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REAUTHORIZATIONl OF THE BROWNFIELDS PROGRAM SUCCESSES AND FUTURE CHALLENGES

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HEARING

BEFORE THE

SUBCOMMITTEE ON
WATER RESOURCES AND ENVIRONMENT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

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REAUTHORIZATION OF THE BROWNFIELDS PROGRAM—SUCCESSES AND FUTURE CHALLENGES

Thursday, June 8, 2006

HOUSE OF REPRESENTATIVES, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT, WASHINGTON, D.C.

The subcommittee met, pursuant to call, at 10:00 a.m., in room 2167, Rayburn House Office Building, Hon. John J. Duncan, Jr. [Chairman of the subcommittee], presiding.

Mr. DUNCAN. I want to first welcome everyone to our hearing today on the reauthorization of the Brownfields Program at the Environmental Protection Agency.

As manufacturing and commercial companies relocate or close their operations, they sometimes leave behind abandoned factories, salvage yards, and warehouses. Some of these sites may contain residual contamination with hazardous substance or other pollutants. These potentially contaminated former industrial and commercial sites are the brownfields that are the subject of our hearing today.

Brownfields drive down property values and tax revenues, and are a major blight in many of our cities and towns. There are hundreds of thousands of brownfields sites in America. While some of them exist in rural areas, most are in our cities, close to highways, rail lines, and ports. They are prime locations for redevelopment except for the fact that the land may be contaminated.

In the past, no one wanted to invest in cleaning up these sites because they feared the environmental liability under statutes such as the Comprehensive Environmental Response, Compensation, and Liability Act, also known as Superfund. As a result, many developers turned to undeveloped green spaces for new investments.

It became clear that it made good economic and environmental sense to remove legal hindrances and support State, local, and private efforts to clean up and redevelop brownfields. So, through this Committee's efforts, Congress passed, and the President signed, the Small Business Liability Relief and Brownfields Revitalization Act. That law provided legislative authority for the Brownfields Program, including grants for site assessments and cleanup. The law also clarified liability associated with brownfield sites and helped provide greater protections for innocent parties who want to clean up and redevelop brownfields properties.

Title II of the legislation was the Brownfields Revitalization and Environmental Restoration Act of 2001, which authorized $200 million per year for Brownfields Program grants and $50 million per

year to support State and tribal response programs. The grants are issued by EPA each year to communities and tribes for site assessments and revolving loan funds and direct cleanups.

With the help of these grants and the law's liability protections, communities can transform eyesores into safe and clean lands for new businesses, residences, public parks, or green space. The EPA estimates that the Brownfields Program has leveraged more than $8.2 billion in private investment and helped create more than 37,000 jobs. In addition, cleaning up brownfields may help control urban sprawl by making former industrial and commercial sites available for new development, thereby taking some of the pressure off undeveloped natural areas on the outskirts of cities.

I think the Brownfields Program has been a very successful government program, but like any good program, there may be ways to make it better. The authorization for appropriations for the Brownfields Program will expire this year. As we consider reauthorization of the Program, we should look for opportunities to make improvements. Turning brownfields back into usable property involves the efforts of the Environmental Protection Agency, State and local governments, private investors, and non-governmental organizations.

We have assembled a panel of experts from each of these entities who will help us understand how this program has been working and how we might want to improve it. I appreciate all of the witnesses taking time from their very busy schedules to be here with us this morning, and I look forward to hearing their testimony.

Now let me turn to my good friend, the Ranking Member of the Subcommittee, Ms. Johnson, for her opening statement.

Ms. JOHNSON. Thank you very much, Mr. Chairman. This morning the Subcommittee meets to hear testimony on the successes and future challenges of the Environmental Protection Agency's Brownfields Program and reauthorization of the Brownfields Revitalization and Environmental Restoration Act of 2001.

I have a deep appreciation for our subject matter this morning, as I have been able to witness firsthand the many positive effects brownfields redevelopment affords. In the heart of my congressional district and less than four blocks from my district office lies a 65 acre site known as the Victory Corridor. Less than five years ago, the former rail yard and utility site and an old abandoned packing house existed as a contaminated brownfield.

However, thanks to the assistance of the State's voluntary cleanup program and the partnership with EPA, the City of Dallas and a private developer, the inner city property has been completely remediated and placed back on the city's tax rolls. The 65 acre site is now home of the American Center and home of my beloved Dallas Mavericks, and a mixed use development project that has transformed a formerly economically depressed area into a dynamic one.

With results like these, it is no surprise that the Brownfields Program commands bipartisan enthusiasm and support. Conceived and initiated in the Clinton administration and legitimately enacted in the Bush administration, the program has proven to be a necessary catalyst in revitalizing underutilized sites and preserving undeveloped areas.

Brownfields redevelopment programs are critical to our Nation's communities to grow stronger and smarter, while allowing them to recycle our Nation's land to promote continued economic growth and a cleaner environment. As President Bush said when signing the Small Business Liability and Relief and Brownfields Revitalization Act, this is a good jobs creation bill.

Congress authorized, and the President supported, a funding level of $200 million annually for the site assessment cleanup efforts. Yet, the consistent and dramatic underfunding of the Brownfields Program by the President and the Congress leave much to be desired in terms of corresponding appropriations. In fact, the appropriations for brownfields assessment cleanup peaked at $97.7 million in fiscal year 2002, and only $89 million in this year's House passed appropriations bill.

Last year, EPA received 656 proposals for funding that passed its threshold requirements for eligibility. Unfortunately, EPA did not fund 55 percent of these proposals. Historically, EPA funds only about one-third of the requests. A fully funded program could fulfill nearly all of these proposals. EPA purports that the Brownfields Program has leveraged more than 37,000 jobs, yet the program has never received even one-half of its authorized funding.

With job creation in the most recent quarter falling well behind expectations, one can only speculate what effect a fully funded program could have on the job market and the economy at large. Unfortunately, this appears to be another program where great promise is being left unfilled by inadequate funding.

Mr. Chairman, I look forward to the testimony of our witnesses, and I want to thank you for being here. As evidenced by the GAO's sheer number of estimated brownfields throughout the Country, there is a clear and evident need for a strong flexible, accountable, and adequately funded Brownfields Program. The time has come to renew our resolve and desire toward stimulating growth across our Nation, and as we can begin by recognizing, targeting, and cleaning up the more than 500,000 estimated brownfields across America, when left only, only frustrate the plans and hopes for our communities and neighborhoods.

Thank you, Mr. Chairman. I yield back.

Mr. DUNCAN. Thank you very much.

Mr. Gilchrest.

Mr. GILCHREST. Thank you, Mr. Chairman. I appreciate the hearing and all the witnesses that are here today to give us some insight into creating—I don't want to use the word "expanding," because people don't like to expand Federal programs necessarily, but the idea that we can get into this program, look at some ingenious ways to make it work better on the local level by creating and continuing this partnership between the Federal Government and the local level, and the idea that the potential that we could use besides assessments, but demolition can be included into the process of understanding how we can make better use of brownfields.

The fundamental issue here, though, I think, Mr. Chairman, is that we are going to create a program where there are other options. You don't have to take the ag land, you don't have to take the open space. Let us make that connection between the local gov-

ernment, who has, really, virtually total authority over land use decisions, and create various options that they can think about.

So we are creating options, offering opportunities for human thinking, the thought process, which we don't always have that much of any more because of Blackberries and strawberries and whatever you call those things, and cell phones and all these other things. Just to sit back, creating options, time to think about it so we can make much more valuable use out of this Federal program.

Thank you.

Mr. DUNCAN. Thank you very much.

Mr. Pascrell.

Mr. PASCRELL. Thank you, Mr. Chairman and Ranking Member. Mr. Chairman, I am puzzled as to why we have not moved on this legislation, certainly through no loss of efforts on your part and the Ranking Member. You have been out front on water resources and on the issue of brownfields. You have been out front on the issue of sewer separation, SEOs, not sexy topics to talk about, but these are issues that municipalities throughout the United States struggle with day in and day out, and you have been strong on these issues.

Brownfields legislation costs money, but the data and the science all show that this is a true economic stimulant. Jobs are created when this partnership moves forward in a forceful manner. Property that has been abandoned for many, many years that we drive by, an old city that I am from in New Jersey comes to life; people live there, people work there. And when I have to make a comparison, this is the kind of comparison I am making, judgment or not. And I am sure you wouldn't agree with the comparison, but, nonetheless, this is the one I make.

If I have to make a judgment into putting more money into this program that has worked, as Clean Air Act has worked, as Clean Water Act has worked, if I have to make a comparison and a judgment between doing that and giving a tax cut to Jason Giombi and Barry Bonds, it is a very easy decision for me, because there is absolutely no scientific evidence that the tax cuts to those people making more than $1 million have anything to do with job creation in the United States. And you can pontificate all you want, I have not seen any evidence to that effect. But I have seen evidence, I have seen evidence on this issue.

Now, all of these pieces of land throughout the United States of America add up to about 200,000 acres, so this is pretty significant. If there were 200,000 acres on fire in California this afternoon, there would be a major problem there. These pieces of property are literally on fire. They are not only barren, they are not only barren, but they may be causing major problems to the very aquifer health system within the community. And they are not giving anybody a place to live, particularly in densely populated areas, and they are not giving opportunities for people to work; and in certain parts of the Country, that is a major interest as well.

So we have these 1200 brownfield sites. In my district alone, there are 1200 sites. Twelve hundred sites. My district covers two northern New Jersey counties. And, as I said, they are abandoned. They have been often industrial properties. In my district, this is

the oldest industrial area in the entire Nation, ourselves, as well as Lowell, Massachusetts.

Hazardous substances generated from many years of industrial activities contaminate these properties. As a former mayor, I can tell you that redevelopment is the only type of growth that is possible any longer in our urban communities. Even though our industrial base has changed over time, and we have debated that in other areas, since we have given away our infrastructure, our manufacturing infrastructure.

We have surrendered it to the other side, to the other ocean or to that ocean. We have surrendered it under the belief that service jobs would supplant it. And where in God's name is the evidence for that? Particularly service jobs that we do create create jobs that pay far less money and provide less benefits. Ah, there is the twist. That sounds good in our efforts to protect the American worker.

So even though our industrial base has changed, these properties in the district I am referring to, the 8th district in New Jersey—and it could be said for any district—they are valuable assets.

And this is exactly how you have looked at it, Mr. Chairman, as a valuable asset. What do we do with that asset even though it may be a tainted asset, even though there may be some problems with that particular public asset? It could be a public asset even though it might be some of these properties are privately owned.

And it has the potential to become magnets for the revitalization of our cities. Nobody ever talks about our cities any longer. Have you heard either side of the aisle, Democrats or Republicans, talk about the major cities of this Country? My party doesn't talk about it, in our attempt to be a global party, in our attempt not to be a fringe party. We don't talk about it anymore either. So everything must be wonderful in the cities of America, just moving along here.

Brownfields development can have a multitude of positive effects on these most troubled areas of our Country, where most of the people live. Oh, yeah, I forgot about that. They can help to create jobs; they can improve the quality of the environment; they can spur smart growth and preservation of open space. There are so many success stories from our cities and suburbs that are being heard across the Country.

The $250 million annually that we authorized; we know how much we appropriate. We don't do what we say, Mr. Chairman. And you have done everything in your power. You have even had sweat on your brow. And I wonder how, when you go home at night, what you think about all the effort that you put in sincerely and then the result, and then have to deal with the magnitude of irrelevant materials that we vote on in the Senate or the House. At this current funding level, Mr. Chairman, only about one-third of the eligible applicants can receive any money at all, and that is why I am mostly concerned.

So I want to just end, if you may, if you give me the luxury. I have three questions just to throw out which I think are significant to the discussion today, and if you would allow me to provide those questions:

What about allowing communities to apply for assessment and cleanup grants with one application, less paperwork, and mean it?

And should the Congress consider making it easier for communities to apply for cleanup for properties that they do not yet own at the time of the application? I think that would be helpful, but what do you think?

And would making assessment grants, in addition to cleanup grants, available to private non-profit entities, in addition to municipalities, be beneficial in terms of encouraging additional redevelopment of brownfields?

Mr. Chairman, thank you for your courtesies.

Mr. DUNCAN. Well, Mr. Pascrell, thank you very much. I can tell you that I spent five and a half seasons as bat boy for a minor league baseball team. I worked the first season and a half for free and the next four seasons for $1.50 a game. I can assure you that I have never once worried about Jason Giombi or Barry Bonds, or their salaries. And I can tell you that I am not concerned at all about giving them tax cuts, but I am concerned about trying to do something with this very small program.

But I liked your statement so much I have allowed you give the longest statement that has ever been made in this Subcommittee, I believe.

[Laughter.]

Mr. DUNCAN. Thank you very much.

Mr. Miller.

Mr. MILLER. Thank you, Mr. Chairman. And, Chairman Duncan, I really appreciate your hosting this hearing today. This is an issue. I have been a developer for 35 years. It is really, really important, being a former mayor. The cleanup and redevelopment of brownfield sites is really pretty important in most every community we face out there.

The reports I have read, it appears that there is easily over 450,000 brownfield sites throughout this Country, and they are basically there because of contaminated products that were produced on their chemical compounds or hazardous substances that were used on the property have left them where they are at. And they really represent more than just eyesores to these communities; they threaten their groundwater supply, they cost local communities jobs and revenues.

And they do, in some way, attribute to urban sprawl because we have sites within communities that have infrastructure in place that would accommodate various uses, whether it be a community center, a park, you know, apartments, condominiums, homes, commercial, whatever, that are not being utilized, they are just sitting there; and we are taking and advancing development in areas that really don't have the infrastructure necessary like some of these brownfield sites do.

To build their economies and attract employers, increasing numbers of States and local governments are working to clean up and redevelop these sites. The largest obstacle they face in many cases is a lack of capital needed up front to cover the essential early stage activities such as site assessment, remediation planning, and actual cleanup of the sites. Private financiers really are unwilling, in many cases, to put the money forward to do that, to take the project through full recycling and redevelopment stages. Local mu-

nicipalities and local leaders find themselves confronted with this complex task of redevelopment because of a lack of funding.

As we work on this EPA Brownfields Program, I think it is important to ensure the Program focuses on assessing and cleaning up brownfield sites. Some advocate that the EPA Brownfields Program should include economic development, which HUD is doing currently, and I really have a problem with that. I mean, you approach a cleanup from a different perspective than HUD approaches it. HUD looks at redevelopment on the development side, and they look at redevelopment, they look at economic issues and how to basically go in and help communities up front with early stage funding to get the planning and those type of things going.

Some have tried repeatedly to eliminate the funding for the BEDI Program and look at funding that through EPA, and I think Congress, in recent years, has made a very strong statement. We have expressed an overwhelming support for the BETI Program in this last year's program by including funding to allow the important program to continue. The House unanimously passed an amendment during floor consideration in favor of funding for the BEDI Program, and last year, on December 13th, they approved H.R. 280, which is the bill I introduced to reauthorize HUD's Brownfields Redevelopment Program.

The fact that EPA does not specialize in economic redevelopment and the responsibility should not be brought to take on that role. I think what you are doing right now is an area you have expertise in; I don't think economic development is necessarily where your expertise are at. I don't believe that EPA and HUD's Brownfield Programs should be consolidated; I think there is a place for each of those. Each agency serves a unique purpose for redevelopment of brownfields in our Nation's communities.

Mr. Chairman, as we look to reauthorize the EPA program, I would really encourage you and ask you to take into consideration the fact that HUD's goals on brownfields are different than EPA's goals on brownfields, and you are both doing a good job. So my talk today is not in any way to impugn you on what you are doing, because what you do is worthwhile, and it is a great endeavor and we need to expand that.

But HUD looks at EPA, what you do, from a different perspective on their Brownfields Program. Theirs is just dealt with through the BETI Grant Program to be able to empower local agencies to take and be able to partnership with either private developers through redevelopment areas and take and stimulate economic growth within a community.

So I know the Administration keeps zeroing out the BEDI Program through HUD, but I think we haven't emphasized the ability to use BEDI like we should. In fact, I have been strongly advocating simplifying the program because they require now you go get a Section 108 loan, then you pledge your CDBG funds for repayment.

And, as you know, in most communities, CDBG funds are one of the most usable funds they have to give to communities, whether it is Meals on Wheels, YMCAs, other programs that these communities really need funds for. These programs are really utilized for those. So a lot of communities don't want to pledge those funds,

and unless you are a direct recipient of it, which most communities aren't, you can't pledge something you don't receive other than getting it through the county or such.

So we have actually complicated the BEDI Program, where it is not working as it should. I think we need to simplify the program. But what I don't want to do is mix two programs that have different objectives, when we want to encourage you to expand what you are doing. And you have to admit you have a different focus than HUD does.

And so, Chairman Duncan, I wish you would look at this. And we seem to be arguing this every year, and we shouldn't be arguing it because we are all trying to arrive at the same destination, thus, do good to clean up these 450 to half a million sites we have out there, put them to better utilization. But EPA and HUD have different purposes, and I think we need to understand that and we need to encourage both. So I look forward to this process completing, but, Chairman, I would really appreciate it if you could look at this, and maybe you and I could discuss this further, because I think there are different objectives from different programs.

I yield back. Thank you.

Mr. DUNCAN. Well, you have made some good points, and we will work on it.

Mr. Barrow is next on the minority side. You have no statement?

Mr. Brown.

Mr. BROWN. Mr. Chairman, I want to talk about the cities. We have two cities, Charleston and North Charleston, and in between, about several hundred acres, is a brownfield site, and it is not a success story yet, but I think it is evolving into a real success story. Back during the war, when we had the shipyard, we also had an oil refinery, we had a creosote plant, we had fertilizer plants, we had metallurgical plants. All of these were pollutants.

And today these several hundred acres, which already has the infrastructure, water and sewer, they have the bus routes going by, everything is in place, but right now it is just a brownfield. It is growing up a real distraction because it is a connect point between the City of North Charleston and Charleston, and you come in on I–26 and it is an eyesore.

But the innovation of the private sector and through the brownfield legislation, a lot of good things are taking place, and I just wanted to say that I think it is a win-win, it is a win for urban sprawl to prevent those folks having to move away from the city that work in the city. So I commend this program and I certainly look forward to the reauthorization and the continuation of reclaiming a lot of these polluted properties. And I thank the panel for being here today.

Mr. DUNCAN. Thank you very much.

Ms. Schwartz.

Ms. SCHWARTZ. Well, thank you, Mr. Chairman. I will be brief. But I do want to just say that I look forward to the panel's discussion and to the reauthorization. I will say that representing Pennsylvania, I am really proud of the work we have done in Pennsylvania. I was involved as a State senator in the 1994 legislation, the brownfields legislation that was passed in Pennsylvania.

I believe, really, we were leaders in setting the stage for what was then done obviously on the Federal level, and now we couldn't do without you I think in the cooperation that we have seen. So it has been hugely important to the redevelopment not only of our cities, but in some of our older towns and suburban areas.

And, in fact, the President came to visit Conshohocken, Pennsylvania, which is just outside my district, to tout the enormous revitalization of an old industrial area that is now sort of a hot spot to live, work, and dine, if I can say that. It has really been an enormous revitalization, a great example to what can happen when we see that kind of revitalization in community. And I think as we have all heard already, we are really interested in seeing more of it happen. We would like to see more of these brownfields redeveloped, cleaned up, and to see if we can't do that across this Country; and certainly in parts of my district we are looking to make this happen.

I do understand that Pennsylvania has a memorandum agreement with the EPA, our environmental department at the State level, which does create a sort of a one-stop shop for redevelopment. So one of my interests is how do you see that working. I think from our point of view we are pleased with that, that we know developers, businesses can come to us, can come to the State level and know that they don't have to go through a lot of extra paperwork; they are able to do it by applying at the State level and getting those approvals, seeing it through.

We have an enormous commitment in Pennsylvania to make this work. So I am curious as to whether that is going on in other States, whether it should be going on in other States. How can we make this simpler so that more people know about it and can use it. So I want you to talk to that, speak to that, if you can.

And my second question would be, should we get to it later, really has to do with what else EPA is doing, as this redevelopment happens in brownfields, to encourage green buildings, to encourage other kinds of energy saving conservation efforts, to be an example. If we are putting Federal dollars, State dollars into some of these private developments, what else are we doing to set the stage for how we can be doing even a better job in creating that example of energy efficiency as well.

So I know there was a problem that did exist, that I think I understand was just a demonstration that did talk about green buildings on brownfields redevelopment. Why not more of that? Did it not work? Why not move ahead with some of those other kinds of innovations?

So I am looking forward to hearing what we have learned to how we can do the reauthorization in a way that moves us forward and, of course, as it always comes, the bottom line is is funding adequate? Are we getting those dollars on the ground to do this quickly enough to do the redevelopment, keep open space preserved the way we would like to see it in many areas?

And the third question would be just how is this fitting into the planning generally for some of the redevelopment in different communities as well? As we see communities redeveloping, are we seeing the redevelopment of brownfields, reuse of brownfields really

being a part of that, or can we be proactive in that in suggesting that as we see some of the new development?

So with those questions, Mr. Chairman, I look forward to hearing the panelists and to the dialogue we will have. Thank you.

Mr. DUNCAN. Thank you very much.

What we are trying to do is go in order in which members arrived here, and that means, on our side, Dr. Boustany would be next, Vice Chairman Boustany.

Mr. BOUSTANY. Thank you, Mr. Chairman. I will be very brief. I look forward to the testimony as we look at brownfield reauthorization. And I hope one area that we can look at would be performance measures, because I think especially in a program that has restricted or somewhat limited resources, performance measures are very important to make sure that we are spending those dollars wisely. So I hope this is something we will address perhaps during testimony or in the questioning period.

Thank you. I yield back.

Mr. DUNCAN. Thank you very much.

Mr. Osborne?

Mr. OSBORNE. No questions, Mr. Chairman.

Mr. DUNCAN. Mrs. Kelly.

Mrs. KELLY. Thank you very much, Mr. Duncan. I appreciate your having this hearing.

Brownfields aren't just in cities. I represent the entire lower third of the drinking water reservoirs for New York City, and there are brownfields and contaminated areas that can present a real threat to that drinking water.

Of particular interest to me is TCE. As I know you are aware, the health risks associated with TCE have continued to be of significant concern for me and my constituents, and I am really happy to see Susan Bodine here, because I know that she understands the drag that bureaucratic structures can have on getting information out.

But I am particularly frustrated by the lack of urgency on the part of the EPA here in Washington to set guidelines after studies done by the Agency in 2001 indicated there were huge risks associated with TCE. They were more than originally thought, and it is important that we focus on getting the information out.

I have raised the issue with you, Mr. Chairman, in committee hearings, in letters, and in private conversations. I appreciate your personal interest and strong commitment to protecting communities across the Country from public health risks associated with water contamination. I hope that we can continue working together in exhorting the EPA to provide my constituents with the answers they need and they are really anxious to have on the TCE problem.

I am deeply concerned that the Agency is going to continue being very slow-footed in their response to this very serious problem. As we speak, the plumes are continuing to flow toward the reservoirs, and I am hoping, Mr. Chairman, you will agree this issue merits a hearing in the near future.

Mr. DUNCAN. Well, certainly, Congresswoman Kelly, you have raised this issue, as you mentioned, several times before, and I can understand that, and I admire and respect your concern. And certainly you are correct in saying that this problem of the presence

of hazardous contamination is not just in the biggest cities, but it is in areas like yours.

The Superfund program is meant to address the issues you have raised, and I can assure you that I will be happy to work with you and to use the resources of this Subcommittee and our staff to be sure that the program is working appropriately and in a timely manner, and especially in the case of TCE contamination in your district. But you are really doing a good job on that area, calling attention to that problem, and I thank you very much.

Mrs. KELLY. Thank you, Mr. Chairman. I yield back.

Mr. DUNCAN. All right, thank you very much. We are very pleased and honored to have an outstanding panel of witnesses here this morning. The witnesses will testify in the order in which they are listed on the call of the hearing.

That means our lead witness will be a woman that we all admire and respect, a former long-time staff director for this Subcommittee, the Honorable Susan Parker Bodine, who is Assistant Administrator of the Office of Solid Waste and Emergency Response at the U.S. Environmental Protection Agency here in Washington; Mr. John M. Magill, who is Deputy Director of the Ohio Department of Development from Columbus, Ohio; Ms. Terry Manning, who is the Senior Planner and Brownfields Coordinator for the South Florida Regional Planning Council, and she comes to us today from Hollywood, Florida; Mr. Jonathan Phillips, Senior Director of Cherokee Investment Partners from Raleigh, North Carolina; and Dr. Peter B. Meyer, who is Director of Applied Research at the Institute for Public Leadership and Public Affairs at Northern Kentucky University in Highland Heights, Kentucky.

Thank you very much. As I have said at hearings before, most committees give witnesses five minutes for statements. We give six minutes here, but we ask that, in consideration of other witnesses, that you not run over that time. So if you see me start to wave this gavel, that means end your statement. Your full statements will be placed in the record and you may now begin your oral statements.

Ms. Bodine.

TESTIMONY OF THE HONORABLE SUSAN PARKER BODINE, ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY, WASHINGTON, D.C.; JOHN M. MAGILL, DEPUTY DIRECTOR, OHIO DEPARTMENT OF DEVELOPMENT, COLUMBUS, OHIO; TERRY MANNING, SENIOR PLANNER AND BROWNFIELDS COORDINATOR, SOUTH FLORIDA REGIONAL PLANNING COUNCIL, HOLLYWOOD, FLORIDA; JONATHAN PHILIPS, SENIOR DIRECTOR, CHEROKEE INVESTMENT PARTNERS, RALEIGH, NORTH CAROLINA; AND PETER B. MEYER, DIRECTOR OF APPLIED RESEARCH, INSTITUTE FOR PUBLIC LEADERSHIP AND PUBLIC AFFAIRS, NORTHERN KENTUCKY UNIVERSITY, HIGHLAND HEIGHTS, KENTUCKY

Ms. BODINE. Thank you, Mr. Chairman, Ranking Member Johnson, and members of the Subcommittee. I am very pleased to be here today to talk about EPA's Brownfields Program.

As this Subcommittee well knows, policymakers began to focus on the issue of brownfields redevelopment about 12 or 13 years ago.

The U.S. Conference of Mayors was actually the first to bring this matter to my attention, and they pointed out, as some of you have also pointed out, that, as demographics changed and economies shifted, many communities found themselves with former industrial and commercial property that was now lying vacant. But they also found that they couldn't get investment and redevelopment into those properties because there was a fear of liability, particularly liability under the Superfund statute.

That left the mayors with a dilemma: they have vacant property; they can't get the investment; and, instead, they saw capital being invested outside of established communities in former green space, and the result of this was stranded infrastructure in our established communities, creating the need for new infrastructure out in former green space. And with that development we would have also increased environmental impacts that just naturally arise from people being there, for instance construction and paving. Development does have an environmental impact.

By putting all these issues together and focusing on them, the Conference of Mayors was very effective in putting together a coalition of redevelopers, open space advocates, community groups, and they brought this matter to the attention of Congress, EPA, States, and other policymakers. Now, the primary focus of their efforts was to remove the barriers to redevelopment, and that primary barrier was the fear of Superfund liability. They also successfully made the argument that there needed to be some Federal seed money to jump start redevelopment in blighted areas and to increase local capacity to address brownfields.

States responded to this by establishing State voluntary cleanup programs such as Pennsylvania's Act 1 Program, or Act 2, which has been very successful. EPA responded by developing tools such as prospective purchaser agreements, which was labor-intensive and site-specific, but the Agency would enter into agreements with new property owners and, under that agreement, would protect them from Superfund liability.

EPA also entered into memoranda of agreement with States that had voluntary cleanup programs, and, again, Congresswoman Schwartz mentioned those. Those would provide comfort to redevelopers that, if they were complying with the State requirements, that EPA didn't intend to come in and establish different requirements or secondguess State decisions. EPA also began to provide seed money for brownfields redevelopment.

Now, even though we had those administrative tools, most agreed that legislation was necessary. The administrative tools were case-by-case and resource intensive. So, again, as this Subcommittee knows, with strong support from this Committee, by Congress and by President Bush, Congress did pass the Small Business Liability Relief and Brownfields Revitalization Act in January. Well, actually, as the Chairman will remember, it passed, I believe on December 20th, at 4:00 a.m., nearly 5:00 a.m., at the very end of the first session of the 107th Congress. And the Senate passed it after that, and then the President signed it in January of 2002. But after that very successful effort, the legislation then provided a clear mandate to EPA to carry out and provide the tools for brownfields redevelopment.

EPA has taken great strides to implement the law. It required a lot of new guidelines to be issued in a very short time period. And now that I am on the administration side of the program, I recognize how complicated it is to put out guidelines, and they successfully were able to do that within a year and have a competition under the new rules that began in 2003.

Under the new law, there were specific criteria for how grants were to be awarded, and I just want to briefly describe that. For awarding the cleanup, the assessment, and the revolving loan fund grants, EPA has a process where the applications are reviewed by regional panels first, just to make sure they reach the threshold criteria; then the grants that meet those threshold eligibility criteria are then reviewed by national panels and assigned scores; and that is how the selections are made, they are made by the recommendations of experts.

Recently, we did complete the competition for 2006. We received about 700 applications and on May 12th announced awards of $69.9 million to fund 292 grants to communities in 44 States and 2 territories.

The other funding that is authorized under the brownfields law and that EPA implements is funding to support the State voluntary cleanup programs. That is under Section 128 of the law. Now, these grants are allocated out to the States in a non-competitive process because the concept is to be able to have every State have a successful voluntary cleanup program. What the Agency has been doing is allocating those grants, but in allocating those grants we have been looking at unspent funds. This is part of being careful stewards of the funding that Congress has provided to us. We are making sure that the States are spending the money that is given to them and, in fact, are reducing their allocations dollar for dollar, if they haven't spent prior awards.

The program has had tremendous results. Through EPA's efforts and EPA funding, there have been more than 8,000 assessments. As the Chairman mentioned, we have leveraged more than $8.2 billion in cleanup and 37,000 jobs. But I also want to point out that that is where we have direct Federal participation. The vast majority of the work is being done actually in the States under the State programs. We estimate that 48,000 properties have been cleaned up through those State response programs, and we know that about 53,000 properties are currently enrolled in those programs.

In terms of being able to work more closely with the States and to better understand all the cleanup activity that is taking place nationwide, we are working with the States to collect data now on their accomplishments as well.

I now know that I have gone over my time, so I would like to say that I am happy to be here to discuss the management of the program. I am very happy to be here to start a dialogue on how to improve the program, both administratively and in your reauthorization process. Thank you.

Mr. DUNCAN. I thought the least likely person to run over her time would be you.

[Laughter.]

Mr. DUNCAN. I can tell you that I do remember well speaking on the floor on that bill at 5:00 a.m. in the morning. That is the only

time I think I have ever spoken on the floor at 5:00 a.m. in the morning, although I did recall, thinking back, that many years ago I offered an amendment to another bill at 3:00 in the morning, and I think I got the fewest votes on that amendment of any amendment I have ever offered, and I sort of made up my mind to never do it at that time of morning again; I don't know whether that is such a good idea to bring up something at that time.

Mr. Magill.

Mr. MAGILL. Good morning, Mr. Chairman and members of the Subcommittee. I am John Magill, Deputy Director of the Office of Urban Development in the Ohio Department of Development. On behalf of Ohio Governor Bob Taft, Lieutenant Governor Bruce Johnson, Director of the Ohio Department of Development, I thank you for the opportunity to discuss the important role of the Brownfields Program in Ohio's brownfield redevelopment strategy.

Brownfield redevelopment is a critical element of Ohio and the Nation's economic security. The task of cleaning up brownfield property requires the collaboration of the Federal and State governments operating within the free market. Measurable success is appearing across the Country, giving an impetus to reauthorization of the Brownfields Program.

Ohio has developed one of the Nation's vibrant brownfield programs by combining U.S. EPA grants along with Ohio's $200 million Clean Ohio Revitalization Fund. This Federal and State collaboration demonstrates the value and vitality of the federalism model. Development has received two brownfield revolving loan fund and two supplemental grants. With these grants we have made four loans and are scheduled to close a fifth in July. The department is uniquely positioned to see the role of the grants in cleanups, economic development, and creation of parks.

U.S. EPA funds were loaned to the Columbus and Franklin County Metropolitan Park District to conduct remediation and demolition activities on 16 acres of the Whittier Peninsula in Columbus, a historic industrial site, which will become part of a new 80 acre urban park. Metro Parks and the Audubon Society will invest more than $10 million into the development of the park.

The Brownfields Program is an example of the Federal Government's role to facilitate commerce as envisioned by the founders. Commerce cannot occur on a brownfield without cleanup. The cost of this effort, due to changes in the economic fabric, must be borne by both private and public parties.

To remain vibrant, the Brownfields Program should look for ways to strengthen and grow. The first step would be to foster the development of sustainable organizations. A second action would be to place a premium on using dollars to leverage private capital and act as an equity investor in projects with community goals.

A way to achieve sustainable organizations is for U.S. EPA to recognize the difference between assessment and cleanup grant awardees and RLF awardees. Assessment and cleanup grant dollars encourage smaller communities and non-profits to analyze properties to determine their environmental condition and prepare them for redevelopment. The challenge is the grant amount limits the type of projects and may not be part of a long-term strategy.

Underwriting the cost of cleanup and servicing loans requires sophistication and resources beyond that offered by U.S. EPA. Regional and State organizations that have a history of effectively undertaking economic development lending would, as grant recipients, complete more loans with quantifiable economic and community results. The Brownfields Program needs to examine ways to attract private capital to cleanups. A step on this path is promoting a variety of flexible RLF financial products, ranging from loan guarantees, loan deferrals, and balloon payments.

The Brownfields Program, if reauthorized and fully funded, will catalyze innovative and dynamic redevelopment in Ohio and across the States.

Thank you.

Mr. DUNCAN. Well, thank you very much, Mr. Magill. Very fine testimony. You know, I will mention one thing, though, that almost nobody ever thinks about. It always sounds great for a politician to create a park, but we have created so many parks now, Federal, State, and local, that we can't even take care of all of them. But the main concern is that we keep taking land off of the tax rolls and shrinking our tax base, at the very time that the schools and all the other government agencies and departments are demanding more and more money. And we have got to really think about that before we just blindly say that creating another park is a wonderful thing.

Ms. Manning.

Ms. MANNING. Good morning Mr. Chairman and members of the Subcommittee. My name is Terry Manning and, as mentioned, I am a Senior Planner and the Brownfields Coordinator for the South Florida Regional Planning Council. I am honored to be here today to discuss the Brownfields Program with you and how we have been able to utilize the EPA programs and offer some suggestions for the future.

Brownfields redevelopment is a voluntary redevelopment tool that is being used by many local governments in the Southeast Florida area to help in the redevelopment of actual or perceived environmentally contaminated properties. In the Southeast Florida Counties of Miami-Dade, Broward, and Palm Beach, the Eastward Ho! Brownfields Partnership was created in 1997 as a forum to bring together local governments along with non-profit and other governmental agencies to address brownfields issues. This is an area that includes approximately 40 percent of the population of Florida and is growing.

We are part of the larger Eastward Ho! effort which seeks to revitalize and improve the quality of life in Southeast Florida, and we are sometimes referred to as a portion of the urban component of the Everglades restoration. We are trying to lessen development pressure and urban sprawl in the sensitive lands in the western part of our region that are needed to restore the Everglades and to ensure our future regional water supplies.

Over the years, the Brownfields Partnership has found the following obstacles to brownfields redevelopment: the lack of adequate funding for cleanup; concerns over environmental liability; the need for environmental assessment of properties; the uncertainty over cleanup standards; inadequate or non-existent infrastructure sys-

tems necessary to support redevelopment; unfavorable neighborhood and market conditions; land assembly problems; the reluctance of the private sector to invest in distressed communities; and the time and effort needed to address environmental and other issues.

To address these concerns and to assist in brownfields redevelopment issues, funding from EPA Brownfields Program has been utilized to try and address these problems. Funding under this program has been used to assess and clean up brownfields and to assist in redevelopment efforts.

The following is a brief summary of the programs that we have been able to use within the Southeast Florida area, and again, I am referring to the three county area: we have been able to receive assessment project for one county, four cities, two regional planning councils, one community redevelopment area, and one tribe; we have received a revolving loan fund grant which has been utilized so far to loan out money to two for-profit businesses.

And on Monday morning I was approached by a non-profit entity that it looks like we might be able to do a third loan with; we have received cleanup grants for two cities and one community redevelopment agency; we have had two job training grants; and we have received targeted brownfield assessment funding for numerous cities, and this funding is through the Florida Department of Environmental Protection but is actually EPA funding.

Because of this funding, we have noted the following positive outcomes. And I am going to mention some numbers here, and these are for completed projects. We have more projects in the works. We have been able to leverage this money with $1.3 million from the State of Florida, $10.4 million from local and regional governments, $31 million in private funding. And because of this we have been able to complete environmental assessments for approximately 390 sites.

Fortunately, 75 of these sites we have found to be clean and do not need further remediation. Twenty sites have actually undergone remediation activities and are either undergoing redevelopment or will shortly undergo redevelopment. This has resulted in approximately 2,000 jobs and 600 housing units for very low-to moderate-income people. A total of 88 students have been trained under this program, with 95 percent of the students receiving employment in environmental fields. We have been able to combine the Federal and our State program and designated nearly 50,000 acres of land under the Florida Brownfields Program.

I should also mention that without the Florida Brownfields Program, we would not be able to complete many of these activities, and the Florida Brownfields Program does have a Memorandum of Agreement with EPA in order to promote brownfields activities, and we think it has been very successful.

But much remains to be done. Suggestions for the future include the following: providing more flexibility in the way EPA grants are funded, including combined grants for assessment and cleanup; using a rolling grant application process instead of a once a year process—this will allow for more timely access to funding—increase overall funding. We also would suggest streamlining reporting and other requirements.

We also recommend looking at the brownfields loan program, the revolving loan fund programs to increase the amounts for capitalization of grants and to allow the funds to be used to help guarantee more private loans, which we feel may increase the number of loans that are made. Also, we recommend that more thought be given to the duplication of programs under State and Federal programs.

Thank you, sir, for your time.

Mr. DUNCAN. Well, thank you very much, Ms. Manning.

Mr. Philips.

Mr. PHILIPS. Thank you, Mr. Chairman, members of the Committee. My name is Jonathan Philips, and I am Senior Director of Cherokee Investment Partners based on Raleigh, North Carolina. Thank you for the opportunity to testify in support of reauthorizing the Small Business Liability Relief and Brownfields Revitalization Act.

Cherokee is the largest and most active private investment firm in the world specializing in the acquisition, cleanup, and sustainable revitalization of brownfields. Since inception, we have acquired over 520 sites across North America and Europe. We are privileged to be fiduciaries of institutional capital providers to perform this important activity. We are not aware of any private organization in the world that voluntarily cleans up more pollution.

The Brownfields Act that we are here today to support has been an important first step in returning neighborhoods to healthy places where families can live and work. Brownfield revitalization catalyzes positive community transformation that extends well beyond the individually contaminated sites. This community transformation and resulting ripple effect throughout neighboring communities writes new chapters of hope from the often sad histories of economic and environmental decline and urban blight.

This Act includes important tools for local communities to assess contamination and start planning for redevelopment, and it includes important provisions regarding bona fide prospective purchasers. The dedicated team of staff at the U.S. EPA should be commended for their implementation of these critical programs.

A larger brownfield coalition, of which Cherokee is a member, has provided written testimony today detailing a number of specific issues that should be examined by this Subcommittee as it considers reauthorization. There are many good suggestions in that statement. We would encourage members to specifically explore modifications that could be made to the existing definition of brownfield under the Act to bring in sites that are currently excluded under the Section 101(39)(b).

One example would be to enhance communities' ability to prioritize sites for use, eliminate currently defined set-asides for certain types of sites—petroleum brownfields and sites acquired prior to the January 2002 enactment—and allow all brownfield sites, as defined broadly by 101(39)(a), to compete for program resources and those legislative enactments that definitionally key off of Section 101(39).

Another example is sustainability, as mentioned by Representative Schwartz just a few moments ago. When we clean up pollution below ground, what are we doing to protect our environment above

ground when we redevelop? Many of you know buildings consume roughly 50 percent of the energy in our Country. Let us create a positive mirror image and offer incentives, legislative incentives for sustainable development and green building on these sites so we can replicate on top of the sites the same environmental benefits produced by cleaning up what was below the ground. And this is something that we already practice and we look to further pursue.

Mr. Chairman, in our mind, there is no question that this Act should be reauthorized. From Cherokee's perspective, we need to go further. If Congress wishes to seriously address this Nation's brownfield crisis, we must develop additional Federal incentives to draw private investment dollars to the more complex and economically less desirable sites. These are sites that are more complex, take longer to redevelop, involve significant liability and cost overruns, risks, and almost invariably lead to the various permutations on the same question that we hear so frequently from others in the traditional development world, which is: Why should we invest in this site given its risks, limitations, unknowns, additional costs, and brain damage required, when I can just develop the next farm on the proverbial "edge of town"? Why should we engage in this redevelopment?

Well, Congress has responded, not just with the Brownfields Act, but with important programs such as the 198 expensing provisions, recently created unrelated business income tax exemptions, and Representative Turner's proposal to create transferrable tax credits. Each of these holds tremendous promise for returning brownfield sites to productive use.

The incentives the Federal Government provides can take many forms: direct funding, tax credits, loan guarantees to reduce the cost of debt-financed redevelopment, or other tools. Local and State governments can assist with expedited permitting and other tools to encourage brownfield redevelopment. What is important is that these incentives need to directly address the financial underpinnings of brownfield transactions.

In testimony before other subcommittees, I have encouraged members to think about brownfields as "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. A site that is "above water" is likely to be cleaned up and revitalized by the private sector without government assistance.

And 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 Federal, 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 will never be remediated by the private sector.

It is critical to note that these terms, "under water" and "above water", take into account only what I will call, for lack of a better term, "internal" costs and benefits of a developer. They do not reflect the various public benefits that development would bring,

such as reduced pollution, more jobs, reduced sprawl, or increases in tax revenues.

So one mission of government, then, must be to focus particularly on those properties that are under water from a market perspective and above water from a public perspective. For those sites, we need an aggressive mix of local, State, and Federal programs to encourage the private markets to undertake the task of remediating pollution and redeveloping sites. We encourage Congress to take specific notice of the significant challenges faced by public and private actors seeking to perform land assembly for large brownfield revitalization, where master planning is the most effective way to move brownfield and underutilized lands from blight to robust productivity. Without effective tools to control brownfields or blighted zones, these sites will indefinitely sit.

Having said that, we appreciate that it is extremely difficult to discuss brownfield incentives in the abstract. Without looking at actual sites and running numbers on actual projects, it is almost impossible to assess how well an incentive program will function.

I see that my time is up. I just wanted to extend a genuine offer to the members of this Committee. My company is extending a serious offer to help you assess the reforms required for this reauthorization. If you have a site in your district that is a priority site, and even if that site does not meet our investment criteria, we will sit down and work with you and your staff to walk through our underwriting of those projects and help you assess in real concrete terms, real-world examples, what impediments exist and what challenges exist, and what incentives might be needed in this legislation.

Thank you very much for your time.

Mr. DUNCAN. Well, thank you very much, Mr. Philips. I think that might be very helpful.

Dr. Meyer.

Mr. MEYER. Thank you very much. Mr. Chairman, members of the Committee, I thank you for the invitation to join you today. My name is Peter Meyer. My comments today are informed by 14 years worth of research on brownfields—by the way, that is longer than the program has been in existence—conducted mostly with my research partner, Dr. Kristen Yount, who is a Professor of Sociology at Northern Kentucky University, where I am now. In addition to my NKU post, I direct something called the Center for Environmental Policy and Management at the University of Louisville, and I also serve as the Director of an EPA-funded environmental finance center there.

For brevity today, and largely because much of this has been already covered by others, I am going to skip all comment on the successes of the program. What I want to turn to is some cost-effectiveness and performance measure issues that I think are important, and then look at some challenges and some of my take on them.

I am an economist by training, and I am backing away from offering you any dollar figures having to do with the successes of the program. And the reason that I do that is that I don't trust the direct impact data for a variety of reasons. These are not specific to brownfields; they come from a general problem associated with eco-

nomic development programs and evaluating them more generally; and I used to do work in that arena.

The counterfactual is something that we don't know, it's not knowable. When we see the offer of a subsidy followed by a new investment, we have no way to empirically demonstrate what would have occurred without the incentive offer. And this has to do with the above water-below water that Mr. Philips just referenced. The value of any one incentive may be impossible to extract because, and, again, if you look at what Ms. Manning just put before you, you have multiple incentives feeding into any one project. So isolating the value of any one of them is exceedingly difficult.

But, yet, making it even more complicated is the fact that the direct economic impacts of site redevelopment are in fact not limited to the increase in the value or the new users or the new jobs or the new tax revenues just on that one parcel of land; it spills over to other land in the entire area. And this makes it very, very difficult to ascribe direct economic benefits to any one stream of dollars.

There are, however, other measures of the economic value of the Brownfields Program, and one that I want to put before you is something that is the accelerated rate of entry into the brownfields business of new firms. Some of the brownfield specialists that I was interviewing in the 1990's—including the gentleman to my right—have complained to me about the fact that there are too many developers. From their point of view, there is too much competition for those brownfield sites that they used to be able to get for a song. I submit to you that the brownfields bill played a significant role in changing the entire climate of brownfield reinvestment and risk perception on the part of those developers.

Based on my past research, I can conservatively claim that the effects of the Brownfields Program on redevelopers' perceived risks have probably saved State and local governments, at a bare minimum, $100 million in the subsidies that they otherwise would have had to offer developers to get them to do the brownfield redevelopment that we have experienced. And this is a benefit on top of the benefits that we get from the redevelopments themselves.

I should add, by the way, as we look at performance measures, that increasingly we have got brownfields being redeveloped that never enter the State programs, never apply for Federal money, but are being redeveloped because of that climate change that has been generated by this bill.

And, finally, I should point out, with regard to those kinds of measures, that infrastructure utilization has improved. We are now more fully utilizing infrastructure that exists in our urban areas instead of then having to build new infrastructure in the rural areas. These are all valuable performance outcomes.

But a variety of challenges remain. I should put on the table mothball sites, which are idle sites, tie up capital. They are basically a drain on the U.S. economy. Sites are mothballed because the firms that own them fear that they will be the deep pockets that will be tapped under the strict joint and several liability provisions of CERCLA if any problems or costs arise, no matter how far in the future.

The new FASB rules may help drive some of these mothballed sites into the market. The liability shadow will remain. I would suggest that one of the things the Federal Government may want to look into is becoming a re-insurer of last resort for the environmental insurance industry. This is something that could produce significantly greater access to and more readily available long-term risk transfer capacity on the part of the environmental insurance industry that should get firms to release their sites to the market.

On the other hand, we have a very big problem with our small sites. The vast majority of the up to a million brownfield sites in the United States are in fact going to be under a half an acre in size. Half an acre is not very big. Most of the brownfield redevelopment specialists generally look for at least 10 acres. What is the potential return to a municipality or other local government from taking steps to facilitate the remediation of a brownfield with Federal help, a brownfield that has depressed the economic activity and attractiveness of all the sites nearby, not just that one site?

What we are dealing with here is we are dealing with spillovers and spillover returns that are not well enough recognized.

By the way, Mr. Chairman, you can get those kind of spillovers from, in fact, putting a park where there was none. And you can get offsite benefits in terms of tax benefits. This is something we have all understood for decades in taxing permit financing.

Minor changes in grant applications merit scoring could help the municipalities to think more about looking at those area impacts, and that is doubly important in the context of depressed neighborhoods, which are shot through with brownfields, where each one affects the other one and makes it that much more difficult to attract capital to any one of them. In that situation, local governments could play a role in taking title to those properties, but the new GASB standards are likely to make it more difficult for them to do so.

And some Federal help in the form of liability relief from Federal liability for small municipalities that take title to sites in order to redevelop them, following the logic of the lender liability relief that was provided in the 1997 Budget Reconciliation Act, I think could be something that could be very, very valuable in terms of signaling to the States that they need to help their municipalities with liability relief.

I thank you very much for your attention and look forward to your questions. And, by the way, I can empirically defend the statements I made. Thank you.

Mr. DUNCAN. Thank you very much. Very interesting testimony, Dr. Meyer.

Dr. Boustany.

Mr. BOUSTANY. Thank you, Mr. Chairman. This was indeed very interesting testimony.

I mentioned earlier performance measures, and we know that EPA does report on cumulative sites addressed, jobs generated, cleanup, development activities, funds leveraged, and so forth. But what about actual cleanup and redevelopment activities, which should be one of the primary goals of the program, and also, looking even further down the line, mitigation of future risk? It seems to me that performance measures are linked, critically linked to

this issue of liability and liability relief. I mean, certainly in my State of Louisiana, we have had our share of lawsuits dealing with underground water aquifers and things like that.

And I was impressed, Mr. Philips, with your testimony. You got a little bit into some of the things you have to do as a private investor to shield yourself, so let me start off by asking you how do you minimize your liability as you go forward in these investments?

Mr. PHILIPS. Sir, the very best way to minimize liability when you are seeking to invest and redevelop a brownfield and do it sustainably is to attack the pollution quickly, literally spending dollars up front, first dollars, and the riskiest dollars, by the way, when you consider it from a real estate perspective. That is the single best way to mitigate one's liability. If you walk into a site with your eyes open and you know that part of this project involves cleaning up pollution, and you are going to assess very carefully, in advance, what the costs are associated with that, the liability associated with that site drastically reduces when you start spending those dollars.

We also use other risk management techniques. Environmental insurance, which has been mentioned by a number of people, is important to our transactions, and there are two types: sort of a pollution liability, legal liability, and there is also a cost overrun product that is out in the market.

So I would say those two would be the first ones.

Mr. BOUSTANY. Out of the 520 sites that you have acquired, are some of them small sites, or are you mostly focusing on large sites?

Mr. PHILIPS. As we have gotten larger and we have continued with your track record, our investors have entrusted in us more capital to deploy, and that has meant that we have been able to invest in larger sites. But that doesn't mean that there are individual parcels that are larger; it could be that we are assembling large amounts. One the gentleman mentioned, the project in Charleston. That is one of our projects where we have assembled a number of sites along the industrial neck area of the river, some large, some small.

But we view brownfields as a zone, as a redevelopment zone. And sometimes you have to buy property outside of the individual sites in order to make the economics work, because when you transform one site, it will have that ripple effect in the surrounding area. And if you can capture those economics from the surrounding area, then you can place a bet that at the end of the day you are going to be return investors' capital, and a return on that capital as well. So that is how we think about things.

Mr. BOUSTANY. Dr. Meyer, you mentioned the small sites and mothballed sites, and some of the problems associated with those. Do you think we need to catalog these, have some sort of official cataloging and come up with a separate way of dealing with this to mitigating the economic blight that is left behind?

Mr. MEYER. Well, let me start with the mothballed sites. Under the new rules, FIN 47, which implement the financial accounting standard boards—what is it?—143 ruling basically requiring disclosure of environmental liabilities as part of the asset disposal for requirements for firms in the United States in terms of financial accounting, that is going to require the firms, certainly those publicly

traded, publicly traded firms, to disclose those liabilities. That is going to give us a partial inventory, if you will, of the mothballed sites. They are also much smaller in number than the small sites. So that is the easy part of the equation, if you will.

With regard to the small sites, look, we are talking about hundreds of thousands of sites. We are talking about, you know, the dry cleaner here, what was a gas station some time before someplace else, we are talking about old machine shops, we are talking about paint shops. The retail sector is really responsible for the largest number of the brownfields in absolute numbers, not in acreage, obviously.

There are a number of problems here. If in fact you go out and you label a site as a brownfield, what do you do to the property value of the adjacent site? Do you really want to have that inventory out there? I mean, this is a very, very serious problem in terms of the stigma that gets spread around the area.

By the way, the other side, the flip side of that is eliminating that stigma is something that happens when you clean up that site, so that, in fact, if all you look at is the numbers, the return on that one property—same point that Mr. Philips just made—you have got to look at the impact on the adjacent properties. That is not being done by municipalities right now for the really, really small sites, and I think there is an under-investment as a result.

But I don't think there is a cost-effective way of doing the kind of an inventory you are suggesting for the very, very small sites.

Mr. BOUSTANY. I was just interested in your view on whether it should be done. But what do we do to stimulate cleanup of the small sites? Do you have any ideas on that?

Mr. MEYER. Well, the argument that I try to put forward in my written testimony in somewhat more detail is if in fact there are a couple of things that happen. First of all, we have got a grant application program right now, and the funny part about this is that there is an advantage in what I am about to say in the fact that it is not fully funded and we can't provide funding for everybody who applies. There is some discretion with regard to the waiting that is provided for different provisions and different elements of the applications.

One thing that could be done is for, in fact, the Office of Brownfield Cleanup and Redevelopment in the grant application process to modify some of the language in there to provide greater weight and greater, if you will, points for those applications that come from municipalities that recognize those spillovers and focus on some of those smaller sites. If that is a sufficiently high priority, that is something that can be done. That sends a message to all of the other would-be applicants, potential applicants that puts the agenda out on the table more, because there is a certain amount of educating the needs to be done to get this to be done.

We could be doing more in the way of, you know, technical assistance and that kind of thing to local governments in that regard. But they are very, very difficult to do, and the other problem you run into is at the State level, in many instances—well, sir, you are from New Jersey, if I remember correctly.

In the State of New Jersey, if in fact an abandoned gas station, for example, becomes tax delinquent and it moves into the owner-

ship of a municipality, that municipality is not liable for that cleanup, legally, within the State of New Jersey. But if in fact that municipality buys that small site to do the kind of area-wide redevelopment, the site assembly kind of logic Mr. Philips just talked about, then the municipality becomes liable.

Perhaps if the Federal Government waived that liability for those municipalities, that might send the message to the States maybe you guys ought to be doing that too. And that is another way of encouraging the municipal action, because what is absolutely critical, as you pointed out earlier, Mr. Chairman, in your opening remarks, is that partnership between the Federal Government and local governments with regard to brownfields.

Mr. DUNCAN. All right. Well, you are giving very good answers, Dr. Meyer, but we are going to have a vote here in just a few minutes, and I want to go to Mr. Pascrell and give him a chance.

Mr. PASCRELL. Well, Mr. Chairman, they were excellent questions and great responses for the Committee.

Ms. Bodine, you mentioned in your testimony, you talk about the landlord liability protections. Yet, we know that a final rule is being issued in 2006, it goes into effect, I think, in November, dealing with liability protections.

Could you tell us what the present system is and what we will move to in November of 2006 with regard to the general question of liability? Because that is a major issue in all the development in all of these properties, and many municipalities need some technical assistance to deal with that, as I see it. Would you agree, the rest of the panel?

Ms. BODINE. Congressman, I am going to have to answer that question for the record. I am embarrassed to say that I need to check and—I don't want to mislead you. I want to make sure that my answer is accurate. So I will provide that for the record.

Mr. PASCRELL. Would you do that, please?

Ms. BODINE. Yes, I will.

Mr. PASCRELL. And would you also provide for the record the States that are not spending what they were allotted?

Ms. BODINE. Yes, we have that.

Mr. PASCRELL. There is such an animal, right?

Ms. BODINE. Yes, that is accurate.

Mr. PASCRELL. And you will present that to the Committee?

I would like to ask, Mr. Magill, what about the question I presented before about allowing communities to apply for assessment and cleanup grants with one application? What about that idea, does that make sense to you? And anybody else can jump in. Make your answers as brief as possible, please.

Mr. MAGILL. Thank you, Representative Pascrell, Mr. Chairman. I believe that the combining of assessment and cleanup awards is a viable idea. The challenge is it requires a trigger mechanism, because some of the sites will turn out to not be as dirty as has been anticipated, and may be able to move to redevelopment in a more timely fashion without the expenditure of any cleanup or lower levels of cleanup than had been anticipated. So the application process and rules would have to allow for what we call in Ohio sometimes a stop-start. We stop, we evaluate the phase 2 data, and then you would move on to do the cleanup.

Mr. PASCRELL. Thank you.

What about the other members of the panel? Yes, Ms. Manning.

Ms. MANNING. I think the combining of a cleanup and assessment grant would be a great idea in many cases. I can give you specific examples of projects where a city has had to apply for an assessment grant one year and then has had to wait one or two years to go for a cleanup grant; whereas, if they had been able to go from assessment to cleanup, it would have had redevelopment on the ground probably in a year.

Mr. PASCRELL. I had to handle that kind of frustration, and what happens, if the wait is so long, it debilitates the project, many times, and people walk away.

Ms. MANNING. Right. And also sometimes there is no guarantee that if you get an assessment grant, you will get a cleanup grant, and that could kill a project.

Mr. PASCRELL. How about the other members of the panel?

Mr. MEYER. I think that the one comment that should be made I think is that there are two things that can get done with this with assessment grants: one way is doing individual sites, another way is trying to do a much more blanket job, for example, on very, very small sites. Let us go out and assess as many tiny sites as we possibly can with the money in hopes that we find that all of them are clear, or that 80 percent of them don't require any additional work.

So we are really looking at those assessment grants to play two different roles: one is the first step on properties that are already targets, and the other one is that very, very broad base scattered site thing. And the issue then is we would like the assessment grants to be able to serve both purposes.

Mr. PASCRELL. So there is something we can do in the process situation to make this a lot easier.

My final question is this, Mr. Magill. Should Congress consider making it easier for communities to apply for cleanup grants for properties that they don't yet own? This is a major problem in New Jersey, and I am sure it is a major problem in other areas. What do you think about that idea? What is the pluses, what is the minuses.

Mr. MAGILL. Congressman, Mr. Chairman, I think there are some pluses. The challenge—and this is what we do in Ohio in our Clean Ohio Revitalization Fund—is that you have to have adequate assessment information submitted at the time of application. So the seller or the party who currently owns the property must be willing to provide to the applicant—that EPA will evaluate—a time on the site to conduct adequate environmental due diligence, phase 1 and in the invasive phase 2, soil samples and groundwater samples. So I think the answer is yes, and it requires trigger mechanisms to ensure its success.

Mr. PASCRELL. Anyone else? Mr. Philips?

Mr. PHILIPS. I would agree that consent and collaboration and cooperation of the seller is really vitally important on that issue. And I think you could easily run into a situation where you have the same problem with mothballed sites, which is that because of the concern for bringing daylight to a particular problem of liability, that the risk outweighs the reward, and, therefore, you might have

fewer applicants. But I think if you have the cooperation of the seller, I think it is a wonderful idea.

Mr. PASCRELL. Many of these communities are reluctant to do this before they own the property, because they say once we own the property and the questions of liability occur, what happens if we find that the situation is far worse than we ever thought it to be? Then what? So I am saying to you there are still more pluses than minuses in the communities being allowed to apply for this money even before they own it. Is that what I am hearing?

Mr. PHILIPS. I think it is an important option to have.

Mr. PASCRELL. Ms. Bodine, what do you think?

Ms. BODINE. Well, you are talking about a statutory authority change. We don't have the authority now. But I would also point out that the issue that you are raising comes up in two contexts. You are addressing it in the context of wanting to do the work before the entity is going to acquire the property.

It also comes up in the context of entities that don't want to acquire the property at all but they are, in effect, good Samaritans and want to do work on the property without entering the ownership chain. So the ownership requirement has raised issues in the program.

Mr. PASCRELL. Thank you.

Thank you, Mr. Chairman.

Mr. DUNCAN. Thank you, Mr. Pascrell.

Ms. Schwartz.

Ms. SCHWARTZ. Thank you. I just wanted to follow up. I know some of my comments in the opening were addressed during your testimony, but I was wondering if you could be more specific. And I think, Mr. Philips, you specifically addressed the issue I raised about green buildings. Maybe others might want to briefly just answer some of these questions.

What more can we do or should we be doing in moving forward in being able to be an advocate—but I want to be stronger than that—about green buildings? We are using public dollars here to clean up brownfields; we are going to put new entities there. We are all involved in those stages. There was this pilot project.

Really, my question is what more should we be doing? Should we give priorities to a project that is going to build green buildings? Do they get priorities now in any of the programs that you are involved in? Should we set more requirements for the kind of buildings that get built on brownfields? Do you feel like that would be too many strings attached?

Basically, my question is, what more could we be doing through the reauthorization particularly for EPA or on the local level for us to be able to be setting standards for the kind of development that goes into brownfields?

Let us step it up a notch. We know there is much more that we want to do just for the brownfields if we were to redo it just the same way. But now that we know so much more, there is so much more technology available, so many more tools, as we say, in our toolbox to create these sort of more energy efficient buildings, should we not use them in this process?

Mr. PHILIPS. I think that is a very astute question. If I could just begin by saying that we have noticed that there is a strong analogy

between the economics of brownfields and the economics of green building, in that both involve complexities, both potentially involve greater costs, and both are in the public good; to clean up brownfields, to engage in more green building.

We at Cherokee have launched our green initiative, where we were, frankly, ashamed of ourselves, because we were cleaning up a lot of brownfields and we hadn't been paying as much attention to the build-out on these sites, which results in billions and billions of dollars, sometimes on a per project basis.

So what can we do about that? Well, as landowners, we can begin to mandate that certain green building standards and sustainable design features are implemented. We have a national home builder management green home that we are doing with the National Association of Homebuilders as a showcase for that exact reason.

But we do recognize that just as municipalities today are giving more and more incentives, accelerated permitting for green buildings—and also for brownfields in certain cities—we could imagine a situation where greater economic incentives, perhaps, were available if, in addition to performing the cleanup under the ground, you could ensure that a certain standard of green building or sustainable design occurred on top of that site. That would be, from our perspective, a wonderful idea.

Ms. SCHWARTZ. You raised a really good suggestion, which is if you just accelerated the process, I think that saves dollars along the way. If you know that you are going to get your approval process done three months sooner, then you just saved the developer potentially quite a bit of money that then could be used in ways that would really be more sustainable and more energy efficient.

I guess I would throw it back to the EPA and whether you would be open to adding some of that kind of language to create the incentives, financially or just logistically, as kind of suggested, as a financial fallout. Would you be open to doing something like that?

Ms. BODINE. First, I want to say that EPA supports green buildings. In fact, EPA has just moved into some new GSA space at Potomac Yards over in Crystal City, which is a brownfield. The building is a green building; it has natural lighting, it has low flow toilets, it is energy efficient in its use, and it has a rain garden on the roof. So it is one of these green buildings.

In terms of a preference, well, I guess you have raised two issues, one is preference and funding for green buildings, and one is EPA setting standards. On the first, I would respond by noting that the ranking criteria that Congress put into place for allocating funding under brownfields are broad criteria, one of which, of course, is environmental benefits. And the fact that your redevelopment project is a green building then allows it to rank higher on that criteria.

So I would suggest to you that the ranking criteria already work and capture that benefit. And then avoid the problem that I would have with creating a set-aside for a specific type of environmental benefit. I think that when you are dealing with nationwide problems and trying to address them, you don't want to say, OK, we will spend so much money on this benefit and so much money on that benefit.

Ms. SCHWARTZ. Yes. I hadn't suggested a set-aside, it was really more about whether, maybe you want to look at this as to whether the criteria is strong enough, whether there might be some additional incentives or a bit more proactive in acknowledging the future benefits of this, so that it may even be that a project that is on its way might think about doing this. It was just suggested by Mr. Philips that he had to sort of step back himself, as a developer, and say we didn't initially think of that.

Maybe if someone, during this process, has said, you know, we really love your project. If, by the way, you also would look at some of these other aspects, that would enhance the project. I don't know if there is that opportunity for that kind of dialogue to go on, but, again, sometimes an incentive, extra few points on a scale can create that kind of incentive. It is not to tie any hands or to be too specific as far as location, but it is more to create the incentives, create the information to be able to make it financially feasible to do some of these things up front that later on we say why didn't we think of that, why didn't we do it when we were building this building.

Ms. BODINE. Right. I think we can certainly make people aware that those environmental benefits count, and should count in the ranking criteria.

Ms. SCHWARTZ. OK, thank you. And I think my time is up.

Thank you, Mr. Chairman.

Mr. DUNCAN. Thank you very much, Ms. Schwartz.

Ms. Johnson.

Ms. JOHNSON. Thank you very much, Mr. Chairman.

Ms. Bodine, when Congress passed the brownfields law, it determined that the ratio of assessment and cleanup dollars program should be 4 to 1 in favor of assessment and cleanup, and I think I heard in your testimony where you indicate the ratio is down to 1.4 to 1. Is that correct?

Ms. BODINE. Are you talking about the funding and——

Ms. JOHNSON. Cleanup versus administrative costs. The grants.

Ms. BODINE. The grants vary from year to year in terms of the targets and how many assessment targets there are versus how many cleanup targets. So your statistics I assume are based on a particular year?

Ms. JOHNSON. Well, the grants for assessment and cleanup are funded at 35 percent of the authorized level, but the grants to State programs are funded 99 percent of the authorized level.

Ms. BODINE. I misunderstood your statement. OK. Those authorizations are separate authorizations. The law doesn't actually establish a ratio, a funding out of a single authorization, but establishes two separate authorization ceilings for the 128 authority and then the 104(k) authority.

Ms. JOHNSON. Do you know why one is fully funded and the other one isn't?

Ms. BODINE. There is a recognition that a great deal of cleanup activity is going on in the State programs that are funded under the Section 128 program, so when we fund the State cleanup programs, we are not funding just individual projects, we are funding a program that then generates many cleanups.

So we want to do both, but when you look at the whole concept of leveraging, by funding capacity, you are then creating an institution that is sustainable and continues cleanups on an ongoing way. By funding a project, you are creating a cleanup in a single community, but then when the project is done or when the money is used, that doesn't sustain and roll over into another project, except where we have the revolving loan fund.

Ms. JOHNSON. Do you have any figures on that in terms of the investment versus the return?

Ms. BODINE. What I have are the estimates that I provided in the testimony. But we are currently in the process of changing the agreements that we have with States, the funding agreements so that they will be required to report back to us exactly the data on what their progress has been and what they are achieving with the funding so that we will then have hard data on that.

Ms. JOHNSON. Do you know about when you might have that? I am just curious.

Ms. BODINE. Well, the change in the form is pending approval. I mean, we have done all the work. I don't have an estimate right now, but I can certainly get back to you with one.

Ms. JOHNSON. Thank you very much.

Mr. DUNCAN. All right, thank you, Ms. Johnson.

Ms. Bodine, you can see there has been a lot of interest among members today and a lot of support for the work that is being done through this program. Based on your discussions with officials at EPA since you have been there and your discussions with the staff of the Appropriations Committees and others, and officials within OMB and the Administration, do you see similar support? Is the EPA happy with this program and do you think that they are going to push for greater funding for this program in the future? And do you see that same willingness to recommend more in this area by the Administration and by the Appropriations Committees?

Ms. BODINE. First, yes, I do hear strong support for the program within the Agency, within the Administration, as well as in Congress. Notwithstanding that strong support, the appropriations history for the program has been steady and it has been at about $160 million a year. And after asking for higher funding over a series of years and being told no, in the 2007 budget request EPA decided to take no for an answer and request the funding that has been provided. So that doesn't mean any less support for the program, but a recognition of Congress' willingness to fund at a particular level, as well as what Congress has established as priorities across the board.

Mr. DUNCAN. Well, I guess one thing I might suggest or might encourage is that perhaps some of the people involved in the appropriations process should be perhaps told a little more forcefully about the enthusiasm at EPA for this program, if it is there, and perhaps, more importantly, given specific examples, understandable examples of what has been done and the progress that has been made through this program.

One thing that Ms. Johnson may have been getting at about the administrative costs, I am told the EPA currently is using about $25 million of its own administrative expense budget to help administer this program or oversee these grants. Does this compare

or how does this compare to the other administrative costs in the department? Are we spending too much to administer these grants, do you think, or what is the situation in that regard?

Ms. BODINE. I think the situation is evolving. What we have, remember, when the program started it was not an authorized program and a smaller program with smaller dollars. What we have now is a statute with a specific mandate and also specific criteria, which means that we follow those criteria and have to use FTE to make sure that we are complying with the law.

So we have EPA employees who are doing the evaluation of the grant proposals, ranking them so that we are responding to Congressional intent, in terms of putting projects forward, and then also managing those grants once they are given out to ensure that the money is spent. That has been discussed this morning. We do have to make sure that funds are not misspent. And also to do grant closeouts so that, after the project is completed, we make sure that the money was spent for its intended purposes.

There is a tension between the good management and good stewardship of Congress' money and yet that creates oversight costs. And in looking at that, I recognize the tension.

Mr. DUNCAN. Mr. Philips mentioned a few minutes ago this coalition of organizations involved with brownfields, and they have suggested some ways to simplify the funding and grant process, including the rolling of grant applications, eliminating EPA approval of brownfield loans, streamlining reporting requirements, and so forth. What do you think about some of those suggestions?

Ms. BODINE. I am going to respond, but I also would welcome a continuing dialogue on these issues, because I am not going to say yes/no. I just want to point out the issues. On the rolling of applications, as I mentioned, there are statutory criteria and a process for ranking grants, which we do on an annual basis. If we had to do that on a rolling basis, I don't know how we would be able to rank projects against each other to appropriately divide up the funding.

On the reporting requirements, we are trending the other way because of the desire to get a better understanding of the environmental outcomes, and we are asking grant recipients to report not just on the number of properties cleaned up and the number of properties assessed, but we are proposing to change our forms to have them report, in addition, on the contaminants addressed, the acres addressed, the media affected, more of the environmental details, again, so that we have a better idea of what is going on and what we are achieving, what the outcomes are for the funding.

So we recognize that that creates a burden. So, again, we have to balance increased information for good use of resources against increased burden.

And you had a third one, which I have now forgotten what it was.

Mr. DUNCAN. Well, the third one was eliminating the EPA approval of brownfield loans.

Ms. BODINE. In the RLF process, those loans are issued by the State or local RLF programs. EPA's role should be to make sure that they have a good program, and not to review every loan.

Mr. DUNCAN. Mr. Philips, what do you think about that trending in the other direction, towards more reporting on the actual results or accomplishments that Ms. Bodine just referred to?

Mr. PHILIPS. Well, just starting with Ms. Bodine's first comment regarding the rolling applications, I think there may be some logistical ways to overcome the complexity associated with having a rolling. Other programs in Federal Government allow sort of an objective scoring opportunity, and there could be an allocation for different periods of time. Even if it is not rolling, you could break it out and there could be an allocation of capital for each of those. So there may be ways to get around that.

There was another.

Mr. DUNCAN. Well, when she said that they are trending towards more reporting being required on the actual results instead of just the assessment and the cleanups and so forth. In other words, as I understand it, what you are talking about, you are requiring more information on the end, as far as the results, rather than on the beginning?

Ms. BODINE. We are proposing to do that, yes, that is accurate. What we require now is number of properties assessed, number of cleanups.

Mr. PHILIPS. I think that is a great trend. We would like to see more of that. We would like to see some objective performance metrics on the back end that may be tied to maybe recapture, even. In other words, if you don't perform up to a certain point, if you don't eliminate the pollution or if you don't remediate appropriately or if you don't redevelop to create enough jobs or enough new tax revenue, then maybe some of that money is recaptured. So that would be an important way to, because we really are not, we can improve in the way we are looking at the results of some of these projects.

Mr. DUNCAN. Well, I have got many other questions, including questions about so-called mothballed sites, many other things, but, unfortunately, they are going to have to be submitted to you for inclusion within the record, because you just heard the second buzzer go off and we have got to go to the floor for some votes.

But I will tell you this: there is a lot of interest in this, and you have been a very informative, very interesting panel, and I certainly appreciate your assistance on this, and will appreciate also your further submission of answers and materials for the record of this hearing. But that will conclude the hearing at this point.

[Whereupon, at 11:45 a.m., the subcommittee was adjourned.]

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

JUNE 8, 2006

INTRODUCTION

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

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

EPA's Brownfield Program began over a decade ago, when the Agency began providing seed money to communities for inventorying brownfields and assessing contamination. In response to community requests, additional tools were added to the brownfields effort. Grants were made to capitalize revolving loan funds for cleanup. Brownfields job training grants were developed to promote employment in brownfields communities. A tax incentive was enacted to encourage private sector investment. States, Tribes, local governments and non-governmental

organizations began to focus on brownfields, creating local and regional approaches to revitalizing properties.

The national brownfields effort has produced impressive results. Since the first grants were awarded, EPA and its grant recipients have performed more than 8,000 assessments. We continue to see progress in the clean up of brownfields. Brownfields grantees have leveraged $8.2 billion in cleanup and redevelopment dollars, leveraging more than 37,000 jobs. Brownfields have proven to be a good public investment, with every public dollar spent on brownfields leveraging about $2.50 in private investment. Brownfields revitalization also produces long-term sustainability benefits, with every acre of brownfields reused saving 4.5 acres of greenspace. Working with communities, states, tribes and other federal agencies, the brownfields initiative has become a coordinated national effort, linking environmental protection, economic development and community revitalization.

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

EPA has taken great strides to implement the new law. EPA developed and published guidelines for the many new grant programs for assessment, revolving loan fund and cleanup grants; state and tribal response program grants; and, research, training and technical assistance

grants. These new programs required application guidelines, funding competitions and selection processes – and they were completed and grants awarded in the first fiscal year following the passage of the new law. Since the start of EPA's brownfields program, EPA has awarded 1323 brownfields grants totaling more than $454 million.

EPA'S BROWNFIELDS PROGRAM

Brownfields Grants

I would like to describe the Brownfields Program components in greater detail. Assessment grants provide funding to inventory, characterize, and assess properties; develop cleanup plans; and conduct community involvement activities related to brownfields. Environmental site assessments provide the information that communities and property owners need to move forward with reuse. In fact, up to one third of the sites assessed show little or no contamination, freeing the site for reuse through a relatively small public investment. Over the years, EPA has awarded hundreds of assessment grants, generally $200,000 each, to communities large and small. The Brownfields Law expanded the eligibility to new entities such as redevelopment authorities and allowed additional assessment-related activities such as planning to be done by grant recipients. Over the past three years, EPA has awarded 446 assessment grants for a total of $102.3 million across the country.

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

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

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

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

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

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

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

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

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

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

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

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

In addition to assessment and cleanup funding, EPA also funds brownfields training, research and technical assistance. As communities engage in cleaning up of brownfields, EPA recognizes the need for a workforce with environmental cleanup skills. To date nation-wide, EPA has awarded 106 job training grants, including 49 grants since passage of the law, resulting in the placement of more than 1,600 individuals with an average wage of $13.00 an hour.

State and Tribal Programs

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

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

The development of successful state and tribal programs is essential to ensuring the successful implementation of the federal brownfields program, because states and tribes are the

frontlines of effective brownfields cleanups. Providing financial assistance to states and tribes increases their capacity to meet brownfields cleanup and reuse challenges. It also helps to ensure cleanup and reuse plans are safe and appropriate and that cleanups are protective and in accordance with federal, state and tribal standards.

Under section 128(a) of the Brownfields Law, EPA provides financial assistance to establish or enhance state and tribal programs so they can meet the challenges of brownfields cleanup and reuse. In fiscal year 2006, EPA plans to provide $49.3 million to 47 states, 41 tribes, and 2 territories (U.S. Virgin Island and the Northern Mariana Islands).

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

States and tribes are using the grant funding for a variety of activities. For some, the funding provides an opportunity to create new response programs to address contaminated properties, while for others it allows them to enhance existing programs with innovative new tools. Some states, like Colorado, are using the funds to bolster cleanup revolving loan funds, while others, like Wisconsin, are using the funds to maintain a "one cleanup" approach to assessment and cleanup. Many are using the funds to conduct site-specific activities, such as the

assessment and cleanup of brownfields sites. Since section 128 funding was awarded in FY03, States and Tribes have voluntarily reported more than 420 site assessments performed on brownfields sites. As with the competitive grants, states are increasing activity in cleanups. To fully quantify the results in this area, the Agency has recently revised its data collection questionnaire, and an amended Information Collection Request form is pending with the Office of Management and Budget.

Liability Protection

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

The Brownfields Law also clarifies the landowner liability protections of bona fide prospective purchasers, innocent landowners and contiguous property owners under CERCLA. To qualify for liability protection, these property owners must satisfy certain statutory requirements. For example, prior to acquiring a property, purchasers must meet environmental due diligence requirements by undertaking "all appropriate inquiries" into the condition of the property. EPA has developed a regulation establishing standards for conducting "all appropriate

inquiries." The Agency did this through a collaborative stakeholder negotiated rulemaking. The final rule was issued in November 2005 and goes into full effect in November 2006.

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

CONCLUSION

EPA's Brownfields Program serves as an innovative approach to environmental protection, spurring environmental cleanup, reducing neighborhood blight, generating tax revenues, and creating jobs. Continuing our success will require ever more interaction and collaboration among all levels of government, the private sector and non-governmental organizations. EPA is dedicated to continuing our efforts to reach out to our partners and the Administration is committed to continuing strong funding for the program.

EPA will continue to implement the program to protect human health and the environment, enhance public participation in local decision-making, build safe and sustainable communities through public and private partnerships, and recognize that environmental protection can be the engine that drives economic redevelopment.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

July 31, 2006

The Honorable John J. Duncan
Chairman
Subcommittee on Water Resources and Environment
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20510

Dear Chairman Duncan:

Please find enclosed responses to questions posed by the Subcommittee pursuant to the June 8, 2006, hearing on Reauthorization of the Small Business Liability Relief and Brownfields Revitalization Act. I hope this information will be useful to you and the Members of the Subcommittee.

If you have any further questions or concerns, please contact me, or your staff may contact Carolyn Levine in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-1859.

Sincerely,

Catherine Sulzer
Deputy Associate Administrator

(Enclosures)

Responses to questions submitted by Representative Pascrell

Question: What have states been allotted for their programs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 128?

Answer: The Environmental Protection Agency (EPA) awards CERCLA section128 funds through a national non-competitive, allocation process. In making funding decisions, EPA takes into account outstanding balances of prior years' funds.

Please see attachment entitled "Funding History for CERCLA § 128(a) State and Tribal Response Program Grants (as of 4/17/06)" for the funding history for Fiscal Years 2003, 2004 and 2005.

Question: What have States spent regarding this funding?

Answer: On an annual basis EPA reviews the drawdown of prior years' CERCLA section 128 funds, old Superfund targeted brownfields assessments (TBAs), and voluntary clean up program (VCP) funds before awarding new funds. Based on outstanding balances, some requests are reduced significantly or they receive no new funds. Any outstanding balances are permitted to be used for future activities.

Please see attachment entitled "Outstanding Funds for the State and Tribal Response Program Funding Allocation Process (as of 4/14/06)."

Question: How are States using this funding?

Answer: EPA provides grants funds to States and Tribes to "establish and enhance" their response programs. States and Tribes use this funding in a variety of ways, each tailored to the needs of that State or Tribe. Examples of funded activities include: developing regulations or tribal ordinances; hiring staff; conducting oversight of cleanups; capitalizing a clean up revolving loan fund, and conducting assessments or cleanups of brownfields sites.

Below are highlights reported by States and Tribes of activities and accomplishments resulting from the use of CERCLA section 128 funds. This represents a small cross-section of the activities that are taking place.

- Since FY 2003, States and Tribes have assessed over 420 properties and cleaned up 21 properties.
- Missouri
  - Expanded outreach to smaller communities in the suburban and rural areas of the state and increased clean-up applications by 135% over the previous year.
  - Initiated the Missouri Brownfields Targeted Assessments program.
  - Developed a comprehensive inventory of mine-scarred sites in preparation for facilitating brownfields redevelopment efforts.

- South Dakota
  - Increased full-time staff by 100% and part-time staff from three to seven.
  - Provided outreach and technical assistance to six economically-distressed communities, allowing them to successfully compete for funding.
- Idaho
  - Awarded $35,000 in annual CERCLA section 128 funds over two years, resulting in $1.5 million in state funds going toward brownfields, according to the state. The funds permitted staff to work on amending Idaho's existing VCP statute and resulted in a new law that creates a new financial incentive to draw private parties into the program.
- Rhode Island
  - Completed a site assessment at the Festival Pier/Pawtucket Riverfront site in December 2005. This allowed the City of Pawtucket to conduct public workshops for the "Master Plan" phase of the project that will redevelop the site into a public park with river access. This site is within the John H. Chafee Blackstone River Valley National Heritage Corridor.
- Massachusetts
  - Worked on the newly announced Bristol Squibb Myers manufacturing facility to be located on the former Ft. Devens' property, an early transfer under CERCLA from the Army to MassDevelopment.
- North Carolina
  - Created an interactive map of projects taking place throughout the state. The web site demonstrates the program's scope, while allowing the public, government officials, and potential developers to access information on sites in their area of interest. Once fully complete, it will include background on the site, site activity, contaminants founds, clean-up plans, photographs, etc.

Question: What is the timeline for implementing the All Appropriate Inquiries Rule? Are landowners and tenants afforded the same protections from CERCLA liability?

Answer: EPA published a final rule setting federal standards for conducting all appropriate inquiries in the Federal Register on November 1, 2005 (70 FR 66070). The effective date of the final rule is November 1, 2006. The regulation establishes the all appropriate inquiries standards as specified under Section 101(35)(B)(ii) of CERCLA as amended by the Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Law).

The final rule establishes standards and practices for conducting due diligence, or all appropriate inquiries, that purchasers must undertake at the time of acquisition to claim Superfund liability protection as an innocent landowner, contiguous property owner, or a bona fide prospective purchaser. The all appropriate inquiries rule does not alter in any way the Superfund liability scheme and the liability protections available to property owners and landlords established by Congress in the Brownfields Law.

With regard to landlord and tenant liability concerns, the Brownfields Amendments to CERCLA define a bona fide prospective purchaser as "a person (or tenant of a person) that acquires ownership of a facility after the date of enactment of ... and that establishes each of the following by preponderance of evidence ...". The statute clearly provides that landlords who own a property and comply with all of the conditions set forth in the statute, including conducting all appropriate inquiries prior to purchasing the property, are bona fide prospective purchasers. However, the statutory language is less clear whether tenants that may be liable under CERCLA for releases and threatened releases of hazardous substances – as either a CERCLA "owner" or a CERCLA "operator" may claim protection from CERCLA liability by qualifying as a bona fide prospective purchaser. EPA has created a national workgroup to explore the potential policy approaches that would protect a tenant from CERCLA liability if a tenant otherwise meets the statutory conditions to qualify as a bona fide prospective purchaser, as well as the implementation issues raised by this statutory language.

OPENING STATEMENT OF
THE HONORABLE RUSS CARNAHAN (MO-3)
COMMITTEE ON TRANSPORTATIN AND INFRASTRUCTURE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
U.S. HOUSE OF REPRESENTATIVES

Subcommittee Hearing on
Reauthorization of the Brownfields Program - Successes and Future Changes

Thursday, June 8, 2006, 10:00am
2167 Rayburn House Office Building

Chairman Duncan and Ranking Member Johnson, thank you for holding this subcommittee hearing today.

The Brownfields program has had tremendous success in redeveloping abandoned cites that are contaminated with hazardous materials and hinder community development.

In Maplewood, Missouri, a city in my own district, a deserted former Kroger Grocery Store, contaminated with asbestos tiles, is now the thriving local business of Schlafly Bottleworks and the appraised value of the property has increased 137 percent since 2001.

In many instances such as this the site redevelopments not only contribute to the economy by stimulating growth and improvement, but also benefit the environment and the health of our constituents through clean up of hazardous materials. These benefits appear obvious, but performance-based measures are not available for these projects and the EPA has no method of ensuring their success or protecting against their failure.

The authorization of the Brownfields program expires at the end of Fiscal Year 2006, and for all the aforementioned reasons, the reauthorization of the Brownfields program is crucial.

I anticipate a bright future for the Brownfields program and look forward to hearing the valuable testimony of the witnesses here today.

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STATEMENT OF
THE HONORABLE JERRY F. COSTELLO
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
HEARING ON THE REAUTHORIZATION OF THE BROWNFIELDS PROGRAM – SUCCESSES AND FUTURE CHALLENGES
THURSDAY JUNE 8, 2006

Thank you, Mr. Chairman, for holding today's hearing on the Reauthorization of the Brownfields Program – Successes and Future Challenges.

Brownfields funds provide communities with new options when it comes to financing redevelopment projects. It gives local communities a valuable tool to address blight and contamination, create new jobs, and expand their tax bases.

The EPA defines Brownsfields as ``abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination." It is estimated that there are between 450,000 to one million Brownfields sites across the country in need of cleanup and remediation.

These sites represent more than just eyesores affecting individual communities. They threaten our groundwater supply, cost our local communities jobs and revenue, and contribute to urban sprawl.

Unfortunately, the largest obstacle cities face when redeveloping Brownfields sites is a lack of capital which is needed for essential planning activities such as site-assessment, remediation planning, and actual clean-up. Because the private markets are often unwilling or unable to provide the funding to take a site through the full clean-up cycle, local municipalities and leaders must take on the arduous task of redevelopment. Many communities are faced with this in my congressional district.

The Brownfields program was designed to provide some relief to this problem; however, with repeated decreasing funding levels in the President's budget, only one-third of eligible applicants actually receive grants.

I am interested to hear from our witnesses their thoughts on the structure of the current program – the strengths and weaknesses – and where we go from here.

I look forward to our witnesses' testimony.

Statement of John M. Magill
Deputy Director, Ohio Department of Development
To
The Subcommittee on Water Resources and Environment
Of the Committee on Transportation and Infrastructure
Of the
U.S. House of Representatives

"Reauthorization of the Brownfields Program – Successes and Future Challenges"

Good morning Mr. Chairman and members of the Subcommittee, I am John Magill, Director of the Office of Urban Development. On behalf of Ohio Governor Bob Taft and Lt. Governor Bruce Johnson, Director of the Ohio Department of Development, I thank you for the opportunity discuss the important role of the Brownfields Program in Ohio's successful brownfield redevelopment strategy.

Brownfield redevelopment is a critical element of Ohio and the nation's economic security by turning liabilities into assets. Brownfields found in urban and rural America drain wealth and limit a community's aspirations through a blighting influence or posing a health risk. To accomplish the task of physically changing property requires the collaboration of the federal and state governments, within a free market setting, attracting private capital leading to the creation of new wealth. Today, success is appearing across the country giving an impetus to discussion and hopefully actions to reauthorize the Brownfields Program.

Over the past five years, the State of Ohio has developed one of the nation's best and most holistic brownfield programs by combining USEPA grants for Brownfield Revolving Loan Funds (BRLF), cleanups and assessments with Ohio's $200 million Clean Ohio Revitalization Fund. This program also enjoys the support of the Ohio EPA's Voluntary Action Program. Together this strong federal and state relationship demonstrates the value of the federalism model with each entity conducting those activities it does best. This in turn, leads to economic and community development transformation of brownfields.

The Ohio Department of Development (ODOD) is uniquely positioned as to see the role of the USEPA grants in cleaning up and positioning property for economic redevelopment or to create or preserve parks and greenspace. ODOD over the past five years received two BRLF grants and two supplemental awards. With these resources ODOD has made four investments totaling $2.45 million with an executed loan commitment of $2 million anticipated to formally close in July.

ODOD chose to seek USEPA funding five years ago because we recognized the value of a flexible financing program's ability to address cleanups on any real property. This decision remains true today as we make loans to a variety of borrowers from townships, municipalities, limited liability corporations and park districts addressing a range of environmental issues from contaminated soils to asbestos. In each case the borrower relied upon the Brownfields Program to be a critical part of the financial structure for the cleanup.

The ability to bring the USEPA resources to a variety of property types and to achieve locally desired end uses, permits the dollars to be an integral part of complex environmental investments. Within Ohio's BRLF portfolio, the loan and grant combination to Columbus and Franklin County Metropolitan Park District is the best example of an innovative and transformational project. BRLF funds were expended to conduct soil remediation and demolition activities on 16 acres of the Whittier Peninsula in Columbus, a historic industrial and manufacturing site, which will become part of a new 80-acre urban park along the Scioto River. The Brownfield Program's encouragement of the creation and preservation of green space, allowed ODOD to bring the BRLF resource to a project with different objectives than what state dollars are often seeking, a direct economic development benefits. Metro Parks and the Audubon Society will invest more than $10 million in the park and Metro Parks supported the cleanup activities with over $250,000 of their own funds.

USEPA has taken action over the past years to strengthen the program including a change to permit properties purchased before 2001 to be eligible for the program. This adjustment brought many more properties into consideration for assessment and cleanup and recognized the reality of how land is acquired and later redeveloped. In many cases communities and other stakeholders gained control of vacant brownfields throughout 1990s to address health and redevelopment issues.

Like other states, Ohio, through the Ohio EPA, relies upon USEPA resources to support the administrative work and outreach related to its Voluntary Cleanup Program (VCP) and Brownfield assistance to communities. The Federal government grants enable states to undertake specific state policies and initiatives, which over time are able to bring forward new ideas and strategies to redevelop brownfields.

The Brownfield Program is an example of the governmental role to sustain commerce and facilitate the development of markets envisioned by the Founders. "The prosperity of commerce is now perceived and acknowledged by all enlightened statesman to be the most useful as the most productive source of national wealth, and has accordingly become a primary object of their political cares."[1] Commerce cannot occur on a brownfield without cleanup, and the cost of this effort due to changes in the economic structure of industry and communities must be borne in a cooperative manner by private and public resources. Past uses on properties across the nation left a mark while helping to build the America we know. The challenge today is the leveraging and layering of financial resources to achieve new successes on old properties.

To remain a vibrant element of the brownfield landscape, the USEPA Brownfield Program needs to make two changes. The first change would be to create a focus on

[1] Federalist Papers, Number 12

permitting and fostering the development of sustainable organizational frameworks. The second change to the program would be to place a premium on using USEPA dollars to leverage private capital and act as an equity investor in projects with community benefit.

A means to achieve a sustainable organizational structure that can be replicated across the nation is for USEPA to formally recognize the difference between assessment and cleanup grants and BRLF awards. Assessment dollars encourage communities and non-profits to seek out properties in order to determine their environmental condition and possible suitability for redevelopment. In a large number of brownfields throughout the nation, nature of contamination and possible health risks makes each assessment a valuable part of helping to characterize land based upon data and key information. Communities and non-profits in urban and rural America may have the administrative capacity and capability to undertake assessments grants. Targeted cleanup grants of $200,000 for specific properties are similar to the assessment grants with a minimum of local administrative structure needed. The projects do not include longer monitoring due to repayments or a continued need to market the program. The value of the cleanup grants again enables USEPA to fund a larger number of projects showing brownfield redevelopment is viable. The challenge is the grant amount limits the type and nature of the cleanup and may not be part of a long-term strategy to redevelop brownfields in the greater community or region.

Underwriting the cost of cleanups, conducting due diligence and servicing loans are activities requiring greater levels of sophistication and resources beyond that supported by USEPA resources. Placing BLRFs at the regional and state level with organizations that have a history of successfully undertaking economic development lending is likely to increase the number and quality of loans. ODOD's program is administered through the Office of Urban Development whose staff includes individuals with business, lending and environmental

experience and background. In addition, ODOD draws upon its fiscal and legal offices to provide in-kind services enabling the program to meet its responsibilities and give borrowers a seamless transaction.

Organizations with an existing capacity and a deeper BRLF capital pool would be able to undertake larger and more complex loans, making a significant and quantifiable economic and community impact. Excluding its largest loan of $2 million, Ohio's average loan amount is $531,000. By simply making two loans, a grantee with a similar average loan size would deplete a $1,000,000 BRLF grant. With a shorter time horizon and below market interest rate, it would take a grantee approximately three years to generate enough program income, principal and interest, to make the next average sized loan.

The Brownfields Program is better served by capitalizing larger loan funds with adequate resources to develop a portfolio producing revenues able to support continued loan activities. Without a commitment to sustaining grantees continued capacity USEPA is funding transactions, not viable redevelopment strategies.

In order to undertake a greater number of more complex cleanups, the Brownfields Program needs to look for specific ways to attract additional private capital. One attraction is the availability of new financial products including: loan guarantees, loan deferrals, balloon payments and types of collateral. Ohio's experience is that flexibility on the financial side brings new borrowers forward who are looking to conduct a cleanup requiring a lower source of capital in order for the project to occur.

Finally, USEPA guidelines and training related to investment are important components of a more robust and well-rounded brownfield program. Each grant for assessment, cleanup or BRLF will fund a select number of projects to be meaningful and sustainable, the choices will be based upon both environmental and economic factors.

Economic factors for every project, whether the potential end use is an industrial park or a new greenway, include analysis of cost estimates for reasonableness and ensuring there is adequate capital to complete the project. Training for grantees would be a vital step in ensuring grants are administered wisely and prudently to the projects most environmentally and economically helpful to communities.

The Brownfield Program, if reauthorized and fully funded, will lead to more innovative and dynamic brownfield redevelopment projects in Ohio and across the states.

Statement of Terese M. Manning
Senior Planner/Brownfields Coordinator
Southeast Florida Regional Planning Council
Before the
Subcommittee on Water Resources and Environment
Committee on Transportation and Infrastructure
U.S. House of Representatives
June 8, 2006

Good morning Mr. Chairman and Members of the Subcommittee. My name is Terry Manning, and I am a Senior Planner and the Brownfields Coordinator with the South Florida Regional Planning Council, headquartered in Hollywood, Florida. I am honored to be here today to discuss the Brownfield Program of the U.S. Enviornmental Protection Agency, how we have been able to utilize the program, the successes of the program, and suggestions for the future.

Background

Brownfields redevelopment is a voluntary redevelopment initiative that many local governments are using as a tool to assist in the redevelopment of actual or perceived environmentally contaminated properties. Brownfields redevelopment activities can cover a broad range of activities, including environmental assessment and cleanup, public outreach and job training. In the Southeast Florida Counties of Miami-Dade, Broward and Palm Beach, the Eastward Ho! Brownfields Partnership (the Partnership) was created in 1997 to address brownfields issues. It is an approach that is being undertaken to combine federal, state and local programs to further brownfields redevelopment.

Because actual or perceived environmental contamination in urban infill sites, along with the risks and costs associated with addressing it, is a significant barrier to redevelopment in the Eastward Ho! corridor, the Partnership is targeting the remediation and sustainable reuse of contaminated and abandoned or underused sites as part of the larger Eastward Ho! effort. The Eastward Ho! initiative seeks to revitalize and improve the quality of life in Southeast Florida's historic, urban areas in an effort to lessen development pressure and urban sprawl in sensitive lands to the west which are needed in order to restore the Everglades ecosystem and ensure future regional water supplies.

Designated a National Brownfields Showcase Community in 1998, the Partnership is a regional collaboration around shared environmental restoration and urban revitalization interests in a fragmented administrative environment. It allows public, private and non-profit entities to bring their skills and resources to bear on the shared problem of brownfields in Southeast Florida's urban core, and thus add value to each other's ongoing work. The Partnership's members are committed to working individually and in tandem to achieve numerous accomplishments.

The Partnership has found that brownfields programs address only part of the urban revitalization/redevelopment puzzle, and the programs are not intended to address all

redevelopment needs and issues. We have found that obstacles to brownfields redevelopment include:

- The lack of adequate funding for cleanup
- Concerns about environmental liability
- The need for environmental assessments of the properties
- Uncertainty over cleanup standards
- Inadequate or non-existent infrastructure system necessary to support redevelopment, including potable water, sanitary sewer, and storm water facilities
- Unfavorable neighborhood and market conditions
- Land assembly issues
- Reluctance to invest in distressed communities due to concerns with socio-economic conditions
- The time and effort needed to address environmental and other issues.

To address these concerns and to assist in brownfields redevelopment efforts, funding from the EPA Brownfields Program has been widely used throughout Southeast Florida. Funds under this program have been used to assess and clean up brownfields, such as abandoned or under-utilized warehouses, gas stations, salvage yards, vacant lots, contaminated properties, and other eyesores that are found throughout the region. These properties cause blight to neighborhoods, inhibit economic development, pose risks to public health and the environment, and erode the tax base of communities.

The following is brief summary of the U.S. Environmental Protection Agency (EPA) funded projects in Southeast Florida:

- Brownfields Assessment Projects in Miami-Dade County, the Cities of Fort Lauderdale, Miami, Opa-Locka, and Lake Worth; the Miami Model City Community Revitalization District Trust; the South Florida and Treasure Coast Regional Planning Councils; and for lands under the jurisdiction of the Seminole Tribe of Florida.
- The South Florida Regional Planning Council and the Eastward Ho! Brownfields Partnership received a $2.2 million grant from the EPA to capitalize a Brownfields Cleanup Revolving Loan Fund that is being used to assist in the cleanup and reuse of brownfields sites in Southeast Florida. Loans totaling $1.41 million dollars have been awarded under this program to date to two local businesses to assist in remediation activities.
- Cleanup grants to the Cities of Miami and Homestead and for the Miami Model City Community Revitalization District Trust.
- An EPA funded job training grant to Miami-Dade Community College and an U.S. Department of Health and Human Services job training grant to Clark University targeting two neighborhoods, one in Fort Lauderdale and one in Miami.
- Targeted Brownfield Assessment Projects (funded by EPA through the State of Florida Brownfields Program) in Miami-Dade County and the Cities of Opa-Locka, North Miami Beach, Deerfield Beach, West Palm Beach and Miami.

These EPA funded projects have resulted in the following for brownfields outcomes throughout the region:

- An investment of approximately $1.3 million in State of Florida funding to assist in assessment and remediation activities.
- An investment of approximately $10.4 million in local and regional government funding. to assist in assessment and remediation activities.
- An investment of approximately $31 million in private and non-profit funding. to assist in assessment and remediation activities.
- Approximately 390 sites have received various levels of environmental assessment review. Approximately 75 sites need no further assessment and will not require remediation.
- Twenty sites have under gone remediation activities and are either undergoing redevelopment or will shortly undergo redevelopment. The redevelopment activities will create at a minimum 2,000 jobs and 600 very low to moderate income apartment units, townhouses, condo units, and single family homes.
- A total of 88 students have been trained under the job training programs. Approximately 95% of the students were employed at the end of their training, with most jobs in environmental cleanup related programs.
- Miami-Dade County and the Cities of West Palm Beach, Opa-Locka, Miami, Miramar, Pompano Beach, Hialeah, Lake Worth, Hallandale Beach, Homestead, Deerfield Beach, Dania Beach, Miami Beach and Lauderdale Lakes have designated 39 sites and areas, totaling approximately 49,450 acres, under the Florida Brownfields Program. This accounts for approximately 64% of the acreage designated in Florida as brownfields.
- Miami-Dade and Broward Counties have received delegation from the Florida Department of Environmental Protection to administer and implement the Florida Brownfields Program in their respective jurisdictions. This results in streamlining of the review and implementation of assessment and cleanup activities thus saving time and money.

The investment of non-EPA funding, the creation of jobs, the creation of new housing units, and the other accomplishments listed above would not be possible without the EPA Brownfields funding that has been received. The EPA funding has been utilized as "seed" money, allowing brownfields projects to go forward.

Specific examples of successful projects can be found attached to this testimony.
It should also be noted that a second key program in brownfields redevelopment in Southeast Florida is the Florida Brownfields Program. The Florida Brownfields Program is primarily implemented and administered by the Florida Department of Environmental Protection (DEP), which also receives an annual grant from the EPA for brownfields activities. The Florida Brownfields Program was created by the Florida Legislature in 1997 with adoption of the Brownfields Redevelopment Act, Chapter 97-277, Laws of Florida, which has been amended in recent years and was amended again this year to respond to needs in the State. The Program is intended to assist local governments with the remediation and sustainable reuse of contaminated, abandoned or underutilized sites with actual or perceived environmental contamination, a significant barrier to redevelopment. The Program is a voluntary program, and the legislation is an "enabling" statute for local governments to use in providing incentives. The DEP has been able to fund numerous assessment and cleanup activities with the EPA funding, with 80% of the funding annual funding being used for the assessment and cleanup activities.

Key objectives of The Florida Brownfields Program include:

1. Community economic enhancement through increased capital investment
2. An increased tax base and tax revenues
3. Job creation
4. Better utilization of community resources
5. An improved quality of life
6. Improving the environment

The EPA and State of Florida Programs are compatible and complement each other, further assisting us and other local governments throughout the State with brownfields activities. DEP and EPA have signed a Memorandum of Agreement recognizing Florida's Brownfields Redevelopment Program as a means to expedite the cleanup of polluted properties and return them to productive use. This agreement incorporates the requirements of the 2002 Federal Brownfields Law and recognizes that cleanups conducted under Florida's program may also satisfy the requirements of the federal Resource Conservation and Recovery Act. The agreement represents a commitment by both agencies to work cooperatively to achieve protective cleanups at Brownfield properties in Florida, while preserving federal enforcement authority. The agreement, in part, promotes the Federal "One Cleanup Program", facilitating assessment and cleanup of polluted properties under the most efficient state or federal cleanup authority, and assisting redevelopment and reuse.

The Need for Brownfields Authorization

The EPA established the federal brownfields program in 1995 as a demonstration program, which provided seed funding to several types of demonstration pilots across the country. The brownfields pilots helped demonstrate how federal funding for assessment and cleanup could leverage billions in private sector investment to help bring contaminated properties back into productive use. In 2002, Congress enacted the Small Business Liability Relief and Brownfields Revitalization Act, which provided the brownfields program with a Congressional mandate, new liability tools to promote reuse, and increased funding at a level of $250 million per year.

While the EPA Brownfields Program has been a significant resource in Southeast Florida and as resulted in positive outcomes, much remains to be done. We have estimated that there are approximately 2,100 potential brownfields sites in Southeast Florida alone. These sites continue to blight neighborhoods, discourage new investment, and undermine economic progress. There is a continued need for the EPA Brownfields Program and for EPA Brownfields funding. Without this critical seed funding, sites will continue to remain idle, blighting neighborhoods and undermining local revitalization efforts. In addition, funding from non-federal sources may be lost.

There continues to be a major gap between the local brownfields needs and the funding and incentives that have been available from the federal government and other sources.

Potential Changes to the Federal Brownfields Revitalization Act of 2002

The results of the Federal Brownfields Revitalization Act of 2002 could be enhanced if certain shortcomings of that statute were improved, and if emerging new tools for brownfields revitalization can be catalyzed. The following is listing of suggested changes to the program based on our experience with the current EPA programs. Also included are brief comments on why the changes are needed. The listing below does not include all potential improvements that could be implemented, but the improvements that we feel are the most important.

1. Provide more flexibility in EPA's grants, including:

   - Eliminate set-aside for petroleum sites.

   It has been our experience that the majority of the brownfields sites in Southeast Florida are either petroleum sites or have petroleum issues. These are the sites we have the most difficulty in addressing.

   - Allow funding to be used for reuse planning.

   Completing an assessment only addresses what is currently on the site. It is the missing link between determining what the problem is and how to implement the cleanup activities. It will provide more certainty in cleanup activities and allow for costs to be determined.

   - Allow state and federal Underground Storage Tank funds to be used on petroleum brownfields.

   Again, it has been our experience that the majority of the brownfields sites in Southeast Florida are either petroleum sites or have petroleum issues. These are the sites we have the most difficulty in addressing. This will also allow more leveraging of state and federal resources.

   - More flexible requirements to qualify as bonafide prospective purchaser for older sites, and thereby be eligible to receive funding.

   It is difficult to demonstrate that a local government took reasonable steps prior to acquiring sites a prior to 2002, and many of these sites may have great need for clean-up funds.

2. Consider a single multi-purpose grant for a larger amount

   Providing multi-purpose grants that can be used for assessment, cleanup, demolition, reuse planning, etc. could speed up the return of brownfields sites to productive use. It will allow local governments to address sites on a more efficient basis, allowing them funding to address all issues on a site at one time. This would also allow more flexibility in how a local government addresses brownfields.

An example of this is the funding awarded to the Miami Model City Community Revitalization District Trust. In separate years, with separate grant applications, they have had to apply first for an assessment grant and later for a cleanup grant. This has cost the Trust time and effort to undertake brownfields cleaunup and redevelopment activities. If a multi-purpose grant for a larger amount was awarded, the Trust could undertake the assessment and cleanup activities more efficiently and with less cost.

3. Use a rolling grant application process

   The need for brownfields funding is needed year-round, not just at one time of the year. Projects and opportunities could be lost because they can not wait for a once a year process. A rolling grants process will provide increased timeliness to meet needs of redevelopment process. The U.S. Department of Commerce, Economic Development Administration uses a rolling grant application process for funding infrastructure improvements that could be used as a model.

4. Increase overall funding

   Currently, EPA only funds approximately one-third of all applications. Increased funding, or even funding at the levels in the current Act will produce more results and return more properties to productive use.

5. Simplify program requirements

   - Provide multi-purpose grants that can be used for assessment, cleanup, demolition, reuse planning, etc.
   - Streamline reporting requirements

   As stated previously, a multi-purpose grant that can be used for multiple activities with one grant application can more efficient and provide more certainty to the brownfields redevelopment process.

   Currently, the reporting requirements can be burdensome. We were required to report on a quarterly basis the status of 19 different key measures for our assessment grant and 7 different key measures for our revolving loan grant. Each quarterly report also requires a narrative on the status of the project. Also, detailed reports must be submitted for each site assessed or remediated. This takes a great deal of time, effort, and staff time (money).

6. Improve Brownfields Revolving Loan Funds (RLF), such as

   - Increasing the amounts of capitalization grants
   - Allow funds to be used to guarantee private loans
   - Allow commingling and leveraging of funds from multiple sources
   - Expedite or eliminate EPA approval of loans
   - Reduce process time delay for loans

We have awarded two loans under our Brownfields Cleanup Revolving Loan Fund Program. It has been our experience that this is probably the most difficult of the EPA brownfields grants to administer. In order to successfully implement a RLF, a grantee needs to address environmental remediation issues, ensure the loans are financially feasible, ensure the funds will be repaid and ensure the funds will be properly used in the future. It is not cost efficient for local governments with small grants to implement such a program. As a coalition RLF grantee with four members of the coalition, we were able to "pool" resources to have a greater amount of capitalization now and in the future for the loan fund. The loan fund has a better chance of being more sustainable in the future and to produce results after the first round of loans. A larger capitalization amount allows for larger loans to be made, for the more difficult projects.

An example of this is our first loan, which was for a project called Malibu Bay. The cleanup costs on the project site were $1.2 million. The developer was not able to get conventional financing for the total amount of the costs. Our loan was for $800,000. By committing this amount of funding into the project, the Florida Housing Finance Corporation agreed to finance the remaining costs of cleanup as well as the financing the costs for the redevelopment of the site. This financing was approximately $22 million. Up until this project, the Florida Housing Finance Corporation was reluctant to invest in brownfields projects. However, after we signed a joint funding with them and the developers, the project was able to go forward. The project was completed successfully in the Fall of 2005, with 264 very low and low income rental apartment built on the site, with all apartments rented. Loan repayments start later this year. In addition, the Florida Housing Finance Corporation has now approved 3 other housing projects in the region because of the project. All three projects are primarily being funded with their funding without additional federal funding.

The other improvements listed above would allow more flexibility in funding projects and provide for additional financing options. As we found, the EPA funding for our first loan provided the "seed" money necessary for other options to occur.

7. Technical Changes

- Remove administrative cost prohibition for grant recipients
- Eliminate EPA Quality Assurance/Quality Control requirements for sampling, etc. when duplicated under state requirements

The current Act prevents brownfield grant recipients from using a small portion of their grant to cover reasonable administrative costs necessary to carry out a project. This limitation makes it extremely difficult for local governments, community organizations and non-profit entities to effectively develop and implement their site assessment and cleanup programs and projects. All other EPA programs (Clean Water, Drinking Water, Superfund, RCRA, etc) and virtually all Federal grant programs allow a portion of grant funds to be allocated to cover reasonable administrative costs.

State agencies that receive brownfield funding from EPA are permitted to pay administrative costs with their grants. Only local governments and non-profit organizations are penalized

by this prohibition and only the Brownfields program is singled out for this treatment. As a result, many localities and organizations are unable to use brownfields funds.

EPA Quality Assurance/Quality Control requirements for sampling, etc. when adequate requirements are existing under state laws and regulations is a duplication of requirements. This increases costs and the time to complete projects. When adequate requirements are not available under State programs, this requirement should remain.

Conclusion

We thank you for your leadership in promoting brownfields redevelopment. Thank you also for considering our requests to enhance EPA's Brownfields Program. The Program is making a critical difference to communities in Southeast Florida, and enhancing this program would enable more communities to return blighted property to productive use.

This concludes my prepared remarks. I would gladly answer any questions you may have.

Attachment
Successful Brownfields Projects in Southeast Florida

The following is a brief summary of three projects in the Southeast Florida Region, noting funding sources, project partners, and project outcomes.

I. Wagner Square Project, City of Miami, FL

Project Funding:
- $1 million BEDI grant for site remediation
- $4 million in Section 108 loan funds for acquisition, remediation and construction
- Total project cost: $34 million
- 4:1 ratio of private funding to public funding

Project Partners
- City of Miami
- Two private developers

Project Summary
- 2.95 acre parcel of land in Miami's Allapattah Community
- A mixed-use project
- Will provide 198 units of affordable and market rate for-sale housing
- Will create new commercial and retail space that will generate 195 new jobs

II. Martin Luther King Boulevard Mixed-Use Project, City of Pompano Beach, FL

Project Funding:
- $500,000 BEDI grant
- $2,833,000 Section 108 loan funds
- $7,600,00 City funds
- $500,000 HOME/SHIP funds
- $2,000,000 Broward County Transit
- Total project cost: $55 million

Project Partners
- City of Pompano Beach
- Broward County Mass Transit
- Local Initiatives Support Corporation
- Workforce One
- Redevco Consulting, Inc.

Project Summary

- 24 acre area along Martin Luther King Avenue in the City's Northwest Community Redevelopment Area
- A mixed-use project that will provide retail and office space, housing for the elderly and mixed-income housing
- The redevelopment along MLK Avenue is expected to create 238 new jobs
- Housing Units To Be Built:
    - 70 for sale townhouses
    - 250 apartments
    - 70 senior residential units
- Other Projects In The Area
    - A New Neighborhood Transit Center to be built by Broward County Mass Transit Division
    - A New Multi-Purpose Community Center to be built by the City of Pompano Beach

III. Malibu Bay Project, West Palm Beach, FL

Project Funding:

- BCRLF Loan from South Florida Regional Planning Council for $800,000
- ➢ Developer's contribution of $2,981,000
- Housing Finance Authority of Palm Beach County, Florida, Multifamily Housing Revenue Bonds, $19,510,000
- Housing Finance Authority of Palm Beach County, Florida Taxable Multifamily Housing Revenue Bonds, $500,000
- The bonds are being guaranteed by the Florida Housing Finance Corporation, acting through the Florida Affordable Housing Guarantee Program.

Project Partners

- Private developer
- City of West Palm Beach
- South Florida Regional Planning Council

Project Summary

- Approximately 13 acre site
- Site was formally a golf course
- Built 264 market rate multi-family apartments
- Contamination on the site: arsenic

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Before the
Subcommittee on Water Resources and Environment
Committee on Transportation and Infrastructure
U.S. House of Representatives
June 8, 2006

Mr. Chairman and Members of the Committee, I thank you for the opportunity to contribute to the subject of today's Hearing, the Reauthorization of the Brownfields Program – Success and Future Challenges. The Small Business Liability Relief and Brownfields Revitalization Act of 2001 has very efficiently provided wide-ranging positive economic and environmental impacts, and reauthorization can expand those benefits in future years.

By way of disclosure, let me note that I recently have been, and continue to be, a beneficiary of the Program, since I am funded to conduct research on behalf of Brownfield Program stakeholders whose efforts to reclaim and redevelop sites on which reuse is impeded by real or perceived contamination is affected by the programs of the federal government. My first research on brownfields, with my colleague Dr. Kristen Yount, Professor of Sociology at Northern Kentucky University – with whom I continue to work, dates to 1993, well before the Program was launched. We first received federal funding for our work two years later, working on a project funded jointly by EPA and the Department of Housing and Urban Development (HUD). At the time, I was Professor of Urban Policy and Economics at the University of Louisville, where I am now an Emeritus Professor but continue to serve as Director of the Center for Environmental Policy and Management and Co-Director of our EPA-supported Environmental Finance Center.

For more than a decade, I have had the privilege of conducting research on all aspects of brownfields redevelopment and provided technical assistance to states and localities across the nation. Funding has come from different EPA offices, as well as from HUD and the Economic Development Administration of the Department of Commerce. My prior experience included over a decade as Director of the Local Economic Development Assistance Project at The Pennsylvania State University, a role that has shaped my perspective on CERCLA and brownfields policy.

Dr. Yount and I have conducted case study, survey and literature review analyses of a broad array of actors on the brownfields scene, including appraisers, bankers and other lenders, business environmental managers, community members, private developers, local economic development organizations, realtors, and state regulatory and economic development bodies. In recent years, we have specialized in analyzing issues related to environmental insurance and other risk management approaches for the Office of Brownfield Cleanup and Redevelopment and its predecessor, the Outreach and Special Projects Staff

of EPA's Office of Solid Waste and Emergency Response. (I have appended a list of the titles and URLs of our reports on different federal agency websites.)

My objectives today are to comment on some singular successes of the brownfields program as a whole, and the 2001 legislation in particular, briefly addressing the issue of their cost-effectiveness, and then to turn to some issues that may be considered as challenges.

On Successes

Much has changed in the climate for brownfield redevelopment in the past four years, stemming from finally having some federally legislated initiative that distinguishes brownfields from superfund sites, provides clear definitions, offers explicit conditions for liability relief, and encourages other levels of government to promote the reuse of previously developed sites through a program of grants:

- All the states have brownfield programs – a far cry from where we were in the late 1990s, when the matter of cleaning up previously polluted sites was seen as a federal problem.

- There are now many different brownfield redevelopers, of varying sizes and capacities, from those operating across the country to others specializing in their local settings. The people and companies I characterized as "brownfield cowboys" in a study conducted when there were only a few dozen firms chasing high profits by taking on immense risks now complain about too many other firms competing with them for the previously unwanted sites they used to be able to buy for a song.

  Having "too many developers" is a singular measure of success. An economist's interpretation would be that the entry into the market of many new brownfield redevelopment firms must be seen as a reflection of the reduction in barriers to entry. That is, the new legislation, with liability relief, a delegation of enforcement powers to the states, and all the other provisions in the 2001 law, has made it easier for private firms to enter into the business of mitigating and redeveloping brownfields. The evidence of economic success lies in the increased number of firms, the profits they are making, and the jobs and new tax revenues they are creating. The evidence on environmental quality success lies in the completion of projects that meet state standards for site remediation.

- Growth in the number of real estate investment pools that specialize in previously developed properties, including those that can be expected to have been polluted. This expansion of investment activity is indicative of the new climate created by the 2001 legislation. Given that a large proportion of those pools attract pension fund monies, the fact that pension fund managers now accept that brownfield projects can satisfy the "prudent man rule" that governs their investment decisions is a measure of the risk reduction and certainty that Congress and the Brownfields Program have provided to this real estate sector.

- States continue to innovate in developing new incentives and regulatory relief systems to encourage identification and redevelopment of brownfields within their borders. Given the fiscal pinch felt in many states, a strong case can be made that the funding of state brownfield initiatives under the 2001 Act provided the foundation on which this innovation has flourished.

  My sideline company, The E.P. Systems Group, Inc., was responsible for the conduct of *An Assessment of State Brownfields Initiatives* that the Department of Housing and Urban Development

released in 1999. After considering a number of state efforts to study, we looked at Massachusetts, Michigan and Pennsylvania, rust-belt states with major pollution problems associated with abandoned factories, because we could fince few significant initiatives in states outside the northeast and midwest. Today, that has all changed, and I contend that the Brownfields Program has played a major role in getting states around the country to confront not just their large factory sites, but the mass of sites left behind by machine shops, small foundries and smithies, appliance repairers, auto maintenance and repair facilities, dry cleaners, paint stores, and the like. We now can see state-level innovation across the nation.

My knowledge of current state activities is grounded in an ongoing study in which Dr. Yount and I are monitoring state decisions and providing technical assistance to decision-makers with respect to facilitating developers' access to private insurance products as a means of managing brownfield risks. Five states have developed some form of program (MA, WI, CT, NY, and CO). A number of others are in the process of developing or investigating the potential benefits of a program (AK, DE, ID, IN, NJ, OH, OR, PA, RI, VT, VA, and WY).

Diversity exists among states that have insurance programs. MA provides a direct subsidy to the cost of the coverage, while NY simply makes a credit against state taxes available as a means of subsidizing insurance coverage. CT provides technical assistance and may offer support for premium costs, while CO is just implementing an information hotline. WI has a different approach from the others, insuring *itself* against losses arising from offering liability relief to developers using natural attenuation of groundwater, a lengthy process monitored over time.

- The number of applicants for the different grants available under the 2001 law continues to grow. In light of the other findings about changes since 2001, this expanded demand cannot be easily dismissed just as publicity-driven local pursuit of federal funds. Local pressures building for decades for reuse of abandoned sites, and for cleanup of potentially health or eco-system threatening pollution conditions have finally been met by a new federally-generated clarity of mitigation standards and opportunities to gain liability relief. The 2001 Act and the Brownfields Program provided cities, towns, counties, and Native American tribes with the opportunity to test if small amounts of visible public support for brownfields could attract the private investment that is essential to redevelopment. They took up the challenge, applied for funding, launched new initiatives, and the influx of new investors into the brownfield marketplace demonstrates that their efforts have borne fruit.

The Brownfields program has been a singular success in stimulating a new investment climate.

Cost-Effectiveness

These successes are real, but you, no doubt, will note that I, an economist, have failed to cite a single dollar figure on the value of the activities generated by the liability clarifications or the private investments leveraged by the grants provided under the Act. This is a matter of some concern.

I cite no numbers, because there are no direct impact measures that I consider to be reliable. That is not to say that there has not been substantial effort expended on the part of EPA and others in the federal government on the problem of impact measurement. The effort is there, but the requisite data are not

available, and there is little sign that there is any level of government prepared to expend the very extensive effort – and substantial financial resources – required to produce the needed information.

Believing as I do that the grants provided under the Act have had a significant impact on the rates of reclamation of contaminated sites and the redevelopment of underutilized lands in and near our urban centers, I would not recommend diverting limited funds to such data collection. There are other ways to measure impacts, and I will discuss some below. However, I want to comment first on what we already know about the problems of measuring the impacts of brownfield policies. The problem that brownfields pose is a specific case of the general difficulty we face in connecting particular policy interventions to specific investments in a complex and changing economic environment.

- The "counter-factual" is not knowable: when we observe passage of a policy followed by a specific act by a party intended to be influenced (a subsidy offering, followed by an investment, for example), we have no way of knowing what would have occurred in the absence of the policy intervention. We have theories and hypotheses, and but no hard evidence, since the costs of controlling for all the external variation are simply too great. (Even attempting to extrapolate from a series of other situations is tenuous as best, as the Appraisal Institute has noted in its past pronouncements on valuation of contaminated – and stigmatized – real estate.)

- The direct economic impacts of a site mitigation and redevelopment are not limited to increases in the value of that single parcel of land, but spill over to changes in the value of other properties. (The presumption of such a spillover is the basis for the extensive reliance on Tax Increment Financing by local economic development agencies across the U.S.A.) The extent of spillovers from brownfield cleanups has never been fully measured (although there is some preliminary evidence in work done for the Superfund branch by E2, Inc. that suggests that larger off-site effects may swamp site-level impacts). The highly detailed data collection required to provide reliable measures of the impacts on property values spreading out from a single contaminated parcel, and how they shift with the size of the site, the proximity of other brownfields, the strength of the local real estate market, etc., has never been undertaken – perhaps because, even if the data were available, they could only show correlation, not strict causality.

- The value of individual economic development incentives is not known; in most cases we cannot even rank order the significance of different incentives. In practice, a number of different inducements are offered in bundles and that makes it almost impossible to separate the impacts of the individual elements. But the myriad studies of economic development incentives that have been undertaken just make things worse: developers are asked to rate or rank incentives individually, often just to give a score of from 1 to 10 on their importance. No developer who is paying attention would fail to rate each incentive of interest to his firm as "essential" or a 10, in an effort to encourage provision of as many additions to his bottom line as possible. That is the only rational answer from a profit-maximizing respondent. Research methodologists work to make it impossible to give such "strategic responses;" they are not asked to design local surveys.

We can conclude that, as a nation, we do not have good generalizable tools for measuring direct economic development impacts, a key element of any assessment of the economic value of the

Brownfield Program. There are, however, other measures by which we can gauge the impact of the program on the flow of private capital into contaminated land reclamation and redevelopment.

- The accelerated rate of entry of new firms into the brownfield redevelopment business is one such measure. With project costs in the multiple tens of millions of dollars, it is difficult to say that federal grants of $200,000 or $350,000 to local governments brought development companies into the brownfields business even if the public recipients just passed along the funds. But something did attract them to regeneration projects.

  What changed more in the urban redevelopment arena than anything else as a result of the passage of the Small Business Liability Relief and Brownfields Revitalization Act in 2001 is the contaminated land investment *climate* across the nation – and effects of that climate change cannot be measured by calculating the federal – or other public – dollars in any one deal. We cannot ascribe the new state-level brownfield program initiatives in Idaho or Wyoming just to market forces raising the prices of old brownfield sites, which would have made such investments attractive even without the Act. New interest in reclamation and regeneration on the part of both the private sector and local governments has been generated by the Brownfields Program itself – even in states without growing real estate demands. The grants, then, have to be seen, not as federal support for individual brownfield projects, even in priority efforts in some localities, but rather as investments in changing the whole perception of brownfield projects and in reducing the tendency to exaggerate the risks on reclaiming and redeveloping such previously used sites.

- The appearance – even if not the reality – of certainty with respect to liability relief and regulatory processes are key to private developer interest in brownfields. The Brownfields Program as a whole, and its heightened visibility through an expanded grants program, has contributed to a greater sense of certainty, through new liability relief provisions and the wide attention to that relief that the regulatory negotiations on the All Appropriate Inquiry standards attracted.

  My claim of the importance is not a claim made lightly or on theoretical grounds. Under a grant from EPA's National Center for Environmental Research, under a special program for examination of Market Mechanisms and Incentives, I conducted a survey in 2003-2004 of developers who were members of the Urban Land Institute with my colleagues Kris Wernstedt from Resources for the Future and Anna Alberini of the University of Maryland. We offered a hypothetical brownfield project with details about costs and returns on investments to the developers and asked them to choose between different bundles of incentives designed to attract them to investing in the project. Using a specialized statistical tool called conjoint analysis, we were able to identify the value of complete certainty with respect to key sources of risk in brownfield projects. Our findings, now in print in multiple peer-reviewed journals, were stark:
  - Complete certainty on cleanup standards and thus costs was declared by developers to have a value equal to about 15% of expected project profits.
  - Complete certainty with respect to relief from future liability was declared to be worth roughly an additional 20% in project profits.

  It is thus appropriate to argue that the increased sense of certainty provided by the Brownfields Program helps explain the perceived behavior of developers, who are now more willing to take on

brownfield projects than they were before 2002. (A one page summary, with other findings, appeared in *Brownfield News* in June, 2005. A copy is appended to my written submission.)

The claim about cost-effectiveness that can be derived from this study also is worthy of note: The climate of greater certainty that appears to have attracted more developers to brownfields did the job that would otherwise have had to be accomplished by subsidies and tax breaks to raise the risk-adjusted rates of return for investors. Based on our study cited above, perceived certainty on both cleanup costs and prospective liability would be worth over $1,700,000 on a $25 Million residential redevelopment of an industrial brownfield. We can conservatively attribute only $500,000 of this figure on average on a $25 Million project to the perceived risk reduction, but not certainty resulting from the Brownfields Program. That $500,000 is then the reduction in the returns the average investor would demand for a risk-adjusted return on a brownfield investment.

Next, we can take the claim of $7.2 Billion in leveraged investments from EPA's *Brownfields Stakeholder Report* of 2004 and assume, again conservatively, that only $5 Billion of that was private sector investment made after the passage of the 2001 Act. It thus follows, using the $500,000 to $25,000,000 ratio, that the effects of the Brownfields program on perceived risk reduction may have saved state and local governments $100 Million in subsidies they otherwise would have had to offer developers to generate the extent of brownfield redevelopment we have experienced. This is a benefit on top of the more direct effects, namely raising property value, producing new jobs and taxes revenues, and reducing human health and environment damage costs, routinely associated with the Brownfields Program and its grants.

Let me reiterate here that these certainty effects on the flow of investment capital come from both the actual liability relief provided in the 2001 Act and from the publicity about those provisions associated with the increased grant program that it authorized. A contrast can be drawn between the 2001 Act and the 1997 Budget Reconciliation that legislated a form of lender liability relief that EPA had been providing through its regulatory process for years. It took lenders years to learn about the relief (and I see evidence to this day that not all have learned about the benefits the 1997 legislation provided). Developers got the message about liability relief much faster – and the big difference in the two situations is that the 2001 Act generated far more publicity due to the expanded grant programs involving both states and localities that were incorporated with the liability relief for innocent parties, neighbors and certain redevelopers.

On Challenges

The successes of the Brownfields Program are, in part, the generators of the challenges. As more and more sites get attention and get redeveloped, the sites remaining to be regenerated always will be more difficult to work on than those already addressed. I want to focus attention on three issues today, all of which pose policy challenges and all of which currently impose substantial costs on the American economy. I shall address (a) "mothballed" sites, (b) small sites, and (c) depressed and contaminated areas. My comments and examples derive primarily from the urban settings I know best, but some points also apply to mine-scarred lands, of which we have a few in Kentucky.

Mothballed Sites

Major American corporations have substantial assets tied up in closed factories and mines, many of which may have positive value as real estate, even after site mitigation costs are taken into account. That is, not all mothballed sites are so-called "upside down" properties on which the cleanup costs appear to exceed the value of the land "as if clean," to use the appraisers' jargon. Some could be very profitable redevelopment properties, were it not for their owners' concerns about prospective liability risk exposures.

Those mothballed assets are idle, and constitute a drag on the entire US economy, since the capital is not invested in productive activity. To the extent that the assets are in locations that would be the optimal sites for other economic activities, the alternative users of the properties are forced to use suboptimal locations, so the economy is further impaired. There is thus a strong economic efficiency argument in favor of doing something about mothballed sites, even those that do not pose any environmental threats by remaining unremediated. (Obviously, to the extent that the failure to do anything about an environmental condition actually results in damages to human health and ecological conditions, the case for action is strengthened further, but I want to stress the purely *economic* case here.)

It is fairly simple to understand why sites are mothballed: they are held out of future use by firms that fear that they will be the "deep pockets" that will be tapped under the strict joint and several liability provisions of CERCLA if any problems or costs arise, no matter how far into the future. It is much more complicated to determine what one might do about the idled assets and productivity losses:

- New legislation to relieve the firms of prospective liability, even after some future date just transfers the costs to others – and who will those parties be? Presumably *not* the public sector.
- While insurance is a useful tool for many environmental risks, the current market will support, at best, a ten-year term on a pollution liability policy, so this risk transfer tool helps little on mothballed sites.
- Prepaid insurance programs, setting aside funds for purchase of new pollution liability policies when the current ones expire, assume that the coverage will still be sold, that the firm holding the set-aside funds will still be viable, and that the funds will be sufficient to buy the coverage.
- Federal legislation (or accounting provisions going beyond those in FAS 143 and FIN 47) may be able to force the conduct of actual site assessments on all idled and environmentally suspect sites, but even this requirement would not necessarily result in remediations.
    - In Massachusetts, where the results of the assessment would have to be reported, the state might require remediation, but in Pennsylvania, there is no requirement that the firm that does a site assessment report findings to the state, so the mothballer may still not act.
    - In some instances, such an assessment will show the firm that the environmental response costs are much lower than expected – but if what is deterring redevelopment is the liability concern, not redevelopment project costs, this finding will not reduce mothballing.

  On balance, such a provision may simply add regulatory costs without generating redevelopment.
- Given the will to examine the issue – and it is one that will involve fee payments to a sequestered account that is not part of general federal revenues and from which the government cannot be permitted to borrow – the federal government could act as a reinsurer of last resort for the environmental insurance industry. (Reinsurers insure the primary insurance underwriters for a share in premiums, so the fee structure could mirror industry practice but just give the underwriters a more

reliable back-up. It is common practice for the insurers to reinsure each other, thus spreading risk, but the credit ratings of insurers rise and fall, limiting their long-term reliability as reinsurers.) This approach could lead to longer terms for coverages and a greater willingness to enter into prepaid programs since the good faith and credit of the federal government will be more highly rated than that of the insurers.

- The federal government could move to force actual site mitigation by mothballers, which might lead them to release their land for redevelopment to recover the costs of cleanups. Alternatively, there might be a federal or EPA role in encouraging states to let local governments exercise powers of eminent domain to take mothballed sites and get them back to productive use. Both of these approaches, however, would require accepting a more coercive role for the state, turning our backs on what has been one of the strengths of the Brownfields Program – cooperation.

Over the long haul, it does appear that some sort of public-private collaboration on assuring the safe reuse of mothballed sites will have to be negotiated across all the stakeholders, and then legislated. The Brownfields Program is a good structural network through which to initiate such negotiations.

Small Sites

It is likely that there is not a single local property tax jurisdiction in the nation that has not had to deal with the abandonment of small parcels of land. When those abandoned sites are brownfields, we as a society have a major problem on our hands. In those states in which tax delinquent property automatically transfers to municipal title, such as Missouri or New Jersey, the problem is the environmental liability the city takes on. Those states that offer sovereign immunity to cities can avoid the liability problem. But the municipalities that enjoy sovereign immunity then share the problem of the localities that do not have to take title in the first place, such as Kentucky: the existence of abandoned properties, sometimes with buildings or other "attractive nuisances" on them.

Logic (and limited data) tells us that the vast majority of the up to one million reputed brownfields across the nation are under one acre in size. Just how big are the lots occupied by gas stations, machine shops, small foundries and smithies, appliance repairers, auto maintenance and repair facilities, dry cleaners, paint stores, small fertilizer – or pesticide and herbicide – blenders and the myriad other mom and pop operations that have always been the majority of American businesses? Probably mostly under half an acre, or even smaller. How many of them are abandoned? We don't have hard data, but the likelihood that the original polluter on any of these small sites is still in business has to be considered to be extremely low. The same holds for the probable financial capacity of the current owner if it is not an abandoned site. In this part of the brownfields world, unlike that of the large factory sites, there are no deep pockets.

If the environmental problems are severe enough, the economic returns to getting one abandoned site of this size back into productive use will never be as great as the effort needed to do so. Even if the environmental problems are not severe (and the majority of brownfields probably suffer only from "perceived" contamination), the costs of finding out that the site is usable may be too great for a small parcel. And, even if you can determine the site is clean at a reasonable cost, it may still be too small to attract the attention of a redevelopment investor.

When we did the study of brownfield redevelopment specialists a few years ago, every company reported that it had no interest in any sites of less than ten to twenty acres. Our findings parallel the experiences of urban economic development officials across the continent who struggle to assemble sufficiently large tracts of land to attract real estate investment capital from outside the local area. And all those officials will tell you that site assembly efforts – or, worse yet, subsequent marketing efforts – can be undermined by even the hint of contamination on one small site in the bundle.

That complaint about the single site, however, provides the clue to the solution. If one contaminated quarter-acre parcel can make a ten to twenty acre site unattractive to a redeveloper, what is the economic value of getting that parcel cleaned? What is the potential return to a municipality from stepping in itself and remediating a small brownfield that has depressed the economic attractiveness of all the other sites nearby? This spillover return is not yet well enough recognized, so small sites get relatively short shrift in brownfields program planning.

Recognizing the economic payoff to redeveloping a key parcel led cities in the 1980s to push the logic of Tax Increment Financing, under which the increased revenues *from an area* that could result from the redevelopment of a *single parcel* can be used to provide debt service for an economic development bond. The tool has been used for strategically located large underutilized sites in many cases, so this is nothing new, even for brownfields ... except that the logic has not been applied to finding the funds to redevelop the quarter-acre site through recognizing that the new revenues from, say, five acres around it that may help payoff a loan taken out by a city or redevelopment agency. The failure to recognize small scale brownfield off-site effects is illustrated by the Michigan Brownfield TIF program, which permits only on-site revenue gains to count, while the state has a separate Industrial TIF program that recognizes off-site effects.

But even where the TIF logic is well understood, and the state encourages the creation of Brownfield Redevelopment Districts for economic development planning – in New Jersey, for example – the municipal liability issue remains a potential problem for site assembly efforts. In the NJ case, if a city inherits a site due to tax delinquency, the state does not consider it liable for environmental conditions on the property. The same does not apply to any brownfield *voluntarily* acquired by a local redevelopment office in its efforts to attract renewed real estate investment.

But I am happy to be able to not merely report on the problem of small sites, but also to note that the Office of Brownfield Cleanup and Redevelopment is examining ways of addressing the issues – at least some of the funds we have received are devoted to the problem, and area-wide impacts have become more prominent in the discussions at the office's annual Brownfields conferences.

This is evidence to me of some recognition of a problem and a need to address it. That the small sites problem is only now coming into focus is a function of the magnitude of the problem posed by the abandoned, non-mothballed larger sites with which EPA and our local governments have had to cope. Their successes with the larger sites now allows us now to move to another issue.

It can be difficult to convince local officials desperate for new real estate tax revenues that, rather than clean up an abandoned lot and try to maximize the taxes from the single parcel, they should make an effort to determine what new use will maximize *total area tax increments* rather than on-site property value. Minor changes in the weights given to features of proposed local brownfield

programs in future OBCR application instructions and/or in the merit scoring of those elements could, however, start to get local officials to think more in these terms. In this manner the grants themselves could not just help cities develop brownfield regeneration programs, but also educate them further about how to make more efficient use of the funds at their disposal. As we move forward, we can learn from Great Britain and others in Europe, notably Germany, Belgium, and the Netherlands, all of which have developed contaminated land policies grounded in an *area approach*.

Depressed and Contaminated Areas

A further dimension of the small sites problem arises from the fact that such sites do not arise in isolation. In urban settings, depressed neighborhoods may be shot through with many brownfields, whether underutilized or abandoned, that combine to undermine prospects for area regeneration.

Any investor in a brownfield counts some profit made on the increase in the value of real estate holdings arising from completion of a required environmental response undertaken as part of the expected return on investment . In depressed neighborhoods with multiple brownfields, there may be no value increment to the mitigation of any one site. The presence of others nearby generates an area-wide stigma that holds down increased property values for even the remediated sites.

Localities with such economically depressed and environmentally damaged zones have little choice other than to try and tackle bundles of brownfields simultaneously. The alternative – providing a project-by-project, site-by-site subsidy to developers to compensate them for the loss of the value increment on mitigating small sites – is just too costly for local government budgets.

If local authorities are to work on such bundles, then they will need to acquire them if not all the sites have been abandoned. They thus will have to accept additional contingent liability claims for the cleanups and past environmental damage in most of the states. In light of the revisions to the GASB standards for municipal accounting now being completed, those liabilities may have to be declared, with attendant weakening of the bond ratings of the local governments making such acquisitions – and thus increased borrowing costs for the very funds needed to accomplish the cleanups. Openness is a positive characteristic for any accounting system and the full disclosure is desirable. The outcome in this case, however, may be perverse: undermining local governments' willingness to address an economic development and environmental protection issue of great importance to the nation.

Thus, if there were any contemplated changes in the authorizing legislation for the Brownfields Program, I would encourage inclusion of language that provides explicit relief from federal liability for local government units and agencies that acquire brownfields for the purpose of redevelopment. Given the delegation of environmental response standards to the states that is already present in the 2001 Act, this federal assurance may not have substance in terms of real liability relief. It may, however, signal to the states that Congress does not consider imposing new obligations on those local governments and counties trying to improve their economic and environmental status to be a constructive approach to addressing the nation's contaminated land legacy.

I thank you for your attention and look forward to any questions you may have.

Selected Relevant Publications Authored by Dr. Meyer

for other information or articles, he can be reached at <pbmeyer@ouisville.edu>

Reports for Federal Agencies and Departments

✓ *Environmental Insurance Products Available for Brownfields Redevelopment, 2005* (With K. Yount) (USEPA, 2006) <http://www.epa.gov/brownfields/pubs/enviro_insurance_2006.pdf>

✓ *Update: State Brownfield Insurance Programs, 2005* (With K. Yount) (USEPA, 2006) <http://www.epa.gov/brownfields/pubs/insurance_update_2006.pdf>

✓ *Brownfields Insurance for Public Sector-Led Development Projects: Experience and Methods* (With K. Yount) (USEPA 2005) <http://www.epa.gov/brownfields/pubs/bf_case_studies_report.pdf>

✓ *State Brownfield Insurance Programs, 2004* (With K. Yount) (USEPA 2004) <http://www.epa.gov/brownfields/pubs/state_report_04_revised.pdf>

✓ *Models of Government-Led Brownfield Insurance Programs* (With K. Yount.) (US EPA, 2002). <http://www.epa.gov/swerosps/bf/pdf/nku2002.pdf>

✓ *Environmental Insurance and Public Sector Brownfield Programs: Factors Affecting Pursuit of Insurance as a Redevelopment Tool* (With K. Yount.) (US EPA, 2000). <http://www.epa.gov/swerosps/bf/pdf/meyeryou.pdf>

✓ *Reclamation and Economic Regeneration of Brownfields* (With H.W. VanLandingham) (Economic Development Administration 2000). <http://www.eda.gov/ImageCache/EDAPublic/documents/pdfdocs/meyer_2epdf/v1/meyer.pdf>

✓ *An Assessment of State Brownfield Initiatives* (HUD 2000). <http://www.huduser.org/publications/econdev/assess.html>

✓ *Environmental Insurance for Urban Redevelopment: A Feasibility Study* (With K. Chilton) (HUD 1998). <http://www.huduser.org/publications/econdev/envins.html>

✓ *The Effects of Environmental Hazards and Regulation of Urban Redevelopment* (Co-authored with five others) (HUD 1998). <http://www.huduser.org/publications/econdev/bfield.html>

✓ *Financing Small–Scale Urban Redevelopment Projects: A Sourcebook for Borrowers Reusing Environmentally Suspect Sites* (With K. Yount) (EPA 1997). <http://www.smartgrowth.org/library/finsbk.html>

Practice Guides for Local Official (from U. of Louisville Environmental Finance Center):

✓ *Public Strategies for Cost-Effective Community Brownfield Redevelopment* (With H.W. VanLandingham) <http://cepm.louisville.edu/Pubs_WPapers/practiceguides/PG1.pdf>

✓ *Closing the Brownfield Information Gap: Some Practical Methods for Identifying Brownfields* (With S.L. Coffin) <http://cepm.louisville.edu/Pubs_WPapers/practiceguides/PG3.pdf>

✓ *Utilizing Environmental Insurance for Brownfield Redevelopment* (With S.L. Hollis and T.L. Lambert) <http://cepm.louisville.edu/Pubs_WPapers/practiceguides/PG4.pdf>.

COVER STORY

What Do Developers Want?

By Kris Wernstedt and Peter B. Meyer

There are numerous success stories of public actions that appear to have attracted private investment in brownfield properties. However, we have little systematic evidence of what really works best to stimulate investment.

What, for instance, is the relative value to private developers of third party liability protection versus protection from additional cleanup requirements after state approval of a response? How significant are incentives to a project's bottom line? Do developers care when and in what form public subsidies come?

The high value placed on third party liability relief reflects demand for certainty.

Looking for Answers

With a research grant from the U.S. EPA, we recently surveyed more than 300 private developers who are members of the Urban Land Institute about their preferences regarding the redevelopment of contaminated properties.

We presented our respondents with a hypothetical $25 million residential redevelopment project that included $1 million of environmental costs for assessment and cleanup and an expected 20 percent return on investment. We asked each respondent to select a preferred hypothetical incentive bundle from a list of options.

The bundles included reimbursement for environmental assessment, public hearing considerations, full protection from any reopener costs after regulatory approval of the cleanup, full protection from any third party liability for environmental damage claims, and construction subsidies. Based on the responses, we statistically estimated the relative attractiveness of each individual action and translated these into dollar terms.

Our analysis suggests full relief from third party liability offers the biggest bang, representing nearly 20 percent of the project's profit. Protection from additional cleanup costs in the event of a change in standards or the discovery of additional contaminants is worth nearly 15 percent of the profit.

Introducing an additional public hearing requirement, in contrast, imposed the equivalent of a cost representing almost five percent of the profit. This likely reflects the possible deterioration in cash flows associated with requirements arising from the hearing or time from an extended project horizon.

Prior to the analysis, we expected that reimbursement for the costs of the environmental assessment would look better than a construction subsidy on a dollar-for-dollar basis because the latter is not paid if the project fails to go forward. But looking at all of our responses, we cannot detect a significant difference in the relative value of these subsidies, likely because of the small size of the reimbursement relative to the expected profit (about two percent).

However, the one-quarter of respondents who indicated that they preferred cash subsidies to fee waivers of equivalent value (for water hookups, for example) indicate a higher value for an assessment reimbursement than for an equivalent construction subsidy.

What Does It Mean?

What do these results suggest for the development of brownfield programs? The high value placed on third party liability relief reflects demand for certainty about and protection from lawsuits that more states may be able to address, either through legislative and regulatory changes or state-facilitated insurance. The states also could gainfully support cleanup protection, given the difficulty in obtaining privately-provided insurance policies for sites such as our hypothetical project that have cleanup costs under $1–2 million.

In addition, while requirements for public hearings on brownfield projects appear to impose costs on developers, these costs are significantly less than those associated with liability risks. To the degree that public hearings help reduce future cleanup or environmental liability claims, such hearings could increase expected returns even absent state-sponsored liability relief.

Finally, the risk-based cleanups that are common at brownfield projects may leave residual contamination as well as residual financial risks. Our findings suggest that a risk-based cleanup could leave the equivalent of over $1 million worth of profits on a site when compared to a cleanup that eliminates all future liabilities. This result suggests that private developers and public officials both need to weigh the savings associated with lower upfront remediation costs against the costs of controlling the residual risks. **BFN**

Kris Wernstedt is a fellow at Resources for the Future. Peter B. Meyer is director of the Center for Environmental Policy & Management at the University of Louisville.

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STATEMENT

OF

JONATHAN PHILIPS

Senior Director
Cherokee Investment Partners

TO

THE HOUSE SUBCOMMITTEE ON WATER RESOURCES AND

ENVIRONMENT

OF THE COMMITTEE ON TRANSPORTATION AND

INFRASTRUCTURE

OF THE

UNITED STATES HOUSE OF REPRESENTATIVES

REGARDING

Reauthorization of the Brownfields Program:
Successes and Future Challenges

June 8, 2006

Testimony of Jonathan Philips
Before House Subcommittee on Water Resources and Environment
June 8, 2006

Good morning, Mr. Chairman, members of the Committee. My name is Jonathan Philips and I am Senior Director of Cherokee Investment Partners based in Raleigh, North Carolina. Thank you for the opportunity to testify in support of reauthorizing the Small Business Liability Relief and Brownfields Revitalization Act.

Cherokee is the largest and most active private investment firm in the world specializing in the acquisition, cleanup and sustainable revitalization of brownfields. Since inception, we have acquired over 520 sites across North America and Europe. We are privileged to be fiduciaries of institutional capital providers to perform this important activity. We are not aware of any private organization in the world that voluntarily cleans up more pollution.

The Brownfields Act that we're here today to support has been an important first step in returning neighborhoods to healthy places where families can live and work. Brownfield revitalization catalyzes positive community transformation that extends well beyond the individually contaminated sites. This community transformation, and resulting ripple effect throughout

neighboring communities, writes new chapters of hope from the often sad histories of economic and environmental decline, and urban blight.

This Act includes important tools for local communities to assess contamination and start planning for redevelopment. And it includes important provisions regarding *bona fide* prospective purchasers. The dedicated team of staff at the U.S. EPA should be commended for their implementation of these critical programs.

A larger brownfield coalition, of which Cherokee is a member, has provided written testimony today detailing a number of specific issues that should be examined by this subcommittee as it considers reauthorization. There are many good suggestions in that statement. We would encourage members to specifically explore modifications that could be made to the existing definition of "brownfield" under the Act to bring in sites that are currently excluded under Section 101(39)(b). One example would be to enhance communities' ability to prioritize sites for reuse, eliminate currently defined set-asides for certain types of sites – petroleum brownfields and sites acquired prior to the January 2002 initial enactment date -- and allow all brownfield sites (as defined broadly by 101(39)(**a**) to compete for program

resources and those legislative enactments that definitionally key off of section 101(39).

Another example is sustainability, as mentioned by Representative Schwartz a few moments ago. When we cleanup pollution below ground, what are we doing to protect our environment above ground when redeveloped? Can we afford to do only half the job? It has been widely cited that buildings account for roughly 50% of the energy consumption in this country. Let us create a positive mirror image and offer legislative incentives for sustainable development and greenbuilding. With this mirroring, we can replicate on top of the sites the same positive environmental impact that results from remediation below ground.

In our mind, there is no question that this Act should be reauthorized. From Cherokee's perspective, we need to go further.

If Congress wishes to seriously address this nation's brownfield crisis, we must develop additional federal incentives to draw private investment dollars to the more complex and economically less desirable sites. These are sites that are more complex, take longer to redevelop, involve significant liability

and cost overrun risks, and almost invariable lead to the various permutations on the same question that we hear so frequently from others in the traditional development world "Why should we invest in this site, given its risks, limitations, unknowns, additional costs and brain-damage required, when I can just develop the next farm on the proverbial "edge of town?" Congress has responded, not just with the Brownfield Act, but with important programs such as the 198 expensing provisions, recently created unrelated business income tax exemptions, and Representative Turner's proposal to create transferable tax credits. Each of these hold tremendous promise for returning brownfield sites to productive use. The incentives the federal government provides can take many forms: direct funding, tax credits, loan guarantees to reduce the cost of debt-financed redevelopment, or other tools. Local and state governments can assist with expedited permitting and other tools to encourage brownfield redevelopment. What is important is that these incentives need to directly address the financial underpinnings of brownfield transactions.

In testimony before other subcommittees, I have encouraged members to think about brownfield sites as "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. A site that is "above water" 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 federal, 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 will never be remediated by the private sector.

It is critical to note that these terms – under water and above water – take into account only what I'll call for lack of a better term, "internal" costs and benefits of a developer. They do not reflect the various public benefits that development would bring, such as reduced pollution, more jobs, reduced sprawl, or increases in tax revenues.

One mission of government, then, must be to focus particularly on those properties that are under water from a market perspective and above water

from a public perspective. For those sites, we need an aggressive mix of local, state and federal programs to encourage the private markets to undertake the task of remediating pollution and redeveloping sites. We encourage Congress to take specific notice of the significant challenges faced by private or public actors seeking to perform land assembly for large brownfield revitialization, where master planning is the most effective way to move large brownfield and underutilized lands from blight to robust productivity. Without effective tools to control brownfield or blighted zones, these sites will sit indefinitely.

Having said that, we appreciate that it is extremely difficult to discuss brownfield incentives in the abstract. Without looking at actual sites and running the numbers on actual projects, it is almost impossible to assess how well an incentive program will function once it is implemented.

Toward that end, let me make a novel proposal on behalf of Cherokee Investment Partners.

Our company is willing to provide each member of this committee with an economic assessment of the redevelopment potential of the top-priority

brownfield site in your district. Even though these sites may not meet our investment criteria, we will volunteer our staff resources to help you and your communities evaluate your top-priority brownfield site as a way of helping develop a set of real-world examples on which you can base decisions regarding this and other brownfield legislation that may come before you.

This assessment will help you, your constituents and other stakeholders sort through their options for the particular site and it will also provide a concrete, close-to-home example that you can use in evaluating the type of reforms necessary to revitalize brownfield sites all across this country.

If the members of this Committee are interested in pursuing my genuine offer of a private sector, candid assessment, we can work either directly with your individual offices or coordinate this effort through the staff for this subcommittee.

Just this week I returned from the annual meeting of the U.S. Conference of Mayors. Despite the difficult issues Mayors face, the sense of optimism and willingness to find new ways to tackle old problems is always energizing.

As I'm sure you know, mayors across this country list brownfield revitalization as one of their top priorities.

And it is no wonder. Revitalizing brownfield sites is a way to restore communities, create jobs, expand tax roles, and create a healthier environment. Yet, progress is painfully slow. The U. S. Chamber of

Commerce estimates that, at the current rate of remediation, it will take 10,000 years to clean up our nation's brownfields. While I, like many of you, find this timetable to be unacceptable, I am convinced that public and private entities can work together to leverage each other's strengths to accelerate the pace of brownfield cleanup.

Please know that as you consider the pending reauthorization and as you look to other incentive programs, Cherokee Investment Partners is willing to do whatever it can to help advance the national goal of revitalizing America's brownfield sites.

Again, thank you very much for the opportunity to speak here today, and I look forward to working with you and your staff to evaluate high priority sites in your districts. I yield any remainder of my time and welcome

U.S. Conference of Mayors
Cherokee Investment Partners, LLC
International City/County Management Association
International Council of Shopping Centers
Local Initiatives Support Corporation
National Association of Industrial & Office Properties
National Assoc. of Local Government Environmental Professionals
Northeast-Midwest Institute
The Trust for Public Land

June 8, 2006

The Honorable John J. Duncan, Jr.
Chairman
House Water Resources Subcommittee
U.S. House of Representatives
Washington, DC 20515

The Honorable Eddie Bernice Johnson
Ranking Member
House Water Resources Subcommittee
U.S. House of Representatives
Washington, DC 20515

RE: Statement for Hearing on Reauthorization of the Small Business Liability Relief and Brownfields Revitalization Act

Dear Chairman Duncan and Ranking Member Johnson:

Thank you for convening the June 8 hearing to consider potential reauthorization of the brownfield revitalization program. The undersigned coalition of organizations represents thousands of communities and millions of Americans with keen interest in the strength and success of the federal brownfields program. We have been working to advance and promote brownfield revitalization since the issue emerged in the early 1990s. We are pleased to submit this statement for the record.

As you know, Congress enacted the Small Business Liability Relief and Brownfields Revitalization Act with unanimous bi-partisan support in both the House and the Senate in 2001. This Act built on the initial success of the brownfield demonstration program that the Environmental Protection Agency established in 1995. The pilot program provided seed money to demonstrate how federal funding for assessment and cleanup could leverage substantial private sector investment to help bring contaminated properties back into productive use. The 2002 law provided the brownfields program with a Congressional mandate, and new tools to attract additional private capital investment and promote reuse. It also authorized increased funding, to a level of $250 million per year: $200 million a year for brownfields assessment and clean-up grants to local communities and entities focused on redevelopment; and $50 million a year in grants to states and Indian tribes to help them implement stronger and better state brownfield response programs.

By any measure, the federal brownfields program has been a tremendous success. The EPA has invested approximately $800 million in brownfields site assessment and cleanup since 1995. According to EPA, the program's relatively modest investment has leveraged $8.2 billion in cleanup and redevelopment monies – a more than ten to one return on public investment. This has taken place because the brownfields program has been shaped to reflect the realities of the real estate market – a relatively small up-front public investment to overcome cleanup barriers and make sites "shovel ready" can leverage significant follow-on investment. In addition, this investment has resulted in the assessment of more than 8,000 properties and helped to create more than 37,000 new jobs nationwide. Moreover, the EPA program typically serves as a revitalization catalyst, attracting other state and federal agency resources, as well as local incentives, which serve to attract the private sector participation essential to success.

While the EPA brownfields program has helped hundreds of communities, much remains to be done. Brownfields can still be found in virtually every community, as abandoned or underused warehouses, salvage yards, inactive manufacturing facilities, former gas stations and dry cleaners, and other eyesores that undermine economic and social vitality. Reauthorization of the program can build on the substantial successes of the program's first five years; key refinements can make it even stronger, further enhancing its ability to make a difference in communities. Reauthorization will support existing partnerships with other programs and help forge new federal-state-local program linkages to maximize the value of tools at all levels of government, especially those states and cities that have taken innovative approaches to brownfield cleanup and reuse. Reauthorization can also offer an opportunity to consider new types of tools and strategies to broaden the program's impact in communities across the country.

In anticipation of reauthorization, a broad-based group of brownfields leaders met on November 4, 2005 at the national brownfields conference in Denver to discuss potential improvements to federal brownfields programs and policies. From that initial meeting and follow-up discussions in 2006, our stakeholder coalition evolved. Cumulatively, it represents decades of public, private, and non-profit experience with brownfields in thousands of communities across the country. The ideas and recommendations for strengthening the program, summarized below, represent our collective experience.

Increase EPA Funding for Brownfields Assessment and Cleanup

- Congress should increase overall EPA funding for brownfields to between $500 million and $750 million a year. The General Accounting Office has estimated that there are 450,000 brownfield sites across the country, and most industry experts believe that are probably more than 1 million properties that could be cleaned up and reused. While the current program has produced significant results, it has just touched the tip of the iceberg in terms of brownfields that need attention and hold promise for reuse. At current program levels, EPA can fund only one of every three qualified applications. Moreover, below we recommend increasing funding limits for cleanup grants and revolving loan fund (RLF) capitalization grants, as well as making funding available for demolition costs where remediation is involved. All of these changes demonstrate the need for additional

funding and will lead to the cleanup and reuse of thousands of additional sites across the nation.

- Congress should recognize the complexity of the cleanup process at larger or more contaminated sites by increasing the funding limit for cleanup of a single site to at least $1 million. This increase would enhance the local ability to address larger anchor sites that can catalyze broader revitalization and result in significant ancillary benefits.

- Congress should allow communities to apply for higher levels of grants to capitalize Brownfields Cleanup Revolving Loan Funds (RLFs). We recommend that this level be increased to at least $5 million. One state has reported that its average brownfields cleanup loan is about $500,000. Under the current RLF capitalization grant limit of $1 million, states and communities can only loan funds for a few projects at a time.

Increase Flexibility in the Use of EPA Brownfield Funds

- Congress and EPA should streamline the brownfield redevelopment process on the ground in communities, by allowing eligible entities to apply for multi-purpose grants that can be used for the full range of brownfield needs – assessment, cleanup (both direct grants and RLFs), as well as reuse planning, demolition where environmental remediation is involved, purchase of environmental insurance, and development of institutional controls.

- Congress should allow funding to be used to address the full range of contaminants at brownfield properties, including the demolition and remediation of sites and structures with asbestos, lead, and other contaminants.

- To enhance communities' ability to prioritize sites for reuse, Congress should eliminate currently defined set-asides for certain types of sites – petroleum brownfields and sites acquired prior to the January 2002 initial enactment date – and allow all brownfield sites to compete equally for program resources. This would dramatically simplify the grant application process and enable communities to more efficiently use federal funding to promote reuse.

- Congress should allow communities to tap into their full range of local brownfield redevelopment partners by clarifying and broadening which entities can be eligible to receive brownfield program funds. For example, non-profit organizations including community development corporations (CDCs) are uniquely positioned to play a leadership role in brownfields redevelopment projects. It should be clarified that these organizations are eligible to receive assessment funds and RLF capitalization grants as well as cleanup grants.

- Congress and EPA should enhance the capacity of RLFs to leverage additional private capital investment, by allowing funds to be used to guarantee private loans, and by permitting commingling and leveraging of funds from multiple sources (both public and

private) into the RLF capital pool – which would expand local capitalization opportunities and could reduce local administrative needs for multiple fund operations.

- Congress should establish more flexible requirements for local governments and non-profit organizations to qualify as bona fide prospective purchasers for older sites, where these parties did not cause or contribute to the contamination. This would enable these older brownfield properties to become eligible to receive brownfield program funding. Local governments have acquired numerous properties over the years through a range of mechanisms. In many instances, it can be difficult for localities to prove that they took "all appropriate inquiries" prior to acquiring sites many years in the past because these standards were never established or required until the brownfields law was enacted in 2002. However, in many communities, these long abandoned sites may have the greatest need for brownfield funds to protect health and the environment, as well as promote reuse. The brownfields reauthorization should ensure that these older sites acquired by innocent localities or non-profits are eligible for assessment and cleanup funds.

Simplify and Improve EPA's Funding and Grants Process

- Congress and EPA should allow communities to better capture brownfield reuse opportunities by making the grant program more timely – for example, the Agency should explore implementing a bi-annual grants award process, or implementing a rolling grants process to provide improved timeliness to meet the needs of the typical redevelopment process (similar to the Economic Development Administration's grant process).

- Congress and EPA should streamline the RLF process by expediting or eliminating EPA approval of brownfield loans, and thereby ensuring the timeliness of this important source of funding.

- EPA should streamline reporting requirements, both to minimize the paperwork burden on grantees, as well as to encourage more accurate, useful and timely program data generation.

Further Clarify Liability Relief Provisions to Spur Cleanup by Innocent Land Owners, Innocent Purchasers, and Innocent Prospective Land Users

- Local government efforts to clean up and reuse brownfields, especially at long-abandoned, "orphaned," or mothballed properties need to be encouraged through clearer liability protections. Local governments should not be faced with greater liability exposure as a result of taking action to address properties that are contaminated and blighting influences on their communities.

- To encourage even more private parties to take a second look at brownfield sites, additional liability clarification is needed – for innocent easement holders, lessees, and other parties in similar contractual relationships at sites.

- Further protections for innocent landowners who acquired sites prior to the enactment of the brownfield law in 2002, such as changing "all appropriate inquiries" requirements to better reflect pre-enactment practices, would encourage more private interest in these sites.

Provide Targeted Brownfields Assistance to Address Special Needs

Over the past five years, the brownfields program has delivered great successes. However, the following areas need additional assistance to ensure that the program continues to meet community needs:

- Economically and socially disadvantaged communities still face considerable barriers when addressing brownfields in their neighborhoods. EPA's grant program should be more accessible and better able to assist communities with higher poverty and higher unemployment. To this end, EPA should be encouraged to increase technical assistance and training targeted to disadvantaged communities to help enhance local capacity to promote brownfields revitalization.

- Institutional controls such as engineering solutions or land use restrictions are critical to ensuring that brownfields cleanups are protective of public health and the environment over the long term. As such, they are being promoted by most states through their voluntary response programs. To address ongoing community and developer concerns about their efficacy and long-term viability, the EPA brownfields program should provide funding for research and demonstration projects in this area.

- Environmental insurance has brought needed financial certainty to the brownfield site redevelopment process, leveraging considerable private investment along the way. The brownfields program should facilitate expanded use of this tool in several ways – through incentives for carriers to set up insurance pools for smaller sites or community-wide site portfolios (where individual site premiums would be cost-prohibitive), by encouraging use of insurance to provide finality and incentives for mothballed sites, and by facilitating the use of grants to cover environmental insurance costs.

- Small and rural communities have difficult brownfield capacity issues, and EPA should target technical assistance efforts – for example, on reuse process basics, public program packaging and leveraging, AAI, and private sector opportunities – to encourage revitalization of sites in those areas.

Provide Technical Changes to Improve the Brownfields Program

Finally, brownfields program reauthorization should make a couple of technical changes to enhance program impact.

- First, it should eliminate EPA's "Quality Assurance/Quality Control" requirements for sampling and other practices, since they are duplicative of state requirements and can

inhibit reuse by slowing down the process and increasing costs.

- Second, 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 project. This limitation makes it extremely difficult for local governments, community organizations and non–profit entities to effectively develop and implement their site assessment and cleanup programs and projects. All other EPA programs (Clean Water, Drinking Water, Superfund, RCRA, etc) and virtually all Federal grant programs allow a portion of grant funds to be allocated to cover reasonable administrative costs. State agencies that receive brownfield funding from EPA are permitted to pay administrative costs with their grants. Only local governments and non-profit organizations are penalized by this prohibition and only the Brownfields program is singled out for this unfair treatment. As a result, many localities and organizations are unable to use brownfields funds. We have heard from a number of communities – especially small and rural communities – that have indicated they are unable to apply for EPA brownfield funding due to the prohibition on the use of funds for administrative costs.

Thank you for considering our views about how to enhance EPA's brownfields program and ensure that brownfield cleanup and redevelopment continues to make a critical difference in communities across the country.

For more information on these recommendations, please contact Judy Sheahan (US Conference of Mayors), Paul Connor (NALGEP) Charlie Bartsch (ICF), Ken Brown and Matt Ward (The Ferguson Group), Evans Paull (Northeast-Midwest Institute) or any of the brownfield coalition members below.

Sincerely,

U.S. Conference of Mayors
Cherokee Investment Partners, LLC
International City/County Management Association
International Council of Shopping Centers
Local Initiatives Support Corporation
National Association of Industrial & Office Properties
National Association of Local Government Environmental Professionals
Northeast-Midwest Institute
The Trust for Public Land

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