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BROWNFIELD REDEVELOPMENT

Stakeholders Cite Additional Measures That Could Complement EPA's Efforts to Clean Up and Redevelop Properties

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Highlights of [GAO-05-450T](#), a testimony before the Subcommittee on Federalism and the Census, Committee on Government Reform, House of Representatives

Why GAO Did This Study

Brownfields are properties whose re-use may be hindered by the threat of contamination. Cleaning up and redeveloping these properties can protect human health and the environment, and provide economic benefits. The Environmental Protection Agency (EPA) provides grants to state and local governments and others for site assessments, job training, revolving loans, cleanups, and for assisting state efforts.

This testimony is based on GAO's report, *Brownfield Redevelopment: Stakeholders Report That EPA's Program Helps to Redevelop Sites, but Additional Measures Could Complement Agency Efforts* (GAO-05-94, December 2, 2004). GAO (1) obtained stakeholders' views on EPA's contribution to brownfield cleanup and redevelopment, (2) determined the extent to which EPA measures program accomplishments, and (3) obtained views on options to improve or complement EPA's program. Stakeholders GAO surveyed included grant recipients, state program officials, interest groups, real estate developers, and others.

What GAO Recommends

GAO's report recommended that EPA develop additional measures of the Brownfields Program's achievements and consider stakeholder suggestions for improving and complementing the program. EPA agreed with the report's recommendations and has begun steps to implement them.

www.gao.gov/cgi-bin/getrpt?GAO-05-450T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact John B. Stephenson at (202) 512-3841 or stephensonj@gao.gov.

BROWNFIELD REDEVELOPMENT

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What GAO Found

Stakeholders said that EPA's Brownfields Program supports the initial stages of site redevelopment by funding activities that other lenders often do not, such as identifying contamination and cleaning up sites. While important, the impact of EPA's funding is difficult to isolate because it is often combined with funds from other sources. For example, representatives of a company that combined an EPA loan with city, state, and other federal agency funds to redevelop a brownfield site near Seattle, Washington, said that EPA's loan, while small, provided critical up-front funds for cleanup. Furthermore, while an unknown number of projects rely solely on private and other federal agencies' funding, EPA funds often go to sites with more complex cleanups, less desirable locations, or liability issues. In addition, officials in 10 states reported that EPA's assistance has been crucial to establishing and expanding the scope of their voluntary cleanup programs.

EPA's performance measures have provided information on achievements in some but not all key areas of the Brownfields Program. For example, EPA has not yet begun reporting data on progress toward cleaning up and redeveloping sites or assisting state programs. As a result, the agency's—and the Congress'—ability to determine the extent to which the program is achieving its goals is limited. Furthermore, EPA has not yet developed measures to assess the extent to which the Brownfields Program achieves key outcomes, such as reducing environmental risks. Similarly, EPA's Inspector General found that the agency's performance measures do not demonstrate the program's contribution to reducing or controlling health and environmental risks. After acknowledging the limitations of the program's performance measures, in fiscal year 2004, EPA began collecting additional data—such as the number of acres ready for reuse—about properties under the program and is developing performance measures for state voluntary cleanup programs.

Stakeholders identified three options for improving or complementing EPA's Brownfields Program. First, they suggested eliminating the provision in the Brownfields Act that, in effect, disqualifies from grant eligibility those landowners who purchased a brownfield site before January 2002. Second, they suggested changes to the stringent technical and administrative requirements that they believe have discouraged the use of revolving loan funds. While EPA officials maintain that the act eased administrative burdens, stakeholders believe that technical requirements continue to impede lending. Stakeholders also suggested that EPA give priority to applicants with proven administrative expertise or to coalitions that can consolidate administrative functions. Third, stakeholders believed that a federal tax credit for developers' remediation costs could attract developers to brownfields sites on a broader national basis. Although EPA and other organizations were also generally supportive of a tax credit, we did not analyze the costs and benefits of such a tax credit or any other potential incentives.

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to discuss our work on EPA's Brownfields Program and potential options for enhancing brownfield redevelopment efforts. As we reported in December 2004, an estimated 450,000 to 1 million brownfields—sites whose redevelopment or reuse may be complicated by the presence or potential presence of hazardous substances—sit abandoned or underused across the country.¹ These sites have remained undeveloped for several reasons, including uncertainty about the presence of contamination, limited cleanup resources, and fear by the sites' owners or prospective purchasers that they might be held liable for cleaning them up. Cleaning up and redeveloping these properties can improve and protect human health and the environment; increase local tax bases; and encourage smart growth by slowing the development of undeveloped, open land. The Environmental Protection Agency (EPA) has the lead federal role in encouraging and facilitating the cleanup and redevelopment of brownfield sites. In addition, state and local governments, commercial lending and real estate development corporations, and other entities provide funding for brownfields redevelopment—both with and without EPA's participation.

While EPA has conducted brownfield efforts since 1995, the Congress established a formal Brownfields Program within EPA in January 2002, by passing the Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Act) (Pub. L. No. 107-118). The objectives of EPA's Brownfields Program are to assess, clean up, and redevelop properties; leverage job creation; and leverage cleanup and redevelopment funding from other sources. The Brownfields Act authorizes \$200 million annually for fiscal years 2002 through 2006, to fund EPA grants to state and local governments and others for site assessments, job training, revolving loans, and newly created cleanup grants in support of brownfield revitalization efforts.² Between fiscal years 1995 and 2004, EPA awarded over 1,200

¹GAO, *Brownfields Redevelopment: Stakeholders Report That EPA's Program Helps to Redevelop Sites, but Additional Measures Could Complement Agency Efforts*, [GAO-05-94](#) (Washington, D.C.: December 2, 2004).

²EPA's site assessment grants provide funding for a grant recipient to inventory, characterize, assess, and conduct planning and community involvement related to brownfield sites. EPA also awards brownfields job training grants to provide environmental training for residents of brownfields communities. EPA's revolving loan fund grants provide funding for recipients to make no- or low-interest loans or subgrants for brownfields cleanup. EPA also awards cleanup grants that provide direct funding for a recipient to address contamination at brownfield sites.

brownfield grants totaling about \$400 million. While the total amount of EPA's grant funds is relatively small, these grants are intended to leverage much larger amounts for brownfield cleanup and redevelopment from other sources. For example, EPA's objective is to leverage \$10.2 billion in cleanup and redevelopment funding from fiscal years 2003 through 2008. In addition, the act authorizes \$50 million in grants to assist states and tribes in developing and enhancing their environmental response—or voluntary cleanup—programs to address contaminated sites. Since fiscal year 2003, EPA has awarded about \$100 million in assistance to states and tribes.

My remarks today are based on our December 2004 report on brownfield redevelopment and will focus on (1) the views of stakeholders—including EPA grant recipients, state and local government officials, real estate developers, interest groups, and others—on the extent to which EPA's program has contributed to the cleanup and redevelopment of brownfields; (2) the extent to which EPA measures its brownfields program accomplishments; and (3) stakeholders' views on potential options for improving or complementing EPA's program.

For our report, we interviewed officials in EPA's Office of Brownfields Cleanup and Redevelopment, and other EPA offices; representatives of industry groups and associations with brownfields expertise; eight recipients of EPA site assessment, revolving loan, or job training grants in Colorado, Florida, Minnesota, and Washington State; other local stakeholders in these states, such as real estate developers, property owners, attorneys, nonprofit organizations, and other state and local government officials; and voluntary cleanup program officials in these four states as well as Alabama, Alaska, Kentucky, Virginia, West Virginia, and Wyoming. Although we did not identify a sample of stakeholders that would allow us to generalize our findings to the total population, our methodology enabled us to obtain a wide range of views on EPA's program and brownfield issues.

Summary

In summary, we found the following:

- Stakeholders reported that EPA's Brownfields Program provides an important contribution to site cleanup and redevelopment by funding activities that might not otherwise occur. According to these stakeholders, EPA grants are important in that they fund activities in the initial stages of brownfield redevelopment and address sites—such as those with more complex cleanup requirements, less desirable locations, or liability or

ownership issues—that private lenders and others often do not. In this regard, EPA’s site assessment grants provide seed money for identifying contamination and estimating cleanup costs, while its revolving loan fund grants support cleanup activities. While important, the impact of EPA’s funding is difficult to isolate because it is often combined with funds from other sources. All of the grant recipients we interviewed used EPA grants in conjunction with funding from other sources to address brownfield sites, but an unknown number of projects are under way or have been completed without any EPA funding. Furthermore, officials in all 10 of the states we contacted reported that EPA assistance has been crucial to establishing and expanding the scope of their voluntary cleanup programs. They said that without EPA’s grants, their voluntary cleanup programs would not have had the resources to undertake activities such as compiling state inventories of brownfield sites and performing site assessments.

- The measures that EPA has used to date to gauge Brownfields Program accomplishments have provided information on achievements in some but not all key areas of the program. As a result, the agency’s—and the Congress’—ability to determine the extent to which the program is achieving its goals is limited. First, while EPA has reported the cumulative number of sites assessed, jobs generated, and amounts of cleanup and redevelopment funds leveraged by the program, the agency has not begun reporting data on grant recipients’ activities to clean up and redevelop properties—one of its primary stated objectives. Second, EPA does not collect data on its assistance to state voluntary cleanup programs for such activities as compiling inventories of brownfield sites, performing site assessments, and developing guidance for program participants. This assistance accounted for about one-third of the total Brownfields Program funds in each of fiscal years 2003 and 2004. Third, although EPA’s overall mission is to protect human health and the environment, the agency has not yet developed measures to determine the extent to which the Brownfields Program helps reduce environmental risks. Acknowledging these limitations, EPA began collecting additional information—such as the number of acres ready to be reused—in fiscal year 2004, and is developing performance measures for voluntary cleanup programs.
- Stakeholders identified three potential options for improving or complementing EPA’s Brownfields Program:
 - First, they suggested eliminating the provision in the Brownfields Act that, in effect, makes landowners who purchased a brownfield site prior to January 2002, ineligible for EPA grant funding. Stakeholders asserted that this clause continues to discourage brownfields

redevelopment by limiting program eligibility.

- Second, stakeholders suggested changes to address the underutilization of revolving loan funds. As of November 2004, grant recipients had loaned out less than \$29 million (about 17 percent) of the \$168 million in revolving loan fund grants awarded by EPA. According to stakeholders, the stringent technical and administrative requirements to establish a revolving loan fund have discouraged grant recipients from using the funds and continue to be the primary impediments to making loans. Additionally, stakeholders believed that EPA could achieve greater results by giving priority to applicants with proven administrative expertise or to coalitions of agencies that could consolidate administrative functions associated with establishing and managing a revolving loan fund and thereby produce economies of scale.
- Third, stakeholders believed that a federal tax credit allowing developers to offset a portion of their federal income tax with their remediation expenditures could complement EPA's program by attracting developers to brownfields sites on a broader national basis. While EPA and other organizations with brownfields expertise were also generally supportive of a federal brownfields tax credit, we did not analyze the costs and benefits of such a tax credit or any other potential incentives.

To enhance federal efforts to support brownfield clean up and redevelopment, we recommended in December 2004 that the Administrator of EPA:

- develop additional measures to gauge the achievements of the Brownfields Program, especially those addressing the program's environmental and state voluntary cleanup aspects;
- weigh the merits of revising the Brownfields Act to eliminate the provision that prevents pre-January 2002 purchasers of brownfield properties from qualifying for EPA grant funds, and, if deemed appropriate, develop a legislative proposal to amend the act;
- monitor the brownfield revolving loan fund grants to determine why they have been underutilized and what, if any, changes are needed to facilitate use of these funds; and
- determine the advantages and disadvantages of giving priority to entities with revolving loan fund administrative expertise when awarding grants

and, if found to be beneficial, adopt this as a key criterion for selecting grant recipients.

EPA agreed with these recommendations and Brownfields Program officials told us that, since December 2004, the agency has taken a number of steps to address them. With regard to measuring program achievements, EPA is finalizing a data collection instrument that will allow the agency to incorporate the achievements of state voluntary cleanup programs into the measures it currently reports, such as the number of sites assessed. Brownfields Program officials also told us that they are working with other EPA program offices to measure and report the cumulative acres cleaned up through the agency's overall land revitalization efforts as an indicator of the agency's efforts to reduce environmental risks. Concerning our recommendation on the Brownfields Act's eligibility provision, rather than developing a legislative proposal to amend the act, EPA included language in its fiscal year 2006 budget request that, if enacted, would make pre-January 2002 purchasers of brownfield properties eligible for EPA grant funds.

In response to our recommendations on revolving loan fund grants, EPA continues to monitor revolving loan grant activity and "deobligate" grants to recipients who are not lending the funds, according to program officials, thereby making these funds available for other grants. These officials also said that the agency has bolstered its efforts to ensure that revolving loan fund grants are awarded to recipients with the expertise necessary to administer a fund and, in fiscal year 2006, will reevaluate and consider strengthening grant proposal criteria assessing applicants' ability to manage a fund. Finally, EPA officials told us that the agency awards noncompetitive supplemental funding to some revolving loan fund grant recipients that have demonstrated their administrative expertise.

Background

EPA began its efforts to address brownfield properties in 1995 with the Brownfields Initiative under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which was enacted in 1980 in the wake of discoveries of abandoned hazardous waste sites around the country. CERCLA authorizes EPA to compel parties responsible for the contamination to clean up hazardous waste sites; allows EPA to pay for the cleanups, then seek reimbursement from the responsible parties; and established a trust fund to help EPA pay for cleanups and related program activities. Under CERCLA, past and present owners and operators of hazardous waste sites, as well as generators and transporters of the hazardous substances, can all be held liable for cleanup costs. CERCLA

establishes a defense to liability for innocent landowners—that is, owners who obtain property without knowing it was contaminated despite conducting “all appropriate inquiries” regarding the present and past uses of the property and the potential presence of onsite contamination.

Under its Brownfields Initiative, EPA awarded several types of grants in support of brownfields redevelopment, including, among others:

- site assessment grants, which provide funding to inventory, characterize, assess, and conduct planning and community involvement related to brownfield sites; and
- revolving loan fund grants, which provide funding for recipients to make no- or low-interest loans for brownfields cleanup.

On January 11, 2002, the Congress amended CERCLA by passing the Brownfields Act. The act formally established EPA’s Brownfields Program and amended the criteria for establishing the innocent landowner defense. It also limits liability for two types of parties: (1) contiguous property owners—persons who own property that may be contaminated by a release of hazardous substances from a neighboring property—and (2) bona fide prospective purchasers—persons who purchased the property after the act’s passage on January 11, 2002; did not contaminate the property; and exercised appropriate care with respect to any hazardous waste found on the property. Both types of parties must demonstrate that they conducted all appropriate inquiries into the site’s previous ownership and use.³ Under the act, any landowner who acquired a potentially contaminated property before January 11, 2002, is not eligible for the bona fide prospective purchaser exemption and accordingly may not be eligible for brownfields grants. Among other things, the act authorizes EPA to continue awarding site assessment, revolving loan fund, and job training grants; authorizes new cleanup grants up to \$200,000 to be used directly for brownfields remediation; and allows a portion of revolving loan fund

³In August 2004, EPA proposed a rule that would establish specific requirements and standards for conducting all appropriate inquiries into the previous ownership, uses, and environmental conditions of a property for the purposes of qualifying for CERCLA liability protection.

grants to be directed to cleanup activities as subgrants that do not have to be repaid, in accordance with certain statutory restrictions.⁴

Brownfield grants are currently awarded competitively by regional panels that evaluate grant proposals against threshold eligibility criteria and by a national panel that scores and ranks proposals on broader criteria. EPA has awarded over 1,200 brownfields grants totaling about \$400 million since 1995. Table 1 shows the number of grants and the amount (in nominal dollars) awarded for each grant type between fiscal years 1995 and 2002 (when the Brownfields Act was passed), and during fiscal years 2003 and 2004.

Table 1: Number and Amount of Brownfield Grants Awarded

Dollars in millions						
Grant type	Fiscal years 1995 ^a through 2002		Fiscal year 2003		Fiscal year 2004 ^b	
	Number of grants	Amount	Number of grants	Amount	Number of grants	Amount
Site assessment	437	\$103.1	117	\$30.7	155	\$37.6
Revolving loan fund	143	117.0	28	30.4	18	20.9
Cleanup	N/A	N/A	66	11.4	92	16.9
Job training	57	12.1	10	2	16	2.5
Other ^c	97	14.4	-	-	-	-
Total	734	\$246.6	221	\$74.5	281	\$77.9

Source: GAO analysis of EPA data.

^aEPA awarded one site assessment grant in 1993, and two site assessment grants in 1994, as pilot tests for its Brownfields Initiative.

^bFiscal year 2004 numbers and amounts are for grants announced, not awarded. A small number of these grants may have been awarded after the end of fiscal year 2004, according to EPA officials.

^cThis category includes other types of grants awarded prior to the Brownfields Act.

The 2002 Brownfields Act also authorizes grant funds to establish or enhance state and tribal voluntary cleanup programs that encourage private parties to identify and clean up sites. Some states began to establish voluntary cleanup programs in the late 1980s to alleviate

⁴EPA guidance limits the portion of funds that can be used as subgrants to 40 percent of the original grant amount.

concerns that liability under federal and state hazardous waste cleanup laws was hindering brownfield cleanups. All 50 states now have voluntary cleanup programs, although these programs vary considerably in scope and breadth. The 2002 Brownfields Act authorizes EPA to provide \$50 million for each of fiscal years 2002 through 2006, to support state or tribal programs. In 2003, EPA distributed almost \$50 million among the 50 states, 30 tribes, the District of Columbia, and the Virgin Islands to develop or enhance their programs' infrastructure and capabilities. The Congress appropriated \$50 million in funding for state and tribal voluntary cleanup program grants for fiscal year 2004.

Stakeholders Reported That EPA's Program Enables Brownfield Redevelopment That Might Not Otherwise Occur

Stakeholders told us that EPA's Brownfields Program contributes significantly to grant recipients' redevelopment efforts by providing seed money to identify contamination and estimate cleanup costs and by supporting cleanup activities.⁵ By funding site assessments and cleanups, EPA supports activities that private lenders and other government programs often do not fund, according to stakeholders. In this regard, a revolving loan fund grant recipient in Washington State told us that the banking industry generally is reluctant to lend money for brownfields projects because of the high risks involved. Consequently, EPA is an important—and sometimes the only—funding source for the critical assessment and cleanup activities in the initial stages of redevelopment. Stakeholders also told us that EPA's grant funds are important to brownfields redevelopment because they are often applied to sites with (1) more complex cleanup requirements, (2) less desirable locations, or (3) liability or ownership issues that make them less likely to be redeveloped by private or other governmental investors alone.

Although stakeholders believed that EPA's contribution is important, all of the grant recipients we interviewed told us that they often combined funding from many sources to clean up and redevelop brownfields, using EPA's grants in conjunction with funds from other federal, state, and local sources. For example, a Colorado real estate developer with whom we

⁵These stakeholders included a nonprobability sample of eight EPA brownfields grant recipients, as well as real estate developers, property owners, attorneys, and nonprofit organizations, which the grant recipients identified, and several industry groups and associations representing state and local governments with brownfields expertise that we identified. Some stakeholders did not offer a response to our open-ended questions on various issues, while others offered more than one response. We did not determine the extent to which stakeholders agreed or disagreed with any particular response offered by other stakeholders.

spoke combined an EPA brownfields revolving loan, a substantial company equity investment, several commercial loans, bonds, and other financing to fund a mixed-use project that will include retail shops and housing units. Although EPA's program makes an important contribution to some brownfields projects, an unknown number of other projects are under way or have been completed using funds solely from other public and private sources without any EPA assistance. An official with the Northeast-Midwest Institute—a nonprofit, nonpartisan research organization for the Northeast and Midwest states—emphasized that, while EPA and other federal programs provide key support for brownfields redevelopment, the number of brownfield sites far exceeds the number of properties that could be addressed by available federal resources. Similarly, in its September 2003 report on the Brownfields Program, EPA stated that while there remain hundreds of thousands of brownfield sites across the country that could be put to better use, the sheer enormity of the problem far outstrips all available federal resources.

The state officials we contacted also reported that EPA brownfields assistance is crucial to establishing and expanding the scope of their voluntary cleanup programs. Program officials from 4 of the 10 states we contacted—Kentucky, Virginia, West Virginia, and Wyoming—reported that EPA's funds keep their voluntary cleanup programs operating and that their programs would not exist without this assistance. State officials from Colorado and Minnesota commented favorably on the flexibility that EPA's funding provides their state programs. In this regard, officials from all 10 states said that their programs would not be able to accomplish a number of key activities without EPA's assistance, such as compiling state inventories of brownfield sites, performing limited brownfields site assessments, and developing needed guidance and information for program participants. For example, state officials overseeing Alabama's program said that EPA's funding allowed the program to hire additional staff, provide training, and develop an inventory and public record of brownfield sites. Similarly, Colorado program officials noted that, without EPA's funding, the state's program would not be operating at its current service level and would not have undertaken activities such as preparing cleanup guidance to deal with the state's growing problem of contamination from illegal methamphetamine drug laboratories.

EPA's Current Performance Measures Are Not Sufficient For Effective Program Oversight and Decision Making

The performance measures that EPA reports to the Congress regarding its brownfield activities do not fully address the program's central objectives, thereby limiting both the agency's and the Congress' ability to determine the extent to which the program is achieving its goals. According to EPA, the specific objectives and goals for the Brownfields Program are to (1) assess, clean up, and redevelop 9,200 properties; (2) leverage \$10.2 billion in cleanup and redevelopment funding; and (3) leverage 33,700 jobs. In its fiscal year 2003 annual report, EPA reported to the Congress on the cumulative (1) sites assessed, (2) jobs generated, and (3) cleanup and redevelopment funds leveraged. However, EPA did not report the number of properties cleaned up or redeveloped under the program. In addition, EPA's performance measures do not provide information on the impact of EPA's funding to state voluntary cleanup programs, which comprised about one-third of the total Brownfields Program funds in each of fiscal years 2003 and 2004. Moreover, while EPA's objective to assess, clean up, and redevelop properties addresses the environmental impact of the program, its measures do not allow the agency to determine the extent to which the program helps reduce environmental risks, a key agency goal. In 2002 and 2004, the EPA Inspector General reported that while the Brownfields Program's current performance measures may provide information on economic outputs and activities, the measures do not provide information on how risks to human health and the environment will be reduced or controlled.⁶ Furthermore, we testified in July 2004 that EPA is not consistently ensuring that its grants—such as those awarded under the Brownfields Program—are clearly linked to environmental results.⁷

Recognizing the limitations of its performance measures and supporting data, EPA is taking steps to obtain and report additional information that may better measure Brownfields Program accomplishments. In August 2002, EPA initiated an internal work group to develop a data collection instrument to gather information from site assessment, cleanup, and revolving loan fund grant recipients beginning in fiscal year 2004. EPA officials believe that this instrument will provide them with more detailed

⁶EPA, Office of Inspector General, *Observations on EPA's Plans for Implementing Brownfields Performance Measures*, 2002-M-00016 (Washington, D.C.: May 24, 2002) and *Substantial Progress Made, But Further Actions Needed in Implementing Brownfields Program*, 2004-P-00-20 (Washington, D.C.: June 21, 2004).

⁷GAO, *Grants Management: EPA Continues to Have Problems Linking Grants to Environmental Results*, [GAO-04-983T](#) (Washington, D.C.: July 20, 2004).

information on such factors as common contaminants and property size, and will allow the agency to better measure the direct economic and environmental impact of EPA's activities on a property-specific basis. EPA officials anticipate that these data will provide a better measurement of program results, and they plan to conduct further evaluations after a full year of data collection to determine whether and how to use the data to develop environmental indicators. EPA also has efforts under way that may assist the agency in developing performance measures to gauge the impact of its funding for voluntary cleanup programs. In 2004, EPA formed a work group of state and tribal officials that analyzed methods that states currently use for measuring their programs. EPA officials told us that the work group is now developing performance measures for EPA's assistance to voluntary cleanup programs that could be implemented by the end of fiscal year 2005.

A recent review by the Office of Management and Budget (OMB) has also prompted EPA to take steps to develop measures that provide a more comprehensive picture of the Brownfields Program's impact. In February 2004, OMB completed an EPA Program Assessment and Rating Tool review—a systematic method of assessing the performance of program activities, focusing on their contribution to an agency's achievements of its strategic and program performance goals.⁸ According to the Director of EPA's Office of Brownfields Cleanup and Redevelopment, OMB recently approved a performance indicator that will be used in future OMB reviews and will enable OMB to compare the efficiency of the Brownfields Program with other federal programs, and could also be incorporated into the program's strategic plan and annual performance report.⁹ Finally, EPA's fiscal year 2005 annual performance plan included additional

⁸EPA and other federal agencies are required under the Government Performance and Results Act (GPRA) to develop strategic plans covering at least 5 years and submit them to the Congress and the Office of Management and Budget. GPRA also requires agencies to set annual performance goals and to prepare annual reports setting forth the performance measures and the agency's actual program performance as compared with the annual goals. OMB developed a Program Assessment and Rating Program for federal agencies in 2002 to improve program performance and better link performance to budget decisions.

⁹OMB also directed EPA to modify its currently reported measures to provide more accurate information about the program's impact. EPA agreed to qualify two of its Brownfields Program performance measures—jobs generated and cleanup and development funds leveraged—by indicating that the EPA investment “enabled” the outcome. OMB believed that this addition (1) recognized that other entities were involved in the creation of jobs and the leveraging of funds on brownfield projects and (2) impacted these measures.

information that more closely links the program to the goals of its strategic plan. The plan added a new measure that tracks the number of cleanup grants awarded and added a targeted goal—60 properties—for the “properties cleaned up” measure that was included in the previous annual plan without such a goal. This latter measure potentially addresses the program’s environmental impact. While incorporating this measure and goal as well as efforts to collect additional information are steps forward in measuring the agency’s progress in achieving the program’s goals and objectives, EPA must ensure that its data collection efforts address the program’s central activities and that, once collected, it uses these data to inform the Congress on program results.

Stakeholders Identified Changes That Could Enhance Existing Federal Brownfield Redevelopment Efforts

Stakeholders suggested three options for improving or complementing EPA’s Brownfields Program.¹⁰ First, stakeholders believed that revising a restrictive provision of the Brownfields Act could expand the number of eligible grant applicants. The act effectively limits grant eligibility to parties who purchased their property after January 11, 2002.¹¹ The stakeholders we interviewed suggested that EPA’s Brownfields Program could have a broader impact if those who purchased property prior to January 11, 2002, were also eligible to receive brownfields grants. Representatives of three of the organizations with brownfields expertise mentioned that many local governments that were actively addressing brownfields by acquiring these sites before the law was enacted have been penalized by the act’s eligibility date. EPA brownfields officials and a coalition of groups with brownfields expertise reported that EPA rejected a number of brownfield grant applications in fiscal year 2003, and other applications were never submitted, largely because of the eligibility date. Although the Consolidated Appropriations Acts for Fiscal Year 2004 and Fiscal Year 2005 temporarily suspended the eligibility date for each respective fiscal year, all of the stakeholders we spoke with who raised this issue believed that the date will continue to limit program eligibility—and, thereby, the program’s support of brownfields redevelopment—until it is permanently revised. The Director of EPA’s Office of Brownfields

¹⁰These stakeholders included representatives of eight land developers and other private companies and four organizations with brownfields expertise.

¹¹The act states that responsible parties are not eligible for brownfields grants. The current owner of a contaminated property is generally considered to be a responsible party. However, persons who purchased property after January 11, 2002, may be considered bona fide prospective purchasers, who are not generally responsible parties.

Cleanup and Redevelopment supports removing the eligibility date from the requirements for obtaining prospective purchaser liability protection, noting that the act's other requirements for obtaining prospective purchaser liability protection are sufficient without specifying the date of acquisition.

Second, almost one-half of the stakeholders we contacted suggested changes to address the underutilization of revolving loan fund grants. As of November 1, 2004, recipients of revolving loan fund grants had loaned about \$28.6 million (about 17 percent) of the \$168 million in such grants that EPA had awarded up to that date. EPA data show that, of the 154 active grants, 47 grant recipients had made 67 loans for brownfields projects and the remaining grant recipients had made no loans. Reacting to this situation, EPA began rescinding revolving loan fund grants from communities that had not used them and "deobligated" about \$12 million in revolving loan funds, thereby making them available to make other grants.¹² Furthermore, the Senate Committee on Appropriations expressed disappointment in the revolving loan component of EPA's Brownfields Program, noting in the report accompanying EPA's fiscal year 2004 appropriations bill that only a small percentage of grant recipients had made loans, resulting in only a small number of completed brownfield site cleanups over the life of the program.¹³ In response to these concerns, EPA officials told us that the Brownfields Act's provision allowing a portion of loan funds to be awarded to brownfield projects in subgrants that do not have to be repaid will bring renewed interest in the loans.¹⁴ EPA also told us the act eased the administrative burden on grant recipients by no longer

¹²Thirty grants were expected to be deobligated by the end of calendar year 2004, and 44 additional grants were expected to be reissued under the new requirements in the act by this date.

¹³EPA officials stated that informally collected information obtained as of November 1, 2004, suggested that cleanups have been completed at 37 brownfield sites, are ongoing at 19 others, and 3 more are about to get under way. They explained that since EPA brownfield funds generally represent only a portion of ongoing cleanup activities, recipients may delay reporting progress until such time as all site cleanup activities are completed.

¹⁴EPA guidance allows up to 40 percent of revolving loan fund grant dollars to be distributed as subgrants to provide direct assistance for brownfield cleanups.

requiring their full adherence to CERCLA National Contingency Plan requirements.¹⁵

According to five revolving loan fund grant recipients and a number of developers, however, other technical and administrative requirements have also discouraged grant recipients from using the funds. Managing a revolving loan fund requires a government or nonprofit entity to perform many of the functions of a commercial lending institution, including establishing interest rates and collateral requirements; processing and approving loans; and collecting loan payments. While factors such as the availability of low-interest private loans play a role in the number of loans made, revolving loan fund grant recipients told us that staff time and expertise are key to making these loans. Representatives of eight stakeholder groups indicated that EPA could achieve greater results with revolving loans by giving priority to applicants with proven expertise or to coalitions of agencies that can consolidate administrative functions and thereby produce economies of scale. Specifically, stakeholders reported that grant recipients with in-house technical expertise, who partnered with other agencies with expertise, or that hired contractors to obtain technical expertise were better positioned to set up a fund because they were able to gain access to financial expertise or experience in administering other revolving loan funds. For example, the Department of Environmental Services in Hennepin County, Minnesota, contracted with a nonprofit organization that specializes in servicing loans to manage its fund. Hennepin County has made four loans totaling over \$1.7 million to local brownfield projects.

In the same vein, grant recipients said that coalitions that consolidate administrative functions and pool revolving loan fund grants were able to take advantage of economies of scale by making more loans once they had made the up-front administrative investment to establish the fund. Nine grant recipients and other stakeholders told us that EPA's grants were not large enough to justify the time and effort required to establish a fund

¹⁵Prior to 2002, EPA-funded brownfields cleanups were subject to the National Contingency Plan (NCP)—CERCLA regulations that provide EPA's blueprint for how to respond to hazardous substance releases. Under the 2002 Brownfields Act, an NCP provision applies to EPA-funded brownfields cleanup only if EPA determines the provision is relevant and appropriate to the Brownfields Program. While EPA regions will determine the terms and conditions applicable to each grant, EPA expects that grant recipients will receive increased flexibility as a result of the new provision. EPA, however, retains certain requirements in order to ensure environmental cleanups protect public health and the environment.

because it is frequently depleted after one or two loans are made. The 67 loans made to date range from \$50,000 to \$1.95 million, with an average loan amount of about \$420,000. The act limits revolving loan fund grants to \$1 million, and many grants have been funded at less than this amount. However, EPA grant guidelines allow coalitions of eligible entities to apply together to receive funds of up to \$1 million each. For example, five entities could jointly apply and each receive up to \$1 million, for a total of up to \$5 million for the coalition. In selecting grant proposals, EPA currently evaluates grant applicants' ability to manage a fund as 1 of 10 ranking criteria, allocating it a maximum of 10 points out of a possible 120 points.¹⁶ While EPA's fiscal year 2005 grant proposal guidelines require a description of previous experiences managing federal funds and a plan for managing the loan fund in accordance with prudent lending practices, EPA's draft guidance to regional offices does not require grant applicants to discuss the expertise or resources they will rely on to implement prudent lending practices. We did not evaluate EPA's grant selection or award process.

Finally, stakeholders generally supported a federal brownfields tax credit, which would allow developers to offset a portion of their federal income tax with remediation expenditures, to complement EPA's Brownfields Program and encourage brownfields redevelopment. All of the stakeholders we spoke with about such a tax credit believed that it could attract developers to brownfield sites on a broader national basis and enhance the federal, state, and local brownfields redevelopment efforts currently under way. One stakeholder noted that while brownfields redevelopment is still a small and specialized real estate market, a federal tax credit could attract new developers and investors to these projects. At least 10 developers and 5 state or local government officials also said that other similar federal tax credits, such as the federal low-income housing and historic rehabilitation credits, have proven effective in stimulating

¹⁶In addition to management capabilities, EPA evaluates (1) the grant proposal budget; (2) the community's need for brownfields redevelopment; (3) the process for selecting loan or subgrant recipients; (4) the target market and business plan for making loans and subgrants; (5) the sustainable reuse of projects; (6) the creation or preservation of public or greenspace; (7) community involvement activities; (8) the reduction of threats to human health and the environment; and (9) the leveraging of additional funding resources. According to EPA officials, the grant proposal budget, target market and business plan, and the leveraging additional resources criteria also provide an assessment of applicants' ability to manage the grant.

redevelopment.¹⁷ The U.S. Conference of Mayors and other organizations told us that a federal tax credit has tremendous potential to foster new brownfield redevelopment. Furthermore, a brownfields redeveloper in Minnesota suggested that a federal tax credit would be most effective if the credit were directed to brownfield projects with more complex contamination, liability, or cleanup issues that would be less likely to be redeveloped without federal aid. Nevertheless, while stating that a credit could be beneficial, three stakeholders voiced concern about a tax credit's potential impact on federal revenue. EPA's Brownfields Program Director generally supported a federal brownfields tax credit as an incentive to new brownfields redevelopment. We did not analyze the costs and benefits of such a tax credit or any other potential incentives.

Conclusions

Although stakeholders we contacted acknowledged that EPA's contribution to brownfields revitalization is significant, the agency has not fully measured or reported to the Congress on the extent of this contribution. This information is needed both for EPA to improve the effectiveness of the program and the Congress to improve congressional decision making and oversight. While EPA has collected and reported data on some of the program's achievements, further action is needed to ensure that both the agency and the Congress have sufficient information on program results, particularly with regard to its assistance to state and tribal voluntary cleanup programs and impacts on environmental risks. EPA has initiated efforts to obtain additional data, but the agency must ensure that these efforts address the program's central activities and that, once collected, it uses these data to inform the Congress on program results. Although stakeholders we contacted praised EPA's program, they identified a number of limitations that, if addressed, could improve the program. However, while it appears that these suggestions might potentially enhance brownfield efforts, a careful review of their implications is warranted before EPA or the Congress takes action to implement them.

¹⁷The federal low-income housing tax credit provides an owner of newly constructed or renovated rental housing, who sets aside a specified percentage of units for low-income persons for a minimum of 15 years, with a tax credit over a 10-year period. The federal historic rehabilitation tax credit provides the owner of a certified historic structure with a tax credit equal to 20 percent of the amount of qualified rehabilitation expenditures.

Mr. Chairman, this concludes our prepared statement. We would be happy to respond to any questions that you or Members of the Subcommittee may have.

Contacts and Acknowledgments

For further information about this testimony, please contact me at (202) 512-3841. Richard P. Johnson, Kirk Menard, Joanna Owusu, and Vincent P. Price made key contributions to this statement.

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