back into productive places.

But even though there is so much progress that has been made, the work is nowhere near finished.

Mr. GRAVES OF LOUISIANA. Would you please wrap up?

Mr. ZONE. I want to thank you for this opportunity, Mr. Chairman, and I look forward to your questions in a little bit.

Thank you.

Mr. GRAVES OF LOUISIANA. Thank you. I appreciate it, Councilmember.

Our next witness is Commissioner John Dailey from Leon County, Florida.

Commissioner Dailey, you are recognized.

Mr. DAILEY. Chairman Graves, Ranking Member Napolitano, and members of the subcommittee, it is my honor and privilege to be here with you today.

My name is John Dailey, and I serve as the chairman of the Leon County Commission in Florida, and today I am representing the National Association of Counties.

Leon County is located in northern Florida, and is home to our State capital of Tallahassee. We serve a population of 285,000.

As a county commissioner, I have seen firsthand the positive effects that brownfields redevelopment has had on my community. Today's hearing is timely since counties play such a significant role in both land-use planning and economic development.

Many counties oversee brownfields redevelopment projects directly because these projects are a natural extension of our land-use authorities. These authorities include developing comprehensive land-use plans, setting zoning ordinances, overseeing environmental monitoring and enforcement, creating viable economic development districts, conducting public health evaluations, and running risk assessments at brownfield sites.

These many responsibilities allow us to see the big picture for our communities and direct our focus on areas that would most benefit from a brownfields redevelopment project.

In my county, we had a former 450-acre brownfield site that included a historic rail depot, chemical warehouses, and other indus-

trial sites, and about 6 years ago, we completely transformed the area. And it is vibrant. It now includes shops, restaurants, pubs, hotels, private housing, and a small business incubator.

As a result, the corridor has brought 200 new jobs, increased the tax value of the site by $130 million, and attracted nearly 3,000 new residents. Since additional improvements are planned, we only expect these numbers to grow.

We are also proud of our 24-acre Cascades Park. This area was formerly a manufactured gas plant and municipal landfill located just blocks from the Florida capital. We have completely transformed this area into a nationally award winning stormwater facility that just happens to also be a beautiful central park in downtown Tallahassee.

The successes that we have experienced are not atypical. Counties across the U.S., large and small, are undertaking brownfields projects in their local communities. While we have made tremendous strides, it is estimated that there are over 400,000 brownfield sites that have yet to be addressed nationally.

As you consider revisions to the Federal brownfields policies, we have several recommendations to ensure that local governments can successfully clean up and develop sites as part of our comprehensive plans.

First, there is more need for funding. I will say it again. There is more need for funding availability for local governments. We need that strong Federal partner to address these sites, no doubt about it.

[The National Association of Counties submitted the following post-hearing amended portion of Mr. Dailey's opening remarks:]

> We recommend that Congress maintain or even increase funding for EPA's Brownfields Program and increase the total allowable grant amount so communities can clean up more sites.

Second, we advocate for a multipurpose grant program which would allow local governments to apply for one, rather than multiple, brownfield grants to clean up the site. Under the current process, county governments bear a significant administrative burden because we have to apply for multiple grants for one project and have very little flexibility on how we apply the grant to meet the needs of the project in our local community. This places a burden on our staff.

Third, as local governments acquire brownfields, our ongoing risk of incurring liability under Federal environmental laws is a continued concern and may prevent us from even acquiring the sites in the first place, as my colleagues have also testified.

This is especially relevant, as it was mentioned prior, for "mothball" properties where the current property owner is unreachable or unwilling to discuss a property transfer or improve the site conditions. These sites are often delinquent on property taxes, and the local government must foreclose on the property to address the contamination. However, this is the option of last resort because of liability issues.

While a number of the States have clarified brownfields liability protections for local governments, there is a need for a more permanent national solution.

We believe that Congress should exempt local and State governments from liability if they neither caused nor contributed to the contamination and exercised due care with contaminants once they acquired the site.

In conclusion, we look forward to working with the committee to address revisions to the Federal Brownfields Program. Together, we can transform our communities and lay the groundwork for a new and better future.

Thank you again for the opportunity to testify today on behalf of America's 3,069 counties. I welcome the opportunities to address any questions that the committee may have.

Thank you.

Mr. GRAVES OF LOUISIANA. Thank you, Commissioner.

Our next witness has been misled in the pronunciation of her name. Coming from south Louisiana, we would pronounce that very differently. However, I will respect the Kentucky approach here.

Ms. LEFEVRE. Right.

Mr. GRAVES OF LOUISIANA. And I want to introduce Ms. Amanda LeFevre from Kentucky Brownfield Redevelopment Program.

Ms. LEFEVRE. We also say Versailles, too, instead of Versailles. So please forgive us.

But good morning, Chairman Graves, Ranking Member Napolitano, and members of the subcommittee. Thank you for having us all here today to talk about this subject.

My name is Amanda LeFevre. I am the vice chair of the Brownfields Focus Group for the Association of State and Territorial Solid Waste Management Officials.

ASTSWMO is an association representing the waste management and remediation programs of the 50 States, 5 territories and the District of Columbia. ASTSWMO is a strong supporter of the Brownfields Program. Brownfields are evidence of our country's proud industrial, commercial and social heritage. These once thriving properties, now abandoned, contribute to the economic, social and environmental decline in the places we live, work and play.

However, the redevelopment has substantial benefits. Brownfields redevelopment sparks job creation and private investment, encourages infrastructure reuse, increases property values, improves the tax base, and facilitates community revitalization.

For the past 15 years, State and territorial Brownfields Programs, in collaboration with local communities and our Federal partners, have served to break down the barriers to redevelopment. Section 128(a) funding has allowed States to building a buffet of services particular to their State's specific needs.

Services can be accessed and combined, depending on the project and the entity pursuing the project. At any given time you will find State program staff across this country providing environmental site assessments, assisting communities to apply for Federal brownfield grants, providing education on brownfield redevelopment, assisting entities to manage risk and liability, providing crucial technical support, and managing the volunteer cleanup programs that are the basis for the reuse of properties.

Properties going through our programs may use one or all of our services, but the underlying theme is that we cannot provide them without the section 128(a) funding.

While many envision brownfields as just an urban problem, we would like to highlight the important role that we play in small cities, towns, and rural areas. Due to limited resources, these smaller local governments cannot afford to have an environmental professional or a grant writer on staff. They require a higher level of project assistance.

In many cases, redevelopment in these towns would not happen without those section 128(a) supported services. Since the beginning of the section 128(a) program in fiscal year 2003, funding has been provided at just under the $50 million level, whereas the number of applicants has more than doubled. In the first year, 80 States, territories, and tribes received funding. By 2016, 164 entities requested funding, including 50 States, 4 territories, the District of Columbia, and 109 tribes, 8 of which were new.

The awards in 2003 averaged $618,000. In 2016, they averaged $293,000. As a result of this budgetary slide and inflation, States have increasingly resorted to cost saving measures, such as brownfield staffing reductions, cutting or eliminating the amount of assistance provided, increasing fees, and reducing the number of environmental assessments.

This especially impacts our rural partners as they frequently require more support services than some of our urban partners.

We are at a critical juncture in our national history where expansion of our municipal boundaries, while attractive short term, lead to increased infrastructure costs that we can ill afford. While rebuilding our infrastructure, we have the opportunity to revitalize the surrounding areas which will help build a more robust economy. Brownfield development and economic development go hand in hand.

Keep in mind that brownfield investment is a good one. The funding provided for brownfields redevelopment multiplies in our communities and attracts additional public and private investment. According to the studies indicated in my written testimony, $1 of brownfield investment in Delaware generates a $17 return on the State's initial investment. In Wisconsin that $1 leverages $27 in total funding and resources. In Oregon, $1 equals about $15, according to a 2014 study, and in Michigan in 2016, if you spend $1 on brownfield redevelopment, you received about $34 in leveraged funds.

And brownfields, of course, are the gift that keep on giving. Since 2015, Oklahoma has garnered over $10 million in new State and income taxes annually on remediated sites. A 2014 study of Oregon's program found that the 51 completed sites in their survey generated 4,300 permanent jobs. Sixty percent of those were in the industrial sector.

To summarize, ASTSWMO believes that a robust Brownfields Program at all levels of Government is essential to our Nation's economic, social, and environmental health. The ASTSWMO position paper, "128(a) 'Brownfields' Grant Funding," which was provided with this testimony, gives additional information on ASTSWMO's support for the program.

We thank you for this opportunity to offer testimony today, and I will be happy to answer any of your questions.

Thank you.

Mr. GRAVES OF LOUISIANA. Thank you, Ms. LeFevre.

And finally, for cleanup, our last witness is Mr. Jonathan Philips with Anka Funds.

Mr. Philips.

Mr. PHILIPS. Good morning, members of the committee. I am Jonathan Philips, managing director of Anka Funds out of Raleigh, North Carolina.

Anka Funds invests institutional capital and expertise in strategies that often concurrently help solve environmental or societal problems. We have acquired approximately 700 properties and spun out of Cherokee Investment Partners, which prior to the 2008 crash, had been recognized as the world's largest and most active firm specializing in brownfield revitalization.

And given what we know about the causes of the brownfield problem, the market forces that both inhibit and encourage remediation and redevelopment, existing Government programs to encourage redevelopment, and the criteria that markets use to select particular sites for investment, we ask: how do we solve the overall problem? How do we move beyond the current situation where some of the sites are being remediated and redeveloped while literally hundreds of thousands of others continue to languish?

A friend once told me that for every complex, difficult problem, there is usually a simple solution—and it is usually wrong. I think that is true for the brownfield issue generally.

If there were one simple solution, we probably would have found it and enacted it long ago. On the one hand, the problem seems clear cut. The costs associated with redeveloping a site must be outweighed, when adjusted for risk, by the potential economic reward from that transaction. Viewed on that level, the solution becomes one of reducing costs and risks or increasing potential income.

On the other hand, the problem is much more complex. In 2005, 2006, 2009, and 2015, I encouraged congressional committees to think about sites as being "underwater" or "above water." A few brownfield sites may be already economically "above water." That is to say, without additional incentives, those sites will still likely be revitalized soon. The risk of unknowns may still drive some developers away, but the project is economically viable.

The other sites, sort of in the middle band, are those that are marginally "underwater." That is to say that with some coordinated efforts, focus, creativity, and a modest economic push, the sites would likely be redeveloped within a reasonable period of time.

And then there is a third category of sites in less attractive real estate markets and/or those with more substantial contamination. Those sites may be substantially "underwater" and without significant help may never be cleaned up.

Viewed on this level, the solution becomes more multifaceted. Policymakers need to increasingly understand that the problem of brownfields is nuanced, and solutions must be nuanced and targeted, as well.

Some would prefer to focus attention on the geographical intersection of the most polluted sites and those with the lowest intrinsic real estate value, as these are the ones that most need the help from the public sector for reclamation to occur.

Other folks would prefer to target sites that fall within the geographical intersection of those with most economic development potential and those that are most easily, cheaply, and quickly revitalized. So, you know, perhaps the answer is a combination of those two views.

If we, as a country, really want to attack the brownfield issue on a nationwide basis, it is clear that we must create policies that will truly move the meter well beyond assessment assistance and expensing provisions—though such programs have been and continue to be important.

I believe it is on this front that the Federal Government can have the biggest impact. The challenge should not be to create a new program that helps better characterize brownfield sites or that tries to create a larger role for Federal agencies. The Federal Government's challenge should be to look for bold, innovative ways to reduce barriers and create incentives to attract significant volumes of private capital and hire leaders who know how to do this.

I have spent a good amount of time thinking about creative ideas related to this issue, from both a policy perspective and also as an investor who could benefit from a good many programs that have been put in place over the years across different agencies. The fruit of some of this thinking was the UBIT tax exemption for eligible nonprofits investing in qualified sites, an idea I personally developed in 2000 and one that was passed into Federal law as part of the American Jobs Creation Act of 2004 with active, bipartisan support.

I understand members of this committee and also in the Senate have been working on a reauthorization of this legislation. This is just one example of the Federal Government's creative path to leveraging private capital to clean up and recycle America's lands.

It is my basic assessment that the sites most plaguing this country are more often than not either those that would produce net losses for private investors or those with a risk reward ratio that is significantly unattractive relative to traditional greenfield development. In either case, the problem stems from rational economic decisions based upon local forces of supply and demand.

With strong public guidance, private forces can operate efficiently to produce revitalization in places where communities most need it, but where without such involvement, revitalization may not occur.

Right now the EPA has a unique opportunity to dig deep into the anatomy and, if I may borrow a phrase, "the art" of a private brownfield deal and understand and alleviate the obstacles that remain. Doing so will forge a pathway where one day the Federal Government's expenditures will drastically reduce and be reserved for a much smaller group of sites.

It will take very concerted leadership at the highest levels of the EPA and other agencies to make this happen, but it is doable and will not require large expenditures of taxpayer dollars.

With less than 4 percent of the Nation's brownfields having been cleaned up in a decade following the EPA's coining the term

"brownfield," it is clear that more needs to be done. Clearly, if we are to be successful, the Federal Government must be an active and significant facilitator and partner in this effort to attract private investment to solve this problem in our lifetime. We have an opportunity to make real headway and leverage the private sector as never before.

Thank you for your invitation to provide testimony to the distinguished members of this committee and repeat our sincere interest and willingness to continue to serve as a resource to you and your colleagues as you do your good work.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Philips. I appreciate it.

For the first round of questions I am going to defer to the gentleman from Illinois, Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman.

I appreciate you convening this panel today. Great testimony, and this is a very important issue even in rural communities that I serve in central Illinois.

I would like to ask the panel about access to brownfields grant funding for some of those rural communities. One such community in my district in Litchfield, Illinois, has been working with our regional office, EPA region 5, and the Illinois EPA to secure funding to clean up and redevelop a specific property, but unfortunately has not yet been successful in acquiring that funding.

The city continues to be told that no funding is available to assist, and the property in question, a small property, sits downtown and it impacts economic viability during the year when community events are bringing thousands of people to that rural community.

Can any members of the panel address any disparities that exist for rural communities having access to brownfields funds and make some recommendations for having to improve them?

Who wants to start? Ms. LeFevre.

Ms. LEFEVRE. Well, in Kentucky, I mean, if you have ever been there, it is mostly green space. So incentivizing——

Mr. DAVIS. And horses.

Ms. LEFEVRE. And horses and some bourbon out in the corner, right?

So when we first started our program, really all we could do for you was assessments, but our program in particular, and all of our programs are different across the States. We have been given that latitude to create what each State needs.

So part of our strategy, we cannot give you funding, but we can actually help you get better access to that. And as you know, the brownfield cleanup grant competition is highly competitive. So what we undertook was a strategy of teaching communities who did not have a grant writer on staff how to better write grants, how to make them more competitive.

So we created a lot of those support services. We also worked with our Area Development Districts. I am not sure if Illinois has something similar.

Mr. DAVIS. Oh, yes, we do.

Ms. LEFEVRE. If you can educate your Area Development Districts on those grants as well, they have been strong supporters of

brownfield cleanup grants and things like that, and they work with their smaller communities.

A lot of times those smaller communities need those gap services. So that is where our State and local Area Development Districts really come in.

Mr. DAVIS. OK.

Ms. LEFEVRE. So it is more building a support system that will help them because they are at a disadvantage because you have a lot of consultants writing grants and professional grant writers. So you have got to get them on a much more even playing field.

Mr. DAVIS. Thank you for your suggestions.

Mr. Philips, in the development business that you are in, do you see this disparity with any of your properties?

Mr. PHILIPS. Well, there is no question that redevelopment of brownfields from the private-sector perspective is driven completely by the real estate markets, and that is the local real estate markets. And so if that particular rural community has an attractive real estate opportunity, that is going to drive the private capital. That is fundamentally what folks, I think, need to understand.

Now, in rural communities, there are opportunities to be creative. People have used the USDA loan program. People have included solar credits as part of brownfield sites redevelopment. They have included monies from broadband infrastructure in rural communities.

So people get really creative with dipping into different pockets, but at the end of the day, you know, it is interesting. I think the EPA and the administration and Congress can really do a great job here in focusing attention and being a facilitator for more difficult sites or sites in areas where maybe there is less economic activity.

There was a site in Oklahoma called Tar Creek that we toured with Senator Inhofe at the time. He had asked to come and look at a private buyout of residents who happened to be in that locality and who were concerned about contamination. And what it did was it really focused the lens on that area and allowed other private companies to come in and were interested in the sites and began poking around, and it spurred some activity.

And I think that helps in some of the rural settings.

Mr. DAVIS. Thank you. Thank you.

Mr. Zone, I want to go on to another question real quickly while I have got a couple of seconds. What you guys have done in Cleveland is amazing. I was there this summer, a beautiful community. You guys did great at the National Convention, which was probably the best logistically run convention I have been to out of three. So congratulations to the city of Cleveland.

In cases where State and local governments involuntarily acquire brownfields by bankruptcy, abandonment, et cetera, how do they protect themselves from liability?

And what about cases where they voluntarily acquire these sites, too?

Mr. ZONE. So this summer they were calling for a riot and we threw a block party in Cleveland. So thank you for coming.

You know, local governments can take control of property through a variety of means, including tax liens, foreclosure purchases, and the use of eminent domain in order to clear title.

Consolidating multiple parcels can be very challenging, but when you are looking to put forth an economic, viable project, sometimes you need to do that. So we have been conducting site assessments, remediating environmental hazards to address public health and safety issues and otherwise preparing the property for development by the private sector or public and community facilities.

The issue is that CERCLA includes liability defenses and exemptions that may protect local governments, and the optimal word there is "may," that involuntarily acquire brownfields.

We have acquired property through tax delinquencies, and you know, one of the examples cited in the law often presumes that we are protected. That creates exposures for cities.

I would be happy to follow up, Mr. Chairman, at a later date if that is appropriate.

Mr. GRAVES OF LOUISIANA. Thank you. Thank you, Councilmember.

I want to defer to the gentlewoman from California, the ranking member of the subcommittee, Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chair.

This is for the entire panel. Based on current appropriations to the Brownfields Program, we know that EPA can only fund 30 percent of qualified applications that are submitted to the agency annually. The funding deficiency delays vital community redevelopment plans and prohibits business expansion.

In your opinion, what would be the beneficial amount to increase the authorized funding level to the program?

And should we increase it, yes or no?

[Many panelists nod.]

Mrs. NAPOLITANO. Yes. And to what level?

Mr. ZONE. The total amount? Well, we have been asking for up to $1 million per project, and in some instances, you heard the mayor talk about maybe in special exemptions up to $2 million.

Mrs. NAPOLITANO. No, for the whole program. All of it. What would happen if it were doubled? What would happen to the ability for you to file and get cleanup?

Mr. BOLLWAGE. Currently, in every congressional district in this country there are at least 30 identified brownfield sites, and if you look at the 30 identified brownfield sites at a minimum in every congressional district and you pick a number, I think this panel would gladly leave it up to this body on what number you would want to pick.

Mrs. NAPOLITANO. But what would you do with the money is what I am asking. Every community, would it help foster your economic growth, your cleanup?

Mr. BOLLWAGE. Oh, go ahead. Absolutely, yes. All of that.

Ms. ROBERTSON. Yes, without a doubt, Member.

I would just like to say, echoing what they are saying, as I said earlier we have just in Rialto alone 25 identified sites. That is not counting surrounding communities, and even though Rialto and the areas, such as Colton and my neighbors, we are all seen as urban or suburban areas.

I would think that if you were to increase the program, perhaps we would be able to move forward on not only our own sites, but

also on some of our neighboring sites, such as the application I have right now.

Mrs. NAPOLITANO. Well, what would it mean to the economy to each site?

Ms. ROBERTSON. Right, but at least it would allow us to include, do multijurisdictional assessments with the county and with our local agencies, and so we could attack and address the issue, I think, a more effective way if we knew we had more resources available.

Currently, we have to decide how can we, one, be successful and at the same time do it in a manner that we look at multijurisdictional applications from now on.

Mrs. NAPOLITANO. OK. And you heard me state that we sent the letter to the leadership in regard to the cut of funding to the EPA program, the Brownfields Program. We have not received a response.

Are any of you concerned about the elimination of the program?

Mr. ZONE. Yes, absolutely, and I would say that only about one-third of all applications that are submitted are actually funded. So to answer your previous question, if you increased the program by three, I think that would be moving in the right direction.

Mrs. NAPOLITANO. Anybody else?

Mr. BOLLWAGE. A couple of weeks ago, I met with the Administrator, with the U.S. Conference of Mayors, and part of his comments were extremely encouraging when it came to funding brownfields and Superfund sites.

Mrs. NAPOLITANO. Just remind him of that.

Mr. BOLLWAGE. I am. Hopefully, I will have the opportunity to do that, but he also said that he was going to take that position to the White House and be firm and stern about funding brownfields and Superfund sites, and he saw that from his perspective as the new Administrator as a priority in the upcoming budget.

Mrs. NAPOLITANO. Let's hope the President agrees with him.

Mr. BOLLWAGE. I agree, Congresswoman.

Mrs. NAPOLITANO. One of the original goals of the brownfields law was to invest in communities of underserved populations. Has the implementation followed through on the original goal? Anybody?

Ms. ROBERTSON. Well, if you do not mind, I would like to at least address that to begin with. In some degree, the money, the resources that have been made available in Rialto has definitely helped. When I was making my comments earlier about the Federal legislation that allowed for the relocation of the general aviation airport, it was very ironic. The city took on the facility which was really in the past a military installation.

Yet when it was time for us to do cleanup and identified hazardous waste there at that property, because the city owned it, it is back to what we were talking about: the liability that becomes a big problem.

We could not even apply funds to that. Nonetheless, we are moving forward. We are redeveloping an area that is going to bring about a significant retail, commercial, industrial, and housing area

to the tune that when we build out the total 1,500 acres, we are going to see approximately a $2 billion investment.

Sadly, that investment and what we will see envisioned will not have occurred with the brownfields dollars. But fortunately, we have used them in other areas within the city, an 18-acre area where we are going to be able to do similarly, and we will be able to bring about a public fire station and other open spaces.

So it has been an advantage to the underserved communities.

Mrs. NAPOLITANO. Thank you, Mr. Chair.

Mr. GRAVES OF LOUISIANA. Thank you, Ranking Member.

We are going to next go to Mr. Ferguson from Georgia.

Mr. FERGUSON. Well, thank you all for taking time today.

It was not but just a few months ago I was sitting where you all are as mayors and representatives of your local communities. Lord, sometimes I surely do miss that compared to what we get to go through now.

But I will say this. As a mayor, I have dealt with this issue before, and I was mayor of a community that really had to go through an important revitalization to begin to put itself back on track.

And one of the things that we found that was very, very difficult in this process with brownfields was the complexity of the process, and we always tried as a local government to make the process of application through the permitting as smooth as seamless as possible.

Could you all address, you know, two issues? First of all, how would you recommend or what are your thoughts on streamlining the process, getting through the procedures?

Because that is one of the things that developers would always come to us and say. "Hey, we understand there is a process here, but sometimes it is so complex and so complicated that the economic viability of the project is in jeopardy because of the longevity."

And private dollars will follow the opportunity to make a profit, and they get hung up in a swamp, so to speak, it really makes it more difficult.

And the second thing is: can you all speak to—and, Mr. Philips, maybe you could address this—how much, even with brownfield grants; what is the economic viability gap on many of these projects, particularly in rural communities, and how would you address that?

So we will start with Mr. Dailey, if you do not mind talking about how would you streamline the regulatory process.

Mr. DAILEY. Congressman, that is a fantastic question, and we appreciate it. What we tend to forget nationwide is that 70 percent of the counties have a population of 50,000 or less. We are small; we are rural, and so we deal with these issues day in and day out.

In the State of Florida, we have a population of over 2 million, half of which live in the unincorporated areas. We deal with these issues every day.

Counties are in charge of comprehensive plans in many situations. And addressing brownfields is a piece of the puzzle. Getting back to the funding issue, those in small communities do not have tremendously big staffs.

My colleague testified to the fact, and this goes directly to the process; my colleague testified to the fact that when we have smaller communities with smaller staff, there are staffing gaps that we need to address as well.

But the fact of the matter is that when we are dealing specifically with private industry on a particular project, if we say, "I am afraid that this process is going to take anywhere from 18 to 36 months. We are going to have to apply for several grants from beginning to end in order to accomplish our goals."

A lot of times the private industry might not be interested in moving forward with the more extended timeline; on top of that, for us to be even able to dedicate the staff.

The answer is, number one, of course, more funding, and every opportunity that I have to speak, I will stress that need. I think we all agree that more funding can be put into the program, it would be great because it also levels the playing field for our smaller rural communities to be able to compete for these projects.

Number two, more flexibility within the grants themselves. If you could be able to empower local governments to work hand in hand in partnership with the Federal and State governments along with the private sector on these particular programs, that would be fantastic.

First and foremost, funding; secondly, flexibility.

Thank you.

Mr. FERGUSON. Mr. Dailey, I am going to go to Mr. Philips. I have only got about a minute here.

If you could briefly touch on that economic viability gap question.

Mr. PHILIPS. Sure. I think the gap is really huge, honestly, for most of the sites that concern people, and the gap is not just in fungible dollars as we think about it. The gap is in time, and this is particularly true for the investment community.

You know, your return on investment clock, your IRR, is ticking, ticking, ticking, and every moment that you wait for the next step, for approvals and for processes, it just makes it much more difficult.

Just to give you a feel: a couple of years ago we did an assessment internally to see how many sites are we looking at, how many sites come through that funnel and that we actually invest in. Now, remember this was the largest investor in brownfields in the world.

We reviewed about 450 sites, and in the next 2 years we were able to invest in 10 of those sites. We researched these and found out other entities across the world only invested in an additional 10 of those sites, leaving 430 of those sites underwater, unable to attract investment, and this is despite the State and Federal programs and incentives that existed at the time, and these were not rural sites mostly, I can assure you.

So in terms of the gap, it is significant.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Ferguson.

We are going to go to the gentleman from California, Mr. Lowenthal.

Dr. LOWENTHAL. Thank you, Mr. Chairman, and thank you for all the witnesses for joining us today and really informing us on some of what is really taking place in the communities regarding the Brownfields Program.

I am really glad that we are having this hearing and that we can understand a little bit more what the Federal Government's role is in working with the States and localities in funding and helping to redevelop many of these sites.

You know, I think the Brownfields Program has been a great example of a win-win situation which both improves the environment, improves the health of our citizens, and at the same time spurs economic growth and development. That is a win-win situation.

That is why I am particularly disturbed when I read that the program might face severe cuts. You know, we talked about what additional monies we have heard you might need, but let's just talk about the reality, that this program might receive severe cuts or even elimination if the President and the EPA Administrator have their say and that is really the direction we move in.

So really I want to start with Mayor Robertson. You know, I represent the port area of Long Beach, and so I am familiar with many of the critical issues that face Rialto and the other cities in the Inland Empire that serve as logistic centers, and so we are really connected to each other.

So what happens in reality in Rialto directly affects my district also, and so I am very impressed with what you are trying to do.

So my first question is: could you really elaborate a little bit more deeply on some of the positive benefits of your successful projects?

Tell us a little bit more, Mayor Robertson, about some of the successful projects and what the benefits have been economically and also to the health of your community.

Ms. ROBERTSON. Thank you. Thank you, Member.

You know, I guess I would just quickly say that one of the things this tool, this program, has really helped Rialto in the community and a lot in California with public-private partnership, a willingness for our partners to know that we are in this together.

From that, just recently in a lot of the sites that we have identified in Rialto and that we have actually done the cleanup of the hazardous areas in partnership with some of our developers, we have managed to help them cobble together a lot of small pieces of property to facilitate the development of a major industrial or warehouse. It brings directly 1,500 jobs every time we assemble some land and we create a more efficient way to use the land.

At the other side, the other thing I need to speak to constantly we seem to lose and I know from your district we have all dealt with health assessments.

Dr. LOWENTHAL. Yes.

Ms. ROBERTSON. And what is ongoing not only from the mobile activity, the mobile source of what is in the air, the particulate matters, but we also have to recognize that because if we fail to address these areas, a lot of these brownfields are also fallow land, dry land, and the elements are still in the air and then they are contributing factors not only to the adults and the people in the area that are working, but they are contributing factors to a lot of our young adults who are now highly affected with asthma conditions.

So it is imperative that we address it and we figure out how to address it not only, yes, the economic opportunity is great because

it brings about jobs; it brings about some local revenue to our community; it helps us come up with some type of sustained revenue source for the local jurisdictions.

But it also has a significant health impact, and we are not talking about only airborne, what is in the air, but also what can go into the air by the fact that we continue to not address these designated, identified brownfield sites.

Dr. LOWENTHAL. This is for any, including yourself, Mayor Robertson.

We are living in a time of uncertainty. We are not sure where the EPA is going, what funding will be available. I am wondering how does this uncertainty affect your planning process. Anybody.

Where are you now hearing about these cuts and not really understanding whether this program will be cut, not cut?

What is happening in the communities now about planning?

Anybody want to jump in?

Mr. ZONE. I would just add, Congressman, the private sector wants predictability. You know, the public sector dollars is the yeast that raises the dough from the private sector. There is so much uncertainty right now that the private sector is, quite frankly, skittish. They want to know if I am going to invest in an area, is Government going to be with me and supporting me, and there is a lot of uncertainty.

Dr. LOWENTHAL. Yes. Thank you, Mr. Chair, and I yield back.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Lowenthal.

We are going to go to the gentleman from New York, Mr. Katko.

Mr. KATKO. Thank you, Mr. Chairman.

And thank you all for your testimony today.

Mr. Dailey, I have to note at the outset that I am absolutely shocked and stunned that you think more funding would be helpful.

[Laughter.]

Mr. KATKO. But I, quite frankly, happen to agree with you. I am from the industrial Northeast, and Syracuse has been ravaged by loss of industry, but loss of industry also comes brownfields because they are not always the best stewards of the environment when they leave, and that is always a problem.

So I happen to agree with you, and I am proud to say I have partnered with my colleague on the other side of the aisle, Ms. Esty, to present a reauthorization bill that we introduced today and we hope to see Congress act on that bill because we truly believe this is a critically important program to revitalize areas.

There are towns and cities all across my district, Auburn, New York; Wolcott; Fulton; Oswego; Syracuse, and others have all benefitted from that program, and the differences have been absolutely remarkable.

It is a critical aid to the redevelopment and the use of blighted properties, and I really hope that we can continue robust funding of this.

Now, my colleague, Mr. Ferguson, noted about the complexity of the process, and I wanted to dig into that a little bit deeper because that is something I am very interested in.

Assuming we can be successful, Ms. Esty and myself and others, in getting this reauthorization, I want to know how we can make

it better. It is clear to me from talking to businesses across my district that time and again that overregulation and the labyrinth of paperwork and regulatory structures are choking businesses just as much as the programs themselves sometimes.

So if someone can just give me some examples, pick one thing. What is one thing we could do to really make this process less complex?

Let me start with the councilmember from Cleveland because I want to go to the Rock and Roll Hall of Fame, and you are making me think of it. So we will start with you.

Mr. ZONE. Well, Congressman, I would love to give you a behind the scenes tour.

Mr. KATKO. Oh, be careful about that because I will take you up on it.

Mr. ZONE. I am going to give you my card at the end of the hearing.

If I had to give one thing, we have reviewed the summary of your bill. Thank you for putting that forward. We would hope that the Brownfields reauthorization could include liability protections for local governments that take ownership of properties through both voluntary and involuntary means.

The example that I cited about the Trinity Building, what once was a public safety hazard, we came in there to remediate the public safety hazard. Now we are left with an environmental hazard on our hands.

So really holding governments harmless who were not the original polluter would be the one thing I would encourage you to include in your bill.

Mr. KATKO. Thank you.

It is funny you say that. I was just thinking of a property in Syracuse where they were a scrapyard and adjacent on Onondaga Lake, and they basically just went out of business, up and left and just basically left the keys on the table for the county to mop up.

And that is the type of thing I am concerned with, and we need to do a better job with that. So your point is well taken.

Anyone else want to chime in? Mr. Bollwage?

Mr. BOLLWAGE. Congressman, section 3 of your bill where it talks about multipurpose cleanup grants would be extremely important in streamlining the process because it affords a flexibility opportunity for not only the developers, but the municipality as well.

Mr. KATKO. Thank you.

Anyone else? Mr. Philips?

Mr. PHILIPS. On the issue of——

Mr. KATKO. I feel like I am in a game show. Whoever presses a button first I call on. So this is fun.

Mr. PHILIPS. On the issue of complexity, I would just note that it tells you something when cities that are active in brownfields redevelopment are the ones that have to hire a brownfield coordinator as a full time position in the city or the county.

I mean, think about that for a moment. A city has to hire a special person just to navigate through the complexities of these different programs, of the grants, of the assessments.

You know, so there is not enough time to go into the complexities in detail now, but I think we were certainly in agreement with the premise of your question.

Mr. KATKO. Well, I encourage after the hearing feel free to submit Ms. Esty and myself or others some of the laundry list of things we can do to make it less complex because, you know, we are in an era where we are reviewing the overregulation of everything, and this is a good time to have a wish list.

So I encourage you to have a wish list. Does anyone else want to chime in?

Ms. ROBERTSON. Yes.

Mr. KATKO. Ms. Robertson.

Ms. ROBERTSON. I just would like to say along with the things that they identified I guess for me and for a lot of us in the local communities it would be great if we could expedite. Sometimes the time alone just to know if, in fact, you are going to be successful in a competitive process.

We already know that there are way more projects than there is money available, but then you have to still wait. So if we had some way of knowing a preliminary of whether we are going to get the nod or not, we need, yes, it clearly goes without saying. Everybody says we need more money, but the other thing I would say, too, is it had created kind of an industry niche in Rialto because we have 95 companies that specialize in hazardous waste cleanup.

So I don't know. It spurs growth. It spurs jobs, and it gives us an opportunity to have that qualified staff and consultants available and onboard.

Mr. KATKO. Thank you very much.

I know my time is up, but I encourage all of you to please submit some papers on this because they are very helpful, and we will look at them.

We are committed to try and streamline the process. We understand very well how regulations sometimes well intended can end up as a whole really choking the process to the point where it is not worth it, and that defeats the purpose, and we do not want that to happen here.

Rest assured Ms. Esty, myself and others, we are robust supporters of this program, and we will work hard to keep it.

Thank you very much, and I yield back, Mr. Chairman.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Katko.

The gentlewoman from Connecticut, Ms. Esty.

Ms. ESTY. Thank you, Chairman Graves and Ranking Member Napolitano, for convening this hearing today on an incredibly important topic, and as you may have gathered, rare in this place these days, one of bipartisan support because we know as you indicated, Mr. Bollwage, this is across every single congressional district in America. The low estimate is 400,000. The high estimate is 600,000 sites.

They are gas stations in our rural communities at crossroads. They are large industrial sites like the brass centers in Waterbury, Connecticut, that I represent, and these are all opportunities as well as obligations for us to do better.

So I wanted to lay out a few things, a bit about the bill that Mr. Katko and I are introducing today, get your response, but also to

have you think about while I am doing that about some of the themes that I heard from you: the importance of predictability; the importance of de-risking. You did not use that language, but de-risking is critically important for liability. The assessment grants are about de-risking so that people like Mr. Philips know what they are getting into.

And the importance of saving time which translates to money, and so if we are going to leverage those private resources, we have to find ways to get determinations, as Mayor Robertson noted. Yes or no, let us know so we can move forward.

And we are all committed to doing that. We have got what we think in part, due to many of you and your organizations helped us craft this bill over some considerable period of time, but it certainly can be improved, and we look forward to continuing to work with you and our colleagues across the aisle to get the right bill that can make it through both Houses and get signed by the President, get out there making a difference in our communities.

So I wanted to talk a little bit about those provisions and lay them out. One, it creates multipurpose grants. This is something I was just in New Britain, Connecticut. We do not really have those. So we have right now our State is doing this, and Connecticut is one of the States doing it, but clearly we have heard from everybody this crosses across jurisdiction.

We need more flexibility, to go to the point. Commissioner Dailey, I think you mentioned the point of flexibility. We need flexibility. So that is going to allow characterization, assessment, inventory, planning, remediation with greater certainty over funding streams and can flow into the areawide planning revitalization, which I know especially, again, can be important when you have got properties that cross boundaries.

It also clarifies and expands eligibility. We have discussed this at considerable length. If we are going to have public-private partnerships, there is not enough money in the Treasury to clean up every one of these properties so the dirt can be eaten with a spoon.

That is not the objective. The objective is to try to get them back into play to make sense to deal with category 1, Mr. Philips, of the worst contaminated sites that are public health hazards. Clean those up, and the category 3 things that can get back into productive use. How do we leverage those? How do we move both of those categories?

To encourage those partnerships, our bill expands eligibility for brownfields grants to certain nonprofits that have been excluded; limited liability corporations; limited partnerships; and community development entities. And I can tell you Waterbury, Connecticut, where I do a lot of work, this has been a huge stumbling block for them.

They have a redevelopment authority. It is not actually the city that wound up with the keys, as Mr. Katko noted. They wind up with the keys, and the entity that is empowered to do it actually is ineligible for these grants.

Well, that is clearly wrong, and with your help, hopefully we will fix it.

It also expands to include governments that acquired the brownfield sites prior to 2002, and we know those legacy sites. How

could you possibly have complied with the post-2002 rules pre-2002 unless you were clairvoyant. You were not able to do that.

And, third, the bill eliminates eligibility barriers for petroleum brownfield sites. We know that in certain communities that has been a huge issue. I have got one two blocks from my house which we are still waiting to get fixed.

So we have talked a little bit about expanded liability. Commissioner Dailey, maybe you can talk a little bit about the multipurpose grants and what a difference that might make if we expand, as our bill does, to do that.

Mr. DAILEY. Sure. Again, Congresswoman, it is a wonderful question. Thank you for the opportunity to speak to it.

I am sure my colleagues will agree with me. Any time that we can provide the most flexibility to local governments to make the best decisions on behalf of their communities, we are going to be moving in the right direction.

Any time we make assumptions, either nationwide or even within the State, that every community is the same and all community needs are the same, I think that we are not moving in the right direction.

So when we look at the multipurpose grants and the flexibility within, especially with smaller communities that have limited resources to even begin the process, we need to provide them flexibility, so that when they are in the game and they are moving forward, they have the flexibility to do the best they possibly can for their community.

Ms. ESTY. Mr. Philips, just a quick question as the private-sector representative. On this de-risking notion, what are these most important elements, things you like about the bill that we have got out there, things that we could maybe improve as we move forward?

Mr. PHILIPS. Well, first, I would welcome talking to you about some details about the bill.

But I would say that, you know, just in your own State, you know, we looked at the Stratford Army Engine Plant, and at the time there was no clarity on the cleanup at all. We tried. We worked hard. We spent a lot of money. We made a lot of trips. We engaged in a lot of officials, and at the end of the day, there were multiple entities involved with determining who was responsible and how it was going to be cleaned up.

And we did not even know where to invest dollars, and we ended up pulling out. That delayed the process by at least 10 years, at least a decade, probably more because it still has not been redeveloped, and they are looking at it now.

Ms. ESTY. Thank you.

I appreciate your indulgence and I will follow up with all of you again. Thank you very much.

Mr. GRAVES OF LOUISIANA. Thank you.

Next we are going to go to the gentleman from California, Mr. LaMalfa.

Mr. LAMALFA. Thank you, Mr. Chairman.

Panelists, thank you from joining from a wide range of diverse places and backgrounds.

I have a very rural district in far northern California that borders Oregon to the north and just north of Sacramento to the south. The largest cities, a couple of them, around 100,000 and many of them are at 1,000 or less.

So we have issues as well with brownfields that over the years with industrial use, et cetera. But let me give you an example real quickly. There is one city in my district called Yreka, different from Eureka on the California flag. Yreka is right near the top, nearly the Oregon border. It has just 7,000 residents, but it was able to take a $400,000 grant and turn it into many millions in private investments that came in after that grant on former mill sites when basically the timber industry had been run out of business by regulations, et cetera.

So the brownfield activity that came from that conversion has fortunately turned up to a little over $4 million of annual activity, and then for a small town, again, like Yreka of about 7,000 people, the project created about 100 jobs. So proportionally, that is pretty good. OK? Not the biggest maybe across the country, but for a proportion, it is a pretty big hit.

So I guess for folks on the panel here, maybe I would like to get maybe a couple of extreme ends perhaps, Mr. Dailey and Mr. Zone, on rural and urban.

The Federal dollars we put in, does it change a lot based on the locality or its size, such as, you know, rural areas like mine?

Does it require a bigger emphasis on the administrative side, the staff side proportionally, but at less cost? Do urban areas have more cost? Were they able to spread that over a wider range of staff or, you know, internal costs?

But then, on the other hand, are they able to get more private attraction out there because it is a large city?

Mr. Zone, would you like to go first? Then we will call on Mr. Dailey.

Mr. ZONE. Thank you, Congressman.

I would answer your question with a question and then just add some commentary.

I mean, if local government does not perform the cleanup, who will?

And you know, in our city we have cleaned up 13 sites. It totaled about 137 acres and invested over $40 million in our city, which has created nearly 3,000 jobs.

We are fortunate. There is our brownfield administrator. We have a full-time person. He is now also doing double duties, acting as our interim economic development director, but we are fortunate and blessed in that respect.

We are an older, urban legacy city that built America. I mean, John D. Rockefeller got his start, Standard Oil, in Cleveland, Ohio, and built America, and now we are left with these old legacy sites, and we are fortunate to have somebody like David, but on the administrative side, it is very, very heavy.

Mr. LAMALFA. Thank you.

Mr. DAILEY. Congressman, a wonderful question. Remember that a lot of times your county is going to be responsible for the overall vision of the community, which is your comprehensive plan, your economic development vision. A lot of times it is the county health

department which is the first line of defense for your health issues in our communities.

We also are the first line of defense for your environmental permitting issues. My point is this: smaller communities have smaller staff. Smaller staff are already spread thin under normal responsibilities, and as it was testified earlier before, some communities have had to literally put a new staff person in place solely to handle brownfields issues and the county's relationship with the Federal Government.

Is it taxing local communities? Yes, sir.

Mr. LAMALFA. So do you think that is a disproportionate amount of staff per benefit because it is a smaller situation at rural or is it made up for by how disproportionately positive it could be on local employment, et cetera?

Mr. DAILEY. I think it would be unfair for me to categorize every local government as the same, but I will say that obviously the smaller the government, the smaller the staff, yes, the more taxing it is going to be, which was also addressed earlier on some of the service gaps, even before applying for the process, let alone carrying through with the grants themselves.

Mr. LAMALFA. OK. Go ahead.

Mr. PHILIPS. I was just going to add that I think a big piece of the answer to your question and probably some other questions that are circulating here relates to the kind of zoning and entitlement issues.

What is going to happen to these sites? That is being controlled by the local governments, and you know, in our experience with rural and smaller communities, they are much easier to work with, overall.

The urban communities, there is just a tremendous amount of resistance to development. There is a scrutiny associated with every decision that is made that takes more time and takes more money. Of course, the cruel irony is that there is generally more value—intrinsic real estate value—associated with the more urbanized areas. So that is the paradox.

Mr. LAMALFA. It would seem, you know, when you are talking about a brownfield in an urban area there would be even more incentive to want to make something flip over to more positive on that.

But my time has expired. So I thank you, panelists, for your comments.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. LaMalfa.

We are going to go to the gentlewoman from Michigan, Mrs. Lawrence.

Mrs. LAWRENCE. I want to thank you for this hearing.

To the Honorable Mayor Bollwage, we were colleagues. He is a mayor's mayor. I am glad to see you and cannot wait to talk about our children.

One of the things I have not heard from a single panelist here today was the pushback on what defines property as being contaminated. As we move forward today, conversation is about our EPA standards and qualifications.

Mayor Robertson, you brought up asthma, which we know is directly tied to air quality and contaminants. I want to hear from you.

I was a mayor for 14 years, and the question of if we do not clean it up, who will, I represent Detroit. We are the, quote, unquote, Comeback City. If we did not have in Michigan over $1 million of investment from brownfields, I can tell you that properties and the insurgence of development that we are seeing at historic levels would not have happened.

But it happened not only for development purposes. I get that because as a mayor I did not want a site sitting there vacant and, you know, undeveloped, but also it gave me that sense of responsibility that I must redevelop with responsibility for health, quality, respect of the earth.

So if you are bold enough, I would like to ask that question.

And, Mr. Philips, you are the private guy, and so I know you look at the dollars and cents, but you know, I had former gas stations that closed down. I had dump sites that are sitting there and buildings in Detroit that were almost a century old, and you know the quality of the material and asbestos and everything that is in the building.

So would you please talk to me about that? Take a deep breath.

Mr. PHILIPS. With regard to the question of how to define contamination, well, for us our opportunity is to invest in places where we are wanted and invest in places where we think we are solving a problem.

And so in some ways we use the word "brownfield" a little bit differently than the EPA has defined it. For us we view brownfield as anything where there is a perceived environmental issue from historic use or, it is, as people would refer to it in the State or Federal sense, a CERCLA or a Superfund site. Even if it is a heavily contaminated site or petroleum site, we view any environmentally distressed site, or potentially environmentally distressed site, as a brownfield, and we think that those are opportunities.

So if we are solving a problem for a community, then that is sort of how we define the brownfield target.

Mrs. LAWRENCE. Mayor Bollwage, please comment on this for me, please.

Mr. BOLLWAGE. We as mayors, as you know, Mayor, Congresswoman, we define brownfield site as any site that has basically laid fallow for a number of years and unable to generate any tax revenue to our community.

There are some that are contaminated, and there are some that are just not marketable maybe because of location or zoning or other issues, but that is within the town's ability to correct if that was the case.

The brownfield sites with some type of minimal contamination will need an assessment grant, will need some type of followup in order to make it marketable for a developer.

Mrs. LAWRENCE. Mayor Robertson?

Ms. ROBERTSON. Yes, I was sitting here thinking about the same thing as well. Sometimes it is very complicated because the land lays fallow, but then we also have an absentee landlord, a person who is not interested in moving forward, trying to improve that

property. So we have to spend a lot of energy resources to try and either bring that property owner forward to work with us, figure out a way that we can mutually do something because in the case of our city, Rialto, which is over 100 years old, a lot of land was bought by others and they have moved away. Now they are sitting back and waiting. They are waiting for the value to go up, and they are waiting on it, and they are not in the environment.

Mrs. LAWRENCE. Mr. Zone?

Mr. ZONE. Congresswoman, in your hometown, I mean, it took skillful coordination between the Federal, State and local governments to clean up and make Detroit the comeback community that it is.

It is not only an economic issue. It is an environmental issue, and look at all of those young people in your city who are suffering some ill health effects as a result of that.

Mrs. LAWRENCE. Yes. Thank you.

I just want to make this statement before I close. Michigan, for every dollar invested, over $35 was generated in economic development. The brownfields work. I know that my city that I represent would not be the Comeback City and have the ability to grow and enhance the overall economic GPA of this country without it.

So thank you so much.

Mr. GRAVES OF LOUISIANA. Thank you, Mrs. Lawrence.

I recognize myself for 5 minutes.

I am going to take a little bit of liberty here with my good friend, the ranking member. I think that we all agree that some objectives like environmental restoration and cleanup are important; that economic development and returning properties to commerce are important; that local revenues and economic activity are important. And I think we agree on that.

I think that the more we can do to eliminate blight is an objective that we share. Obviously, ensuring that we have an efficient program and removing bureaucratic hurdles, I think, is important to both of us, and I think we both support additional funding for this program.

In moving forward, I look forward to working with you to focus on those objectives and a number of others, but I still think we are hearing a few things that I would like to understand a little bit better.

Mayor Bollwage, could you talk a little bit about some of your experiences in dealing with brownfield sites prior to the 2001 Act?

Mr. BOLLWAGE. Thank you, Mr. Chairman.

Before 2001, it was really almost impossible to develop a brownfield site. There was very little direction or very little help from any other government.

So in developing the EPA Brownfields Program in the 1990s and when the law was passed in 2002, I testified here probably between 1994 and 2001 at least four or five times. In order to get one done, the developer had to take a lot of risk, and I think Jonathan could probably speak to some of that risk, but it was mostly based on the risk of the developer.

And those deals were really rare for a lot of communities. Developers would usually just look to the pristine or the green areas,

and as a result, we had all of these abandoned and underutilized property.

The Jersey Gardens, which started in 1997, was actually started based on an EPA assessment grant where we assessed the property and we worked with the developer, OENJ Cherokee at the time, in order to remediate it and vent the methane gas, which was a former landfill that then created the Jersey Gardens project.

But the developer took a risk, and the quick story is they could not get heavy equipment in there. So when the developers came to see me in 1993, they said, "Mayor, we can get heavy equipment in there and remediate this 200-acre landfill if you will build a road."

Now, the road cost the city taxpayers $10 million to build to get the heavy equipment in there. So I could see my reelection campaign where the opposition would say mayor builds $10 million road to dump and nothing gets done.

So there was a lot of risk involved, both a trust factor in the developer and the city to build that road and then remediate the landfill in order to create what is now a 2-million-square-foot mall with 4 hotels and movie theater and 4,000 permanent jobs.

Thank you, Mr. Chairman.

Mr. GRAVES OF LOUISIANA. Thank you, Mayor.

I am going to start a new trend. Ms. LeFevre, look. The French influence in south Louisiana, the people at home are going to be looking at me like, "What is that guy saying?" if I pronounce it the other way. Sorry.

I have two questions for you. Number one, just very quickly, roughly what percentage of properties that you deal with that are in rural versus urban areas, brownfields specifically?

Ms. LEFEVRE. I would say probably 25 percent urban and 75 percent rural.

Mr. GRAVES OF LOUISIANA. Wow, wow.

Ms. LEFEVRE. Yes.

Mr. GRAVES OF LOUISIANA. And one other question. It seems like in reading some of your testimony some of the specific approaches that you have taken in Kentucky to remediate brownfields, to return those properties to commerce seem to be unique and not necessarily Federal centric approaches.

Do you care to comment about some specific approaches that you have taken that you think with perhaps more State-based leadership would have been successful?

Ms. LEFEVRE. Yes. Like I said, you know, being a mostly rural State, we know that, you know, the same person who is your mayor might be your wastewater operator, might be your brownfield redeveloper. So we built a very service friendly program with our State.

You know, we spent a lot of time holding hands, learning what our folks need, whether that be visioning workshops and, you know, educational workshops and things like that. Those are the things you do not initially see in our reports to EPA, but we do a lot of that hand-holding work and that support work.

We actually sort of work as a multipurpose grant from the first place. So them saying multipurpose grants, it is a great idea for cities, too, because I mean, that gives you that flexibility, you know.

And we have developed over time from nonprofits to for profit and from assessment to cleanup, different things for different people.

I just want to emphasize when you talk about liability, one of our most successful parts of our program now is our risk management program and clarifying that risk. We basically have letters, a program that mirrors Federal bona fide prospective purchaser, and you get a letter saying that you are not liable for that contamination, and that has really spurred brownfield redevelopment and movement in those areas.

So over time, we have just sort of paid attention to what our folks need, and States need to do that.

Mr. GRAVES OF LOUISIANA. Thank you.

Next is the gentlewoman from Illinois, Mrs. Bustos.

Mrs. BUSTOS. Thank you, Mr. Chairman.

And thanks to all of our panelists. I appreciate you guys being here.

My congressional district is in the northwestern part of the State of Illinois, and like everybody that I have heard since I have been here anyway, they have all spoken about the importance of the Brownfields Program.

We are the world headquarters for John Deere in the town where I live called Moline, and literally had it not been for the Brownfields Program, what is now a beautiful Mississippi riverfront civic center, which had been an old, closed down factory, never would have happened.

I live right along the Mississippi River. So when I walk down along our bike path and head to our downtown area, I mean, it is just virtually all a result of what has happened with the Brownfields Program.

So I think we have all seen the value of that. What I would like to start out with is a question for Commissioner Dailey. You mentioned the role of brownfields in creating jobs. Part of the Brownfields Program is a job training grant program.

In your experience, are environmental technicians in high demand in areas with brownfield projects? If you could address that please.

Mr. DAILEY. One more time. I am sorry. Could you repeat the question one more time?

Mrs. BUSTOS. Sure, sure. Part of the Brownfields Program is a job training grant program. In your experience are the environmental technicians in high demand in areas with brownfields projects?

Mr. DAILEY. I would answer yes, absolutely, and we have got some pretty interesting examples, not just from private industry, but as I referenced in my written testimony, King County, in Washington State, had a diversion training program for those that were coming out of incarceration. The county trained them to work at these sites.

So we are getting creative with job creation specifically not only working with the private industry, but also using some of the resources that we have as well.

Mrs. BUSTOS. And, Mr. Philips, do you have anything to add to that since you are more in the private end of things?

Mr. PHILIPS. I would agree that environmental technicians are in high demand and there are large companies out there that we have hired a lot of their services to provide technical and remediation support for the cleanups.

You know, you can analogize it to, you know, when you spot some mildew in your house from a ventilation fan maybe not keeping up with your shower exhaust and your steam. You can hire somebody who can clean it up pretty quickly with some bleach or you can hire a certified company to cordon off the place and perform a fumigation, you know, all kinds of remediation. The differences in cost are, you know, orders of magnitude.

And I see there is sort of an analogy here with brownfield cleanup, too, and that may be getting us a little bit off course for what you guys were trying to look at right now for this hearing, but I think that relates to the technician question. Where do we need to focus? Where is the expertise really needed, and how can we do that more inexpensively?

Mrs. BUSTOS. All right. Thank you.

Mayor Robertson, in your experience how has the Brownfields Program interfaced with other community redevelopment programs, such as the Rails to Trails or transit programs in your city?

We have seen some of that in, again, the community where I live.

And could the Federal Government do more to encourage the selection of projects that incorporate multiple redevelopment design elements?

Ms. ROBERTSON. Yes, absolutely, and thank you for pointing that out because in addition to just taking the land and creating economic opportunities, there is an opportunity to take some of this land and create open space, create active transportation opportunities. People can do walking and biking, and so that is what the Rails to Trails Program has done, and I am hoping that we can continue it.

I would like to just add one other item on the workforce thing, which is just to say that one thing that I think we are missing here on the workforce development and training that is available for EPA is an opportunity for those skill sets to bridge into other environmental areas.

And so I just wanted to point that out because we have used the training program in the Superfund site, and we have been able to employ, but the training program that the Brownfields Program has, they have had a much higher success rate in terms of placement, and those skills are transferrable into other areas, such as water treatment, wastewater treatment.

And so we have lost sight of an opportunity where people can, regardless of where they are coming from, begin to deal with getting skills that can be transferrable in an area we are going to continue to be in, and that is the environment.

So I just wanted to say that. I am sorry, but speaking to the Rails to Trails and all of our open spaces, even within our commercial areas we are finding better ways to incorporate the open space, the Rails to Trails, but areas where people can find solace. That is the best way to put it.

Mrs. BUSTOS. Thank you, Mayor Robertson.

And my time has expired. I yield back.

Mr. GRAVES OF LOUISIANA. Thank you.

Next we are going to go to my friend from Florida, the cowgirl from Florida, Ms. Wilson.

Ms. WILSON. Thank you so much, Chairman Graves and Ranking Member Napolitano, for holding today's hearing.

The Brownfields Program is a proven catalyst for redevelopment and revitalization that is truly, truly needed. In fact, when I served as the principal of Skyway Elementary School, I fought to prevent the creation which could ultimately become a brownfield across the street from the school where a composting plant had been built. The facility was polluting the neighborhood and eroding the children's ability to focus and learn.

My students and I mobilized the community and lobbied school board and government officials until the $27 million plant was shut down just 2 years after it had opened its doors. It was quite a victory.

But there are remarkable brownfield success stories in the heart of my congressional district. Thanks, in part, to the Brownfields Program, a former railyard that was contaminated with lead, arsenic, and petroleum was transformed into Midtown Miami, a $1.2 billion mixed-use development that supports nearly 2,000 jobs.

This project garnered national praise, including the prestigious 2009 EPA Phoenix Award.

While I am very proud of the Midtown Miami success story, I remain extremely concerned about the brownfield sites in my district and across the Nation that have yet to be remediated. Due to the current fiscal limitations and recent proposals by the current administration to eliminate the program, I am very worried about the future of the program.

With every Member of Congress having at least one brownfield site in their district and the broad bipartisan support, I am looking forward to working with my colleagues on this committee to reauthorize and strengthen this critical program.

And thanks to the panel for coming today. I appreciate your testimony and I have learned a lot from just listening to you and your responses.

I have a question for all of you. We have heard multiple times today that for every $1 spent through the Brownfields Program $17.50 is generated in economic return. Can you describe for us how this economic return is generated? What does this look like on the ground in the community that has received the brownfields grant?

First come, first serve.

Mr. BOLLWAGE. Congresswoman, thank you for the question.

I can only tell you that when we built the Jersey Gardens Mall and I went out there one day and saw some of the young people that were working there or a senior citizen and they would come up and they would say, "Mayor, I want to thank you because this job opportunity gave me the ability to help my granddaughter go to college," or if it was a high school student, it gave that high school student the ability to save money in order to get enough to go into college.

So the glee on someone's face when they have a job because of the work of the city government and a developer is second to none,

and that is how I can tell you that you feel the effect of the Brownfields Program when somebody says, "Thank you."

Ms. WILSON. Honorable Dailey?

Mr. DAILEY. Congresswoman, it is great to see you, and I have enjoyed working with you when you were at the State level as well. I know you are very familiar with Tallahassee from your great service in the State of Florida, and next time you are in town, I would love to take you out on a stroll down Gaines Street.

Ms. WILSON. OK.

Mr. DAILEY. When I testified earlier about it, the whole redevelopment, which I know you are very familiar with, the old industrial side of Tallahassee which now has 3,000 new residents, over $130 million of economic vitality with hotels and pubs and restaurants and our local incubator program. I think you will be absolutely amazed, and I think it will bring it home because you know and are familiar with this area that this is a great project to stand up and say, "Job well done. We worked together in partnership."

Ms. WILSON. Honorable Zone.

Mr. ZONE. Thank you, Madam Congresswoman.

In my district, there is an old abandoned battery factory. It is called the Energizer Factory. It was owned by the Energizer Company. We were able to use some assessment dollars to do an analysis of that land.

Today on this 14-acre site, we are in the midst of a $150 million housing redevelopment project. So that initial small, little investment of assessment dollars has leveraged the private sector investing nearly $150 million in repurposing land, along the rail spur, right along Lake Erie, next to our fresh drinking water source.

Ms. ROBERTSON. Yes, Member, if I could just chime in and add as well that on one of our remedial grants that we used to clean up, it was $136,000 that was used to clean up a site. That site now is a site that is going to be home to a fire station, a $9 million fire station, also with housing and commercial.

We are anticipating there will be about $15 to $20 million in a retail center and economic benefit and over 1,500 jobs.

And then back to Member Bustos' point about the Rails to Trails, this is another area where we are not necessarily looking at the economic benefit, but we are looking at the trail and the cleanup there has caused us to have a connection with six communities along a corridor that has brought us all the way from the Los Angeles County line well into San Bernardino County line.

So there are also economic benefits, and then there are quality of life benefits.

Ms. WILSON. Thank you.

Mr. GRAVES OF LOUISIANA. Thank you. I appreciate the gentlewoman from Florida.

Next we are going to go to the vice chair of this subcommittee. The gentleman from Florida, Mr. Mast.

Mr. MAST. Thank you, Chairman.

You know, I actually just recently used Florida's Department of Environmental Protection for Brownfields GeoViewer and to explore some of the brownfield sites in my congressional district. There were not very many, only a handful, but I am very thankful that that kind of technology exists. I think everybody up here

should have the opportunity to view that and see that, and hopefully I think we all want to see the number of these actually drop down to zero.

Now, from what I have heard, this program is a pretty fine example of the way Federal Government programs ought to work. I think they should probably be mirrored. You know, the Federal Government should not necessarily be involved in doing everything at the State and local level that they can handle on their own down there, but you know, provide support where need be, you know, and even in circumstances where the Federal Government may get involved should probably be very careful not to sideline State and local partners, you know, really allow the State and the locality to take full ownership of the problems that are faced that were developed in those areas, and I think unfortunately that is where Washington gets into trouble, is when Washington takes full ownership of these programs.

So in that, Mr. Dailey, I would like to ask you a question if you do not mind. You know, when it comes to what they did in Leon County with the Cascades Park, I think it is interesting to turn the brownfields into public parks. I think that is certainly one of the decent ideas that is out there and also have it function as a stormwater management area. That is a good marrying of what you can do in there.

My community is pretty conscientious of pollutants entering into our waterway. We have water from Lake Okeechobee that comes into the Indian River Lagoon in my area, and so we are pretty in tune with that.

So I am interested to know from you what kind of monitoring, what kind of assessment has been done after the cleanup to essentially ensure that there was not anything leaching out and things were not washing downstream, what goes on after, and then maybe even follow up beyond that and state has the EPA been of good assistance in providing technical support after everything has been said and done, or are you getting that support downstream that you need?

Mr. DAILEY. Congressman, first of all, thank you for the question and the opportunity to respond.

I can tell you when it comes to Cascades Park, and you being a Floridian understand the importance of Cascades Park to our history where St. Augustine and Pensacola met halfway to form the government of the State of Florida, it has always been very important to us.

But obviously, over the years we did not necessarily take enough care of it on the local level and had to move forward with the redevelopment of it.

I can tell you that I will need to follow up with the specific details on the environmental remediation and continue monitoring. However, I can tell you that it is a national award winning park and stormwater facility, not only based on the design in the flow of the work, but also based on our environmental record as well for maintaining that facility and being able to move forward.

But you are absolutely correct that first and foremost it is a nationally award winning stormwater facility. When the hurricane came through Tallahassee back in September, knock on wood, it

worked beautifully. It is built to flood and then draw down immediately. It just also happens to be a beautiful park.

I will be more than happy to follow up with your office with the intimate details, but, yes, as far as I know, we have not had any problems with the EPA in partnership with the monitoring moving forward. They have been good partners for us.

Mr. MAST. That would be outstanding, yes, if you could certainly get back to me or this committee and let us know, you know, what is being done going forward. If there is further support needed or something that needs to be addressed to ensure that this continues to be sustainable in that way, I hope you will let us know.

And I yield back, Chairman.

Mr. GRAVES OF LOUISIANA. Thank you.

I am going to go the second round. Mrs. Napolitano, ranking member.

Mrs. NAPOLITANO. Very quickly, I just want to take one last swipe at this.

In the last Congress, this subcommittee held a similar hearing for the reauthorization of Brownfields Program. There were questions on the potential Superfund liability for local governments that acquire brownfields property that were also raised.

In response to the question, for the record, EPA testified that section 101(20)(d) of Superfund law provides a specific statutory exemption for properties involuntarily acquired by local governments through bankruptcy, tax delinquency, abandonment or other circumstances in which the government involuntarily acquires title by virtue of its function as a sovereign.

I ask unanimous consent that the four different documents on EPA, CERCLA liability and local government acquisition and other activities, be made part of the record.

Mr. GRAVES OF LOUISIANA. Without objection.

[Three of the four documents can be found on pages 118–141. The 74-page "FY17 Guidelines for Brownfields Assessment Grants" published by the U.S. Environmental Protection Agency can be found online at https://www.epa.gov/sites/production/files/2016-10/documents/epa-olem-oblr-16-08.pdf, as noted in the table of contents.]

Mrs. NAPOLITANO. There you go.

For properties that are acquired by local government voluntarily, the Superfund law treats these parties the same as any other bona fide prospective purchaser and requires the same level of due care with respect to hazardous substances at the property.

Since the statute seems pretty clear on this and provides a pathway for local governments to redevelop properties acquired both voluntarily and involuntarily, how would you have the proposed changes for municipal liability differ?

Mr. BOLLWAGE. Congresswoman, on those exemptions there is eminent domain and tax liens. The exemptions are not covered. So if we are going to change it, we would want to make sure that municipalities and/or counties that go through an eminent domain process or acquire the property through tax liens, that the exemption is in place.

Mrs. NAPOLITANO. Anybody else?

Mr. ZONE. I would just add that, you know, a lot of the properties that my colleagues around this country have acquired through involuntary actions have become voluntary. Working with the State EPA and the Federal EPA saying this has become a hazard on our community and we need to step in to remediate it, working every step of the way, having that indemnification and working with the Environmental Protection Agency to support that local government would be highly important.

Mrs. NAPOLITANO. That is it.

Well, then if it is voluntary, would there be a different way of looking at it?

Mr. ZONE. Well, I would just say, Congresswoman Napolitano, even properties that we acquire through tax delinquencies, one of the examples that has been often cited in the law and often presumed to be protected may not necessarily be exempt if local governments took it affirmatively or voluntarily through that tax delinquency process. That is always a risk to local government, and one of the reasons or the impediment to cleaning up that property as well.

Mrs. NAPOLITANO. All right. Well, the EPA guidance includes a third party lender liability and the low-risk petroleum sites. So that would be part of the record to show that this is covered.

Thank you, Mr. Chairman.

Mr. GRAVES OF LOUISIANA. Thank you.

I just wanted two issues to try and finish up here. Number one, Councilmember Zone and a few others have talked about helping to address liability issues for local and State governments and whether it be through voluntary or involuntary acquisition.

I just want to get your thoughts, Councilmember Zone, on, I guess, relegating that liability protection to public entities or should that also carry over to private entities that choose to come participate and clean up, but perhaps had nothing to do with the actual contamination. These are folks who, again, have chosen to come in and help clean up blighted properties or try and recondition these properties back to economy development.

Mr. ZONE. Often remediating a brownfield there is usually a private-sector developer that is waiting to partner with that local government and come in and do that.

It is risky. We do not want to. When I say "we" collectively, on behalf of cities, we were not necessarily the original polluters of that property, and letting that sit fallow, as the mayor has said several times here, presents a challenge.

We need to create the conditions to allow the private sector to come in. I am certainly open to having the expansion to private-sector developers, working closely with our State EPAs to make sure that all the rules are regulations are complied with.

Mr. GRAVES OF LOUISIANA. Thank you.

Other folks care to comment on that?

Mr. BOLLWAGE. He said it best.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Mayor.

Next, Mr. Philips, I am very curious. Ranking Member Napolitano and myself, we have talked about concerns expressed with decreased public resources available for investment into

brownfield properties, and we talk about some of the objectives that I think we share.

You talked about a model whereby some properties are actually ripe for private investment. Could you just talk perhaps about some of the characteristics, number one?

Number two, just based upon your personal experiences, what percentage of properties perhaps do you think are actually ripe for private investment?

And I understand in your testimony you cite the downturn in the economy and economic activity, real estate activity, back in the 2008–2009 timeframe, but I am just curious if you could talk a little bit on that and basically just the role you see the public sector playing versus the private sector in some of this redevelopment.

Mr. PHILIPS. Sure. I think the answer to the question as to how many sites are ripe for redevelopment without much public involvement, at least without public resources, is one that fluctuates greatly depending upon the local, and even national, real estate markets.

And, I think one of the things we talk about is public resources. You know, for us, one of the biggest, most important elements of a transaction, particularly the larger transactions, is not necessarily the cleanup assistance specifically, but is more associated with maybe a tax increment financing associated with the future activities that are going to happen on that site. And, if people can buy into what is going to happen there and the tax revenues that are going to be generated from that activity, then the markets can say, "We are going to float a bond," and then the bond can help front end some of that more costly remediation associated with that site.

A similar example might be the entitlements that I had mentioned earlier, particularly in urban areas. You can take a city like Portland, Oregon, with an urban growth boundary. I mean, there are very constricted views as to what can be done on those sites, and maybe brownfields should receive special considerations, essentially, in exchange for a certain amount of cleanup and/or for a certain amount of extra entitlements. That is something that we look at quite a bit.

Another piece is taxation. Institutional investors, at least a big pool of them, are not-for-profit. Essentially, they are structured such that they are only subject to unrelated business income taxation.

And there is a piece of legislation that I mentioned that also exempts for qualified brownfield redevelopments the gain on those developments from incurring unrelated business income tax. Something, perhaps, could be offered for the taxable entity, as well. For the unrelated business income tax, that was sort of the low-hanging fruit, and what that is what we targeted then.

Mr. GRAVES OF LOUISIANA. Thank you, thank you.

If there are no further questions, I would like to thank our witnesses for being here today. I appreciate all of your testimony. This has been very informative and helpful, and I just want to reiterate that there may be additional questions submitted to you for response in writing for the record for the hearing.

And if no one has anything else to add, then the hearing is adjourned. Thank you.

[Whereupon, at 12:04 p.m., the subcommittee was adjourned.]

Written Testimony of Elizabeth Mayor J. Christian Bollwage
For The U.S. Conference of Mayors
Before the House Transportation and Infrastructure
Subcommittee on Water Resources and Environment
on "Building a 21st Century Infrastructure for America: Revitalizing American Communities through the Brownfields Program"

INTRODUCTION

My name is Chris Bollwage, I am the Mayor of Elizabeth, NJ and have served as Mayor since 1993. I'm a Trustee for The U.S. Conference of Mayors and I have served as Chair of the Brownfields Task Force for the past 20+ years. Mr. Chairman and members of the Committee, I would like to officially submit my written testimony for the record.

I am pleased to be here today to discuss the role brownfields redevelopment can play to build our 21st Century Infrastructure as well as revitalize communities. For many people, brownfields are just the neighborhood eyesore or the former industrial site, but for Mayors they also represent unrealized potential. Mayors see the redevelopment of brownfields as a chance to bring jobs back to a community, revitalize neighborhoods, increase our tax base, and reuse and enhance already existing infrastructure in a more sustainable way.

I can not stress enough that redeveloping brownfields is such a win-win for everyone involved, that Congress should reauthorize the brownfields law, and make some minor improvements, that would make the program even more successful.

HISTORY

Since the early 1990s, the Conference of Mayors made the redevelopment of brownfield properties one of its top priorities and you can understand why. At that time, the Government Accountability Office (GAO) estimated there were anywhere from 400-600,000 brownfield properties. Brownfields are defined as abandoned or underutilized property whose redevelopment is hindered due to real or perceived environmental contamination.

Developers and business owners were unwilling to touch these properties out of fear of liability. These concerns were the result of the joint, several, and strict liability provisions in the Comprehensive Environmental Response, Compensation, and Liability

Act (CERCLA), a 1980s law more commonly known as Superfund, which made an innocent developer just as responsible for the cost of cleanup as the actual polluter. As a result, these potential businesses would develop on greenfields rather than take a risk on a brownfield property. This has contributed to urban sprawl and left abandoned or underutilized sites in just about every community in the United States.

As former Chicago Mayor Richard Daley used to say, "As a nation, we recycle aluminum, glass, and paper, but we don't recycle our most valuable commodity, our land." And I would like to add to that, by recycling this land, we are also reusing already existing infrastructure and in many cases, upgrading that infrastructure to support that new development. This is a much more sustainable path of reutilizing infrastructure than continually building new infrastructure that will also eventually need to be maintained.

Back then, the Conference of Mayors worked with Congress and the EPA to formulate legislation and a program that provided some liability relief for innocent developers as well as money to do assessments and cleanup.

I testified before the House and Senate numerous times between 1994-2001 on the importance of this legislation and I was pleased that this bill had such strong bipartisan support. The fact that the Small Business Liability and Brownfields Redevelopment Act passed in the Senate with a 99-0 vote and was put on the unanimous consent calendar in the House and then signed by President Bush, demonstrates the vast bipartisan appeal of this issue. And you can understand why - this is a win for the community, the environment, and the business community.

NATIONAL IMPACT OF BROWNFIELDS

The Brownfields Law and the EPA Program that resulted has had a very positive impact on many communities throughout the nation. According to EPA, since the inception of the program, over 26,000 brownfield sites have been assessed and have made over 5,700 properties and 66,000 acres ready for reuse. As of March 1, 2017, the program has leveraged over 123,000 jobs and over $23.6 billion dollars. In fact, for every EPA dollar spent leverages approximately $16 in other investments.

However, EPA has had to turn away a lot of highly qualified applicants due to lack of funding. EPA estimates that for the past 5 years, over 1,600 requests for viable projects were not awarded money because of limited funding. EPA estimates that if they were able to provide funding to those turned away applicants, an additional 54,000 jobs would have been created along with $10.3 billion of leveraged funding.

In the last Conference of Mayors survey, 84 percent of cities said that they have successfully redeveloped a brownfield site with 150 cities successfully redeveloping nearly 2,100 sites, comprising more than 18,000 acres of land. And, at that time, there were over 1,200 sites comprising of another 15,000 acres that were in the process of

being redeveloped. 106 cities reported that 187,000 jobs have already been created through the redevelopment of brownfield properties with 71,000 jobs in the pre-development stage and 116,000 permanent jobs.

These new developments have resulted in an increase in tax revenues at the local, state, and federal level. 62 cities reported that their actual tax revenues from redeveloped brownfields sites totaled over $408 million with an estimate of potential revenues ranging from $1.3 - $3.8 billion.

And, it should be noted that in every survey that the Conference of Mayors ever conducted, the top three impediments to brownfields redevelopment were always the same-- lack of cleanup funds, the need for more environmental assessments, and liability issues.

BROWNFIELDS REDEVELOPMENT IN ELIZABETH

Attached to my testimony is a summary of some of the most notable brownfield redevelopment projects in my community including the Harbor Front Villas and the Jersey Gardens Mall, which I highlighted the last time I testified. Today, I wanted to highlight another brownfields redevelopment success story and that is our Elizabethport/Hope VI project.

From a historical perspective, the City of Elizabeth's commerce depended heavily on its position as a Port city. The majority of businesses that were located close to and along the Waterfront, focused upon and complimented the shipping industry, supplying additional services such as the transportation and storage of goods. However, as Elizabeth expanded, evolved and changed, so did the vision and potential of the land once utilized primarily by these industrial companies.

Re-imagining Elizabeth's Waterfront has included the creation of luxury housing on a former brownfield site. Harbor Front Villas is a $15 million townhouse development, which includes fifty-five market-rate units, which were designed to attract the most demanding buyer. Constructed in close proximity to the Arthur Kill, the Villas have increased opportunities and contributed to the exciting renaissance occurring within Elizabethport.

Homeownership, coupled with luxurious amenities and a Waterfront view, is what Harbor Front Villas offers its clientele. Located minutes away from Exit 13A off the New Jersey Turnpike, the site is easily accessible from major roadways and is minutes away from New York.

Developments such as Harbor Front Villas were thought impossible by individuals, who could not visualize the possibility of such desirable property. Residents within these units benefit from both the amenities offered within their complex as well as the

splendor of Elizabeth's surrounding open space and recreational facilities. Utilized as both a transportation and leisure waterway, large container ships, pleasure boats and vessels of all sizes, travel along the Arthur Kill en route to Port Newark/Elizabeth. Providing a window into maritime commerce as well as breathtaking scenic views to admire, waterways enhance the viability and marketability of surrounding properties.

Revitalizing underutilized brownfields into remediated, active sites for development, has been occurring for years in the City's oldest neighborhood. The tremendously successful, federally-funded HOPE VI program has assisted in the removal of public housing complexes and replaced them with townhouses in Elizabethport. Individuals previously residing in the old, dilapidated facilities had the unique opportunity to become homeowners. Living in a new community-setting not only physically re-located residents, it positively altered their quality of life. Removing the stigma of public housing, the HOPE VI program assisted in instilling a sense of pride, self-sufficiency and homeownership in a residential neighborhood that included beautiful landscaping and open space.

In 1997, with an initial grant of $29 million dollars, the Housing Authority of the City of Elizabeth began administering the HOPE VI Elizabeth Neighborhood Revitalization Program. With assistance from the HOPE VI program, demolition began on the Migliore Manor public housing complex in 1998, followed by the demolition of the Pioneer Homes public housing complex in 2000.

In addition to new housing opportunities, the Revitalization Program sought to provide transitional services for re-located public housing residents. City officials worked with the Housing Authority to create partnerships and deliver essential services to residents. In order to ascertain the needs of the community, resident surveys were conducted. Once needs were assessed, additional funding sources had to be identified. The County of Union provided one million dollars in funding through the Home Partnership Investment Program, which enabled the creation of twenty home units.

Approaching the project holistically, Union County's Department of Human Services also provided job-training services during the first phase to residents. Senators Frank Lautenberg and Robert Torricelli, former Congressman and now Senator Robert Menendez, Congressman Donald Payne, the Union County Board of Chosen Freeholders, Elizabeth City Council as well as the Elizabeth Development Company, also supported this project and helped to transform this vision into reality.

Through this program, hundreds of residents also participated in services including but not limited to: education for residents of all ages, resume and interviewing workshops, job training and placement, computer classes, youth-oriented programs, child care programs, business development and health care. Identifying neighborhood potential and implementing a strong vision made critical initiatives such as HOPE VI possible. This assistance was also a catalyst for the construction of five developments within

Elizabethport, including: Portside Commons I, Portside Commons II, Westport Homes, Heritage Village and Marina Village.

With clearly defined goals and objectives, the next step in transforming the community was the introduction of mixed-use housing, with an emphasis on commercial space for economic growth and services. Business attraction and retention is critical to the vitality of a neighborhood. The City of Elizabeth recognized this factor and worked with government leadership and local agencies to foster economic development in the Elizabethport neighborhood. Ultimately, The Mills at Jersey Gardens Mall, AMC Loews Jersey Gardens Theater, multiple restaurants and hotels were developed minutes away. In addition, more opportunities and jobs will be created with an exciting 411,000 square foot mall expansion, which will add more high-quality restaurants and top retail brands next year.

WAYS TO IMPROVE THE PROGRAM

The Brownfields Law and the subsequent Brownfields program that EPA runs, has a proven track record of leveraging private sector investment, creating jobs, and protecting the environment. The law provided some liability relief for innocent purchasers of brownfield properties and provided resources to conduct environmental assessments and cleanups. However, there is much more work to be done. As I earlier mentioned, GAO estimated there are between 400-600 thousand brownfield sites throughout the US.

The challenge that communities face now is that many of the "easy" brownfield sites have been developed and now what remains are the more difficult brownfield sites – the, what we would like to call, the medium to dark brown brownfield sites. The Conference of Mayors, working with the National League of Cities and National Association of Counties, believe that with some minor changes to the Brownfields Law would help spur on additional redevelopment projects and economic growth.

I would like to highlight some of the key recommendations that we believe would make a significant difference with redeveloping even more properties and which are outlined in our joint letter that we would like submitted for the record.

Full Funding of the Brownfields Program – I know budgets are tight and we are all doing more with less. However, this program has more than proven itself as a success. It has a great track record of leveraging private sector money, putting people to work, and taking formerly contaminated properties and redeveloping them which also increases all of our tax bases. At the current funding levels, which are far below the authorized level, EPA only funds (roughly 30 percent) of the applications that make it to headquarters. The mayors of this nation believe this is a good investment that more than pays for itself and not only should be fully funded at the previously authorized levels of $250 million but, in fact, the authorized and appropriated levels should be increased.

Creation of a Multi-Purpose Grant – The way the program works currently is that a city applies for various grants and identifies the properties where the money will be spent. The only problem with that scenario is that this is not flexible enough for real marketplace situations. A city may have multiple developers and businesses who are interested in several brownfield properties. What many cities could use is the ability to assess a number of properties and provide cleanup grants and loans depending on which site or sites are chosen for redevelopment. It hinders that opportunity if a city has to apply for a grant and wait 6 months to a year to see if they get funding. We would like to see the establishment of a multi-purpose grant to be given to communities who could use the funds based on marketplace needs. We believe by giving us that flexibility will make the program even more useful.

Increase Cleanup Grant Amounts – As I mentioned earlier, many "easy" brownfield redevelopment projects have been done. And while that work still needs to keep going, we do have many additional brownfield sites that are more complicated due to the level of cleanup that is needed, market conditions, location of the site, or a combination of these factors. We would like an increase in the funding ceiling for cleanup grants to be $1 million and in special circumstances, $2 million. This would give some additional resources to conduct cleanup at the more contaminated sites and bring a new group of properties back into productive use.

Allow Reasonable Administrative Costs - Brownfield grant recipients should be allowed to use a small portion of their grant to cover reasonable administrative costs such as rent, utilities and other costs necessary to carry out a brownfields project. As far as I know, this is the only program that prohibits administrative costs entirely. As a result, smaller communities and non-profits sometimes will not bother to even apply for these grants due to the cost burdens associated with taking a federal grant.

Clarify Eligibility of Publicly-Owned Sites Acquired Before 2002 – The Conference of Mayors believes that as long as a local government did not cause or contribute to the contamination of the property but just happened to own the property prior to 2002, when the law was enacted, they should be allowed to apply for EPA funding for that property. It took Congress nine years to pass the original law and in that time, many communities, such as St. Louis, took it upon themselves to take ownership of contaminated properties so that they could potentially turn these properties around. These same communities have now found themselves ineligible to apply for any funding for those properties to assist them with their efforts.

Remove Barriers to Local and State Governments Addressing Mothballed Sites – The Act should exempt local and state government from CERCLA liability if the government unit (a) owns a brownfield as defined by section 101(39); (b) did not cause or contribute to contamination on the property; and (c) exercises due care with regard to any known contamination at the site.

Local governments throughout the country have long recognized the harm abandoned and underdeveloped brownfield properties can pose to their communities. Properties that lie idle because of fear of environmental contamination, unknown cleanup costs, and liability risks can cause and perpetuate neighborhood blight, with associated threats to a community's health, environment, and economic development.

Local government property acquisition authority is one of the key tools to facilitate the redevelopment of brownfields. Through voluntary sales or involuntary means including tax liens, foreclosures and the use of eminent domain, local governments can take control of brownfields in order to clear title, conduct site assessment, remediate environmental hazards, and otherwise prepare the property for development by the private sector or for public and community facilities.

Although property acquisition is a vital tool for facilitating the development of brownfields, many local governments have been dissuaded by fears of environmental liability. As a result, we have many brownfield properties that are, what we like to call, "mothballed". While it hasn't been a major problem in my community, it is a problem in other communities. We need some additional liability protection to potentially address these types of sites.

Encouraging Brownfield Cleanups by Good Samaritans – The Act should provide an owner-operator exemption from CERCLA liability for non-liable parties that take cleanup action or contribute funding or other substantial support to the cleanup of a brownfield, in conformance with a federal or state cleanup program, but do not take ownership of that site. Groups such as Ducks or Trout Unlimited have wanted to clean up properties and restore them to their natural habitat but because they have no protection under the law, they could be held as liable as the person who polluted the property. We need more, not less, people and organizations to help clean up these sites, as long as they do not make the situation worse.

Closing

I wish to thank the subcommittee for having me testify today. Brownfields redevelopment is a win-win for everyone involved. It creates jobs, it cleans up the environment, and it's pro-business and pro-community. The reauthorization of this law should be a top priority for this Congress and I urge you to pass a reauthorization bill. Thank you again for this opportunity.

Attachment
City of Elizabeth - Brownfield Summary

1. The Mills at Jersey Gardens

Within the City of Elizabeth, the *Jersey Gardens Mall* was built upon a former landfill in 1999. Through strong private/public partnerships on the County, State and Federal level, this innovative project transformed a former brownfield into a thriving shopping experience - with more than 200 stores and an AMC Loews movie theater located next door.

Conveniently located off Exit 13A of the New Jersey Turnpike, the conversion of this former eyesore into a shopping center had numerous positive effects on the health of the neighborhood. It created new employment opportunities, assisted in the stabilization of property taxes through a new tax ratable and continues to improve the overall quality of life within the City.

Jersey Gardens Mall became *The Outlet Collection - Jersey Gardens* and was renamed *The Mills at Jersey Gardens* when it was acquired by Simon Malls in January 2015. *The Mills* has announced a 411,00-square foot expansion, which is expected to start in 2016 and be completed in 2018. Improvements will include adding high-quality restaurants and top retail brands to the location.

The Mall continues to flourish after another successful year, with business up 10% and international visits up 37% - from top markets including Brazil, Germany and Israel.

In collaboration with Union County College, the Retail Skills Center, which has evolved into the Workforce Innovation Center, provides job placement, soft skills training and ESL education to residents - and is located right within the The Mills at Jersey Gardens. In addition We Are One New Jersey-Union County, which is an initiative spearheaded by the County of Union, is located within *The Mills* and provides assistance to individuals as they prepare for the United States Citizenship Test.

The Mills at Jersey Gardens also features a 4.8-megawatt SunPower rooftop solar system. The project, which is among the largest rooftop systems in North America, broke ground in June 2011 and began producing power in February 2012. Consisting of more than 15,000 high efficiency SunPower panels, this project generates approximately the amount of power required for 564 New Jersey homes.

Adjacent to the Mall is an eight-story Embassy Suites Hotel with 82 rooms and an 87,200 sq. ft. restaurant. Additional hotels at this site include: Country Inn and Suites by Carlson, Elizabeth Courtyard by Marriott and Residence Inn by Marriott Newark/Elizabeth Liberty International Airport. Restaurants such as Ruby Tuesday and IHOP are also available on the property.

The IKEA Furniture store, which is also easily accessible from Exit 13A of the New Jersey Turnpike, also completed a $40 million renovation, which included a reconfiguration of its operations and an increase in showroom space to help meet the growth of its business.

2. The HOPE VI Project

Before Jersey Gardens, City Officials had embarked upon an impressive renewal effort in the City's oldest neighborhood, which was located adjacent to the transformed landfill. Economic development expansion and citywide revitalization efforts inspired the removal of public housing structures and the implementation of new housing initiatives.

Hundreds of affordable housing units were completed, with a portion on former brownfields. The tremendously successful federally funded HOPE VI program assisted in the removal of public housing complexes and replaced them with new townhouses in Elizabethport.
Individuals previously residing in the old, dilapidated facilities had the unique opportunity to become homeowners. Living in a new community setting not only physically transported these low to moderate income residents, it transformed their quality of life.

Removing the stigma of public housing, the HOPE VI program assisted in instilling a sense of pride, self-sufficiency and homeownership in a residential neighborhood that included beautiful landscaping and open space. Through this program, hundreds of residents also participated in services including but not limited to: resume and interviewing workshops, job training and placement, computer classes, youth oriented programs, child care programs, business development and health care. Identifying neighborhood potential and implementing a strong vision made critical initiatives such as HOPE VI possible.

The HOPE VI program is administered by the Housing Authority of the City of Elizabeth through the United States Department of Housing and Urban Development.

3. Area Surrounding Midtown Elizabeth Train Station

The Midtown Train Station is a designated New Jersey Transit Village and is located among brownfields. The City is seeking a NJ DEP Brownfield Development Area (BDA) designation for the area within and around the Midtown Redevelopment Area, which includes a 20-acres surrounding the Midtown Train Station. The Midtown Elizabeth Train Station is already a New Jersey Department of Transportation designated Transit Village.

NJ TRANSIT has committed $55 million dollars for the design and reconstruction of the Elizabeth Midtown Train Station, which will include a new two-story station building with a street-level ticket office, waiting room as well as new office and retail space. The location will also feature new, extended high-level train platforms that will accommodate longer, 12-car trains and the platforms will feature covered, heated and air conditioned waiting areas for its users.

The Station will have new elevators and stairs, upgraded passenger information and security systems. The westbound plaza entrance will be highlighted by a marquee façade, new stairs and new vendor space. NJ TRANSIT and the City of Elizabeth is working together to incorporate art into the design of the station. The project will be funded through a combination of state and federal sources.

Enhancements to the Midtown Elizabeth Train Station are not limited to the current facility. These additional brownfield properties surrounding the Station have also begun the revitalization process. New housing, retail and offices will complement a modern Train Station and provide the services residents, commuters and visitors expect and deserve.

4. Harbor Front Villas

The City of Elizabeth's Waterfront underwent a transformation, creating luxury housing on a former brownfield site. Harbor Front Villas is a $15 million townhouse development that features market-rate units, which would attract the most demanding buyer.

Homeownership coupled with luxurious amenities and a Waterfront view is what Harbor Front Villas offers its clientele. Located minutes away from Exit 13A off the New Jersey Turnpike, the site is easily accessible from major roadways and is minutes away from New York. From master bathrooms, cathedral ceilings and fireplaces to granite entrance halls, central air conditioning, terraces and private parking, this new townhouse community provides the comforts of home with a beautiful view on the water.

With wide market appeal, Harbor Front Villas offer an exciting alternative to individuals who work in the tri-state area and are looking to immerse themselves in the beauty, culture and community of an urban municipality.

TESTIMONY

OF

MAYOR DEBORAH ROBERTSON

CITY OF RIALTO
CALIFORNIA

BEFORE THE

TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEE
ON
WATER RESOURCES AND ENVIRONMENT

HEARING

BUILDING A 21ST CENTURY INFRASTRUCTURE FOR AMERICA:
REVITALIZING AMERICAN COMMUNITIES THROUGH THE
BROWNFIELDS PROGRAM

10:00 AM
TUESDAY
MARCH 28, 2017

2167 RAYBURN HOUSE OFFICE BUIDLING
WASHINGTON, DC

Chairman Garret Graves, Ranking Member Grace Napolitano and Members of the Subcommittee, thank you for inviting me to testify on revitalizing American communities through the Brownfields Program. It is a privilege and honor for me to participate in this important hearing. I am here today as the Mayor of Rialto, California to share my strong support, my community's support, for the US Environmental Protection Agency's Brownfields Program.

For those of you who may not be familiar with my City, Rialto is a vibrant, ethnically diverse, working class community of 100,000 people located in San Bernardino County, part of the Inland Empire in Southern California. Rialto is an environmental justice community. Like many older communities, which grew up along the railroad, Rialto has a long and colorful history that evolved from an agricultural base to a more urban, transportation/industrial economy.

Rialto is home to a host of major regional distribution centers: Staples Inc., which serves stores across the entire West Coast of the United States; Toys "R" Us, Under Armour, Niagara, Medine, Amazon, and Target in the northern region of the City. One of the country's largest fireworks companies, Pyro Spectaculars, is also headquartered in Rialto. The City also hosts Union Pacific's East Colton classification yard, the Kinder Morgan regional petroleum and fuel storage tank farm and fuel distribution facilities, major trucking operations such as Old Dominion, Yellow Freight, UPS and Fed Ex, as well as numerous metal fabricators including various surface mining and other heavy industrial manufacturing companies. We also are the home of Martinez and Turek, a large defense contractor and Biscomerica, a large confectioner manufacturer. Rialto, a transportation hub, is ideally situated at the confluence of three major freeways, the I-10, the 210 and the I-15, which help convey the goods movement from the ports of Long Beach and Los Angeles to the rest of the nation.

There are over 95 companies in Rialto that handle hazardous waste. The State of California Water Resources Control Board environmental mapping program "GeoTracker" indicated that a significant number of our underground storage tanks are leaking. EPA, moreover, manages and operates a superfund site in the northern section of the City. So, while my home town of Rialto is a wonderful place to live, work and play, it also confronts many economic and environmental challenges that can best be addressed through the assistance and partnership of local, state and federal stakeholders.

As an elected official and public servant with more than 30-years experience, the Brownfields Program, in my view, plays a critical role in assisting cities such as Rialto clean-up, restore and reuse environmentally compromised properties so that they may once again contribute to the health and economy of our communities. This partnership is absolutely critical to economic revitalization and job growth, not just in Rialto but in cities across the country.

Brownfield Remediation – The WDIJ Site

In 2009/2010, the USEPA awarded a Brownfield grant to the City of Rialto for $600,000 -- $400,000 to conduct communitywide Brownfield Assessments and $200,000 to remediate characterized Brownfields. Rialto used the grant funds to investigate and remediate several sites.

The City of Rialto's Redevelopment Agency (the Agency) acquired a 4.8-acre parcel in 2008 at 1485 South Willow Avenue. The Agency acquired the site to assemble a larger site for the purposes of commercial development. The City did not deem the heavy industrial use as the highest and best use of land. The Agency relocated the occupant in 2012 and demolished the vertical structures on the site.

During acquisition, the Agency conducted Phase I/II Environmental investigations that established contamination with waste oils, lead, and arsenic from the years of heavy industrial use, including steel and metal fabrication and painting operations. The office building also contained asbestos.

The City/Agency used the Brownfield Remediation grant to engage Converse Consultants to prepare a Remedial Action Plan and solicit bids for the removal of the contaminated soils. The City contracted with Partner's Engineering and Science to excavate, transport, and dispose of impacted soil from the site. The total cost of remediation was $136,194.

The City now intends to use approximately 3 acres of the site for a public fire station. The City plans to incorporate the balance of the 4.8-acrce parcel into the adjoining 15-acre parcel for redevelopment to commercial uses. The Brownfield grant helped eliminate a health hazard for Rialto residents and redevelop an underutilized site into a $9 million fire station and community center, and eventually a $15 million to $20 million retail center, creating 1,500 jobs.

Communities Assessments – The Rails to Trails and Metrolink Projects

The City targeted two primary areas for community wide environmental assessments; the Central Business District and Foothill Boulevard. The Central Business District encompassed the historic center of the City, with a variety of civic, service, and retail uses. The Foothill Boulevard area consisted of former Route 66, a strip commercial highway with a mix of newer and older commercial and residential land uses.

The City performed environmental assessments on 15 parcels. The two primary projects that proceeded forward were the Pacific Electric Inland Empire Trail (Rails to Trails) and the Metrolink Expansion Project.

Rails to Trails Project

The Rails to Trails project transformed a 1-1/2 mile long abandoned railroad right of way into a hiking and biking trail as part of the national rails to trails program. The Rialto portion occupies the eastern end of the trail and joins up with completed portions in the neighboring city of Fontana. When fully complete, the Pacific Electric Inland Empire Trail will run 21 miles east-west between Rialto and Claremont, in Los Angeles County. Rialto completed the improvements in 2015 at a cost of $4.4 million. This project turned a previously abandoned rail corridor into a park improving the quality of life for community residents. The Communitywide Assessment Grant allowed the City to secure Phase I/II environmental clearances and complete minor remediation to proceed with the project.

Metrolink Project

The Metrolink Project expanded the existing Metrolink station to accommodate additional ridership. Metrolink is a commuter rail line linking the city of Rialto and the Inland Empire to the greater Los Angeles metropolitan area. The expanding parking lot facilitates access to the station by local residents, further encouraging the use of interurban mass transportation. The site originally consisted of an abandoned City Warehouse and several properties that were used for auto repair and storage, and the Phase I/II assessments allowed the City to receive environmental clearances prior to commencement of construction. The $2.2 million project created construction jobs and approximately 350 new parking spaces for commuters.

Other Brownfield Opportunities in Rialto

Although EPA grants could not fund this particular project because Rialto owned the property and may have contributed to its contamination, the City followed the same basic procedures for the Brownfield Program before awarding a $1.1 million demolition and remediation contract to prepare the 436 acre Airport for redevelopment. The City prepared Phase I/II environmental assessments and developed a Remedial Work Plan that was approved by the Regional Water Quality Control Board. In 2016, the city completed the remediation work, although it retained elements of the contaminated asphalt and concrete on-site pending reuse as roadway base. The City is currently applying the contaminated roadway base as part of its infrastructure improvements to support economic development. The remediation of this Brownfield site will produce $2 billion in new assess valuations, 10,000 new jobs, and $10 million per year in City revenues.

At the north end of Rialto, the City sued the owner of a 62 acre underutilized industrial site that contributed to groundwater contamination from perchlorate intrusion, This fallowed site represents a future Brownfield opportunity for the City. The County of San Bernardino currently assesses the site at approximately $3.8 million, while its underlying land value is upward of $30 million. When developed, the site could add another $70 million in assessed valuation and generate 750 jobs or more. The uncertain burdens of remediation, the ongoing litigation, and other factors create a grossly underutilized property that could be an economic catalyst for the City.

The City of Rialto has a Brownfield Assessment grant application pending with the EPA. The grant is designed to investigate properties deemed likely to be brownfields and determine the best course of action to clean these sites. Our region (Riverside and San Bernardino Counties) has over 25 known brownfield sites. The City of Rialto has established a Brownfields Assessment Coalition, under the National Resource Development Council for Local Governments (NRDC-LG) that will plan, and research economic and environmental needs of the targeted communities, and determine sites for assessment. The project goals are to assess existing brownfields, educate the public on brownfields, determine their capacity for reuse, and begin the planning for redevelopment, in line with broader land reuse documents.

In closing, EPA's Brownfield Program assists communities such as mine to clean up and restore contaminated and underutilized land, producing environmental and economic benefits that generate immediate and long-term dividends. The Brownfield Program, moreover, is an effective tool at leveraging federal taxpayer dollars to enhance and spur local economic development. We should not be so quick to give this up. We should not be afraid to invest in our future. We should be investing more, not less, in our infrastructure. Rather than target this effective program for elimination, as the Trump Administration proposes in its FY 2018 budget, I respectfully urge Members of Congress, EPA Administrator Scott Pruitt and President Donald Trump to weigh this program on its merits and fully fund it in the FY 2017 and FY 2018 budgets.

Thank you.

Statement of

The Honorable Matt Zone
Councilman, City of Cleveland, Ohio
President of the National League of Cities

On behalf of the National League of Cities

Before the House Transportation and Infrastructure Committee,
Subcommittee on Water Resources and Environment

"Building a 21st Century Infrastructure for America: Revitalizing American Communities through the Brownfields Program"

March 28, 2017

Good morning, Mr. Chairman and Members of the Committee. I am Matt Zone, Councilmember from Cleveland, Ohio and President of the National League of Cities (NLC). I am here today on behalf of the National League of Cities, the oldest and largest organization representing local elected officials in America's cities and towns. NLC represents 19,000 cities and towns of all sizes across the country. I appreciate the opportunity to share the perspective of local elected officials on the importance of the U.S. Environmental Protection Agency's (EPA) Brownfields program, how the program contributes to the revitalization of communities, and boosts the local and national economy.

As an older industrial city, Cleveland's legacy of manufacturing and commerce is now symbolized by numerous abandoned structures, obsolete buildings, leaking underground storage tanks and polluted properties. The impact of our industrial legacy has spread across our neighborhoods, killing once vibrant areas and leaving behind dead zones. The factories that once built America and employed thousands of Clevelanders are no longer an asset—they are a liability. To regain our stature as a great American city once again, we will need help in revitalizing our land and buildings.

Local governments approach brownfields redevelopment as an economic development activity. However, strategically redeveloping these contaminated properties means much more than dollars and taxes. It means correcting the environmental injustices unduly thrown upon those living in our impoverished neighborhoods that are host to a disproportionate share of brownfields. It means protecting our first responders by eliminating contaminated enclaves of criminal activity and structures of high fire risk. For Cleveland, it means protecting Lake Erie and our streams and rivers. It also means creating a more sustainable future by promoting urban infill rather than urban sprawl and incorporating more environmentally-friendly design and building stock into our existing urban fabric.

Brownfields sites threaten the health and well-being of communities and are a missed economic opportunity. Redevelopment of these unproductive properties allows local governments to attract jobs and investment to distressed communities while simultaneously addressing public health and safety concerns. The EPA Brownfields Program is vital for local governments in aiding their redevelopment efforts and supporting the productive reuse of property, which otherwise remains a blight on the community. Since its creation, the program has provided crucial assistance to local governments for reuse of hazardous, polluted and underutilized properties.

The Brownfields program has a proven track record of leveraging additional investments, creating new jobs, and redeveloping properties, while creating additional tax revenues. To date, there have been over 26,000 brownfields assessments and 1,200 brownfields cleanups nationally, which has led to over 123,000 jobs. Each of the $22 billion federal dollars that has been invested since the program was established in 2002 has leveraged approximately $16 in other investments—close to $400 billion in total. It is estimated, however, that there are over 450,000 brownfields remaining in the United States. More must be done to make brownfields redevelopment a viable option for more communities.

The City of Cleveland has had a successful partnership with the State of Ohio and EPA in utilizing the Brownfields program to redevelop our urban landscape. Since 2008, the City of Cleveland has directed $6.2 million in federal, state and local resources towards brownfields assessments. Through these assessments, the city identified 1,155 acres of land with contamination. To date, the city has redeveloped 13 sites, totaling 137 acres, through our Industrial Commercial Land Bank, creating or retaining over 2,800 jobs.

While we have seen great success in Cleveland, there is still much work to be done. Investment in and cleanup of the brownfields sites that are a blight on urban and rural communities across the country is an investment in our nation's civic infrastructure, and infrastructure investment is essential to moving America forward. President Trump has made reinvesting in America a key priority of his administration, and we believe the brownfields program is one avenue to making good on this promise. In Cleveland, our brownfields redevelopment has brought new life to the city, new opportunities for our residents, and new businesses. To build upon these past successes and assist in the cleanup, reuse and redevelopment of remaining sites, both in Cleveland and in cities and towns across the country, some key improvements to the program are needed, but importantly, we ask Congress to increase or maintain the current authorization level for the EPA brownfields program.

THE CLEVELAND EXPERIENCE: INDUSTRIAL-COMMERCIAL LAND BANK

Since 2004, Cleveland and its coalition partner, Cuyahoga County, has received $2.3 million in EPA brownfields assessment grant funds that has led to the cleanup of over 100 acres. Assessment dollars are critical to local governments, as they support the first, and most risky, phase of a redevelopment project. Assessment funds granted by the EPA Brownfields program assist local governments in evaluating the extent of contamination and potential costs for remediation. The City of Cleveland has successfully used these grants to leverage over $100 million in development. Without these funds many projects would not have gone forward.

In addition to assessment dollars, the City of Cleveland also received technical assistance from EPA. This assistance is just as critical to local governments as grant funds. With the technical assistance of an expert brownfields professional from the EPA Region 5 Brownfields Office, the city's development department has increased their capacity to redevelop brownfields in Cleveland.

The City of Cleveland, through its partnership with the EPA, State of Ohio, local businesses and other entities, implemented a land bank program in 2005, targeting former industrial and commercial properties for redevelopment. Known as the Industrial-Commercial Land Bank, the rationale for the program is simple—to strategically invest our limited local resources in properties that would, if not for the investment, sit unused for decades.

The land bank allows the city to take a holistic approach to brownfields redevelopment and to take on multiple projects at a time. Currently, the city is redeveloping nearly 140 acres of brownfields properties through the land bank program and has invested over $40 million in demolition and cleanup costs. Three projects are of particular interest in terms of their economic impact, degree of contamination, and liability concerns for the city.

Trinity Building

One of the most complex redevelopment projects the city has undertaken is referred to as the "Trinity Building." This six-acre site, while small, posed huge challenges to the city and put the land bank program in jeopardy due to the lack of federal liability protections afforded to local governments that assume the responsibility of cleaning up contaminated properties polluted by previous users. Additionally, the current cap on assessment grants for each community limits the city's ability to invest in multiple properties at one time.

The Trinity Building, once the workplace to over 500 Clevelanders, sits on a main thoroughfare adjacent to a daycare, multi-family housing, a nursing home and several commercial businesses. In the 1980s the company that occupied the Trinity Building relocated out of state. By the mid-90s, after many failed attempts to encourage the property owner to voluntarily bring the building up to code, the abandoned building became a blight on the community that posed a risk to public health and safety. Demolishing and remediating the property was the only solution to these problems, and it wasn't until the city established its Industrial-Commercial Land Bank that a local mechanism was available for implementation.

The city eventually took ownership of the property through a foreclosure action. Using the land bank as a mechanism, the city determined that it was in the best interest of the neighborhood to demolish the building and remediate the land. Within a year, the city allocated $2.9 million for these costs. In early 2007, the city discovered unforeseen PCB (polychlorinated biphenyl) contamination. Because the cost and extent of the risk to public health and the environment was beyond the capacity of the city, the city requested that EPA investigate the contamination and take immediate response measures to protect adjacent residents and businesses. During the summer of 2007, EPA conducted interim response actions under Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, also known as Superfund) to address the most urgent public health matters.

In December 2007, EPA notified the City of Cleveland that it was a party potentially liable for the cleanup under Superfund. Fortunately, the city was able to work with EPA to reach a determination that the city did not cause or contribute to the site contamination. EPA was able to identify a Responsible Party who oversaw the Emergency Response remediation action and reached a settlement with the city and EPA. However, the Emergency Response action did not fully complete the remediation of the site under the Ohio Voluntary Action Program. The city was required to undertake additional remediation actions to complete the remediation. Although the city and EPA were able to reach an agreement protecting the city, the delays and uncertainty caused by years of litigation caused substantial delays in the remediation project, ultimately increasing costs to the city.

The 2002 amendment to CERCLA that established the brownfields program was a step in the right direction, but as the portfolio of risky, polluted properties in our urban cities is growing larger and larger, the exposure to liability, such as the one Cleveland experienced with the Trinity Building, makes redevelopment of these sites impractical and cost-prohibitive.

Link59 Campus

The City of Cleveland first identified the 12-acre former Ohio Knitting Mills site in the heart of Midtown as a candidate for redevelopment in 2002. The city worked with two development groups to investigate and remediate the site before finally undertaking the remediation efforts itself in 2009. The city was able to secure $3 million in grant funding from the State of Ohio and spent an additional $5 million in its own funds over the course of 10 years to secure a No Further Action Letter from the Ohio Voluntary Action Program in 2012. However, in addition to the environmental issues, the site had significant geotechnical issues and a site restriction that required further remediation. In order to move the project forward, the city secured a $10 million HUD 108 Loan and a $3 million BEDI Grant for the project site. The city ultimately netted almost $2 million in land sales for the project, a net loss of $3 million to the city, over and above the $6 million in grant funding for the project.

The site will be a unique commercial development, featuring health services, retail options, and offices. The western portion of the site will be developed by University Hospitals of Cleveland as an expanded Rainbow Center for Women and Children. The Center will provide a full suite of services for women and children. In addition to routine and specialized medical care, the Center will offer programming in nutrition, mental and behavioral health therapy, and dental care. Additionally, as part of the campus, the development will include healthy food options and programming. The Center's location on a major transit route will increase access for low- and moderate-income residents who often face transportation challenges. The eastern portion of the site will be developed by Hemingway Development with flexible commercial space for health and technology companies. In total, 260 jobs are anticipated to be created at the site.

While this type of development is exactly the type of complimentary, mixed-use development that the market is demanding, this project would not have moved forward without the city expending its own funds and securing substantial grants from our state and the federal government to undertake the remedial activities necessary to make the site developable. The site

serves as an example that EPA's brownfield cleanup grants, generally capped at $200,000, are far too small to support remediation of contaminated sites at the scale necessary to support high-impact development.

Third District Police Station

The city undertook the remediation and redevelopment of the former Ward Bakery site. The site was originally remediated in the late 1990s and early 2000s, with additional work in 2008. Activities included demolition and removal of asbestos, as well as underground storage tanks. When the site proved unattractive to the market, the city used it for the construction of a new Third District Police Station, relocating from an outdated non-descript building to a centrally located, highly visible site, causing significant increases in perceptions of safety, as well as upgrading and modernizing our police infrastructure.

When the city was constructing the building, unforeseen underground storage tanks were discovered. Fortunately, the city was able to fund the cost overruns. However, the city was handicapped because there is no funding available on a rolling basis to solve underground storage tank contamination. Greater flexibility or access to EPA's funding would have been helpful in keeping this project on track.

BROWNFIELDS REDEVELOPMENT CHALLENGES AND OPPORTUNITIES

Cleveland truly considers the State of Ohio and EPA to be a partner in the area of brownfields redevelopment, but I come to you today with examples of pressing issues that could jeopardize Cleveland's and other cities' strategic redevelopment policies and with recommendations on how to strengthen the program to achieve a greater return on investment for cities and the economy.

The current vacant property portfolio in Cleveland puts my city at risk beyond previous crises. Local governments need the support of Congress and our federal agencies to revitalize the abandoned properties and buildings that are a blight on our communities. These abandoned buildings cost cities millions by shrinking our tax base, undermining property values and increasing service costs. In addition to depressing the economic well-being of cities, a failure to act compromises the well-being of our residents.

Brownfields redevelopment is inherently a risk. Additionally, brownfields sites are at a competitive cost disadvantage compared to greenfields sites. From the development standpoint, uncertainty about long-term funding availability and the desire to see an instant return on investment, coupled with limited time and money to address brownfields issues, pushes many developers to choose to develop greenfield sites rather than brownfields sites. While greenfield development may be cheaper, it comes at a price to the environment and our cities, including increased urban sprawl, traffic congestion, and stormwater runoff.

Therefore, in order to address this market challenge and make the development of brownfields properties a more viable and attractive option for cities and developers, Congress must reauthorize the program and make key improvements. NLC urges Congress to increase or maintain the overall funding authorization level for the EPA Brownfields program, increase the

overall grant funding to allow communities to cleanup more difficult sites, and resolve the disincentives created by potential liability to facilitate reuse of brownfields properties.

Increase overall grant funding to allow communities to cleanup more difficult sites.

Although many brownfields sites have been redeveloped, what remains are brownfields sites that are more difficult to redevelop due to their level of contamination or marketplace conditions. Expanding the EPA brownfields program would allow communities to address the cleanup challenges at these more complex sites.

We suggest the following:

- **Increase Cleanup Grant Amounts** – Congress should recognize the complexity of the cleanup process for larger or more complicated sites by increasing the funding limit for cleanup of a single site to $1 million. Under special circumstances, EPA could waive the limit, up to $2 million per site.

- **Establish Multi-Purpose Brownfields Grants** – Congress should allow local governments to have the option to apply for multi-purpose grants that can be used for the full range of brownfields-funded activities (assessment, cleanup, reuse planning, etc.) on a community-wide basis. Applicants should be required to demonstrate a plan and the capacity for using this multi-purpose funding within a set timeline in order to qualify for such funding.

- **Allow Funding for Reasonable Administrative Costs for Local Brownfields Programs** – Congress should allow brownfields grant recipients to use a small portion (10 percent) of their grant to cover reasonable administrative costs such as rent, utilities and other costs necessary to carry out a brownfields project.

Resolve the disincentives created by potential liability to facilitate the reuse of brownfields properties.

The issue of municipal liability for cleanup costs is a concern for local governments, particularly if they were not involved in the contamination of the site. As a general rule, under current law, local governments have a disincentive to cleanup and develop brownfield properties because of the liability that they could face. Often, as involuntary owners of brownfields property, many local governments are wrongly designated potentially responsible parties and held liable for cleanup. The fear of such designation has led to municipalities choosing not to invest in the cleanup or development of land, not because they do not want to, but because they cannot afford the liability costs. Addressing the local liability issue does not constitute a rollback of environmental protections, but rather corrects a market challenge and further incentivizes the redevelopment of brownfields properties.

We encourage Congress to revise CERLA to encourage and protect local communities who choose to take ownership of blighted properties for the purpose of brownfields redevelopment where the local government had no role in creating the contamination by providing a waiver, a

definitive limitation, or elimination of liability for non-contributing local governments coming into title of previously contaminated properties involuntarily. These changes should include:

- **Clarify Eligibility of Publicly-Owned Sites Acquired Before 2002** – Congress should allow local governments to be eligible for grant funding for properties that were acquired prior to the January 11, 2002 enactment of the Brownfields Revitalization Act—when there was no required standard for "all appropriate inquiries"—provided that the applicant did not cause or contribute to the contamination and performed "appropriate care." For these sites, applicants would not have to demonstrate that they performed all appropriate inquiry.

- **Remove Barriers to Local and State Governments in Addressing Mothballed Sites** – Congress should exempt local and state governments from CERCLA liability if the government unit (a) owns a brownfields property as defined by section 101(39); (b) did not cause or contribute to contamination on the property; and (c) exercises due care with regard to any known contamination at the site. We suggest language to amend section 101(20) (D) that clarifies that properties acquired through eminent domain qualify for the CERCLA exemption for local governments involved in "Involuntary Acquisitions." Alternatively, we would suggest language that establishes a simplified and clear exemption from CERCLA liability for local governments that acquire brownfields sites.

In closing, the City of Cleveland has the experience and expertise to address the brownfields in its neighborhoods. The city established a land bank program to prepare brownfields sites for economic growth. Cleveland's story and experiences are no different than any other American city with an industrial legacy. Congress showed great leadership amending CERCLA in 2002. While progress has been made and beneficial relationships formed among local, state and federal entities, the federal brownfields program has not achieved its full potential. The Federal government must continue its commitment to the brownfields program and to the cities protecting its citizens and the environment from the dangers these sites pose to reuse the properties for new economic opportunities.

On behalf of the National League of Cities and the City of Cleveland, I thank you for the opportunity to submit this testimony on a most timely issue. I look forward to your questions.

WRITTEN STATEMENT FOR THE RECORD

THE HONORABLE JOHN E. DAILEY
COMMISSION CHAIR, LEON COUNTY, FLORIDA

ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES
AT THE HEARING

BUILDING A 21ST CENTURY INFRASTRUCTURE FOR AMERICA: REVITALIZING AMERICAN COMMUNITIES THROUGH THE BROWNFIELDS PROGRAM

BEFORE THE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES

MARCH 28, 2017

WASHINGTON, D.C.

Thank you, Chairman Graves, Ranking Member Napolitano and members of the subcommittee, for the opportunity to testify on "Building a 21st Century Infrastructure for America: Revitalizing American Communities through the Brownfields Program."

My name is John Dailey and I am an elected county commissioner from Leon County, Florida, where I currently serve as Chairman of the Leon County Board of Commissioners. Today I am representing the National Association of Counties (NACo).

About NACo

Founded in 1935, NACo is the only national organization that represents county governments in the United States and brings together county officials to advocate with a collective voice on national policy, exchange ideas, build new leadership skills, pursue transformational county solutions, enrich the public's understanding of county government and exercise exemplary leadership in public service.

About America's Counties

Counties are highly diverse, not only in my state of Florida, but across the nation, and vary immensely in natural resources, social and political systems, cultural, economic and structural circumstances, public health and environmental responsibilities. Counties range in area from 26 square miles (Arlington County, Virginia) to 87,860 square miles (North Slope Borough, Alaska). The population of counties varies from Loving County, Texas, with just under 100 residents to Los Angeles County, California, which is home to close to ten million people. Of the nation's 3,069 counties, approximately 70 percent are considered "rural," with populations less than 50,000, and 50 percent of these have populations below 25,000. At the same time, there are more than 120 major urban counties, which collectively provide essential services to more than 130 million people every day.

Many of our responsibilities are mandated by states and the federal government. Although county responsibilities differ widely, most states give their counties significant authorities. These authorities include construction and maintenance of roads, bridges and other infrastructure, assessment of property taxes, record keeping, running elections, and overseeing jails, court systems and public hospitals. Counties are also responsible for child welfare, consumer protection, economic development, employment/workforce training, land use planning, zoning and environmental protection.

About Leon County, Florida

Leon County is located in the "Big Bend" region of northern Florida where the Panhandle meets the peninsula. With a population of approximately 285,000 residents, the county encompasses roughly 700 square miles and contains a diverse mix of urban, suburban and rural communities. Leon County, home to Florida's state capital, Tallahassee, is the seat of state government in Florida. The county is also home to two major universities, a community college, and a broad variety of intellectual, cultural, physical and natural assets.

In recent years, Leon County has actively engaged in promoting redevelopment, reinvestment and revitalization in our community, which has five designated brownfield sites in our downtown core. In just the past decade, the county has made tremendous strides in redeveloping these sites, transforming them into significant and vibrant components of our downtown and university districts.

Counties of all sizes play a key role in brownfield redevelopment projects

The topic of this hearing is of great importance to my county and many other counties across the United States who are tasked with protecting the environment, ensuring public health and strengthening the economic vitality of our communities. Brownfields are sites that have, or are perceived to have, environmental contamination. They range from old manufacturing and industrial facilities to rail yards, former gasoline stations, areas with leaking underground storage tanks, abandoned mills and mines, and even agricultural land. Successful redevelopment of these sites can reenergize entire communities and their local economies.

In Leon County, brownfields redevelopment has been an indispensable component of our economic development toolkit, and changes to the federal program and its requirements would directly affect our residents and our local economy.

Land use planning, which is a basic function of county government, is key to brownfields redevelopment

Whether in an urban, suburban or rural environment, land use regulations are carried out primarily at the local level in most states. Because this authority rests with local governments, counties can play a key role in brownfields redevelopment projects, in at least two distinct ways.

First, many counties oversee brownfields redevelopment projects directly, because these projects are an extension of the county's land use authorities. These authorities include developing comprehensive land-use plans, setting zoning ordinances, overseeing environmental monitoring and enforcement, revising transportation plans, creating viable economic development districts, conducting public health evaluations and running risk assessments evaluations at brownfield sites.

Counties work to create an environment that is livable for our residents, conducive to economic growth, protective of our natural environment and resilient against natural and manmade disasters. Local comprehensive land use plans, ordinances and regulations enable us to balance these considerations in a manner that best suits the unique needs and circumstances of our local communities, and we expend significant time and resources to achieve these goals.

In Leon County, we have taken active steps to incorporate brownfields planning into our comprehensive land use plan. This includes a policy to identify, assess and mitigate both publicly and privately owned brownfields. The plan is then used to determine the community's overall priorities for land use, transportation, economic growth zones, utilities and housing. Creating this plan has allowed us to build valuable partnerships to redevelop brownfields, such as those along our Gaines Street Corridor, which I will talk about a little later.

Second, local governments play an indispensable role in addressing public health and environmental concerns at brownfield sites, which can include old industrial factories, previous gasoline stations, hospitals, dry cleaners, underground storage tanks and even abandoned mines. While these sites generally are not considered "highly contaminated," the types and levels of contaminants present can vary, and may directly or indirectly impact groundwater and the surrounding land and buildings. Types of contaminants include lead, asbestos, petroleum products, treated wood, industrial chemicals and diesel fuel.

Local governments address environmental concerns through implementation of institutional controls (ICs). ICs are legal and administrative measures designed to protect human health and the environment. These may include impenetrable liners to restrict leaking, soil or other containment covers, fences and groundwater pumping and treatment systems. Local governments may also monitor the sites to ensure the controls remain viable. While local governments can implement these measures, they are only a short-term solution and highlight the overarching need to remediate contaminated sites.

As local governments oversee land use authorities, reclaiming brownfields is a vital component of economic development

Redevelopment of brownfields provide counties with a unique opportunity to foster economic growth and community revitalization by providing jobs and creating incentives for private investment. Counties across America can benefit from redevelopment by improving land within their jurisdictions.

While brownfields are often considered an urban feature, brownfields are also found in most rural counties nationwide. Urban counties have limited open space available for new construction; rural

counties may have ample space. Urban counties may have the staff and the technical expertise to remediate and redevelop brownfields, but limited funds to undertake a variety of projects. Rural counties, on the other hand, may not have staff, technical knowledge or funding. No matter whether it's a rural or urban county, targeted brownfields redevelopment can attract new business opportunities, create good-paying jobs, strengthen existing neighborhoods and protect public health and the environment.

Regardless of size, brownfields redevelopment can positively impact local economies in several ways:

First, brownfields and other similar sites are not only eyesores they are often located in underserved communities with depressed property values, high unemployment, low-income housing and high crime rates. However, if the site can be successfully redeveloped, the county can revitalize depressed areas, attract new industry and create good-paying jobs, while protecting public health and the environment.

In my county, Gaines Street, a former brownfields site, demonstrates the impact redevelopment can have on local economic development efforts. In its former life, Gaines Street was a 450 acre, predominantly industrial corridor that included an historic rail depot, chemical warehouses, petroleum distribution centers, a coal gasification plant and a city dump. But in 2000, Leon County, along with a wide variety of stakeholders including the City of Tallahassee, our Community Redevelopment Agency, the State of Florida, university partners, and the private sector, undertook a comprehensive plan to redevelop this corridor, which is still underway today. The Gaines Street Corridor now includes shops, restaurants, pubs, hotels, private housing, infill student housing near both of our major universities and a small business incubator established by Leon County. The Corridor has brought in 200 new jobs, increased taxable value by $130 million and attracted nearly 3,000 new residents in the past six years. We only expect these numbers to grow after new improvements such as additional hotels, a grocery store, convention center and additional student housing are added.

Second, we have found that when our economic development plans align with brownfields initiatives, our ability to move forward with revitalizing communities is strengthened. For example, where brownfields redevelopment is part of a concentrated downtown revitalization program, the entire project stands a better chance of securing public and private investment, as well as gaining political and community support.

Third, since many urban communities are already built-out, developers sometimes need local and state incentives to redevelop previous industrial sites. In the past, many developers dismissed these brownfields because of the high remediation costs to clean up the site. However, local governments have made brownfields development more attractive by offering different types of incentives such as

tax credits and rebates for entities who redevelop these sites. This is a win-win for both local governments and developers.

For example, Leon County, in conjunction with the city of Tallahassee and the Tallahassee Community Redevelopment Agency, offers competitive loans and issues sub-grants for environmental contamination cleanup through our revolving loan fund program. This fund was seeded through a $1 million U.S. Environmental Protection Agency (EPA) Brownfields Revolving Loan Grant. Additionally, through our county's Office of Economic Vitality, we help brownfield site owners connect with available resources at the state level that also offers brownfields development incentives.

Fourth, brownfields can be a strong driver for not only economic development, but for job creation as well. According to the EPA, brownfields redevelopment has created over 117,000 jobs nationally. Brownfield projects offer counties and other local governments the opportunity to train low income individuals for higher paying jobs working in the environmental remediation field.

In Washington State, King County's Jobs Initiative (KCJI), offered a brownfields job training to formerly-incarcerated county residents. After completing a 238-hour training course, the students are certified to work as brownfields environmental technicians. As of 2015, the county had trained over 350 participants in environmental cleanup and placed over 260 into jobs that paid an average of $18.80 an hour, which was well over the median average in King County.

Brownfields reinvestment offers counties of all sizes the chance to stimulate economic growth while also protecting the environment within their communities.

Brownfields redevelopment allow communities to address complex problems through innovative solutions

Not only can brownfields be used to invigorate local economies but they can also be used to address tough environmental challenges.

In Leon County, we are justifiably proud of our 24-acre Cascades Park, a former manufactured gas plant and landfill site, located just blocks from the Florida Capitol in downtown Tallahassee. Completed in 2014, the park includes trails, playgrounds, a 16-foot waterfall, interactive fountains, a war memorial and a state-of-the-art amphitheater for concerts and community events. What most people don't know is that the park's primary purpose is to serve as a stormwater management facility.

Prior to the construction of the park, there were significant flooding problems in nearby office and residential areas. In 2010, the county partnered with the City of Tallahassee to redevelop the site into

a park using both a one-cent sales tax and an EPA Superfund grant. The design of Cascades Park includes a system of box culverts, retention ponds and constructed wetlands, forming a "floodable park" to both mitigate local and regional flooding and improve water quality. Even though we have had multiple significant storms in the past several years, our surrounding neighborhoods have not experienced flooding since the park was built. For these efforts, Cascades Park has brought significant attention to our community, earning state and national awards, such as the EPA's "Excellence in Site Reuse" award.

Additionally, other counties are looking at how to increase the use of renewable energy and brownfield sites offer developers a way to acquire larger tracts of land that may be unsuitable or too costly to redevelop for residential or business purposes.

For example, Nye County, a rural 18,159 square mile county in southern Nevada consisting of 73.5 percent federally managed lands, has undertaken several renewable energy brownfields projects. Because of a 2002 EPA Brownfields Assessment Grant, the county was able to develop a 33-acre property called Calvada Eye into new county administrative offices and county commissioner chambers. The site has been equipped with solar panels to reduce the electric load of the county offices on the site. The county also redeveloped the former Pink Motel, a brownfields site, with a Tesla Supercharger electric vehicle recharging station.

Finally, counties are using brownfields dollars to address environmental issues from abandoned mine lands (AMLs). AMLs are lands, waters and surrounding watersheds in which mining activities previously occurred. Many of these mines were used in the mid-19th and early-20th centuries, but now lay abandoned. These mines have serious acid drainage issues that degrade local water quality, raise potable water costs, impact aquatic species, cause environmental contamination and threaten tourism dollars.

Known as "Colorado's Playground," Summit County, Colorado is considered "rural" with a population of approximately 30,257 residents. However, during the summer months the county draws close to two million visitors due to its natural beauty and proximity to the Colorado Rocky Mountains. In the mid-19th and early 20th centuries, the economy of Summit County, Colorado was heavily dependent on gold and silver mining. After the collapse of the mining industry, Summit County was left with many abandoned mining sites. Because Summit County is heavily dependent on its open space, the county has used EPA Brownfields grant funds to undertake a comprehensive study of its AML sites and, to date, the county has completed or is in the process of finalizing 12 AML reclamation projects. They have also completed site assessments of over 250 mine sites. Through these efforts, the county will preserve undeveloped open space, while improving water quality.

To build upon past successes, there are several ways that Congress can improve and strengthen EPA's Brownfields Program

Even though our communities have made significant strides in redeveloping contaminated sites, they only address the surface of the problem. While it is hard to estimate the actual number of underused or abandoned brownfields, EPA estimates that there are nearly 450,000 brownfields sites nationally. These sites show evidence of at least some contamination, which could trigger environmental regulatory issues and prevent the owners from selling the site, making it very difficult to secure financing or proceed with redevelopment opportunities.

To address these issues, Congress has the opportunity to revise federal brownfields policies to ensure that these sites can return to economically viable properties and move seamlessly into the 21st century.

To that end, I have several suggestions for improving the program.

Increase overall funding levels for EPA's Brownfields grant program

Many brownfield sites across the U.S. remain underutilized because of the limited availability of funds to identify and clean up contaminated sites. Additionally, due to high remediation costs and associated regulatory issues, it becomes very difficult for local communities to fund brownfields projects.

This comes at a time when counties—regardless of size—are experiencing significant fiscal constraints and our capacity to fund brownfields activities are often limited. According to NACo's County Economies report released this February, only one in four of the nation's 3,069 counties have fully recovered to pre-recession economic conditions. This is especially relevant for counties of all sizes that face the stigma of vacant brownfield properties but limited funds to start projects.

Even if counties' economic picture was improved, states put significant restrictions on our ability to generate local revenue. In fact, more than 40 states limit counties' ability to collect sales and/or property tax.

In my county, we continue to recover from the Great Recession, we are fortunate to have a strong and stable economic base. In 2014, Leon County citizens voted to renew a one-cent sales tax that has helped us to transform our community through projects like Cascades Park.

But for other counties, it's a little more complex. As a boom and bust economy, rural Duchesne County, Utah has recently been hit with an economic recession due to low global oil and gas prices.

As a small county of 20,862 in northeastern Utah, the recession has made it more difficult to attract businesses to redevelop derelict industrial sites in the county. However, in 2016, the county received a $550,000 EPA grant to "further brownfields assessment and redevelopment throughout the target communities" within the county. Through the grant, Duchesne County will play a lead role in identifying brownfield sites and prioritizing redevelopment strategies in all of its cities and towns. Without adequate funds, it would be extremely difficult for the county to undertake this effort.

Unfortunately, at current appropriated levels, EPA's Brownfields Program has had to turn away many applicants. According to the agency, over 1,700 applicants applied for funds over the past five years but only a small portion received grants due to the limited pot of money EPA had available.

It is essential that federal resources remain available for brownfields assessment, remediation and redevelopment, as well as to provide incentives for private investment. We recommend that Congress, at the very least maintain and/or increase funding for EPA's Brownfields Program and increase the total allowable cleanup grant amount to allow communities to clean up more sites and provide greater certainty for long-term project financing.

Creation of a multipurpose grant program will allow communities to prioritize brownfield projects

Under the current grant program, there are specific and separate grants for inventory, characterization, assessment, planning or cleanup of a specific brownfield site. That means that applicants must apply for multiple grants to address the various stages of brownfields redevelopment. This is a very cumbersome process for local governments.

We encourage Congress to create a multi-purpose grants that can be used for the full range of brownfields-funded activities (assessment, cleanup, redeveloment, etc.) on an area-wide or community-wide basis. Applicants should be required to demonstrate a plan and the capacity for using this multi-purpose funding within a set timeline in order to qualify for such funding.

Brownfields liability creates disincentives for local governments and other parties

First, virtually every community in America large and small, contains properties that lay vacant for years due to fears about environmental contamination, unknown cleanup costs and potential liability issues. As counties acquire brownfields, our risk of incurring liability under federal environmental laws is a continued concern, and may prevent us from even acquiring the sites in the first place.

This is especially relevant for "mothball" properties which are abandoned brownfields where the current property owner is unreachable or unwilling to discuss a property transfer and/or improve site conditions. In these situations, local governments often have to use eminent domain, tax foreclosures

or other involuntary means to acquire properties. However, due to liability concerns associated with existing environmental contamination, these are typically options of last resort.

Even though a number of laws including the Comprehensive Environmental Response, Compensation and Liability Act (CERLCA or Superfund) (Public Law 96-510) and the Small Business Liability Relief and Brownfields Revitalization Act (Public Law 107-118) were enacted to address liability concerns, counties and other local governments quickly learned that if their name was added as an "owner" on the brownfield property's title as a result of an voluntary or involuntary acquisition, it opened the local governments up to liability issues under CERCLA and other statutes. Although the federal statute contained an "involuntary acquisition" exemption for local governments, the term is narrow, ambiguous and not well understood. Also, there is no exemption for state and local governments that voluntarily purchase properties for cleanup and redevelopment.

A number of states have acknowledged that liability protections for local governments under existing federal laws are confusing. As a result, states have passed clarifying laws, which empower local communities to acquire brownfield sites through involuntary measures, while protecting governments and the citizens they serve. A good example of this hails from New York State.

In 2011, the state of New York passed a bill that permitted municipalities to set up land banks in their communities for tax delinquent, tax foreclosed, vacant and/or abandoned properties, while protecting the local government from liability. In 2013, Suffolk County was approved to establish a Suffolk County Landbank Corporation (SCLBC), which gave the county the authority to acquire, dispose of, and/or redevelop tax foreclosed properties and tax liens, such as brownfield and superfund sites. SCLBC was created to address the 133 tax delinquent and potentially contaminated parcels within the county. As of February 2013, the sites covered 266 acres and represented $28.8 million in unpaid taxes and penalties, with an annual $2.1 million burden to Suffolk County taxpayers.

By establishing SCLBC, Suffolk County was able to limit its liability, reduce costs to taxpayers, stabilize its tax base and facilitate cleanup of brownfield sites.

But, depending on state law, this solution cannot be used universally across the U.S., highlighting the need for a more permanent national solution. We believe that Congress should exempt local and state governments from CERCLA liability if they neither caused or contributed to the contamination and exercised due care with known contaminants on a site.

Second, abandoned mines are a huge issue in many counties, especially in the west. Due to the age of these abandoned mines, well over 50-100 years old in many cases, there is no "financially responsible party" and if the current owner of the property did not contribute to the pollution they are held

harmless. And, since AMLs have not been adequately mapped, identifying the source of acid mine pollution is difficult.

While an exact number is unknown, it is estimated that there are hundreds of thousands of abandoned mines nationwide. Even though some of these sites may have already been identified as a priority for cleanup under EPA's Superfund and Brownfield programs, outstanding issues remain, especially for local governments and other groups who offer to clean up the sites. These "Good Samaritans" are not legally responsible for the site, nor are they responsible for the environmental contamination.

However, if Good Samaritans undertake remediation efforts at an AML site, under current law they could be held liable for any ongoing mine drainage, even though they are not the responsible party. Additionally, they would be required to obtain a Clean Water Act (CWA) National Pollution Discharge Elimination System (NPDES) permit to regulate contaminated runoff from the site. The entity would then be legally responsible for any drainage and would be subject to citizen suits under provisions of the CWA, all because a Good Samaritan wanted to do the right thing.

Earlier in the testimony, I discussed the efforts of Summit County, Colorado to clean up AML sites. This effort has not been without challenges since liability issues remain at the forefront of their efforts to preserve open space and improve the environmental impacts of past mining activities. Through help from the EPA and Colorado's Division of Reclamation Mining and Safety, the county has been able to overcome a diverse set of challenges to clean up these sites. However, other areas have been less successful.

While we do not disagree that federal standards should be upheld, we are concerned that the current Good Samaritan policies discourage cleanup activities at AML sites. This, in turn, makes it more difficult for our local communities to address environmental issues that arise from AML sites.

<u>We encourage Congress to pass legislation that will limit liability for "Good Samaritans" performing voluntary cooperative mitigation efforts at abandoned mine sites where there is no financially responsible party.</u>

Finally, after passage of the 2002 Brownfields Revitalization Act, there was significant confusion over which local governments with brownfield sites could apply for EPA's brownfields grant programs. As part of the Act, only those entities that conducted "all appropriate inquiries" on prior brownfield site uses before purchasing the property were granted liability protection.

Since this provision was only applicable for properties acquired after 2002, brownfields properties obtained prior to 2002 were left in limbo, because they were unable to document previous "all

appropriate inquiries." As a result, only those properties acquired after 2002 are eligible for EPA's grant program while sites acquired before 2002 are ineligible to apply for the grant. This leaves numerous municipally-owned contaminated sites across the U.S. in abeyance since local governments have limited options to evaluate and redress environmental issues at the site.

In order for us to reduce the number of brownfields nationally, Congress should open the grant program to all local governments that acquired brownfields both before and after 2002, provided that the applicant did not contribute to or cause the contamination.

In conclusion

Chairman Graves and Ranking Member Napolitano, brownfields redevelopment is important for counties of all sizes. In areas where the job and housing markets are shaky, investing in remediation, cleanup and redevelopment may create additional revenue for counties, as well as provide many economic benefits for our residents. In addition, brownfields redevelopment can preserve a community's culture, while addressing environmental concerns and constituents needs. Finally, through brownfields redevelopment we can not only transform communities, but we can also lay the groundwork for a new and better future.

Thank you again for the opportunity to testify today on behalf of America's 3,069 counties. I would welcome the opportunity to address any questions.

Attachment:

- About Cascades Park, Leon County, Florida

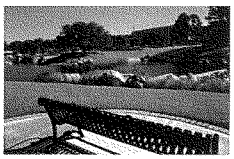
About Cascades Park

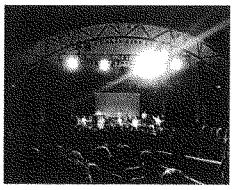
Cascades Park is the crown jewel of parks within downtown Tallahassee. It is "a major stormwater management system cleverly designed as a world-class park." The park is approximately 24-acres along a stream which is south of the Florida Capitol building. This area remained closed to the public for many years due to the soil and water contamination from among other things, coal tar released by a manufacturing gas plant. The remediation of the Cascades Park Gasification Plant Superfund site was a massive environmental accomplishment that went above and beyond what was required by regulation. The assessment and remediation was completed at a cost of approximately $12 million, with most of the 85,000 tons of soil removal being completed in 2006. The cleanup paved the way for the park's development, which now includes numerous recreational, cultural, educational and environmental aspects that are integral to this park's overall theme.

From the early 1900s until the mid-1950s, the City of Tallahassee operated a manufactured gas plant (MGP) on the southeastern edge of the Cascades Park site. The plant converted coal into gas to offer as lighting and heating fuel for the City's residents. Operations released waste products at the site, and deposited municipal solid wastes in a city-owned landfill on the southern portion of the site. Industrial MGP operations ended at the Cascades Park site in the 1950s.

The fact that this site was the location of a former coal gasification site that had numerous major underlying environmental issues mandated a heavy regulatory review/process. Although the park was only required to comply with EPA Regulation, Cascades Park went above and beyond what was required. As a result, Cascades Park not only successfully completed the required remediation but in fact obtained the highly prestigious "Excellence in Site Reuse" Award from the EPA for these efforts.

Cascades Park was designed and constructed to achieve multiple goals. The pollution was cleaned up, stormwater management and water treatment systems were installed, and its 'disguise' as a beautiful park has brought the community together. Cascades Park now serves as a host for educational and networking opportunities that encourage citizens to become more closely linked with their community. The overall atmosphere communicates a sense of civic trust, and community interaction. Residents strolling through the park, walking their dogs or riding their bikes may run into any number of other citizens who are enjoying the sun, reading the historical panels, or attending festivals. Fencing classes, musicians on the amphitheater stage, and toddler T-ball games are common sights as people return again and again to participate in something new.





U.S. House of Representatives

Committee on Transportation and Infrastructure

Subcommittee on Water Resources and Environment

Hearing

"Building a 21st Century Infrastructure for America: Revitalizing American Communities Through the Brownfields Program"

March 28, 2017

Testimony of

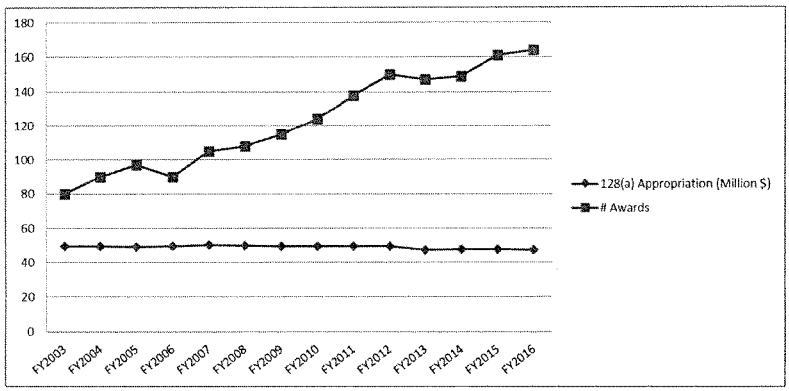
Amanda W. LeFevre

On Behalf of the

Association of State and Territorial Solid Waste Management Officials

Main Points

- Brownfield Redevelopment plays an important role in addressing our country's ailing infrastructure. Redevelopment of brownfields reuses existing roads, bridges, water treatment plants and other infrastructure elements resulting in savings in development costs and the need to build new infrastructure that also requires maintenance.
- Funding, expertise and resources at the State, federal and local levels of government allow those redeveloping brownfields to layer funding and assistance to encourage redevelopment of Brownfields. The variety of tools allows entities to select the incentives and resources that will make their particular project work.
- Since the Brownfields law's beginnings in 2002, 128(a) funding has been provided to States, territories and tribes with the national funding level remaining at just under $50 million for more than 15 years, whereas the number of applicants has more than doubled. The awards in FY2003 averaged $618,000. However, by FY2016, the average award had dropped to approximately $293,000, less than half of what had been awarded in FY2003.



- Funding has been used to assist urban and rural local governments, community officials and others to assist with technical support, environmental assessments and project guidance.
- Funding supports Voluntary Cleanup Programs (VCP), which provide the foundation for overseeing cleanups, setting remediation goals and institutional controls.
- There are a variety of sites in the brownfield universe ranging from simple cleanups to complex sites. The more challenging sites require a unique collaborative approach of stakeholders working in partnership with the community, local, State and federal governmental organizations, business partners, nongovernmental organizations (NGOs) and individuals from the community itself.
- Brownfield Programs offer positive economic impacts as stated in the following studies:
    - The University of Delaware's economic study found that every nominal dollar spent through the brownfield program generates a $17.50 return on the State's initial investment.
    - A study of the impact of funding in Wisconsin found that a dollar invested there yields up to $27.25 in total funds for projects.
    - Since 2015, Oklahoma has garnered over $10 million in new State and income taxes annually on remediated sites. There has also been a 147% increase in job growth on redeveloped brownfields and surrounding sites.
    - A 2014 study by ECONorthwest found that every $1 invested in brownfield redevelopment in Oregon resulted in $15 of leveraged funding. The 51 completed

sites in the survey generated 4,300 permanent jobs, of which 60% are in the industrial sector. In total 8,900 indirect and direct jobs were created.

  - The Michigan Department of Environmental Quality (MDEQ) reports that in 2016 the rerun on investment on brownfield funding is $34 for every dollar of MDEQ funding.

- Brownfields and the associated voluntary cleanup programs are necessary to assist with cleanup and to allow property sales, redevelopments and financing to move forward. Sudden and significant cuts to the money coming to the States can and would cripple States programs, and if State programs cannot remain responsive, they will wither and collapse.

Good morning Chairman Graves, Ranking Member Napolitano and Members of the Subcommittee. Thank you for the opportunity to speak to you today. My name is Amanda LeFevre, and I am the Vice-Chair of the Brownfields Focus Group of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO). I am here today to testify on behalf of ASTSWMO. ASTSWMO is an association representing the waste management and remediation programs of the 50 States, five Territories and the District of Columbia (States). Our membership includes State program experts with individual responsibility for the regulation or management of wastes and hazardous substances.

ASTSWMO is a strong supporter of the Brownfields Program. Communities across our nation live with and adjacent to their brownfields every day. Even if you don't live right next door, you likely

feel their impacts. They contribute to the economic, social and environmental decline in the places we live, work and play. However, the redevelopment of contaminated properties is a powerful tool that has far-reaching implications for both urban and rural communities. Brownfield redevelopment sparks job creation and private investment, encourages infrastructure reuse, increases property values and the tax base and facilitates community revitalization. For the past 15 years, this program has served to break down barriers to redevelopment and move properties with an environmental past forward when they would otherwise have remained blighted.

Our State programs have evolved to be responsive to the needs of communities and developers while protecting the health of our citizens. These programs have developed varied sets of remediation and redevelopment tools that are specific to the State needs. Properties going through our programs may use one or all of our services, but the unifying theme underlying all of them is that we could not provide these services without the aid of our 128(a) funding and our federal program.

Since the Brownfields law was signed in 2002, funding to States, Territories and tribes, via the 128(a) Brownfield Grant, has been essential for States to build and maintain successful State brownfield programs. The funding that States receive each year provides an incredible number of benefits to local governments, corporations and other organizations, whose goal is to clean up and redevelop blighted, underutilized and contaminated properties.

Some of these benefits include:

- Providing funds to complete environmental site assessments of properties to meet all appropriate inquiry (AAI), Phase II sampling, asbestos and lead inspections;
- Supporting local community officials in the preparation of grant applications for Brownfield assessments, cleanups or revolving loan funds;
- Providing workshops for organizations, communities and others to educate them about Brownfield services, incentives and redevelopment processes and issues.
- Assisting local governments, nonprofits and redevelopers to successfully manage risk and liability concerns;
- Meeting with community officials and others to assist them in working through assessment and cleanup of Brownfield properties, as well as providing much needed technical support and recommendations; and
- Supporting VCPs, which provide the foundation for overseeing cleanups, setting remediation goals and institutional controls that provide for safe reuse of the properties.

While our programs do spend time in urban areas and the services we provide there are important, we would also like to highlight the increasingly important role that we play in smaller cities, towns and rural areas. These communities also grapple with brownfield issues and due to limited resources cannot afford to have an environmental manager on staff, hire a consultant or even afford a grant writer. Our programs often serve as a no-cost environmental consultant to those communities by providing assessments, cleanup guidance, liability management and grant assistance. Redevelopment in these towns would not happen in many cases without federal, State and Territorial brownfield services.

Unlike many other environmental programs that began at the federal level, with States taking over authority to run various aspects, States are primarily responsible for the development and maintenance of Brownfield cleanup and redevelopment programs. States have developed their own, unique State-specific statutes, rules and regulations to govern voluntary cleanup of contaminated sites and provide liability releases or letters of comfort to fit the needs of each individual State. However, the individual programs are sufficiently consistent to allow 25 States to execute a VCP Memorandum of Agreement (MOA) with their respective EPA regional authorities. These MOAs promote State-federal coordination, define general roles regarding the cleanup of sites and provide predictability and consistency for those completing a cleanup under State authority.

Since the Brownfields law's beginnings, 128(a) funding has been provided to States, Territories and tribes with the national funding level remaining at just under $50 million for more than 15 years, whereas the number of applicants has more than doubled. In FY2003, 80 States, Territories and tribes received funding from a total appropriation of $49.4 million. By FY2016, 164 entities requested funding including 50 States, 4 Territories, the District of Columbia and 109 tribes, 8 of which were new applicants. The awards in FY2003 averaged $618,000. However, by FY2016, the average award had dropped to approximately $293,000, less than half of what had been awarded in FY2003. This dramatic decrease in award amounts is directly attributable to the success of the program and the steadily increasing demand and competition for these essential funds.

Although most States do not rely solely on 128(a) funding alone to support their Brownfields and State response services, the funds are an essential component of each State's program. The additional resources many States utilize include program fees, special cleanup funds and, in some cases, general revenue funds. However, most of these sources have either decreased or remained flat, particularly during the recent recession. Few of the States receive sufficient State funding to cover all program costs and provide adequate support for EPA 104(k) Brownfield Grantees. As a result, States have had to resort to cost-saving measures, such as reducing staff dedicated to Brownfield functions, cutting or eliminating the amount of assistance provided to local communities, increasing fees and reducing the number of 128(a)-funded environmental assessments.

A continuation of the current funding dynamic would halt the progress our programs are making when the programs are needed most. We are at a critical junction in our national history where expansion of our urban boundaries, while attractive in short-term benefits, will lead to continued increases in infrastructure costs that we can ill afford. When we rebuild our infrastructure, we have the opportunity to renew what surrounds it in order to create a more robust economy and assist in the responsible growth of our communities. Brownfield funding is critical to that mission.

Added to the burden of tight budgets is the complexity of sites that communities often encounter. While States and Territories continue to conduct cleanups on relatively simple sites, in many areas they are starting to address more challenging sites whose redevelopment may be hampered by complex issues, such as contamination and obstacles related to the community as

a whole. These properties are often financially upside down due to the suspected environmental contamination, yet many of these sites are situated at key locations in our small cities, towns and communities. These more challenging sites require a unique collaborative approach of stakeholders working in partnership with the community, local, State and federal governmental organizations, business partners, nongovernmental organizations (NGOs) and individuals from the community itself. The State's Brownfields Program plays a significant role by providing technical support, recommendations and the voluntary cleanup programs to ensure sites are cleaned up to standards that are safe for the intended reuse.

The funding provided for brownfield redevelopment multiplies in our communities resulting in positive economic impacts. The University of Delaware has published two well-respected studies: *Economic Impact of Delaware's Economy: The Brownfields Program* dated January 5, 2010; and *Beyond Natural and Economic Impact: A Model for Social Impact Assessment of Brownfields Development Programs and a Case Study of Northeast Wilmington, Delaware* dated February 2013. The economic study found that every nominal dollar spent through the brownfield program generates a $17.50 return on the State's initial investment. A November 2015 study by the Fiscal and Economic Research Council at the University of Wisconsin found that every $1 spent for assistance in the State of Wisconsin leveraged $27.25 in total funds and that $3,000 in brownfield funding leverages one job. Other States have also done analysis on the power of brownfield funding:

- Since 2015, Oklahoma has garnered over $10 million in new State and income taxes annually on remediated sites. There has also been a 147% increase in job growth on redeveloped brownfields and surrounding sites.
- A 2014 study by ECONorthwest found that every $1 invested in brownfield redevelopment in Oregon resulted in $15 of leveraged funding. The 51 completed sites in the survey generated 4,300 permanent jobs, of which 60% are in the industrial sector. In total 8,900 indirect and direct jobs were created.
- The Michigan Department of Environmental Quality (MDEQ) reports that in 2016 the rerun on investment on brownfield funding is $34 for every dollar of MDEQ funding.

To summarize, ASTSWMO believes a robust brownfields program, at all levels of government and working in concert with the private sector, is essential to the nation's environmental, economic and social health. Without adequate funding for State and territorial Brownfield and Voluntary Cleanup Programs, Brownfield program goals cannot be achieved. While the current funding level is inadequate, we want to ensure that it is protected at a minimum. I would like to also point out the *ASTSWMO Position Paper 128(a) "Brownfields" Grant Funding*, which was approved by the ASTSWMO Board on April 22, 2014, provides additional detail on the Association's support of brownfields funding. The position paper is provided with this testimony.

Thank you for this opportunity to offer testimony. I would be pleased to answer any questions you may have.

STATEMENT

OF

JONATHAN PHILIPS

Managing Director
Anka Funds

TO

THE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT

OF THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

OF THE

UNITED STATES HOUSE OF REPRESENTATIVES

REGARDING

BUILDING A 21ST CENTURY INFRASTRUCTURE FOR AMERICA: Revitalizing American Communities Through the Brownfields Program

March 28, 2017

10:00 a.m.
2167 Rayburn House Office Building

Contact Information:

For more information regarding this testimony, or if there is a site or community area in need of capital or attention, please use the following contact information:

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Prologue

Thank you for this opportunity to provide testimony to the Committee. I have been privileged to provide testimony on 5 previous occasions before various Congressional committees on the issues of revitalization of distressed real estate, brownfields and ways our government can further the public interests to encourage the private activity and investment in the betterment of our national communities. I am deeply honored to be invited to provide testimony about environmentally distressed properties.

I feel like there has never been a better time to create an infrastructure for more efficiently cleaning house in the area of Brownfields. Brownfields drain resources, are often negative tolls on taxpayers and detract from American's beauty. I include a number of suggested solutions for accelerating the cleanup of brownfields across the US in my testimony. When I established the US Conference of Mayors — Community Revitalization Initiative, a first-of-its-kind national public-private partnership to fast-track the revitalization of property in cities and towns across America using private capital in city's off-balance sheet transactions, I intended this model to be a national blue print. I have some concrete solutions for various areas of the capital stack related to brownfield remediation and redevelopment – from equity investors to lender – that would, in my opinion, greatly accelerate revitalization and could do so without spending a dime of taxpayer money. I would welcome the opportunity to meet with you and discuss these ideas and personally assist with implementation in the future.

I would like to preface my statement regarding revitalizing America's communities through the Brownfields Program by emphasizing that since the real estate crash in 2008, the redevelopment of brownfields sites came to a screeching halt in our nation. Brownfields are complicated, messy, laden with liability. In a post-crash world where budgets tightened, the real estate market contracted many magnitudes and even the carrying costs of holding "clean" land were often considered too high by many, brownfields, not surprisingly, have been virtually ignored by private investors and developers for the past 8 to 9 years. Given that almost no new public investment (and even less new private investment) has been deployed in brownfield reclamation and

redevelopment since the market crash in 2008, three things are clear: 1) the real estate market has as much or more to do with the acceleration or deceleration of brownfield cleanup and redevelopment as any government policy; 2) now that real estate market movements are starting to trend toward a healthier period, this is a very fine time to begin to examine the nation's brownfield program infrastructure and implement improvement and reauthorization to further reduce barriers to site development. We hope and expect market forces in the future to begin to make redevelopment economical for more brownfield sites across the nation; and 3) there are few case studies and data over the past 7 years that one can call upon to produce a sample size of meaningful analysis and I encourage the Members of this Committee to examine the larger data sample prior to 2008 when crafting legislation. My comments in this testimony necessarily draw upon the period of activity (pre-2008) rather than the relatively dormant last 8+ years.

I applaud this Committee's foresight in re-igniting the discussion of brownfields to plan for a future that can allow more site redevelopment to occur with fewer impediments. Your timing is excellent and I, along with our investment firm, Anka Funds, look forward to lending our resources to assist you, as called upon.

Before I begin, I would like to provide a little background about our experience as private sector investors in distressed properties.

Anka Funds – Overview

Anka Funds (www.ankafunds.com) is an investment firm headquartered in Raleigh, NC focused on niche, underserved opportunities that produce strong returns for its stakeholders and have a positive social or environmental impact. Anka Funds' platform includes a family of managed private equity funds, including Anka Residential Real Estate Dividend Fund I, Anka Residential Real Estate Dividend Fund II and Anka Residential Real Estate Dividend Fund III which actively acquire, pool and manage attractive properties which produce dividends for Anka investors, the Anka Sustainable Ventures Fund, which invests in the acceleration of companies with innovative products and technologies with central attributes that are environmentally or socially sustainable, the Anka Real Estate Opportunity Fund, which invests in undercapitalized, challenged or governmentally prioritized real estate assets during times when the market is supportive of such strategies.

Anka Funds – History

The principals of Anka have worked together since 2002, helping Cherokee Investment Partners and its affiliates invest opportunistically in, and sustainably manage distressed investments for, their various private equity funds. Cherokee is a real estate private equity family of funds focusing on the acquisition of distressed real estate that grew from $250mm to $2bn during the tenure of Anka's principals. At the time, Cherokee was the largest investor in the reclamation of brownfields sites and pioneered a new sector by applying expertise, creativity and resolve to sustainable redevelopment of properties after remediation. Following the market collapse in 2008, Anka principals spun out and

formed Anka Funds, an independent company to invest in attractive niche opportunities that fell beyond Cherokee's permitted investment criteria.

Anka Funds -- Track Record

Anka has sourced, separately acquired and managed approximately 700 properties since its inception, in addition to its non-real estate investments. Most of these properties were distressed properties upon acquisition. The Principals of Anka have a long history working alongside mayors, governors and other officials on redevelopment projects that incorporate sustainable elements. The Anka team has collectively worked on well over $10 billion of transactions across a wide array of industries. Anka's expertise is in buying housing from distressed sellers in areas and situations where there is little or no competition from traditional institutional capital. Anka's ability to systematically source and manage the buying, rehabbing and management process in these under-served areas has led to superior results, including, in core markets, 9% unlevered cash-on-cash yields (16%+ levered tax-equivalent yields) from rental operations[1] and 40% annual unlevered returns on investment on sold/realized investments[2] in core markets.

Anka Funds -- Mission and Philosophy

Anka's mission is to create positive outcomes for both our investors and the communities and stakeholders that are touched by our projects and companies. Our investment philosophy is straightforward. We target transactions with significant upside potential but take a conservative approach with respect to making sure that our investors' capital and resources are protected in a downside situation. In doing so, we make sure that environmental responsibility, integrity and strong stakeholder relations are a vital part of everything we do. We set high standards for businesses in the area of environmental responsibility and believe that private entities can work in tandem with public institutions to reduce environmental impacts and efficiently accomplish both public and private objectives.

Our corporate philosophy is also straightforward. Anka believes that conducting business ethically and with integrity is vital to the success of the company. We are proud to steward the resources with which we are entrusted and embrace the role of fiduciary for our stakeholders. Our management team is constantly striving to uphold the highest professional standards, provide sound advice and align our interest with our partners. Our integrity builds trust and collaboration and creates a culture of openness and candor. Our reputation is our greatest asset and is molded by the way we act with partners, colleagues and the communities we serve. We strive not only to implement with our partners and stakeholders the best strategic decisions and investment of resources, but also aim to strengthen our relationships by promoting open communication. We value our stakeholders and understand that our business relationships provide us with important sources of proprietary investments.

[1] As of 2014
[2] As of 2015, in core markets

Introduction

Historically, owners of contaminated real estate often focused resources on avoiding liability rather than site cleanup. The consequence was stagnating properties, economic malaise, eyesores, and conditions hazardous to health in otherwise growing urban neighborhoods. Secondary effects have been documented to include increased crime, lower tax revenues, job loss and surrounding blight.

Among the most historically popular tools used by sellers to avoid liabilities included variations on what has been termed "mothballing." Corporate mothballing typically involved a legal team talented in producing endless delays, a chain-link fence, and techniques to continue token and inefficient "operations" with the objective of avoiding requisite environmental assessments and attendant regulatory scrutiny and enforcement actions. Owners have perceived that it is economically and "reputationally" preferable to avoid environmental testing and investigation, so as to delay the greater liability of having been legally "put on notice." This pattern of owner response to environmentally contaminated properties ensured that the nation's brownfield inventory ballooned.

As the true costs of these delays and mothballed sites have become apparent, the public and private sectors have worked together to create regulatory and financial mechanisms to revitalize brownfield sites. These stakeholders have effectuated important changes in court rulings, environmental laws, regulations and enforcement action, urbanization, insurance and availability of financing vehicles to address the cleanup and reuse of these brownfield properties. Both the public and private sectors maintain a strong interest in the cleanup of brownfields and their restoration to productive use.

Just as our nation required both sectors, working together, to produce the important brownfield reforms of the past several years, a similar partnership will continue to be important to ensure an acceleration of the rate of brownfield cleanups across the county.

My predecessor company was the nation's largest and most experienced brownfield investor. We believed that without public-private partnerships, there could be little hope of reclaiming most of the sites that languish today.

Only those sites that are both trivially contaminated and situated in the most attractive real estate locations are sure bets to receive the attention of developers who may be willing to tackle projects with marginally increased risks and substantial rewards. Unfortunately, we believe the vast majority of US brownfield sites are both more complicated and less economically attractive; it is this majority that are unlikely to be addressed under current market forces…even if market forces continue an upward trend of increased demand for urban land.

I believe that the environmentally contaminated sites most plaguing this country are more often than not either those which would produce net losses for the investors, or those with

a risk-reward ratio that is significantly unattractive relative to commonplace, sprawl-producing greenfield development.

In either case, the problem stems from rational economic decisions based upon local market forces of supply and demand. If we are to concede that a wholesale, publicly funded cleanup of every contaminated site in the nation is not resource-feasible or easily implemented, we must innovate better ways to combine public and private resources to effectuate more cleanups more quickly.

The problem of brownfields can be greatly alleviated by creating a rational economic framework in which the private sector may operate, respond and be guided by well-considered, typically local, public decisions for prioritization of private-sector driven site cleanup. In an unsubsidized setting, market economics drive the cleanup decisions of these challenging sites. With public guidance, private forces can operate efficiently to produce revitalization in places where communities most need it, but where without such public incentive, revitalization may not occur.

Municipal officials and urban residents increasingly fight suburban sprawl by encouraging development of urban sites. Communities support redevelopment of in-fill sites they previously avoided due to uncertain or complicated environmental issues. Although challenges remain, federal, state and local governments and private groups have collaborated historically to explore creative ways to remediate environmentally impaired sites. I am proud to have participated actively in many such efforts.

Companies whose core business is not real estate asset management and remediation or brownfield redevelopment can maximize shareholder value and redeploy resources elsewhere by selling underutilized and environmentally impaired properties to brownfield developers with proven and successful track records. By carving out underutilized and environmentally impaired properties, companies improve their liquidity and reduce their liabilities, thereby strengthening both the left- and right-hand sides of their balance sheets.

When companies want to maintain the use of such property pending cleanup, sophisticated buyers can use structures such as sale-leaseback agreements, though these structures have not been fully vetted by the courts. Despite the risks, I see sale-leasebacks as a preemptive tool useful in the fight against what might otherwise become tomorrow's abandoned brownfields. By allowing non-intrusive cleanup to occur during a pre-determined lease-term, we are able to ensure that if the ongoing operation on the site were to depart, the site would have already been environmentally assessed, substantially remediated and in the hands of a community-friendly entity that is interested in seeing property revitalized for a future highest and best use. Best of all, the communities in which these "future brownfield sites" reside are benefited by locking in for the host communities the jobs and tax rates associated with the ongoing concern, in addition to the obvious and instant community and environmental benefits associated with the cleanup of a polluted site.

Background - The Brownfield Market

Even more so than the broader real estate market, the brownfield market is disaggregated and local in nature. Lack of reliable information makes it difficult to estimate accurately participants and market size. According to the Environmental Protection Agency ("EPA") and the Office of Housing and Urban Development ("HUD"), approximately 500,000 industrial and commercial brownfields were estimated to exist in the United States. The EPA's definition of brownfields includes only properties that have both environmental contamination and certain socioeconomic characteristics. Based on George Washington University research using EPA and HUD databases prior to the real estate crash, the value of this impaired real estate in the US exceeded $600 billion in its then current condition.

Corporations own many brownfield sites. Many companies are consolidating operations and closing facilities, while mergers and acquisitions produce additional surplus sites. Government agencies, individuals and financial institutions that unknowingly purchased or foreclosed on brownfield sites also own these properties. Still, there are those sites that were acquired by entities aware of the existing environmental conditions and inspired by the prospect of an attractive return on investment, only to discover that the properties challenges were too difficult to overcome, given the entity's limited track record in dealing with such properties.

Despite the significant increase in the number of brownfield redevelopments since the early 1990s (even considering the slowdown in redevelopments since 2008, as I mentioned earlier) the brownfield market continues to experience excess supply (National Brownfield Association – Market Report). The imbalance between supply and demand results from several factors, including brownfield redevelopment economics, environmental liability potential, capital source limitations available for redevelopment (especially for large redevelopment), capital cost, transaction complexity and market inefficiencies in matching buyers and sellers.

Brownfield Redevelopment Economics

Brownfield redevelopment is a unique real estate development type. The economic drivers are generally similar to those found in typical real estate/greenfield development, but environmental contamination introduces several hurdles to successful economic redevelopment.

On the revenue side, the future sale price (i.e., exit price) of the land is a function of the highest and best use of the "clean" real estate parcel. Highest and best use values the real estate in accordance with the use that, at the time of appraisal, is likely to produce the highest economic return. On the cost side, the expenses associated with brownfields redevelopment include the purchase price, closing costs, remediation and risk management costs, capital expenditure (e.g., infrastructure, building improvements), soft

costs (e.g., legal, rezoning, engineering and consulting) and sales costs (e.g., marketing and/or commissions).

Remediation cost (i.e., cleanup cost) is not the only hurdle associated with contaminated real estate; as important for the developer is the potentially larger environmental liability and the difficulty of finding debt project financing. Brownfield developers have difficulty using financial leverage (e.g. debt) because brownfield appraised value is generally low, and banks require lower loan-to-value ratios to protect themselves from the risk of having to own and manage stigmatized properties. As a result, the equity requirement for brownfield redevelopment is high. High equity requirements combined with increased expenses due to remediation costs often lead to greater risk with a possibility of lower return on investment. In 1998, the Urban Land Institute reported that average rate of return for brownfields was less than three percent, well below the rate of return for greenfields projects, which averaged at that time between 10 to 30 percent. Higher site development and financing costs, along with often significantly longer periods of time during which capital is invested (creating a riskier illiquid investment), are seen as factors contributing to the lower brownfields return rate. Low rates of return on investment combined with high project risk and complexity requiring niche areas of expertise constitute a significant impediment to private sector brownfield development financing.

Another hurdle specific to brownfield transactions is that other dilapidated sites frequently surround individual brownfield sites. Successful redevelopment of an individual brownfield site is often contingent upon developing a master plan for an entire area, which may require the development team to buy adjacent sites from multiple owners. The complexity of dealing with multiple sellers adds to the risk inherent in brownfield development projects. In some cases, buying additional surrounding parcels is the only way for the project to offer the potential to generate, on a blended basis, enough gain to offset the risks and costs associated with the core contaminated parcel(s). However, as more property is acquired on the perimeter of a contaminated site, the investor assumes greater assembly and market risks. For example, with a smaller, core contaminated parcel, a revitalization effort hinging on future market acceptance and absorption is less risky than investing in a geographic so large that the future transformed region would need to be significantly deeper to accommodate the newly created supply in the marketplace.

In spite of these challenges, our success in having cleaned up pollution on so many sites and those activities of others serves to strongly evidence that brownfield sites still have potential if broad community support exists to restore them, and creative development teams can structure the transactions to maximize the customarily low return. Brownfield investors and developers must think creatively about ways to complete a transaction that appears upside-down (i.e., higher cost than potential sale/exit value), using tools such as private equity funding, environmental insurance, public-private partnerships, Tax Increment Financing ("TIF") and other public financing components. Public financing helps lower the capital cost and thereby increase returns. Simply put, public incentive for private activity is necessary to remediate and revitalize most of the thousands of

brownfield sites nationwide. Together, a private company can shoulder the investment and liability of clean up, while the host community receives the environmental benefits of a cleaned site and the community and economic benefits of revitalization.

Financing Brownfield Redevelopment

Significant barriers prevent the remediation and redevelopment of the vast majority of this nation's brownfields. While Congress has made strides to address this problem with the passage of the Section 198 tax provisions in 1997, the passage of the 2002 brownfield law, the passage of the tax provisions waiving the unrelated business income tax penalties on qualified brownfield transaction to reduce unintended tax barriers for large tax-exempt institutions from investing in brownfield redevelopment (an idea I personally dreamed up soon after testifying before Congress in a prior year. I helped architect, write and win passage of this idea into federal law in 2004), there is still much that can and should be done.

In this section of my testimony, I will briefly address the underlying causes of the brownfield problem and the market dynamics that currently inhibit remediation and redevelopment.

I will then focus on two areas where I believe that Congress (as well as states and local governments) can have the biggest impact in encouraging brownfield revitalization: 1) creation of new financial incentives, and 2) other actions to encourage deployment of additional capital.

Finally, in this section of the testimony, I will provide a list of criteria that brownfield investors use to determine whether to remediate and redevelop a particular site. This list is critical since, I believe, it provides some insight to the direction the markets will head if Congress, the states, and/or local governments reauthorize the Brownfields Program and/or provide additional financial incentives and/or other actions to encourage deployment of additional investment capital in this field.

Capital Sources and Cost

Background

The last stock market decline contributed to an increase in capital flow to the real estate market asset class in 2002 - an increased rate that, while stunted starting in 2008, has continued to some extent to present day. Both individual and institutional investors (e.g., pension funds, endowments and foundations) have increased their portfolio real estate allocation target. The real estate allocation is largely comprised of class A office, hotel and development opportunities in strong markets. On the other side of the spectrum, "distressed" real estate receives significantly less allocation. Environmentally contaminated real estate is, for all practical purposes, non-existent in the division of the traditional, conservative, institutional real estate allocation.

Foreign institutions, particularly in Germany, have been increasing their investment in the U.S. real estate market (PricewaterhouseCoopers, 2003). As of September 2002, the total global real estate capital market was about $4.63 trillion. Non-institutional and institutional investors represented about $2.39 trillion and $2.24 trillion respectively. Out of the $2.24 trillion from institutional investors, $402.8 billion (18%) was equity and $1,841.4 billion (82%) was debt. The ability to attract such capital for a category of brownfield investments is driven by several factors, including the category's ability to diversify an institution's holdings, the possibility, if successful, to generate returns at least commensurate with what ordinary real estate investments might yield, there is a defined market in which here is no foreseeable shortage of deal flow and, perhaps in certain situations, an investor's particular interest in engaging in what may be deemed as "socially responsible" investing.

Equity
A very small portion of the $402.8 billion of real estate equity capital represents brownfield investment, due in part to the risk and illiquidity inherent in that investment class. When assessing the risk-return relationship for different types of real estate investment (e.g., core real estate, real estate securities, mezzanine investment, opportunistic investment, and brownfield redevelopment) brownfield redevelopment clearly falls within the upper range of the risk-return spectrum. One of the lessons of this data is that, if we wish to foster a more active private sector participation in the cleanup of our nation's polluted land, we have two levers to adjust. Either one can either lower the risk associated with tackling a brownfield project or increase the potential project return. Absent one or both of these factors, developers across America will follow the easy road: remaining content to make sizeable returns converting the next farmstead to suburban sprawl on that proverbial 'edge of town.' However, as my presence before this distinguished body suggests, there are successful and experienced brownfield equity investors with long track records that have developed the necessary risk management skills to navigate this otherwise risky business environment. Buyer track records and reputation are especially important when sellers seek a transfer of environmental risk and liability.

For small transactions, the number of brownfield equity investors is still limited, though it has been growing in recent years as regulatory changes have encouraged more redevelopment. For large transactions, the universe of brownfield equity players is even smaller, though legislation enacted last October served to promote the formation of larger pools of capital dedicated to the investment in brownfields (I will discuss this legislation in Part IV of my testimony). The main incentives for a seller to transact with equity players with large pools of institutional capital are easy to understand: the wherewithal and credibility, the ability to close without financing contingencies and the experience and track record of the equity investors experienced with large and complex transactions. When unforeseen liabilities arise, or costs spiral out of control (as they so commonly do), our experience is that such unbudgeted events have never been less than 200%. The ability to stand behind a project and write a check to cover such unforeseen events is something that can be reassuring to sellers, communities and investors alike. On the

other hand, institutional investors have fairly rigid return expectations, structural requirements and limited investment horizons, which are often hard to satisfy in many transactions.

The cost of investment equity for brownfields is higher than for greenfields due to the additional time, cost and legal risks assumed for brownfield redevelopment. To achieve a targeted internal rate of return (IRR), the longer the time horizon between the date of purchase and the date of sale of the property, the larger the required spread between the purchase and exit price. Historically, depending on the prevailing interest rate environment, prudent brownfield investors underwrite transactions to yield an IRR between 5-10% greater than a typical greenfield investor. By targeting a higher IRR, brownfield investors attempt to compensate for the historically lower rates of return actually realized on brownfield investments.

Debt

Traditional redevelopment projects rely heavily on the use of debt to enhance investor IRRs and sometimes make seemingly economically unviable projects doable by virtue of time compression effect that use of debt affords an equity investor. Brownfield projects do not have this same luxury. The use of debt in the capital structure reduces the "blended" cost of capital and increases both project risk and the return on equity. Typically, development teams use debt when the project can generate a certain amount of cash flow (e.g., from existing building lease) to service interest payments. Debt cost varies from project to project and is highly dependent on the overall capital market at the time when debt financing is needed.

Conventional lenders are generally unwilling to provide debt during the times when it is needed most: i.e., before cleanup, rezoning and leasing or sale activity has been achieved. On occasion, certain lending groups have warmed to conditional participation in brownfield projects if there is sufficient equity in the project (the amount of equity depends on the overall risk profile of the project), the critical path to environmental closure is known and, perhaps, accomplished or nearly accomplished, and the equity partners/developers have the reputation, track record and risk management capabilities necessary to limit the downside risk. Without these conditions, lenders have been reluctant to lend funds on contaminated sites due to the potential liability, the relatively limited income stream in the short and medium term and the lack of marketability. In the construction lending context, where principal repayment takes months or a few years, lenders chiefly worry about the borrower's collateral relative to contingencies in the construction budget for unknown site costs and whether the project has or can readily obtain takeout financing. Permanent lenders primarily worry about the borrower's defaulting, which may require them to assume ownership of a stigmatized asset with questionable value.

Government Funding & Incentives

As I will discuss more extensively in Parts III and IV of this testimony, government incentives can provide the necessary additional funding to encourage additional brownfield redevelopment. Local governments usually shy away from direct grants;

instead, tending to favor property tax incentives and Tax Increment Financing (TIF), especially for infrastructure costs like roads and utilities. Under TIF, the increased tax revenues generated by the redevelopment are used to pay off part of the redevelopment expenses. Federal and State Brownfield funds are sometimes available. More recently, some states are considering, or have passed, laws that authorize the establishment of a capital pool, drawn from future tax revenues, to serve as reimbursement of certain qualified remediation expenditures. Other programs offer low or zero interest debt financing for brownfield redevelopment. Occasionally, it may be worth exploring a special State or Federal appropriation to kick-start a remediation project. If the Federal Government is a responsible party for onsite contamination, then such appropriations are more likely.

It is unquestionably paradigmatic that the largest and, arguably, most important, brownfield projects in our nation require true public-private partnerships, allowing all stakeholders to leverage each another's resources to produce a winning result for all parties. I can think of several projects that would never have generated attention were it not for the willingness of public and private entities to brainstorm together creative ways to accomplish a shared goal.

Impact of Court Rulings and Legislation

U.S. Supreme Court rulings, as well as federal and state legislation, have helped private and institutional investors become more comfortable with investing capital to redevelop environmentally impaired properties. In 1998, the U.S. Supreme Court in United States v. Bestfoods (528 U.S. 810; 120 S. Ct. 42) clarified the Superfund liability for corporate parents. This case held a corporate parent responsible under CERCLA when (i) the corporate veil is pierced under traditional corporate law doctrines, or (ii) the corporate parent or shareholder directs the workings of, manages or conducts the affairs of a polluting facility. In 2002, the Small Business Liability Relief and Brownfields Revitalization Act increased funding and tax incentives to promote the cleanup and reuse of brownfield and helped clarify and limit the Superfund liability of owners and purchasers under certain conditions.

Furthermore, existing federal legislation has sought to utilize the nation's tax structure to provide incentives for the privately funded cleanup of brownfields. For example, Section 198 of the IRS Code, initially passed in 1997, and subsequently amended, provided a framework to encourage the cleanup of qualified contaminated sites by allowing an eligible taxpayer to immediately expense, rather than amortize, the costs of remediation. Other contaminated site tax legislative proposals have recently passed or are on the horizon.

Brownfield Investment Key Criteria

Location and real estate market are critically important. Ideal brownfield sites are in growth corridors within tier 1 or 2 urban markets with good access from a main highway, complemented by good visibility and strong demographics. In addition to the environmental impairment, a primary brownfields site has all the attributes of a good real estate development site. Due to prior use, many brownfield sites have industrial zoning, and the potential to rezone them for mixed-use residential/retail often increases their development value. To analyze whether a real estate transaction has potential for a private brownfield investment group, the starting point is a thorough understanding of the site's real estate fundamentals. Two of some of the most important analytical elements are the site's underlying market value (its value without the contamination and stigma) and time required/complexity involved to achieve a revitalized site (and hence, a financial exit). Typical brownfield site screening criteria are as follows:

Capital Commitment
The "ideal" size of capital commitment by private brownfield investors depends on the size of their available capital pool. Brownfield investors would prefer to commit amounts of capital in each transaction that reduces overall overhead. Well-capitalized brownfield investors often seek transactions that allow them to employ $10 million or more, realizing that smaller projects can often require as much overhead as larger projects. The site size (number of acres or square feet) is irrelevant if the location does not dictate sufficient value. Multiple sites with a common owner sold as a portfolio can provide the desired critical mass of dollar value. On the flip side, smaller, more moderate site redevelopments can mitigate risk by freeing an investor from the political perils often associated with extremely large projects of any time – contaminated or not. Some of the most financially successful brownfield projects that I know are smaller and midsized projects that were less complicated politically and from a zoning perspective.

Market
Brownfield developers prefer properties in primary urban markets because they represent potentially higher real estate values and because market demands in those areas are more likely to enable prompt (or less risky) redeployment of the asset after cleanup.

Location
Location, despite the cliché into which it has evolved, is still a dominant factor in analyzing a site. Access to highways and infrastructure, visibility and future-use possibilities all combine to increase the value of sites.

Environmental Cost, Schedule and Path to Closure
By studying existing environmental documents including soil-boring results and groundwater well test results and by conducting other standard types of environmental and land use due diligence with the help of experienced and well-qualified technical and legal consultants, the brownfield investor usually can make a well-educated guess as to the extent of the required environmental clean-up. An added challenge is mapping out a remedial closure path that dovetails with future redevelopment plans for the site. In some cases, a seller does not know (and does not wish to know) whether, and to what extent, contamination is present on its property. Former manufacturing sites, for example, are

still contracted for sale without the benefit of accompanying Phase I and Phase II assessment reports.

The Historic Preservation Model:

I'd like to take a brief moment to comment on the tremendous success of historic preservation efforts in this country and to suggest that it could help inform our current discussion if we look to the underpinnings of that success.

In 1976, Congress created the Historic Preservation Tax Credit a tax credit equal to 20% of the amount spent by a taxpayer in a certified rehabilitation of a certified historic structure.

According to the National Park Service, since 1976, this tax credit and a related 10% historic rehabilitation tax credit have produced impressive results including:

- Rehabilitation of more than 32,000 historic properties
- Stimulation of more than $33 billion in private investment
- Rehabilitation of more than 185,000 housing units and creation of 140,000 housing units of which over 75,000 are for low and moderate income families.

National Park Service, *Federal Historic Preservation Tax Incentives: Revitalizing America's Older Communities Through Private Investment* (2005).

While this federal model, on its own, deserves attention, I believe that one of the reasons that this model has been so successful is because of the synergy and complementary nature of the state historic preservation incentives and this federal tax credit.

If our goal is to encourage private developers to undertake projects that are underwater from a development perspective but that are above water from a public perspective, then it makes sense to me that we would look to create federal brownfield incentives that can complement state brownfield incentives that already exist.

In the field of historic preservation, our nation has seen great results by coupling a uniform federal tax credit with individual state initiatives tailored to meet local needs.

If we wish to enjoy a similar measure of success in the brownfield arena, I believe we should look to the historic preservation model as we examine the interplay between state and federal programs.

Brownfield Solutions

Given what we know about the causes of the brownfield problem, the market forces that both inhibit and encourage remediation and redevelopment, existing government

programs to encourage redevelopment, and criteria that the markets use to select particular sites for investment, how do we solve the overall problem? How do we move beyond our current situation where some sites are being remediated and redeveloped while literally hundreds of thousands of others continue to languish?

A friend once told me that for every complex, difficult problem, there's usually a simple solution – and it's usually wrong.

I think that's true for the brownfield issue, generally. If there were one simple solution, we probably would have found it and enacted it long ago.

On the one hand, the problem seems clear-cut: the costs associated with remediating and redeveloping a brownfield site must be outweighed, when adjusted for risk, by the potential economic reward from that transaction.

Viewed on that level, the solution becomes one of reducing costs and risks or increasing potential income.

On the other hand, the problem is much more complex. A few brownfield sites may be already economically "above water" – that is to say that without additional incentives, those sites will likely be revitalized at some point in time. Fear of unknowns or other risks may still drive most prospective developers of those sites away, but an objective analysis would suggest that the project is economically viable. Other sites are marginally "under water." That is to say that with some coordinated efforts, focus, creativity and a modest economic push, the sites would likely be redeveloped within a reasonable period of time. And then there are sites in less attractive real estate markets and/or those with more substantial contamination. Those sites may be substantially under water and, without significant help, may never be cleaned up.

Viewed on this level, the solution becomes more multifaceted, requiring a mix of federal, state and local incentives to thoroughly attack the problem. Policymakers need to increasingly understand that the problem of brownfields is nuanced and solutions must be nuanced and targeted, as well. Some would prefer to focus attention on the graphical intersection of the most polluted sites and those with the lowest intrinsic real estate value, as these are the ones that most need the help of the public sector for reclamation to occur. Others would prefer to target sites that fall within the graphical intersection of the sites with both the most economic development potential and those that are most easily, quickly and cheaply revitalized. Perhaps the answer is a combination of those two views. Regardless of one's view, we would be doing our country a disservice by not understanding the market factors driving cleanups and crafting policies and programs that target those sites that are determined to be in most urgent need of redevelopment.

If we, as a country, really want to attack the brownfield issue on a nationwide basis, it is clear that we must create policies that will truly move the meter well beyond assessment assistance and expensing provisions—though such programs have been important and will continue to help move sites back into productive use. But, by now, it should be clear

to everyone involved that these programs are simply insufficient to drive most of the 500,000 to 1 million brownfield sites into revitalization.

The United States Environmental Protection Agency, in an analysis conducted with George Washington University, concluded that the remediation "costs for all of the brownfields located within the United States have been estimated to exceed $650 billion," and that, consequently, *"it is imperative that private capital be attracted to the redevelopment of brownfields."*

I believe that it is on this front that the federal government can have the biggest impact. The challenge to the federal government should not be to create a new program that helps better characterize brownfield sites or that tries to create a larger role for federal agencies. The federal government's challenge should be to look for bold, innovative ways to reduce barriers and create incentives to attract significant volumes of private capital to help remediate and redevelop our nation's brownfields. The H.U.D. BEDI program, one of the focal points of past Administration's efforts in brownfield economic incentives, is a creative, albeit currently defanged and in need of streamlined guidelines, example of the federal government's creative path to leveraging private capital to clean-up and recycle America's lands.

Given all of these tools at the state level, one might mistakenly think that we have the brownfield problem solved.

This brings us to the second main point that I would like to make here today: As critical as these state efforts are, federal assistance is essential if we are to see a significant portion of america's brownfield sites revitalized in our lifetime.

In previous testimony to other distinguished Congressional bodies that I have been privileged to have been invited to address, I provided a detailed analysis of the economics that drive brownfield transactions and surveyed some of the barriers that exist that are preventing the remediation and redevelopment of the vast majority of this nation's brownfields.

It is my basic assessment that the environmentally-contaminated sites most plaguing to this country are more often than not either those which would produce net losses for the investors, or those with a risk-reward ratio that is significantly unattractive relative to commonplace, sprawl-producing greenfield development. In either case, the problem stems from rational economic decisions based upon local market forces of supply and demand.

If we are to concede that a wholesale, publicly-funded cleanup of every contaminated site in the nation is not resource-feasible or easily implemented, we must create better ways to combine public and private resources to effectuate more cleanups more quickly.

The problem of brownfields can be greatly alleviated by creating a rational economic framework in which the private sector may operate, respond and be guided by well-considered, typically local, public decisions for prioritization of private-sector driven site cleanup.

In an unsubsidized setting, market economics drive the cleanup decisions of these challenging sites. With public guidance, private forces can operate efficiently to produce revitalization in places where communities most need it, but where without such public incentive, revitalization may not occur.

If one recognizes that public-private partnerships represent one of the only realistic hopes this country has to solve its brownfield problem, and if one recognizes the importance of the various state programs already in effect, the question then becomes: "Is the federal government a necessary partner on the public side of the equation?"

The answer to this question must be "yes" – at least today. I see a pathway, however, where one day the federal government's partnership with the private sector will be reserved for a smaller group of sites. It will take very concerted leadership at the highest levels of the EPA and other agencies to make this happen, but it is doable and will not require large expenditures of taxpayer dollars. I would welcome the opportunity to discuss these ideas following this testimony.

It was published that of the between 450,000 and one million abandoned or underutilized brownfield sites in this country, only 16,000 sites (less than 4%) had been redeveloped or were in the process of redevelopment through state voluntary cleanup programs as of 2005.

In 2005, 2006 and 2009 I encouraged Congressional committees to think about sites as being "under water" or "above water." A site that is under water is a site that the marketplace will not redevelop on its own given the cost of cleanup, the value of the property in a clean state, and various other factors (*e.g.*, risk, difficulty/cost of securing capital, cost of development, likely rate of return). A site that is above water is a site where the economics of redevelopment indicate that the site is likely to be cleaned up and revitalized by the private sector without government assistance.

Along this continuum there are some sites that are barely below water. These are sites that may be redeveloped during a favorable economic upturn or with a slight nudge from a state or local incentive program.

Unfortunately, most of the sites we think of as brownfields are further underwater – many considerably so. Without significant public assistance, these sites are unlikely to be remediated anytime soon by the private sector.

Which raises a critical point. These terms – under water and above water – take into account only what I'll call for lack of a better term, "internal" costs of a developer. On the benefits side, they do not reflect the various public benefits that development would

bring, such as reduced risk from pollution, more jobs, a more pristine environment, or even increased property tax revenues. One mission of government, then, must be to focus particularly on those properties that are under water when looking at the internal costs, and above water when the externalities are considered. In this band of sites, government must do what it can to see that the external benefits are realized and that, if possible, the recipients of those benefits (*e.g.,* the municipality that would get increased property tax or sales tax revenue) help defray some of the costs (*e.g.*, through a TIF that will be paid off through those increased revenues). With less than 4% of the nation's brownfields having been cleaned up in the decade since EPA coined the term, "brownfield" and increased its focus in spurring brownfield development, it is clear that more needs to be done. And that increase needs to come not just at the state and local level, but federally as well.

Yet even with all of the state programs and even with the benefits that we have in this market place, the vast, vast majority of sites that I reviewed each year when market conditions allowed us to focus on brownfield investments showed that sites are still so far under water that, even in at the absolute peak of the real estate market boom in 2006, it was uneconomic to invest in most of their remediation and redevelopment.

In past years, my predecessor organization conducted an internal assessment to determine the number of sites that we had reviewed the two years prior and the number of sites that we had ultimately acquired. What we found was that we had reviewed over 450 sites for investment and that in the intervening two years, we had been able to invest in only 10. Critically, we had also reviewed publicly available information to determine whether others had invested in the sites that we had been forced to pass by. What we found was that other entities had invested in another 10 of the original 450 sites.

Consider these numbers for a moment. We reviewed 450 sites. In the next two years, we were able to invest in only 10 of the sites and other entities across the world opted to invest in only an additional 10 sites. That leaves 430 sites that were unable to attract investment because, from an "internal cost" perspective, they were too far underwater. And this is despite the state and federal Brownfield Programs that then existed at the time.

Given this, I think it is safe to assume that there are many hundreds of thousands of brownfield sites in America that will not be revitalized in our lifetimes even with the existing federal, state, and local programs working in tandem with the private sector to bring them back into productive use.

Clearly we must do more if we are to redevelop the hundreds of thousands of brownfield sites that blight our communities. Without additional federal involvement, these contaminated sites will continue to cause health and environmental problems, discourage economic development and encourage sprawl into the countryside.

An analysis prepared by the U.S. EPA and George Washington University in September of 2001 concluded that, "unfortunately, the cost of restoring brownfields to economic

viability may be beyond the capability of many state and local governments. Though remediation costs are always site-specific, total remediation costs for all of the brownfields located within the United States have been estimated to exceed $650 billion." U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response and The George Washington University, *Public Policies and Private Decisions Affecting the Redevelopment of Brownfields: An Analysis of Critical Factors, Relative Weights and Areal Differentials* (Sept. 2001).

Clearly, this is a challenge that is beyond the capacity of state and local governments. If we are to be successful, the federal government simply must be an active and significant partner in this effort to attract private investment to solve this problem in our lifetime.

Again, I thank you for your invitation to provide testimony to the distinguished Members of this Congressional committee and I repeat our interest and willingness to continue to serve as a resource to you and your colleagues as you do your good work.

Contact Information:

For more information regarding this testimony, or if there is a site or community area in need of our help or attention, please use the following contact information:

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BIOGRAPHY OF JONATHAN PHILIPS

Jonathan Philips is a Managing Director and founding partner of Anka Funds, an investment platform that, through a family of managed private equity fund vehicles, opportunistically invests discretionary capital and expertise in niche real estate and sustainable venture programs. Mr. Philips helps oversee the management of Anka's portfolio of real estate assets and operating companies. While at Anka, Mr. Philips has sourced, underwritten, helped closed and managed over 650 separate transactions. Prior to Anka, was a Partner at Cherokee Investment Partners, a real estate private equity family of funds focusing on the acquisition of distressed real estate that grew from $250mm to $2bn during his tenure. In 2008 Anka spun out as an independent company of Cherokee Investment Partners so that Anka could take advantage of attractive niche opportunities that fell beyond Cherokee's permitted investment charter. Mr. joined Cherokee as one of a small handful of senior investment professionals during the deployment of $250mm Fund II and assisted in catalyzing expansion of the Cherokee platform over the next 6+ years with Fund III ($620mm), Fund IV ($1.24b), CSS ($200mm+), New Market Tax Credit vehicle ($92mm) and the creation of the not-for-profit CGB entity. Mr. Philips helped lead the multi-award winning National Homebuilder Mainstream GreenHome, www.mainstreamgreenhome.com, a national educational showcase and the first LEED Platinum home in the Southeast home and helped establish the US Conference of Mayors — Community Revitalization Initiative, a first-of-its-kind national public-private partnership to fast-track the revitalization of property in cities and towns across America. Mr. Philips has provided expert testimony on distressed real estate and revitalization on five occasions in his career before the United States Congress and has served on a number of nonprofit boards. While living in New York City, Mr. Philips founded and ran several companies and spent time as a mergers and acquisitions and capital markets attorney with Davis Polk. He received his JD from the Yale Law School, where he was an Olin Fellow in Law and Economics, and his BA from the University of Virginia, where he graduated an Echols Scholar and with what was possibly the first double Highest Distinction awarded by the University. University of Virginia (BA); Yale Law School (JD). Bars: NY, NJ, NC

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ASTSWMO POSITION PAPER
128(a) "Brownfields" Grant Funding

INTRODUCTION

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (Pub.L.No. 107-118, 115 stat. 2356, "the Brownfields Law"). The Brownfields Law amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) by providing funds to assess and clean up brownfields; clarified CERCLA liability protections; and provided funds to enhance State and tribal response programs. Other related laws and regulations impact brownfields cleanup and reuse through financial incentives and regulatory requirements.

Since the Brownfields Law was signed in 2002, funding to States, Territories and Tribes, via the 128(a) Brownfield Grant, has been essential for States and Territories (States) to build and maintain successful State brownfield programs. The funding that States and Territories receive each year provides an incredible number of benefits to local units of government, corporations, and other organizations, who oversee the day-to-day cleanup and redevelopment of blighted, underutilized, and contaminated properties.

Some of these benefits include:

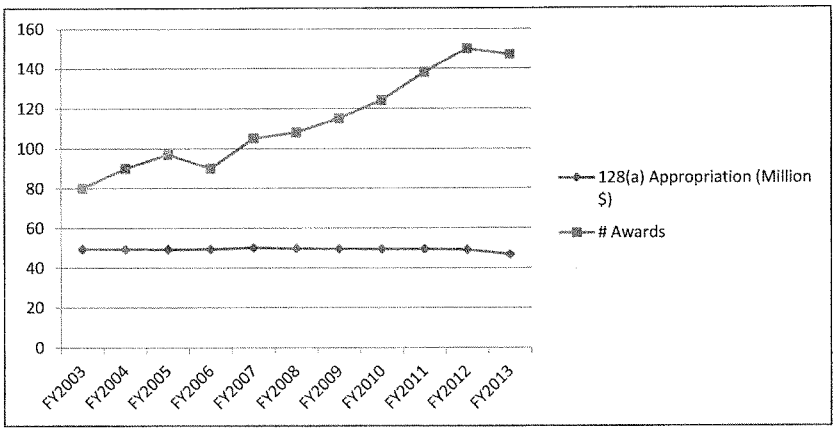
- Providing funds to complete environmental assessments of properties to meet all appropriate inquiry (AAI), as well as Phase II sampling and asbestos and lead inspections and, in some cases, ecological assessments, as needed;
- Supporting community officials in the preparation of grant applications for brownfield assessments, cleanups or revolving loan funds;
- Providing workshops for organizations, communities and others in order to educate them about the many brownfield issues and the incentives that are available at the State and Federal level;
- Meeting with community officials and others to assist them in working through assessment and cleanup of brownfield properties, as well as providing technical support and recommendations; and
- Supporting voluntary cleanup programs, which provide the foundation for setting remediation goals and institutional controls.

Unlike many other environmental programs which began at the Federal level, with States taking over authority to run various aspects, States and Territories are primarily responsible for the development and maintenance of brownfields cleanup and redevelopment programs. States have developed their own, unique State-specific statutes, rules and regulations to govern voluntary cleanup of contaminated sites and provide liability releases or letters of comfort to fit the needs of each individual State. However, the individual programs are sufficiently consistent to allow 25 States to execute a voluntary cleanup program (VCP). Memorandum of Agreement (MOA) with their respective EPA Regional authorities. These MOAs promote State-Federal coordination, define general roles regarding the cleanup of sites and provide predictability and consistency for those completing a cleanup under State authority...

The States have also developed a variety of incentives to encourage cleanup and redevelopment of contaminated/potentially contaminated sites such as tax incentives, low-interest loans, grants and liability protections. For example, Virginia provides a tax exemption for increases in property taxes which can cap taxes for up to 5 years. Ohio provides grants and low-interest loans for assessment and cleanup as well as offering a 10-year property tax abatement on the increased value of the site as a result of the cleanup. Wisconsin offers low-interest loans and grants to local units of government so they may conduct assessments of their brownfield properties. Idaho has a Community Reinvestment Pilot Initiative, which for 10 sites rebates up to 70% of approved remediation costs up to a maximum rebate of $150,000. Massachusetts' MassDevelopment Brownfields Redevelopment Fund was capitalized by the legislature in 1999 with $30 million to support brownfield cleanup and redevelopment and recapitalized the program in 2006 with an additional $30 million. Because States have primary responsibility for operating brownfield/VCP programs, the key to continued success of brownfields cleanup and redevelopment in the nation is the economic health and viability of State programs. The brownfields program at all levels is one of the few programs which has successfully bridged the gap between environmental cleanup and economic development by often integrating cleanup with redevelopment.

BACKGROUND

Since the Brownfields Law's beginnings, 128(a) funding has been provided to States, Territories and Tribes with the national funding level remaining at just under $50 million for over 14 years, whereas the number of applicants has continued to rise to nearly double. The graph below illustrates the changes in funding awards, from a static pot of funding over the years. In FY2003, 80 States, Territories and Tribes received funding from a total appropriation of $49.4 million. By FY2013, 150 entities requested funding including 50 States, 4 Territories, the District of Columbia and 95 Tribes, 3 of which were new applicants. The total funding requested in F20Y13 was $54.8 million and the total budget allocated in FY2013 was $48.08 million. The awards in FY2003 averaged $618,000, however, by FY2013 the average award had dropped to $318,000, nearly half of what had been awarded in FY 2003. This dramatic decrease in award amounts is directly attributable to the steadily increasing demand and competition for these essential funds.



As a result of this increasing demand on 128(a) funds, the vast majority of States are receiving less funding each Federal fiscal year. Although most States do not rely solely on 128(a) funding alone to support their brownfields and State response programs, 128(a) funds are an essential component of each State's program. The additional funding many States utilize includes program fees, special cleanup funds and, in some cases, general revenue funds; however, most of these sources have either decreased or remained flat, particularly during the recent recession. Few of the States receive sufficient State funding to cover all program costs. As a result, States have had to resort to cost saving measures, such as reducing staff dedicated to brownfield functions, cutting or eliminating the amount of assistance provided to local communities and reducing the number of 128(a) funded assessments.

Many States use their 128(a) funding to conduct site-specific activities such as Phase I and Phase II Environment Site Assessments or cleanup planning to assist economically disadvantaged or remote communities or those with issues such as environmental justice, health risks related to hazardous substances, and/or limited experience in working with government agencies. Often this work is the only readily available funding for conducting all appropriate inquiry on brownfields properties in order to obtain Federal liability protection and to facilitate acquisition of these sites. The 128(a) funding also allows the States to provide technical, administrative and public outreach to these communities in support of these site specific activities. In light of the current economic situation, some States have eliminated all direct funding assistance to their local communities or have been unable to recapitalize State-administered brownfield funds and have redirected that funding into staff salaries.

Over the last 10 years the 128(a) funding appropriations have remained just below $50M, while the number of applicants has nearly doubled thus decreasing total funding awarded to each applicant. At a time when most States are struggling to meet their State's brownfields basic

revitalization needs there is an increasing workload placed on the States as developers and bankers turn to State brownfield and voluntary cleanup programs as a cost effective means to promote property revitalization projects. In addition, State programs are increasingly dealing with more complex sites with multiple exposure pathways and ever expanding contaminant concerns which add to an already overburdened State program. The 128(a) funding forms the foundation on which many State programs are developed, and, without sufficient funding, a gap remains that is difficult to bridge regardless of other funding sources. Brownfield/voluntary cleanup programs are geared towards revitalization. If these programs become ineffective due to lack of funding, confidence in the program will erode and resurrecting these programs will be difficult if additional funding ever does become available.

Conducting studies to effectively and accurately document and quantify the full impact of brownfields funding has been a challenge due to the numerous factors affecting outcomes, the widely varying conditions and demographics across the county, and the specific objectives and graphics of individual States. However, all studies have shown brownfields funding, and particularly 128(a) monies, play a vital role. It has been demonstrated repeatedly the tremendous value Federal brownfields money has on the State programs, local communities, the leveraging of State- local community funding, economic development and the increase in tax base. Even more challenging to demonstrate are the socio-economic values of brownfields revitalization which include the decrease in crime as redevelopment occurs, the creation of more livable communities, increase in wages with revitalization, and overall community health and welfare as environmental conditions improve. The University of Delaware has published two well respected studies: the first *Economic Impact of Delaware's Economy: The Brownfields Program* dated January 5, 2010; and *Beyond Natural and Economic Impact: A Model for Social Impact Assessment of Brownfields Development Programs and a Case Study of Northeast Wilmington, Delaware* dated February 2013. The economic study found that every nominal dollar spent through the brownfield program generates a $17.50 return on the State's initial investment.

ASTSWMO POSITION

States have faced significant funding challenges over the last 5 to 6 years given the recession, and their brownfields programs are no exception. Since the recession, States have allocated their 128(a) funds for staffing to administer their voluntary cleanup or brownfields programs. Without these programs, or if the programs are insufficiently staffed, there are fewer resources to ensure that 1) cleanups meets State risk standards and, 2) when non-permanent remedies are employed, that institutional controls critical to protecting future users of the property are in place and monitored regularly to ensure compliance. Without sufficient funds, States cannot ensure that sites meet EPA's goal of "ready for reuse". Additionally, the 128(a) funds have been an important leveraging tool for State programs with trickle-down benefits for their communities.

Sufficient funding for State brownfield/voluntary cleanup programs via the 128(a) Brownfields Grant process is essential for developing and maintaining a successful brownfield cleanup and redevelopment process throughout the nation. Since 2007, the number of 128(a) applicants (States, Territories and Tribes) has increased by 3 to 10 or more per year while available funding has remained somewhere between $47 to $50 million annually. As brownfield cleanup and redevelopment becomes ever more important to the nation's economic growth, the need for this funding will become increasingly critical. Without increased funding, many States may be forced to cut back their already underfunded brownfields and voluntary cleanup activities as well as assistance to municipalities. This will impact all communities, but particularly the small and rural communities that need brownfields redevelopment assistance so desperately.

ASTSWMO believes a robust brownfields program, at all levels of government and working in concert with the private sector, is essential to the nation's environmental, economic and social health, and without adequate funding for State, Territorial and Tribal brownfield and voluntary cleanup programs, brownfield program goals cannot be achieved. The current funding level is inadequate and should be increased to reflect and accommodate the steady increase in applications for 128(a) grant funding that has occurred over the last 14 years.

Approved by the ASTSWMO Board of Directors on April 22, 2014, in Virginia Beach, VA.

United States Environmental Protection Agency | Office of Enforcement and Compliance Assurance | July 2007

CERCLA Lender Liability Exemption: Updated Questions and Answers

Office of Site Remediation Enforcement
Policy and Program Evaluation Division 2273A

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that, for the first time, gave the U.S. EPA the authority to respond to human health and environmental hazards posed by hazardous substances at sites. As a result, EPA could either choose "enforcement first" requiring that liable parties conduct the cleanup or EPA itself could conduct the cleanup and subsequently seek cleanup costs from liable parties. Under Section 107 of CERCLA, liable parties are:

(1) the current *owner and operator*;
(2) any *owner or operator* at the time of disposal of any hazardous substances;
(3) any person who arranged for the disposal or treatment of hazardous substances, or arranged for the transportation of hazardous substances for disposal or treatment; and
(4) any person who accepts hazardous substances for transport to the site and selects the site.

Under Section 101(20)(A) of CERCLA, a person is an "owner or operator" of a facility if that person:

(1) owns or operates that onshore or offshore facility; or
(2) owned, operated or otherwise controlled activities at that facility immediately before title to the facility, or control of the facility, was conveyed to a unit of state or local government due to bankruptcy, foreclosure, tax delinquency, abandonment or similar means.

However, Section 101(20)(A) of CERCLA excludes from the definition of an "owner or operator" any "person, who, without participating in the management of a . . . facility, holds indicia of ownership primarily to protect his security interest in the . . . facility."

In 1996, Congress passed the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act (Asset Conservation Act). In 1997, EPA issued "Policy on Interpreting CERCLA Provisions Addressing Lenders and Involuntary Acquisitions by Government Entities," which provided guidance on interpreting the Asset Conservation Act.

This fact sheet highlights the main rules and EPA policy governing CERCLA environmental liability for secured creditors for the cleanup of contaminated property. The following questions and answers focus on conditional liability protections from "owner or operator" liability under CERCLA. This document supersedes the April 2006 "CERCLA Lender Liability Exemption Questions and Answers."

Questions & Answers

IF I LOAN MONEY TO A BORROWER THAT IS SECURED BY AN INTEREST IN CONTAMINATED PROPERTY AND EPA BRINGS A CERCLA ENFORCEMENT ACTION TO REMEDIATE THE CONTAMINATION AT THAT PROPERTY, WILL I BE HELD LIABLE FOR ANY CLEANUP COSTS?

CERCLA Section 101(20) contains a secured creditor exemption that eliminates owner/operator liability for lenders who hold ownership in a CERCLA facility primarily to protect their security interest in that facility, provided they do not "participate in the management of the facility."

WHAT TYPE OF ACTIVITIES DO NOT CONSTITUTE "PARTICIPATING IN THE MANAGEMENT OF A FACILITY?"

The term "participate in management" does not include:

- merely having the capacity to influence or the unexercised right to control facility operations;
- performing an act or failing to act prior to the time at which a security interest is created in a facility;
- holding a security interest or abandoning or releasing a security interest;
- including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, warranty or other term or condition that relates to environmental compliance;
- monitoring or enforcing the terms and conditions of the extension of credit or security interest;

- monitoring or inspecting the facility;
- requiring a response action in connection with a release or threatened release of a hazardous substance;
- providing financial or other advice to the borrower in an effort to mitigate, prevent or cure default or diminution in the value of the facility;
- restructuring the terms and conditions of the extension of credit or security interest, or exercising forbearance;
- exercising other remedies for the breach of the extension of credit or security agreement; or
- conducting a response action under CERCLA or under the National Contingency Plan, provided that these actions do not rise to the level of participation in management within the meaning of the statute.

42 U.S.C. § 9601(20)(F)(i), (iii) and (iv).

WHAT TYPES OF ACTIVITIES CONSTITUTE "PARTICIPATION IN THE MANAGEMENT OF A FACILITY" WITHIN THE MEANING OF CERCLA?

A lender "participates in management" (and will not qualify for the exemption) if the lender "actually" participates in the management or operational affairs of a facility. Merely having the capacity to influence or the unexercised right to control the facility does not constitute "participating in management."

Furthermore, a lender "participates in management" if the lender, while the borrower is still in possession of the facility encumbered by the security interest:

- exercises decision-making control regarding environmental compliance related to the facility and, in doing so, undertakes responsibility for hazardous substance handling or disposal practices; or
- exercises control at a level similar to that of a manager of the facility and, in doing so, assumes or manifests responsibility with respect to:
  - day-to-day decision-making on environmental compliance, or

- all, or substantially all, of the operational (as opposed to financial or administrative) functions of the facility other than environmental compliance.

42 U.S.C. § 9601(20)(F)(i)-(ii).

IF I AM FORCED TO FORECLOSE ON OR TAKE TITLE TO CONTAMINATED PROPERTY, WHAT STEPS CAN I TAKE AFTER FORECLOSURE AND STILL REMAIN EXEMPT FROM "OWNER OR OPERATOR" LIABILITY UNDER CERCLA?

After foreclosure, a lender who did not "participate in management" prior to foreclosure may generally:

- maintain business activities;
- wind up operations;
- undertake a response action under CERCLA Section 107(d)(1) or under the direction of an on-scene coordinator;
- sell, re-lease or liquidate the facility; or
- take actions to preserve, protect or prepare the property for sale.

A lender may conduct these activities provided that the lender attempts to sell or re-lease the property held pursuant to a sale or lease financing transaction, or otherwise divest itself of the property at the earliest practicable, commercially reasonable time using commercially reasonable means.

42 U.S.C. § 9601(20)(E)(ii).

IF I TAKE TITLE TO THE CONTAMINATED PROPERTY AS A SECURED CREDITOR, WHAT MIGHT BE OF INTEREST TO FUTURE OWNERS ABOUT THEIR POTENTIAL CERCLA CLEANUP OBLIGATIONS PRIOR TO PURCHASING THE PROPERTY?

In 2002, Congress passed the "Small Business Liability Relief and Brownfields Revitalization Act" (Brownfields Amendments), creating a new landowner liability protection from CERCLA for bona fide prospective purchasers. CERCLA §§ 101(40) and 107(r)(1). Prior to the Brownfields Amendments, a person who purchased property with knowledge of the contamination was subject to "owner or operator" liability under CERCLA. Prospective landowners may now purchase property with knowledge of contamination and obtain protection

from liability, provided that they meet certain pre- and post-purchase requirements. CERCLA does not require lenders to notify future owners of landowner rights or potential cleanup obligations.

To meet the pre-purchase requirements to qualify as a bona fide prospective purchaser, a person must:

(1) not be potentially liable;
(2) acquire the property after January 11, 2002;
(3) establish that all disposal occurred before the person acquired the facility;
(4) make all appropriate inquiries into previous ownership and uses prior to acquiring the property; and
(5) not be affiliated with a potentially responsible party.

A more detailed discussion of "all appropriate inquiry" and "affiliation" may be found below.

42 U.S.C. § 9601(40).

"All Appropriate Inquiry"

Prospective purchasers of contaminated property who wish to achieve status as a protected bona fide prospective purchaser, innocent landowner or contiguous property owner must perform "all appropriate inquiries" into the previous ownership and uses of the property prior to acquisition of the property. EPA's final rule was published in the Federal Register (70 FR 66070) on November 1, 2005 and went into effect on November 1, 2006. Generally, the final rule requires that all appropriate inquiries be conducted, or updated, within one year prior to acquiring the property. However, the final rule also requires that certain activities be conducted or updated within 180 days prior to acquiring the property. EPA's final rule setting standards and practices for conducting all appropriate inquiries is codified at 40 CFR 312. EPA's final rule recognizes the ASTM E1527-05 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process as compliant with the requirements of EPA's final rule.

42 U.S.C. § 9601(40)(B).

Affiliation

Bona fide prospective purchasers must demonstrate that they are not potentially liable nor affiliated with any other person who is potentially liable for costs of cleanup at the property. "Affiliated with" includes direct and indirect familial relationships and many contractual, corporate and financial relationships, but excludes contractual, corporate or financial

relationships created by the instruments by which title to the property is conveyed. An entity cannot be a bona fide prospective purchaser if it is the result of a reorganization of a business entity that was potentially liable.

42 U.S.C. § 9601(40)(H).

ONCE A LANDOWNER QUALIFIES FOR THE BONA FIDE PROSPECTIVE PURCHASER LIABILITY EXEMPTION, ARE THERE ANY OTHER REQUIREMENTS THEY MUST SATISFY TO MAINTAIN THEIR NON-LIABLE STATUS AS A BONA FIDE PROSPECTIVE PURCHASER?

To maintain their bona fide prospective purchaser status (i.e., meet all post-purchase requirements), landowners must meet continuing obligations during their property ownership. To meet continuing obligations, bona fide prospective purchasers must:

(1) provide all legally required notices with respect to the discovery or release of a hazardous substance;
(2) exercise appropriate care with respect to the hazardous substances by taking reasonable steps to stop or prevent continuing or threatened future releases and exposures, and prevent or limit human and environmental exposure to previous releases;
(3) provide full cooperation, assistance and access to persons authorized to conduct response actions or natural resource restoration;
(4) comply with land use restrictions and not impede effectiveness of institutional controls; and
(5) comply with information requests and subpoenas.

42 U.S.C. § 9601(40).

In 2003, EPA issued guidance entitled "Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for the Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability" (Common Elements) to address both pre- and post-purchase requirements. This document is available on EPA's Web site at: http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-guide.pdf.

IF I QUALIFY FOR THE SECURED CREDITOR EXEMPTION, CAN I STILL BE HELD LIABLE FOR THE CONTAMINATION UNDER OTHER PROVISIONS OF CERCLA OR FEDERAL ENVIRONMENTAL LAWS?

The secured creditor exemption removes qualifying lenders from the definition of "owner" or "operator" under CERCLA. However, CERCLA also imposes liability on persons who arrange for the transportation of hazardous substances for disposal or treatment. Other

federal environmental laws have different liability standards and may be relevant to secured creditors. More information on potentially relevant federal cleanup laws may be found at: http://www.epa.gov/compliance/cleanup.

WHAT OTHER BENEFITS MIGHT I GET FROM LENDING TO BORROWERS FOR CLEANUP AND REDEVELOPMENT PROJECTS?

The Community Reinvestment Act also encourages lenders to invest to cleanup or redevelop industrial sites as part of an effort to revitalize the low- or moderate-income communities in which the properties are located. Investments qualify if the financing leads to the removal of contamination and contributes to redevelopment activities. More information on Community Reinvestment Act credits can be found at http://www.ffiec.gov/cra/.

Further Information: If you have any questions regarding this fact sheet, please contact Carlos R. Evans at (202) 564-6331 within the Office of Site Remediation Enforcement. More information about CERCLA liability is available on EPA's Web site at http://www.epa.gov/compliance/cleanup/superfund/liability.html.

United States Environmental Protection Agency | Office of Enforcement and Compliance Assurance | March 2011 EPA-330-F-11-003

CERCLA Liability and Local Government Acquisitions and Other Activities

Office of Site Remediation Enforcement

Local governments can play an important role in facilitating the cleanup and redevelopment of properties contaminated by hazardous substances. In particular, by acquiring contaminated properties, local governments have an opportunity to evaluate and assess public safety needs and promote redevelopment projects that will protect and improve the health, environment, and economic well-being of their communities.

One impediment to local government acquisition of contaminated property is concern about potential liability for the cleanup costs under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, also known as "Superfund" or "CERCLA," 42 U.S.C. §§ 9601-9675.

This fact sheet addresses CERCLA liability issues for local governments and summarizes key statutory provisions and requirements.[1] It is intended to assist local governments by identifying CERCLA liability issues and protections that may be applicable to local governments as they consider involvement at contaminated properties.

The U.S. Environmental Protection Agency (EPA) recommends that local governments refer to the statutory language of CERCLA, the regulations at 40 C.F.R. Part 300 (known as the "National Contingency Plan"), and relevant EPA guidance (referenced at the end of this document) for more detail. EPA's Regional offices[2] also may be able to provide information and assistance to local governments considering acquisition of contaminated properties. EPA also encourages local governments to consult with their state environmental protection agency and legal counsel prior to taking any action to acquire, cleanup, or redevelop contaminated property.

What is CERCLA?

CERCLA outlines EPA's authority for cleaning up properties contaminated with hazardous substances regardless of whether the properties are in use or abandoned. Additionally, CERCLA establishes a strict liability system for determining who can be held liable for the costs of cleaning up contaminated properties. CERCLA also provides EPA with robust enforcement

[1] A local government also may have obligations and/or be potentially liable under other environmental statutes such as the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992 (RCRA) or state laws.

[2] For contact information, see http://www.epa.gov/aboutepa/postal.html#regional.

authorities to compel cleanups and recover EPA's response and enforcement costs incurred at these properties. Properties addressed under CERCLA authorities are commonly known as "Superfund sites."

CERCLA also includes authority for EPA to provide grant funding for the assessment and cleanup of brownfield sites. CERCLA § 101(39)(A) defines a brownfield site 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." Many of the properties that local governments may be interested in acquiring may qualify as brownfield sites.

For more general information about, and an overview of, CERCLA, please see EPA's website at http://www.epa.gov/superfund/policy/cercla.htm.

What are the various ways local governments become involved at contaminated properties?

Local governments may become involved with contaminated properties in a number of ways, many of which present opportunities to facilitate cleanup or redevelopment. The ways include:

- Providing incentives to promote redevelopment (*i.e.*, zoning, tax increment financing, etc.);
- Responding to an emergency on the property;
- Transferring of tax liens;
- Collaborating with the current property owner;
- Leasing of the property by the municipality;
- Acquiring the property and "simultaneously" transferring it to a third party;
- Acquiring the property with subsequent transfer to a third party;
- Acquiring the property and managing it through a "land bank"; or
- Acquiring the property for long-term use.

Can a local government be liable under CERCLA?

Yes. CERCLA is a strict liability statute that holds potentially responsible parties (PRPs) jointly and severally liable, without regard to fault, for cleanup costs incurred in response to the release or threatened release of hazardous substances. Under CERCLA § 107, a person, including a local government, may be considered a PRP[3] if the person:

- Is the current owner or operator of the contaminated property;
- Owned or operated the property at the time of the disposal of the hazardous substance;
- Arranged for the hazardous substances to be disposed of or treated, or transported for disposal or treatment; or
- Transported the hazardous substances to the property.

[3] According to CERCLA, federally recognized tribes are not included as PRPs.

A local government that falls into one of the classes of PRPs described above may be potentially liable under CERCLA. Fortunately, CERCLA includes liability exemptions, affirmative defenses, and protections that may apply to local governments. Additionally, EPA has enforcement discretion guidance and site-specific tools that may address concerns about potential CERCLA liability.

Is a local government liable under CERCLA if it responds to an emergency on a contaminated property?

Local units of government, especially fire, health, and public safety departments, are often the first responders to emergencies and other dangerous situations at contaminated properties in their communities. So as not to interfere with these activities, CERCLA § 107(d)(2) provides that state or local governments will not be liable for "costs or damages as a result of actions taken in response to an emergency created by a release or threatened release of a hazardous substance by or from property owned by another party." *Note: This protection does not apply in cases where the local government is grossly negligent or intentionally engages in misconduct.* CERCLA § 107(d)(2). *Negligence and intentional misconduct are fact-specific determinations.*

In addition, CERCLA § 123 authorizes EPA to reimburse local governments for the costs of temporary emergency measures taken in response to releases within their jurisdiction. These temporary measures must be "necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance, pollutant, or contaminant." This reimbursement is to give financial assistance to government entities that do not have a budget allocated for emergency response and cannot otherwise provide adequate response measure. The amount of the reimbursement may not exceed $25,000 for a single response.

For more information on CERCLA § 123 reimbursements, please see EPA's website at http://www.epa.gov/ceppo/web/content/lawsregs/lgrover.htm.

What CERCLA liability protections are available to local governments if they acquire contaminated property?

CERCLA contains liability exemptions, affirmative defenses, and protections which may apply to a local government when it:

- Acquires contaminated property involuntarily by virtue of its function as a sovereign, CERCLA § 101(20)(D);
- Qualifies for a third party defense or innocent landowner liability protection, CERCLA §§ 107(b)(3), 101(35)(A);
- Qualifies as a bona fide prospective purchaser (BFPP) when it acquires the contaminated property, CERCLA §§ 101(40), 107(r)(1); or
- Is conducting or has completed a cleanup of a contaminated property in compliance with a state cleanup program, CERCLA § 128(b).

Each of these is discussed below in further detail.

Key CERCLA Provisions ● – *Could apply to local governments* ○ – *Could apply to local governments under certain circumstances*	Methods of Property Acquisition							
	Tax Foreclosure	Bankruptcy	Escheat	Eminent Domain	Purchase	Inheritance or Bequest	Abandonment	Gift/Donation
Involuntary Acquisition *§ 101(20)(D)*	●	●	●	○			●	
Bona Fide Prospective Purchaser Protection *§§ 101(40) and 107(r)(1)*	●	●	●	●	●	●	●	●
Third Party and Innocent Landowner Defenses *§§ 107(b)(3) and 101(35)(A)*			●	●	○	●		
Enforcement Bar *§ 128(b)*	●	●	●	●	●	●	●	●

The method or type of property acquisition by a local government will play a critical role in the application of liability exemptions, affirmative defenses, or protections. Although most often applied in the purchase and gift/donation context, BFPP status is available for the majority of property acquisitions. *Note: In cases where it is unclear whether the involuntary acquisition exemption, affirmative defenses, or liability protections are sufficient, EPA encourages the local government to achieve and maintain BFPP status to increase certainty that it will not be liable under CERCLA.*

What is the meaning of "involuntary acquisition"?

CERCLA § 101(20)(D)[4] provides that a unit of state or local government will not be considered an owner or operator of contaminated property (and thus is exempt from potential CERCLA liability as a PRP) if the state or local government acquired ownership or control involuntarily. This provision includes a non-exhaustive list of examples of involuntary acquisitions, including obtaining property through bankruptcy, tax delinquency, abandonment, or "other circumstances in which the government entity involuntarily acquires title by virtue of its function as sovereign." However, it is important to note that this exemption will not apply to any state or local government that caused or contributed to the release or threatened release of a hazardous substance from the facility.

For purposes of EPA enforcement, EPA considers an involuntary acquisition or transfer to include situations "in which the government's interest in, and ultimate ownership of, a specific asset exists only because the conduct of a non-governmental party...gives rise to a statutory or common law right to property on behalf of the government."[5] Moreover, EPA acknowledges that tax foreclosure and other acquisitions by government entities often require some affirmative or volitional act by the local government.[6] Therefore, a government entity does not have to be completely passive during the acquisition in order for the acquisition of property to be considered involuntary under CERCLA.[7] Instead, EPA considers an acquisition to be involuntary if the government's interest in, and ultimate ownership of, the property exists only because the actions of a non-governmental party give rise to the government's legal right to control or take title to the property. For example, although a local government might be required to engage in certain discretionary or volitional actions to acquire title to a property through tax delinquency foreclosure or abandonment per state statute, EPA would consider the acquisition involuntary.[8]

For more information on state and local government involuntary acquisition, please see EPA's website at http://www.epa.gov/compliance/cleanup/revitalization/local-acquis.html.

How does a local government become a bona fide prospective purchaser (BFPP)?

A local government, whose potential liability is based solely on the fact that it knowingly purchased a contaminated property and is, therefore, considered the current owner or operator, will not be liable under CERCLA if it achieves and maintains BFPP status. BFPP status may be

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[4] CERCLA § 101(35)(A)(ii) also discusses involuntary acquisitions for a unit of state or local government in the context of the innocent landowner defense pursuant to CERCLA § 101(35)(A).

[5] Municipal Immunity from CERCLA Liability for Property Acquired through Involuntary State Action (EPA/OSRE/OSWER, 10/20/1995) at 3.

[6] *Id.* at 4.

[7] *Id.*

[8] *Id.*

achieved even when the buyer has knowledge of the contamination on the property at the time of purchase. Moreover, EPA encourages local governments to achieve and maintain BFPP status in cases where it is unclear whether involuntary acquisition, affirmative defenses, or other liability protections may be sufficient to avoid CERCLA liability.

CERCLA §§ 101(40) and 107(r)(1) provide that a BFPP is a person or tenant of a person who acquired the property after January 11, 2002 and meets the following threshold criteria:

- All Appropriate Inquiries (AAI) were performed prior to purchase of the property pursuant to CERCLA § 101(35)(B);
- All disposal of hazardous substances occurred before the party acquired the property; and
- The party has "no affiliation" with a liable or potentially liable party.

CERCLA §§ 101(40)(C)-(G) provide additional criteria for maintaining BFPP status. These continuing obligations that must be met after acquisition of the property include:

- Complying with land use restrictions and not impeding the effectiveness of the institutional controls;
- Taking "reasonable steps" to prevent the release of hazardous substances. These obligations are site-specific, but may include preventing threatened future releases and/or limiting exposure to earlier hazardous substance releases. Institutional controls, discussed further below, may play a critical role in complying with reasonable steps;
- Providing full cooperation, assistance and access;
- Complying with information requests and administrative subpoenas; and
- Providing legally-required notices.

To remain protected from CERCLA liability for the existing contamination while it owns the property, a local government must maintain its BFPP status for as long as the potential for liability exists. Potential liability exists for as long as contamination remains on the property and/or the statute of limitations on CERCLA cost recovery actions is not in effect. It is important to note that a local government may become liable for any new contamination that may occur, even if the statute of limitations has run on existing contamination.

Although a BFPP is not liable for the cost of cleaning up the property, the property itself could be subject to a "windfall lien"[9] if EPA has spent money cleaning up the property after the BFPP acquires it and EPA's cleanup efforts have increased the fair market value of the property. CERCLA § 107(r)(2). The windfall lien is limited to the lesser of EPA's unrecovered response costs or the increase in fair market value attributable to EPA's cleanup. EPA may be able to file a windfall lien on the property if:

- EPA spent money cleaning up the property before acquisition by a BFPP if certain requirements are met (*i.e.*, where there are substantial unreimbursed costs);
- EPA's response action results in a significant increase in the property's fair market value;
- There are no viable, liable parties from whom EPA could recover its costs; and

[9] CERCLA contains two sections which discuss the ability of the federal government to impose liens. This fact sheet addresses the windfall provision of CERCLA § 107(r), but will not discuss liens provided under CERCLA § 107(l).

- A response action occurs while the property is owned by a person who is exempt (other than a BFPP) from CERCLA liability.

Whether EPA will perfect a windfall lien and prevent a potential windfall in such instances will be determined by site-specific circumstances and the equities of the particular situation.

For more information on AAI, please see EPA's website at http://www.epa.gov/brownfields/aai/index.htm. For more information on the BFPP liability protection and/or windfall liens, please see EPA's website at http://www.epa.gov/compliance/cleanup/revitalization/bfpp.html.

What are the requirements for the third party defense or innocent landowner defense?

CERCLA § 107(b)(3) provides a "third party" affirmative defense to CERCLA liability for any owner, including local governments, that can prove, by the preponderance of the evidence, that the contamination was caused solely by the act or omission of a third party whose act or omission did not occur "in connection with a contractual relationship." Moreover, an entity asserting the CERCLA § 107(b)(3) defense must show that: a) it exercised due care with respect to the contamination; and b) it took precautions against foreseeable acts or omissions, and the consequences thereof by the third party that caused the contamination.

Congress enacted the Brownfields Amendments[10] and expanded the third party defense by creating exclusions to the definition of a contractual relationship. Previously, the deed transferring title between a PRP and the new landowner was a "contractual relationship" that prevented the new landowner from raising the traditional CERCLA § 107(b)(3) third party defense. To promote redevelopment and provide more certainty, Congress also clarified the "innocent landowner defense," which requires an entity to meet the criteria set forth in CERCLA § 101(35), in addition to the requirements of CERCLA § 107(b)(3). CERCLA § 101(35)(A) distinguishes three types of innocent landowners:

- Purchasers who acquire property without knowledge of contamination, CERCLA § 101(35)(A)(i);
- Governments "which acquired the facility by escheat, or through any other involuntary transfers or acquisition, or through the exercise of eminent domain authority by purchase or condemnation," CERCLA § 101(35)(A)(ii); and
- Inheritors of contaminated property, CERCLA § 101(35)(A)(iii).

For more information on qualifying for the innocent landowner defense where the purchaser acquired property without knowledge of the contamination, please see EPA's *Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchasers, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability* (Common Elements Guidance) available at http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-guide.pdf.

[10] Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. No. 107-118)(hereinafter the "Brownfields Amendments").

How do state response programs interact with CERCLA's enforcement bar?

Many states have established state-specific response programs (for example, State Superfund, brownfields, and voluntary cleanup programs). These programs play a critical role in assessing and cleaning up the vast majority of our nation's brownfields and other lower-risk sites. EPA supports state response programs through:

- Grant funding to establish and enhance state programs; and
- Non-binding Memoranda of Agreement with individual states that provide general enforcement assurances to encourage assessments and cleanups pursuant to a state response program.

CERCLA § 128(b) protects local governments and other parties from EPA enforcement, subject to specific exceptions, when they comply with a state response program and are conducting or have completed a cleanup of an eligible response site, as defined by CERCLA § 101(41). This protection is known as the "enforcement bar." EPA has entered into non-binding Memoranda of Agreement with over 20 states which clarify EPA enforcement intentions under CERCLA at sites addressed in compliance with state response programs. It is important to note that while CERCLA § 128(b) may prohibit EPA from taking an enforcement action; it does not preclude third party litigation.

For more information about state voluntary cleanup programs and Memoranda of Agreement, please see EPA's website at http://www.epa.gov/compliance/cleanup/revitalization/state.html.

What should a local government do if it obtains contaminated property from a land bank or redevelopment authority?

EPA recognizes the importance and increased use of land banks and redevelopment agencies as a tool to address abandoned or vacant properties, promote smart growth, improve existing land use practices, and support local community development. In an effort to make greater use of these tools, an increasing number of states and local governments are passing legislation creating land banks or redevelopment authorities to acquire, redevelop, and reuse abandoned properties.

While many abandoned properties that are of interest to land banks and redevelopment authorities are not likely to be contaminated, local governments should be aware that contamination and potential CERCLA liability may exist. A local government may increase the likelihood that the land bank or redevelopment authority is eligible for CERCLA liability protection by ensuring that the land bank or redevelopment authority conducts AAI prior to acquiring the property. Not only is AAI a critical requirement for obtaining most CERCLA landowner liability protections, but it also aids local governments in making informed property acquisition decisions. When acquiring abandoned contaminated properties, EPA encourages local governments to obtain BFPP status prior to acquisition if it is unclear whether other exemptions, affirmative defenses, or liability protections may apply.

How does CERCLA liability affect eligibility for federal brownfields grant funding?

EPA brownfields grant money is available to eligible entities as defined by CERCLA § 104(k)(1). However, these funds cannot be used to pay response costs at a brownfield site for which the grantee is potentially liable under CERCLA § 107. If an applicant for brownfields grant money may be potentially liable at the site for which they are seeking funds, they must document that they qualify for one of CERCLA's liability protections. Therefore, one benefit of being covered by a CERCLA liability protection is that it enables certain non-liable entities to be potentially eligible for federal brownfields grant funding. If a local government intends to protect itself against CERCLA liability and compete for federal brownfields grant funding, it is advisable for the local government to evaluate whether it is eligible for a grant or become eligible through a liability protection before acquiring a brownfield site.

TYPES OF BROWNFIELDS FUNDING OPPORTUNITIES

CERCLA §§ 104(k)(4) and (6) authorize EPA's Brownfields Program to provide funding in a variety of ways:

- Assessment Grants
- Cleanup Grants
- Revolving Loan Fund Grants
- Job Training Grants
- Training, Research, and Technical Assistance Grants
- Targeted Brownfields Assessments
- Area-Wide Planning Pilot Program

For more information about obtaining an EPA brownfields grant, grant guidelines, and discussions about the various types of grants that are available, please see EPA's website at http://www.epa.gov/brownfields/grant_info/index.htm.

What protections exist when municipal solid waste is disposed of at a contaminated property?

Prior to the Brownfield Amendments, entities that disposed of municipal solid waste at contaminated properties argued that they should not be liable for the cleanup of contamination that was originally and primarily caused by industrial polluters. To address this issue, the Brownfield Amendments included CERCLA § 107(p) to create a qualified exemption from CERCLA liability for certain residential, small business, and non-profit generators of municipal waste at sites on CERCLA's National Priorities List. However, this exemption does not apply to municipalities who owned or operated a site.

For more information on the municipal solid waste exemption and EPA's guidance on the exemption, please see EPA's website at http://www.epa.gov/compliance/resources/policies/cleanup/superfund/interim-msw-exempt.pdf.

What steps might a local government take at a contaminated property to protect human health and the environment and ensure the integrity of a cleanup?

When contamination remains on a property during or after cleanup activities, institutional controls may be used alone or in combination with engineered controls to ensure protection of human health and the environment. Generally, institutional controls are designed to limit land or resource use (*e.g.*, prohibitions on residential use or extraction of ground water) and to ensure the integrity of engineered controls (*e.g.*, restrictions on excavating soils on or in the vicinity of a landfill cap).

As with engineered controls, institutional controls must be maintained, monitored, and evaluated for as long as contamination remains on the property at levels that do not allow for unrestricted use and unlimited exposure.

WHAT IS AN INSTITUTIONAL CONTROL?

An institutional control is a legal or administrative restriction on the use of, or access to, a contaminated property to protect:

1) the health of both humans and the environment; and

2) ongoing cleanup activities and to ensure viability of the engineered controls.

There are four categories of institutional controls:

- Proprietary Controls (*e.g.*, easement, real covenant, statutory covenant)
- Governmental Controls (*e.g.*, zoning, building permit, land use ordinance)
- Enforcement and Permit Tools (*e.g.*, consent decree, permit, order)
- Informational Devices (*e.g.*, deed notice, government advisory, state registry)

Whether or not a local government asserts BFPP status, it may play a key role in implementing, monitoring, and enforcing certain institutional controls – particularly for those it has the legal authority to implement or enforce. A local government also may work proactively with developers, prospective buyers and tenants, and other parties to ensure that institutional control requirements are understood and properly integrated into the planning and future reuse of the property.

If institutional controls are already in place on a particular property, it is important for local governments to understand the obligations the institutional controls impose and to consider how those obligations might be viewed by future owners, developers and property users. In some situations, EPA or the state may be willing to modify existing institutional controls to facilitate the appropriate reuse of the property as long as the engineered controls component of the cleanup will not be compromised and remains protective of human health and the environment.

For more information about institutional controls issues, please see EPA's website at http://www.epa.gov/superfund/policy/ic/index.htm.

CERCLA Liability and Local Government Acquisition of Contaminated Property: Key Documents

Local Government Issue	CERCLA Provision	Relevant EPA Documents or Guidance (if any)
Involuntary Acquisition	§ 101(20)(D)	• Policy on Interpreting CERCLA Provisions Addressing Lenders and Involuntary Acquisitions by Government Entities (EPA/OSRE, 6/30/1997) • Policy on CERCLA Enforcement Against Lenders and Government Entities that Acquire Property Involuntarily (EPA/DOJ, 9/22/2005) • Municipal Immunity from CERCLA Liability for Property Acquired through Involuntary State Action (EPA/OSRE/OSWER, 10/20/1995) • Fact Sheet: The Effect of Superfund on Involuntary Acquisitions of Contaminated Property by Government Entities (EPA/OSRE, 12/31/1995)
Third Party and Innocent Landowner Defenses	§§ 107(b)(3), 101(35)(A)(ii)	• Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchasers, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability ("Common Elements") (EPA/OSRE, 3/6/2003)
Bona Fide Prospective Purchaser	§ 101(40) and § 107(r)	• Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchasers, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability ("Common Elements") (EPA/OSRE, 3/6/2003) • Issuance of CERCLA Model Agreement and Order on Consent for Removal Action by a Bona Fide Prospective Purchaser (OSRE/USDOJ, 11/27/2006) • Enforcement Discretion Guidance Regarding the Applicability of the Bona Fide Prospective Purchaser Definition in CERCLA § 101(40) to Tenants (OSRE/OSWER, 1/19/2009) • Enforcement Discretion Guidance Regarding the Applicability of the Bona Fide Prospective Purchaser Definition in CERCLA Section 101(40) to Tenants: Frequently Asked Questions (OSRE, 11/1/2009)
Windfall Liens	§ 107(r)	• Interim Enforcement Discretion Policy concerning Windfall Liens Under Section 107(r) of CERCLA (EPA/DOJ, 7/16/2003) • Windfall Lien Guidance: Frequently Asked Questions (OSRE, 4/1/2008) • Windfall Lien Administrative Procedures (OSRE, 1/8/2008)

Local Government Issue	CERCLA Provision	Relevant EPA Documents or Guidance (if any)
Brownfield Grants	§ 104(k)(4) and (6)	• Brownfields Assessment Pilot/Grants at http://epa.gov/brownfields/assessment_grants.htm • Revolving Loan Fund Pilot/Grants at http://epa.gov/brownfields/rlflst.htm • Cleanup Grants at http://epa.gov/brownfields/cleanup_grants.htm • Area-Wide Planning Pilot Program at http://www.epa.gov/brownfields/areawide_grants.htm • Brownfield Grant Guidelines Frequently Asked Questions at http://www.epa.gov/brownfields/proposal_guides/faqpguid.htm
Institutional Controls	§§ 101(40)(F), 107(q)(1)(A)(V)	• Institutional Controls: A Citizen's Guide to Understanding Institutional Controls at Superfund, Brownfields, Federal Facilities, Underground Storage Tank, and Resource Conservation and Recovery Act Cleanups (EPA/OSWER, 2/2005) • Institutional Controls: A Guide to Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites (EPA Interim Final Draft 11/2010) • Institutional Controls: A Site Manager's Guide to Identifying, Evaluating and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups (EPA/OSWER, 9/2000)
State Voluntary Cleanups and Memoranda of Agreement	§§ 101(41), 128	• To see state-specific voluntary cleanup programs Memoranda of Agreement, please see http://www.epa.gov/brownfields/state_tribal/moa_mou.htm

Contact Information

If you have any questions about this fact sheet, please contact Cecilia De Robertis of EPA's Office of Site Remediation Enforcement at 202-564-5132 or derobertis.cecilia@epa.gov.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MEMORANDUM

SUBJECT: Revised Enforcement Guidance Regarding the Treatment of Tenants Under the CERCLA Bona Fide Prospective Purchaser Provision

FROM: Cynthia Giles, Assistant Administrator
Office of Enforcement and Compliance Assurance

Mathy Stanislaus, Assistant Administrator
Office of Solid Waste and Emergency Response

TO: Regional Administrators, Regions I-X

I. Introduction

Section 107(r) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund), 42 U.S.C. § 9601 *et seq.*, provides an important liability protection for parties who qualify as bona fide prospective purchasers (BFPPs). This guidance discusses the potential applicability of the BFPP provision to tenants who lease contaminated or formerly contaminated properties, and how the Agency intends to exercise its enforcement discretion to treat certain tenants as BFPPs under CERCLA. This guidance supersedes the EPA's January 14, 2009 guidance titled "Enforcement Discretion Guidance Regarding the Applicability of the Bona Fide Prospective Purchaser Definition in CERCLA § 101(40) to Tenants."

Leasehold interests play an important role in facilitating the cleanup and reuse of contaminated properties. It is essential that such reuse is compatible with, and does not undermine the integrity and protectiveness of, cleanups. Under current CERCLA case law, the mere execution of a lease does not necessarily make a tenant liable as an owner or operator under CERCLA § 107(a). The EPA recognizes the uncertainty regarding the potential liability of tenants under CERCLA and the potential applicability of the BFPP provision in light of the explicit reference to tenants in CERCLA § 101(40). A prospective tenant may wish to seek BFPP treatment in the event of a future federal CERCLA action at the leased property and/or to ensure appropriate environmental stewardship of the property.

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This guidance is intended to assist EPA personnel in exercising the Agency's enforcement discretion.[1] The EPA intends to apply this guidance on a site-specific basis only to the extent appropriate based on the facts regarding the property. This guidance is not a rule and it does not create new liabilities or limit or expand obligations under any federal, state, tribal, or local law. It is not intended to and does not create any substantive or procedural rights for any person at law or in equity. In addition, this guidance does not alter the EPA's policy of not providing "no action" assurances outside the context of a legal settlement or formal enforcement proceeding.[2]

II. Discussion

a. CERCLA Liability and the BFPP Exclusion

Section 107(a)(1) of CERCLA provides that "the owner and operator of a vessel or facility . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for . . . (A) all costs of removal or remedial action incurred by the United States Government . . . ." Thus, without liability protection, an owner or operator of contaminated property is a potentially liable party under CERCLA. Section 107(r)(1) of CERCLA provides statutory liability protection for certain owners or operators of property, called bona fide prospective purchasers or "BFPPs." CERCLA § 107(r)(1) states:

> Notwithstanding subsection (a)(1) of this section, a bona fide prospective purchaser whose potential liability for a release or threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall not be liable as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

In general terms, CERCLA § 101(40)(A)-(H)[3] defines a BFPP as "a person (or a tenant of a person) that acquires ownership of a facility after [January 11, 2002]" and that establishes that:

- all disposal of hazardous substances at the facility occurred prior to acquisition;
- the person conducted all appropriate inquiry (AAI) into the previous ownership and uses of the facility;[4]
- the person provides legally required notices;

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[1] Exercising enforcement discretion involves, among other things, evaluating a number of factors, including the status of a particular matter, allocation of Agency resources, potential litigation risk, potential cost recovery, and equitable considerations. This guidance does not address all the circumstances in which the EPA may choose to exercise enforcement discretion with respect to a party under CERCLA, nor does it cover all of the statutory or other protections that may be available to a party at contaminated or formerly contaminated property. Please note that although this guidance is being issued jointly by OSWER and OECA, the authority to exercise enforcement discretion is delegated to OECA.

[2] *See* "Applicability of Policy against 'No Action' Assurances to CERCLA" (Breen, OSRE 2000); "Processing Requests for Use of Enforcement Discretion" (Herman, OECA 1995); "Policy Against 'No Action' Assurances" (Price, OECM 1984).

[3] *See* 42 U.S.C. §§ 9601(40)(A)-(H) and 9607(r) for a complete description of the BFPP protection criteria.

[4] For more information about AAI, please see the AAI regulations found at 40 C.F.R. pt. 312 and the EPA's AAI webpage at http://www.epa.gov/brownfields/aai/index.htm.

- the person takes reasonable steps with respect to hazardous substance releases;
- the person provides cooperation, assistance, and access;
- the person complies with land use restrictions and institutional controls;
- the person complies with information requests and administrative subpoenas; and
- the person is not potentially liable for response costs at the facility or "affiliated" with any such person.

The EPA previously issued guidance to assist in the Agency's application of the BFPP provision. *See* "Enforcement Discretion Guidance Regarding the Affiliation Language of CERCLA's Bona Fide Prospective Purchaser and Contiguous Property Owner Liability Protections" (Gilberg, 9/21/11)("Affiliation Guidance"); "Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA" (Bromm, 3/6/2003).[5] These guidance documents address many of the criteria a landowner must meet to qualify under the statute as a BFPP. As discussed below, these guidance documents also provide important information on the EPA policies that may relate to tenants who may fall within the scope of this guidance.

b. Tenants Where the Owner is a BFPP

The BFPP definition in CERCLA § 101(40) applies to a "person (or a tenant of a person)," thereby providing that a tenant may *derive* BFPP status from an owner who satisfies the BFPP criteria. The tenant remains a BFPP and is protected by section 107(r) from CERCLA liability as long as the owner maintains its BFPP status and: (1) all disposal of hazardous substances at the facility occurred prior to acquisition, as provided by section 101(40)(A); and (2) the tenant does not impede the performance of a response action or natural resource restoration, as provided by CERCLA § 107(r)(1). As long as the owner maintains compliance with the BFPP criteria, the tenant who has derived BFPP status does not have any independent duty to carry out those responsibilities (such as conducting AAI). However, if the owner loses its BFPP status whether by its own action or inaction or that of the tenant, in the EPA's view of CERCLA's provisions, the tenant generally would no longer be a tenant with derivative BFPP status.[6]

If a tenant has derivative BFPP status through the owner and the owner loses its status through no fault of the tenant, the EPA may exercise its enforcement discretion to treat the tenant as a BFPP under CERCLA § 107(a)(1). In this situation, the EPA intends to exercise its enforcement discretion on a site-specific basis if the tenant itself meets the BFPP provisions in CERCLA §§ 101(40) and 107(r)(1) (identified above in section II(a)), with the exception of the AAI provision.[7] In general terms, as applied

[5] These documents are available from the Agency's website at: http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/.

[6] Because the BFPP protection is self-implementing – by the owner asserting that status – as a practical matter it may be difficult for a tenant to know with certainty whether the owner has qualified for and continues to maintain BFPP status. Thus, tenants with derivative BFPP status may need to evaluate independently whether the BFPP criteria are being met in order to assess their own status as a BFPP.

[7] Because AAI already has been conducted by the owner, the EPA does not expect a tenant to conduct AAI under these circumstances. It should be noted, however, that a tenant may still wish to obtain information on the prior uses of the facility

to the tenant, those BFPP provisions are as follows: (1) all disposal of hazardous substances at the facility occurred prior to execution of the lease; (2) the tenant provides legally required notices; (3) the tenant takes reasonable steps with respect to hazardous substance releases; (4) the tenant provides cooperation, assistance, and access; (5) the tenant complies with land use restrictions and institutional controls; (6) the tenant complies with information requests and administrative subpoenas; (7) the tenant is not potentially liable for response costs at the facility or "affiliated" with any such person (other than through the lease with the owner as further discussed below); and (8) the tenant does not impede any response action or natural resource restoration.

With respect to the "no affiliation" provision, CERCLA § 101(40)(H)(i)(II) provides an exception where the affiliation "is created by the instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services."[8] Thus, a person can acquire title to a property from a liable party and still establish itself as a BFPP. A lease generally does not convey title to the property and thus would not fall within the scope of the exception. For purposes of this guidance, however, the EPA intends to exercise its enforcement discretion on a site-specific basis by not treating the existence of a lease between the tenant and the owner as a prohibited affiliation.

c. Tenants Where the Owner is Not a BFPP[9]

With respect to a tenant who is not addressed under section II(b) of this guidance, the EPA intends to exercise its enforcement discretion on a site-specific basis to treat the tenant as a BFPP when the tenant itself meets all of the BFPP provisions in CERCLA §§ 101(40)(A)–(H) and 107(r)(1) (as identified above in section II(a)). In general terms, as applied to the tenant, those BFPP provisions are as follows: (1) all disposal of hazardous substances at the facility occurred prior to execution of the lease; (2) the tenant conducted AAI prior to execution of the lease; (3) the tenant provides legally required notices; (4) the tenant takes reasonable steps with respect to hazardous substance releases; (5) the tenant provides cooperation, assistance, and access; (6) the tenant complies with land use restrictions and institutional controls; (7) the tenant complies with information requests and administrative subpoenas; (8) the tenant is not potentially liable for response costs at the facility or "affiliated" with any such person (other than through the lease with the owner, as further discussed above in section II(b)); and (9) the tenant does not impede any response action or natural resource restoration.

Section 101(40) of CERCLA provides that a person must have "acquire[d] ownership" of the facility after January 11, 2002 in order to qualify for BFPP liability protection. For purposes of exercising its enforcement discretion on a site-specific basis with respect to this provision under this section, the EPA

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to have an informed basis on which to perform these actions (1-8 in the text above) should its owner lose BFPP status and the tenant wants to be treated as a BFPP under this paragraph.

[8] For more information about this exception, please see the Affiliation Guidance (p. 6-7).

[9] As stated above, this guidance supersedes the 2009 guidance titled "Enforcement Discretion Guidance Regarding the Applicability of the Bona Fide Prospective Purchaser Definition in CERCLA § 101(40) to Tenants." One category of the 2009 guidance focused on tenants with sufficient indicia of ownership to be an owner for purposes of liability under CERCLA. In this revised guidance, this category has been expanded to include tenants of parties who are not BFPPs regardless of whether those tenants have sufficient indicia of ownership to be an owner for purposes of liability under CERCLA.

intends to treat tenants as BFPPs if their lease agreement was executed after January 11, 2002 and they meet the other BFPP provisions outlined above.

III. Limitations of this Guidance

The EPA may decline to exercise its enforcement discretion described in this guidance under various circumstances. For example, if the lease is designed to allow the landlord or tenant to avoid its CERCLA liability, or the tenant is potentially liable for reasons other than its status as a tenant (e.g., it arranged for disposal of hazardous substances at the facility), then the EPA would likely decline to exercise its enforcement discretion. The EPA also may decline to exercise its enforcement discretion when the owner is not in compliance with state or federal regulatory requirements or administrative or judicial cleanup orders or decrees relating to the leased property.

IV. Tools to Address Tenant Liability Concerns

The statutory protection found at CERCLA § 107(r)(1) is self-implementing and the EPA generally will not be involved with facility-specific transactions or determinations of BFPP status. Similarly, the EPA generally will not engage in site-specific determinations on the applicability of this enforcement discretion guidance. There may be limited instances, however, where the EPA determines that it would be necessary and appropriate to address a tenant's concerns at a particular property through an existing tool (*e.g.*, a comfort/status letter or a prospective lessee agreement).[10] In addition, the EPA may use such tools on a case-by-case basis where it is appropriate to address the concerns of tenants not covered by this guidance in order to further the public interest.

V. Agency Contacts

For more information or questions about this guidance, please contact Susan Boushell at 202-564-2173 (boushell.susan@epa.gov) or James Miles at 202-564-5161 (miles.james@epa.gov) in the Office of Enforcement and Compliance Assurance, or Brigid Lowery at 202-566-0198 (lowery.brigid@epa.gov) in the Office of Solid Waste and Emergency Response.

cc: Regional Counsel, Regions I-X
Superfund National Policy Managers, Regions I-X
Elliott J. Gilberg, Director, Office of Site Remediation Enforcement
Brigid Lowery, Director, Center for Program Analysis
David R. Lloyd, Director, Office of Brownfields and Land Revitalization
James E. Woolford, Director, Office of Site Remediation and Technology Innovation
Reggie Cheatham, Director, Federal Facilities Restoration and Reuse Office
Mary Kay Lynch, Associate General Counsel, Office of General Counsel
Ben Fisherow, Chief, Environmental Enforcement Section, Department of Justice
EPA Renewable Energy Liability Workgroup
EPA RE-Power Team
EPA BART National Workgroup

[10] For a listing of the available tools and policies, including the EPA's policy on the issuance of comfort letters, see: http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/.

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March 28, 2017

The Honorable Garret Graves
House Transportation & Infrastructure Committee
Subcommittee on Water Resources & Environment
U.S. House of Representatives
Washington, DC 20515

The Honorable Grace Napolitano
House Transportation & Infrastructure Committee
Subcommittee on Water Resources & Environment
U.S. House of Representatives
Washington, DC 20515

Re: March 28 Hearing: Building a 21st Century Infrastructure for America: Revitalizing American Communities through the Brownfields Program

Dear Chairman Graves and Ranking Member Napolitano,

On behalf of the National Ground Water Association's (NGWA) thousands of members across the United States, we commend the attention the Transportation & Infrastructure Committee is giving the brownfields program during the March 28 hearing, *"Building a 21st Century Infrastructure for America: Revitalizing American Communities through the Brownfields Program."* NGWA is the largest organization of groundwater professionals in the world, whose mission is to promote the responsible protection, management and use of groundwater. NGWA members are experts in the brownfields projects, focusing on groundwater remediation.

On a typical Brownfields project, NGWA members, both contractors and engineering and scientific professionals, are engaged in assessing the site, its soil, and surface water and ground water quality conditions, in order to effectively plan the needed remediation measures to restore it to productive use.

As Congress works to reauthorize the brownfields program, NGWA hopes that the major economic development impacts that brownfields clean-up has on rural communities is given appropriate consideration. While brownfields projects are often thought of as confined to major industrial areas, with over 400,000 brownfields sites across the country, nearly every congressional district has one. Rural areas face the legacies of fertilizer plants, tanneries, and small businesses like gas stations and dry cleaners. With the abundance of land in rural areas, brownfields sites are often overlooked, as its easier to develop green space.

NGWA is interested in working with the committee to see the brownfields program reauthorized and would encourage consideration of the following:

- Incentives for cleaning up and redeveloping brownfields—rather than developing green space;
- Increased flexibility for decision-makers throughout the clean-up process;

cc: Members, House Transportation & Infrastructure Committee

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- Prioritizing rural applications where groundwater is directly impacted, as drinking water is typically groundwater-sourced in rural areas;
- A public-private partnership program to leverage private investment in cleaning up sites
- Regulatory reform that expedites the often lengthy review process, while allowing flexibility in site remediation

Thank you for your attention to this important matter. Please contact Lauren Schapker, NGWA's Government Affairs Director, at lschapker@ngwa.org or 202.888.9151 with questions or if NGWA can be of assistance.

Sincerely,

Kevin McCray, CAE
Chief Executive Officer
National Ground Water Association

cc: Members, House Transportation & Infrastructure Committee

NARC
Building Regional Communities

National Association of Regional Councils
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March 28, 2017

The Honorable Bill Shuster
Chairman
Transportation and Infrastructure Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Peter DeFazio
Ranking Member
Transportation and Infrastructure Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Garret Graves
Chairman
Subcommittee on Water Resources & Environment
U.S. House of Representatives
Washington, DC 20515

The Honorable Grace Napolitano
Ranking Member
Subcommittee on Water Resources & Environment
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Shuster, Ranking Member DeFazio, Chairman Graves, and Ranking Member Napolitano:

Thank you for the opportunity to submit a statement to the record on behalf of regional councils across the country in support of the U.S. Environmental Protection Agency (EPA) Brownfields program. The National Association of Regional Councils (NARC) represents metropolitan planning organizations, councils of government, and other regional planning organizations throughout the nation. The EPA Brownfields program is an extremely successful and important program for our members.

Since its creation, the EPA Brownfields program has provided crucial assistance to local governments for reclaiming hazardous, polluted, and underutilized properties. To date, there have been over 26,000 brownfields assessments and 1,200 brownfields cleanups nationally, which has led to over 123,000 jobs. Each of the $22 billion federal dollars that have been invested since the program was established in 2002 have leveraged approximately $16 in other investments, close to $400 billion in total.

While many communities have benefited from brownfields redevelopment efforts under this program, the U.S. Government Accountability Office estimates there are between 400,000 and 600,000 remaining brownfields sites throughout the United States. To build upon these past successes and assist in the cleanup, reuse, and redevelopment of remaining sites, some key improvements to the program are needed.

NARC understands the fiscal challenges and constraints faced by the U.S. Congress, and strongly encourages you to authorize and fully fund the Brownfields program to at least previously authorized levels. At current appropriation levels, EPA has had to turn away many highly qualified applicants due to a lack of funding. EPA estimates that for the past 5 years, over 1,700 requests for viable projects were not awarded money because of limited funding. EPA estimates that if they were able to provide funding to those turned away applicants, an additional 50,000 jobs would have been created along with $12 billion of leveraged funding.

Additionally, many of the brownfield sites that remain are more difficult to redevelop due to their level of contamination or marketplace conditions. Communities would appreciate the expansion of this

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program to help address the cleanup challenges at these more complex sites. We also encourage Congress to revise the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERLA) to encourage and protect local communities who choose to take ownership of blighted properties for the purpose of brownfields redevelopment where the local government had no role in creating the contamination.

Regional councils across the country benefit from this wide-reaching program. The Mid-America Regional Council (MARC) in Kansas City, MO has secured and implemented about $24.2 million of federal and state brownfields funding to leverage approximately $355.7 million in actual cleanup and new construction since 1997. MARC estimates an average return on investment of about $15 for every $1 of public funds in brownfield projects in the Kansas City two-state region.

In the New Orleans, LA region the New Orleans Regional Planning Commission (NORPC) has leveraged over $77 million in funding to clean up 27 brownfields sites and create 115 permanent jobs, in addition to numerous construction jobs. An additional 375 jobs are expected to be created from projects currently underway. In total, environmental issues at over 58 acres of vacant and abandoned land have been assessed to facilitate their redevelopment with a $1:$91 ratio for brownfield investment to redevelopment investment. NORPC focuses on sites that will spur further redevelopment and support local businesses. In addition, many of the sites are owned by nonprofits looking to fill a community need such as senior housing, schools, community meeting/ performance space, and community gardens.

The Brooke-Hancock-Jefferson Regional Planning Commission on the Ohio-West Virginia-Pennsylvania border has received almost $3 million in EPA funding for sites that would otherwise remain vacant without this program. They have leveraged over $65 million of private investment for these sites that have created 1,074 jobs. In this multi-state area, a community stakeholder group meets regularly as part of a Brownfield Task Force to select sites for performance assessments under their brownfields programs.

The Greater Portland Council of Governments in Maine has identified 400 brownfield sites since 2009 and have leveraged over $18 million from public and private sources to reclaim polluted properties available for development, however many sites still remain contaminated and unusable. The federal brownfields program helps return polluted properties to community use and Portland, Maine's 400 potential sites would benefit from funding to encourage their productive use and improve public safety.

President Trump has made reinvesting in America and putting people back to work as key priorities for his administration. In order to make this happen and to do so quickly, Congress should utilize existing programs. NARC believes that the Brownfields program would be a strong candidate for any type of reinvestment initiative.

Thank you again for the opportunity to express our support for the EPA Brownfields program. It is clear that regional councils benefit from this program, evidenced by the high return on investment and job creation. Small improvements could be made regarding liability issues and flexibility in using funds. Please reference our joint letter with the National League of Cities, National Association of Counties, and U.S. Conference of Mayors for more specific improvements to the program. We look

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forward to working with you on a reauthorization to help communities across the country redevelop brownfields and build better regions.

Sincerely,

Leslie Wollack
Executive Director
National Association of Regional Councils

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